

Evaluation of the Commission Notice on the definition of relevant market for the purposes of Community competition law

Fields marked with * are mandatory.

Public questionnaire for the 2020 Evaluation of the Commission Notice on the definition of relevant market for the purposes of Community competition law

Introduction

Background and aim of the public questionnaire

Market definition is a tool to identify and define the boundaries of competition between undertakings. The main purpose of market definition is to identify in a systematic way the competitive constraints that the undertakings involved face. The objective of defining a market in both its product and geographic dimension is to identify those actual competitors that are capable of constraining the commercial decisions of the undertakings concerned (such as their pricing decisions). It is from this perspective that the market definition makes it possible, among other things, to calculate market shares that would convey meaningful information for the purposes of assessing market power.

The Commission Notice on the definition of relevant markets ([‘the Notice’](#)) has the purpose of providing *‘guidance as to how the Commission applies the concept of relevant product and geographic market in its ongoing enforcement of Community competition law [...]’. By rendering public the procedures which the Commission follows when considering market definition and by indicating the criteria and evidence on which it relies to reach a decision, the Commission expects to increase the transparency of its policy and decision-making in the area of competition policy.* (Excerpts of paragraphs 1 and 4 of the Notice)

This public questionnaire represents one of the methods of gathering information in the evaluation of the Notice, which was launched on 3 April 2020. Among other steps, the Commission will also carry out research, exchange views with the EU national competition authorities and may hold a conference or workshop with technical experts as well as representatives from the main stakeholder groups.

The purpose of this questionnaire is to collect views and evidence from the public and stakeholders on how the current Notice works for them. The Commission will evaluate the current Notice, based on the following criteria:

- Relevance (Do the objectives of the Notice match current needs or problems?)
- Effectiveness (Does the Notice meet its objectives?)
- Efficiency (Are the costs involved proportionate to the benefits?)

- Coherence (Is the Notice internally coherent? Does the Notice complement other actions or are there contradictions?)
- EU added value (Does the Notice at EU level provide clear added value?)

Please note that the purpose of this questionnaire is to evaluate the guidance described in the Notice and not to evaluate the requirement of defining a relevant market for the purpose of application of EU competition law or of having to comply with EU competition law.

The collected information will provide part of the evidence base for determining whether and how the Commission should change the Notice.

The responses to this public consultation will be analysed and the summary of the main points and conclusions will be made public on the Commission's central public consultations page. **Please note that your replies will also become public as a whole, see below under section 'Privacy and Confidentiality'.**

Nothing in this questionnaire may be interpreted as stating an official position of the Commission.

Submission of your contribution

You are invited to reply to this public consultation by answering the questionnaire online. To facilitate the analysis of your replies, we kindly ask you to keep your answers short and concise. You may include documents and URLs to relevant online content in your replies.

We invite all respondents to provide answers to all the questions in the questionnaire. In case a question does not apply to you or you do not know the answer, please choose the field 'Not applicable' or 'Do not know'.

You have the option of saving your questionnaire as a 'draft' and finalising your response later. In order to do this, you have to click on 'Save as Draft' and save the new link that you will receive from the EUSurvey. Please note that without this new link you will not be able to access the draft again.

The questionnaire is available in English, French and German. You may however respond in any EU language.

In case of questions, you can contact us via the following functional mailbox: COMP-MARKET-DEFINITION-EVALUATION@ec.europa.eu.

In case of technical problems, please contact the Commission's CENTRAL-HELPDESK@ec.europa.eu.

About you

* Language of my contribution

- Bulgarian
- Croatian

- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- Gaelic
- German
- Greek
- Hungarian
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

* I am giving my contribution as

- Academic/research institution
- Business association
- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

If you chose "Other", please specify.

* First name

* Surname

* Email (this won't be published)

* Scope

- International
- Local
- National
- Regional

* Organisation name

255 character(s) maximum

* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

* Country of origin

Please add your country of origin, or that of your organisation.

- Afghanistan
- Åland Islands
- Albania
- Algeria
- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Djibouti
- Dominica
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Libya
- Liechtenstein
- Lithuania
- Luxembourg
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Saint Martin
- Saint Pierre and Miquelon
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan

- Belgium
- Belize
- Benin
- Bermuda
- Bhutan

- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria

- Burkina Faso
- Burundi

- Cambodia

- Cameroon

- Canada
- Cape Verde
- Cayman Islands
-

- Germany
- Ghana
- Gibraltar
- Greece
- Greenland

- Grenada
- Guadeloupe

- Guam

- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau

- Guyana

- Haiti
- Heard Island and McDonald Islands

- Honduras
- Hong Kong

- Hungary

- Iceland

- India
- Indonesia
- Iran
- Iraq

- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar /Burma
- Namibia
- Nauru

- Nepal

- Netherlands
- New Caledonia
- New Zealand
- Nicaragua

- Niger

- Nigeria
- Niue

- Norfolk Island
- Northern Mariana Islands
- North Korea

- North Macedonia
- Norway
- Oman
- Pakistan
- Palau

- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland

- Syria

- Taiwan
- Tajikistan
- Tanzania
- Thailand

- The Gambia

- Timor-Leste
- Togo

- Tokelau
- Tonga

- Trinidad and Tobago
- Tunisia

- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu

Central African
Republic

- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Czechia
- Democratic Republic of the Congo
- Denmark
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- Liberia
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena Ascension and Tristan da Cunha
- Saint Kitts and Nevis
- Saint Lucia
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

* The main activities of your organisation

Text of 1 to 250 characters will be accepted

- * Please describe the sectors where your organisation or your members are conducting business, if applicable

Text of 1 to 250 characters will be accepted

- * The 2 digit NACE Rev.2 code(s) referring to the level of "division" that applies to your business (see part III, pages 61 – 90 of Eurostat's statistical classification of economic activities in the European Community, [available here](#)):

If you cannot provide the information, please write "Do not know" or "Not applicable", as the case may be.

- * Mark the countries/geographic areas where your main activities are located

at least 1 choice; multiple choice is possible

- | | | | |
|---|--|--|--|
| <input type="checkbox"/> Austria | <input type="checkbox"/> France | <input type="checkbox"/> Lithuania | <input type="checkbox"/> Slovenia |
| <input type="checkbox"/> Belgium | <input type="checkbox"/> Germany | <input type="checkbox"/> Luxembourg | <input type="checkbox"/> Spain |
| <input type="checkbox"/> Bulgaria | <input type="checkbox"/> Greece | <input type="checkbox"/> Malta | <input type="checkbox"/> Sweden |
| <input type="checkbox"/> Croatia | <input type="checkbox"/> Hungary | <input type="checkbox"/> Netherlands | <input type="checkbox"/> United Kingdom |
| <input type="checkbox"/> Cyprus | <input type="checkbox"/> Iceland | <input type="checkbox"/> Norway | <input type="checkbox"/> The Americas |
| <input type="checkbox"/> Czech Republic | <input type="checkbox"/> Ireland | <input type="checkbox"/> Poland | <input type="checkbox"/> Asia |
| <input type="checkbox"/> Denmark | <input type="checkbox"/> Italy | <input type="checkbox"/> Portugal | <input type="checkbox"/> Africa |
| <input type="checkbox"/> Estonia | <input type="checkbox"/> Latvia | <input type="checkbox"/> Romania | <input type="checkbox"/> Australia & Oceania |
| <input type="checkbox"/> Finland | <input type="checkbox"/> Liechtenstein | <input type="checkbox"/> Slovak Republic | |

- * Publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

- Anonymous**

Only your type of respondent, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.

Public

Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

I agree with the [personal data protection provisions](#)

I. General Questions on the Notice

* I.1. In the last five years, have you or your company / (business) organisation been required to assess the relevant product and geographic market for competition law purposes?

- Yes
- No
- Do not know
- Not applicable

* I.2. If your reply to question I.1. was 'yes', please specify the type of competition law assessment

at least 1 choice; multiple choice is possible

- Assessment of a concentration between undertakings under Council Regulation N^o 139/2004 (the EU Merger Regulation)
- Assessment of concerted practices and agreements between companies under Article 101 of the Treaty
- Assessment of abuse of dominance by an undertaking under Article 102 of the Treaty
- Assessment under the national competition law of one of the 30 states of the European Economic Area
- Assessment under the national competition law of a jurisdiction outside of the European Economic Area
- Other
- Not applicable

* I.2.1. If Other, please specify

Text of 1 to 500 characters will be accepted

* I.3. How often do you consult the Notice?

- Frequently (several times per year)
- Occasionally (once or twice per year)
- Rarely (once every couple of years)
- Never
- I do not know

* I.4. Do you consult the Notice for any purpose other than competition law assessment?

- Yes
- No
- I do not know
- Not applicable

* If yes, please explain your reply.

Text of 1 to 500 characters will be accepted

II. Relevance (Do the objectives of the Notice match current needs or problems?)

In this section, we would like to understand if the objectives pursued by the Notice, namely to provide correct, comprehensive and clear guidance on market definition in EU competition law assessments, are relevant.

* II.1. Is there still a need for a Notice to provide correct, comprehensive and clear guidance on market definition?

- Yes
- No
- I do not know

* II.1.1. Please explain your reply

Text of 1 to 5000 characters will be accepted

III. Effectiveness (Does the Notice meet its objectives?)

The Notice in light of its aim to provide correct, comprehensive and clear guidance

The Notice aims at streamlining the process of assessing the relevant markets for competition law purposes by companies and (business) organisations by providing correct, comprehensive and clear guidance to increase transparency and predictability.

In this section, we would like to have your opinion on the extent to which the Notice meets its objective of providing correct, comprehensive and clear guidance on market definition by the EU.

Please take the following definitions into account in your answer:

“Correct” guidance adequately reflects the case law of the EU courts, the best practices applied by the Commission and other leading competition authorities as well as the mainstream findings of high-quality academic research.

“Comprehensive” guidance is materially complete by summarising all the broad principles applicable in market definition as well as the main specific criteria applicable in the most important case constellations.

“Clear” guidance is easy to understand and follow.

III.1. Have the following aspects within “Definition of relevant market” (paragraphs 7-12) provided correct, comprehensive and clear guidance?

	Yes	Partially	No	I do not know
* Definition of relevant product market and relevant geographic market (7-9)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Concept of relevant market and objectives of Community competition policy (10-11)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Differences between market definition in assessing past behaviour (antitrust) and in assessing a change in the structure of supply (merger control) (12)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

- * III.1.1. Please explain your reply, including, if applicable, how the guidance may be incorrect, incomplete or unclear

Text of 1 to 5000 characters will be accepted

III.2. Have the following aspects within “Basic principles for market definition” (paragraphs 13-24) provided correct, comprehensive and clear guidance?

	Yes	Partially	No	I do not know.
* Competitive constraints (13-14)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Demand-side substitutability (15-19)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

* Supply-side substitutability (20-23)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Potential competition (24)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

- * III.2.1. Please explain your reply, including, if applicable, how the guidance may be incorrect, incomplete or unclear

Text of 1 to 5000 characters will be accepted

III.3. Have the following aspects within “The Process of defining the relevant market in practice” (paragraphs 25-35) provided correct, comprehensive and clear guidance?

	Yes	Partially	No	I do not know.
* Product dimension (25-27)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Geographic dimension (28-31)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Market integration in the Community (32)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* The process of gathering evidence (33-35)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

- * III.3.1. Please explain your reply, including, if applicable, how the guidance may be incorrect, incomplete or unclear

Text of 1 to 5000 characters will be accepted

III.4. Have the following aspects within “Evidence to define markets – product dimension” (paragraphs 36-43) provided correct, comprehensive and clear guidance?

	Yes	Partially	No	I do not know.
* Introductory paragraphs (36-37)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Evidence of substitution and quantitative tests (38-39)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Views of customers/competitors and consumer preferences (40-41)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Barriers and costs of switching (42)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Different categories of customers and price discrimination (43)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

- * III.4.1. Please explain your reply, including, if applicable, how the guidance may be incorrect, incomplete or unclear

Text of 1 to 5000 characters will be accepted

III.5. Have the following aspects within “Evidence for defining markets – geographic dimension” (paragraphs 44-52) provided correct, comprehensive and clear guidance?

	Yes	Partially	No	I do not know.
* Evidence of diversion to other areas (45)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Demand characteristics and views of customers and competitors (46-47)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Geographic patterns of purchases and trade flows (48-49)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Barriers and switching costs (50)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Examples from Commission practice and relevance of different factors (51-52)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

- * III.5.1. Please explain your reply, including, if applicable, how the guidance may be incorrect, incomplete or unclear

Text of 1 to 5000 characters will be accepted

- * III.6. Have paragraphs 53 to 55 on the “Calculation of market share” provided correct, comprehensive and clear guidance?

- Yes
- Partially
- No
- I do not know

- * III.6.1. Please explain your reply, including, if applicable, how the guidance may be incorrect, incomplete or unclear

Text of 1 to 2000 characters will be accepted

- * III.7. Have paragraphs 56 to 58 on the “Additional considerations” provided correct, comprehensive and clear guidance?

- Yes

- Partially
- No
- I do not know

- * III.7.1. Please explain your reply, including, if applicable, how the guidance may be incorrect, incomplete or unclear

Text of 1 to 2000 characters will be accepted

The Notice in light of major trends and developments since its publication

In this section, we would like to understand if the Notice is up-to-date considering the developments that have taken place since its publication.

- * III.8. Do you consider that there are any major points of continuity (for example legal, economic, political, methodological, or technological) that have not changed since 1997 and that you consider should continue guiding the principles of the Market Definition Notice going forward?

- Yes
- No
- I do not know

III.9. If yes, please identify in the following table the major points of continuity that have not changed since 1997 and that you consider should continue guiding the principles of the Market Definition Notice going forward.

Text of 1 to 1000 characters max. for each row

	Major points of continuity	Short explanation/concrete examples	Paragraphs of the Notice where those ideas are expressed
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			

* III.10. Do you consider that there are major trends and developments (for example legal, economic, political, methodological, or technological) that have affected the application of the Notice but are currently not reflected in it?

- Yes
- No
- I do not know

III.11. If yes, please identify in the following table the major trends and developments that you consider have affected the application of the Notice but are currently not reflected in it. Please describe the specific shortcomings of the Notice in this regard, including concrete examples.

Text of 1 to 1000 characters max. for each row

	Major trends/changes	Short explanation/concrete examples	Paragraphs of the Notice that may require an update	Specific shortcoming of the Notice
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				

* III.12. Is there any area for which the Notice currently does not provide any guidance but which would be desirable?

- Yes
- No
- I do not know

* III.12.1. Please explain your reply.

Text of 1 to 3000 characters will be accepted

IV. Efficiency (Are the costs involved proportionate to the benefits?)

In this section, we would like to have your view concerning the efficiency of the Notice in the process of assessing relevant market definitions. In particular, we would like to understand whether the (possible) costs of following the guidance described in the Notice in the process of market definition (for example, increased legal fees or delays) are proportionate to the (possible) benefits of following the guidance described in the Notice (for example, decreased legal fees, transparency or legal certainty).

* IV.1. Are the net benefits – benefits net of costs - associated with following the guidance described in the Notice positive (compared to a situation without the Notice in place)?

- Yes, the net benefits are positive (the benefits of having the Notice in place exceed the costs thereof)
- No, the net benefits are negative (the costs of having the Notice in place exceed the benefits thereof)
- I do not know
- Not applicable

* IV.1.1. Please explain your reply and, if possible, quantify the magnitude of the (positive or negative) net benefits.

Text of 1 to 2000 characters will be accepted

V. Coherence (Is the Notice internally coherent? Does the Notice complement other actions or are there contradictions?)

In this section, we would like to understand the extent to which the Notice is internally coherent as well as coherent with other EU rules or policies.

* V.1. How well do the different components set out in the Notice operate together?

- The different components of the Notice work well together without apparent contradictions.
- There are some contradictions between different components of the Notice.
- I do not know

* V.1.1. Please explain your reply, especially if you have identified any contradictions

Text of 1 to 2000 characters will be accepted

* V.2. Is the Notice coherent with other instruments that provide guidance on the interpretation of the EU antitrust rules (based on Articles 101 and 102 TFEU)?

- Yes
- No
- I do not know

* V.2.1. Please explain.

Text of 1 to 2000 characters will be accepted

* V.3. Is the Notice coherent with the [Merger Regulation](#) and with other instruments that provide guidance on the interpretation of the EU merger control rules, such as the [Guidelines on the assessment of horizontal mergers](#) and the [Guidelines on the assessment of non-horizontal mergers](#)?

- Yes
- No
- I do not know

* V.3.1. Please explain.

Text of 1 to 2000 characters will be accepted

* V.4. Is the Notice coherent with the case law of the General Court and the Court of Justice of the European Union?

- Yes
- No
- I do not know

* V.4.1. Please explain.

Text of 1 to 2000 characters will be accepted

* V.5. Is the Notice coherent with other existing or upcoming EU legislation or policies (including legislation and policies in fields other than competition law) ?

- Yes
- No
- I do not know

* V.5.1. Please explain.

Text of 1 to 2000 characters will be accepted

VI. EU added value (Does the Notice at EU level provide clear added value?)

In this section, we would like to understand if the Notice at EU level has had added value (compared to a situation without such Notice at EU level).

In the absence of the Notice, undertakings would have had to, where applicable, self-assess the definition of relevant markets for the purposes of EU competition law with the help of the remaining legal framework at EU and possibly national level. This would include for instance the case law of the EU and national courts, the enforcement practice of the Commission and national competition authorities, as well as other guidance at EU and national level.

* VI.1. Has the Notice at EU level had added value in the assessment of relevant product and geographic market in the application of EU competition law (including application by national competition authorities)?

- Yes
- No
- I do not know

* VI.1.1. Please explain your reply. If your reply differs between product and geographic market, please also explain that.

Text of 1 to 2000 characters will be accepted

* VI.2. Has the Notice helped in aligning the definition of the relevant markets by the national competition authorities of the EU member states and the European Commission?

- Yes
- No
- I do not know

* VI.2.1. Please explain your reply. If your reply differs between product and geographic market, please also explain that.

Text of 1 to 2000 characters will be accepted

VII. Specific questions

Final comments and document upload

VII.1. Please make any further comments you may have with regard to the Notice.

Text of 1 to 3000 characters will be accepted

VII.2. Please feel free to upload a concise document, such as a position paper, explaining your views in more detail or including additional information and data. **Please note that the uploaded document will be published** alongside your response to the questionnaire which is the essential input to this open public consultation. The document is an optional complement and serves as additional background reading to better understand your position.

The maximum file size is 1 MB

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

* VII.3. Please indicate whether the Commission services may contact you for further details on the information submitted, if required.

- Yes
- No

