

**EU CONSULTATION ON DRAFT REVISED MARKET DEFINITION
NOTICE
- COMMENTS OF INDEPENDENT RETAIL EUROPE -**

11 JANUARY 2023



EXECUTIVE SUMMARY

Independent Retail Europe welcomes the Commission's intention to list more exhaustively in the Notice the sources of evidence to be taken into consideration to define product and geographic markets. We also welcome the willingness to better take into consideration in the new notice the impact of the ongoing digital transformation. In this context, we would like to make comments on four issues that are highly relevant for groups of independent retailers and the retail sector.

Key aspects covered in this paper:

- ➔ Demand substitution in product markets and differences in distribution channels (para 51);
- ➔ Territorial supply constraints and their impact on the definition of geographic markets (paras 64 to 70);
- ➔ Definition of the relevant geographic market: the impact of new online business models on distance /transport costs factor and the importance of distance sales (paras 73 and 74);
- ➔ The size of the catchment areas (para 74).

COMMENTS OF INDEPENDENT RETAIL EUROPE ON THE DRAFT REVISED MARKET DEFINITION NOTICE

1. Demand substitution in product markets and differences in distribution channels (para 51)

Para 51 of the draft revised market definition notice refers to differences in distribution channels and their potential impact on demand substitution in product markets. In this context, footnote 64 provides a list of factors that can be used to determine whether differences in distribution channels may lead to a difference in the market definition.

We support footnote 64, and the inclusion of all elements listed as evidence that must be taken into account. In the retail market for grocery, sport and technical consumer goods, all these factors are highly relevant and likely to show that the relevant market usually includes both online and offline sales channels.

Our recommendation for para 51:

- ➔ We support footnote 64, as it lists the most relevant elements to be considered when assessing whether differences in distribution channels impact the definition of product markets.

2. Territorial Supply Constraints and their impact on the definition of geographic markets (paras 64 to 70)

Paras 64-67 and 68-70 rightly list relevant elements that help to assess whether conditions of competition are sufficiently homogeneous across different areas to include them in the same relevant geographic markets (e.g. identity of available suppliers, market shares and prices, customer preferences and purchasing behaviours).

However, we consider that paras 64, 66 and 70 should also include a reference to the existence of Territorial Supply Constraints (TSCs) unilaterally imposed by large international suppliers, which artificially impose differences in prices between Member States that would not exist otherwise. A [2020 Study commissioned by the European Commission](#) showed that TSCs are commonly applied (by large

international branded food and beverages product manufacturers) and cost European consumers at least 14 billion euros every year in four widely consumed product categories.

TSCs, when used by the main suppliers, may create a false impression of the geographic scope of the (purchasing) market, by making it appear narrower due to artificial divergences in (purchasing) prices, while the real scope of the purchasing market for these products is European. Paras 64-67 and 68-70 should therefore refer to the (possible) existence of TSCs, which should be taken into consideration when defining geographic markets (as this may otherwise unduly narrow the geographic scope of the relevant purchasing market). This is also relevant in relation to the example provided in para 70.

Our recommendation for para 64, 66 and 70:

➔ Include a reference to the (possible) existence of Territorial Supply Constraints imposed by large international suppliers, which should be considered in the analysis, as these may create artificial national divergences in purchasing prices in markets that are European in scope.

3. Geographic markets: impact of new online business models and the distance /transport costs factor and of online sales (para 73 and 74)

Para 73 describes how distance-related factors and transport costs may have an impact on the definition of the geographic market, due to the potential competitive disadvantage they may create. Para 74 explains how the use of catchment areas may be used to define geographic markets when customers' travel distance is an important parameter of competition.

We agree that catchment areas are very important to define geographic markets in many consumer markets, such as for supermarkets and other retailers. However, a nuance should be introduced, due to the huge impact of digitalisation on the retail sector, meaning that competition is increasingly happening omnichannel (with competition happening both offline and online and between omnichannel, offline and online retailers). Paras 73 and 74 insufficiently consider this new reality.

This digital transformation of the retail sector means that in many consumer markets:

- New online business models have emerged, allowing pure online businesses to compete efficiently with brick & mortar retailers through low-costs delivery of products to consumers, despite the distance of delivery.
- To stay competitive, brick & mortar retailers in many consumer markets must also sell online, therefore becoming omnichannel retailers. They directly compete with pure online retailers and online marketplaces for the sale of the same products that are sold in shops.

We appreciate that from para 73 is removed the indication (in para 50 of the existing market definition notice) that *“the impact of transport costs will usually limit the scope of geographic markets for bulky, low value products”*. **However, para 73 remains too silent concerning the growing importance of these new online actors delivering low value products in many consumer markets at highly competitive prices.** Para 73 should explicitly nuance the impact of distance/transport costs in certain consumer markets and recognise that new online business models have allowed pure online companies to overcome the distance/transport cost challenge. **Moreover, the importance of distance**

sales should be factored in the analysis of catchment areas when competition takes place omnichannel.

Our recommendations for paras 73 and 74

- ➔ Nuance the statement on the impact of transport costs/distance by acknowledging explicitly that new online business models have shown that distance and transport costs are becoming less of a competitive disadvantage in certain consumer markets, especially in consumer retail markets;
- ➔ Explicitly acknowledge that the existence of pure online competitors efficiently delivering at distance (at competitive prices and low delivery costs) should be assessed when defining the relevant geographic market.
- ➔ Add a provision acknowledging that the importance of distance sales should be factored in the analysis of catchment areas and geographic markets when competition takes place omnichannel.

4. Size of the catchment areas (para 74)

We support the reference in para 74 to 80% of sales or customers as the commonly used size of catchment areas. This is a figure frequently used as a starting point in practice, when assessing geographic markets for the retail sector.

We also consider positively the flexibility provided through references to alternative figures of 70% or 90%. Based on earlier decisional practice, **it could also be relevant to add that alternative kilometre radiuses or city/area level approaches can be used (depending on the circumstances) without defining the catchment areas in more detail.**

Our recommendation for paras 73 and 74

- ➔ We support the reference to the 80% as an indicative size of the catchment area;
- ➔ In addition to alternative sizes (70% or 90%), reference could also be made to alternative approaches previously used in similar cases (e.g. km radiuses, city areas, etc.)

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*Established in 1963, **Independent Retail Europe** (formerly UGAL – the Union of groups of independent retailers of Europe) is the European association that acts as an umbrella organisation for groups of independent retailers in the food and non-food sectors.*

Independent Retail Europe represents retail groups characterised by the provision of a support network to independent SME retail entrepreneurs; joint purchasing of goods and services to attain efficiencies and economies of scale, as well as respect for the independent character of the individual retailer.

Our members are groups of independent retailers, associations representing them as well as wider service organizations built to support independent retailers.

Independent Retail Europe represents 23 groups and their over 417.800 independent retailers, who manage more than 753.500 sales outlets, with a combined retail turnover of more than 1,320 billion euros and generating a combined wholesale turnover of 513 billion euros. This represents a total employment of more than 6.500.000 persons.

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