



Liberty Global response on the revised Market Definition Notice

Liberty Global welcomes the opportunity to give feedback on the revised Market Definition Notice. The original Market Definition Notice has functioned well. Liberty Global supports the Commission's efforts to update the methodologies to reflect a changing world, accounting for shifts in technologies, market structures and patterns of consumption. We also welcome the formalisation of approaches that have emerged from case law and practice, ensuring the Notice reflects how market definition has developed in practice.

General principles

Liberty Global supports the general principles of market definition outlined in the revised Notice. These principles reflect those established in the original Market Definition Notice and the approaches that have developed in practice. In particular, the emphasis placed on defining markets on a case-by-case basis is welcome. Market dynamics are constantly shifting. Therefore, to ensure a more accurate reflection of these dynamics, market definition should not be rigidly bound by previous decisions but be assessed on the facts of each case. We also welcome the acknowledgement that timing has impact on market definition.

We also support the codification of the position under paragraph (13) that market definition only serves as one step in competition law assessment. Market definition is a useful tool in examining competition dynamics but it does not, nor is it designed to, give a full picture of how the market is functioning. It is one tool that should be used as part of market assessment in the variety of scenarios that the Commission outlines, but it is not definitive in determining the competition dynamics at play.

We also support the position outlined in paragraph (18) to reserve the specific definition of the relevant market where the outcome of the assessment would not change under different potential market definitions. This is in line with practice and is a pragmatic approach to competition assessment. We would also note that in circumstances where the market definition would not raise competition concerns, the undertakings involved should be excused from providing excessive information on the market in question. This would reduce the burden on undertakings and reduce the workload for the Commission and national regulators in assessing information which is not pertinent to the competition concerns.

Liberty Global welcomes the guidance on the types of evidence that will be taken into account in assessing market definition. However, further guidance on how the Commission and national regulators should weigh up contradictory evidence would be useful for all parties.

The Commission should have regard for the impact of regulation on market dynamics. In certain circumstances, regulatory requirements may narrow markets or act as a barrier to entry. However, regulation can also result in reduced barriers to entry. Changing regulatory requirements should be accounted for in market definition exercises.



Geographic Market Definition

Since the publication of the original Market Definition Notice, the European market has become more integrated and global trade patterns have shifted. Increased globalisation has seen markets become broader – we have experienced markets that should be characterised as global or EEA-wide in scope, e.g. TV production and IP Interconnection (often referred to as wholesale internet connectivity). In light of this, Liberty Global welcomes the recognition that markets may be global or EEA-wide in scope, in line with practice.

Liberty Global also supports the types of evidence outlined for assessing geographic markets, namely identify of available suppliers, customer preferences and purchasing behaviour, barriers and costs to supplying customers in different areas, distance related factors and transport and trade flows and patterns of shipments. However, we would urge the Commission not to limit its assessment to these factors if other factors emerge which are also relevant for the assessment at hand.

Product Market Definition

Liberty Global supports the retention of the principles of the approach to demand-side substitution as laid out in the 1997 Notice. We also welcome the recognition that price is not the sole factor to be considered when examining competitive constraints and switching behaviour – quality and innovation are also relevant. We have seen this across the telecommunications sector.

The inclusion of further guidance on supply-side substitution is useful, in particular, the clarification on when supply-side substitution may be used to widen the market definition and the clarity on the conditions under which suppliers may have incentive to switch production. This largely codifies practices which have arisen in case law but its inclusion is helpful.

Specific Market Circumstances

Innovation

There are sectors which are subject to constant and rapid innovation. Liberty Global recognises the usefulness of taking innovation into account when defining the relevant market in these cases. The guidance on this in the proposed Notice is useful. In particular, the explanation of pipeline products and the impact they may have on market dynamics is useful. However, the Commission should exercise caution in assessing the impact of new, untested products on market dynamics. As mentioned in the proposed Notice, the Commission must factor in all potential outcomes of R&D processes in its assessment. The inclusion of pipeline products in a relevant market assessment should not be used as an opportunity to pre-emptively regulate a market where no competition



concerns have yet arisen, particularly in the case of new markets where a product or set of products may comprise a previously unknown market.

Multisided markets

The increased prominence of multi-sided markets has been a significant development in competition law in recent years, in particular the challenges faced in competition assessments of multi-sided markets where a product is provided at a zero monetary price. The inclusion of guidance on market definition for multi-sided platforms is welcome. The Commission is right to retain a flexible, case-by-case approach to market definition in these circumstances, recognising the market may be defined as a whole or as separate markets on each side of the platform depending on the facts of the case. The inclusion of non-price elements in assessing substitution on both sides of the platform is also useful, reflecting emerging case law. The inclusion of the SSNDQ test as an alternative to the SSNIP framework is also welcome, although this shouldn't create an obligation to apply the SSNDQ test in all circumstances involving multi-sided platforms.

System markets

The inclusion of guidance on system and bundled markets is useful. However, in applying assessment of bundled markets in particular, the Commission should be mindful that the existence of a bundled product offering does not preclude competition on individual components of that bundle. As such, the Commission should not take a prescriptive approach but examine on a case-by-case basis, taking customer behaviour and demand substitution particularly into account.

Market share calculation

The greater detail given on different approaches to determining market share is very welcome. Although volume of sales is often a useful indicator, as noted in the revised Guidelines, there are many circumstances where other metrics may be more useful. A pragmatic, flexible approach to market share calculation is the best approach to ensure the assessment of the market best reflects market dynamics.

The telecommunications sector is a dynamic, rapidly shifting market with high level of technological innovation and changes in consumer behaviour e.g. the shift from fixed line telephony to mobile telephony and the increasing movement from linear to non-linear content. It is vital to consider these changes in technology and consumer behaviour when conducting market definition exercises in the sector. Given the dynamics across the market, it should also be noted that market shares are not necessarily indicative of market power in all cases – other factors need to be considered.