

The Danish Government's response to the public consultation on the evaluation of the market definition notice

The Danish Government welcomes the opportunity to comment on the Commission's public consultation regarding the ongoing review and evaluation of the market definition notice.

The notice offers highly relevant and useful guidance for companies and their advisers as well as for national competition authorities when considering questions on how to define the relevant market in competition and merger cases.

The Danish Government agrees that the market definition notice – dating back to 1997 – could benefit from an evaluation and a possible update taking into account, among others, recent case law and new technologies. An updated notice would continue to serve as important guidance and a useful tool for companies and competition authorities.

It is vital for the Danish Government that the current, fact-based approach to market definition is maintained, and it is essential to guarantee that independent enforcement of antitrust and merger rules is based on verifiable empirical evidence in order to ensure effective competition within the Single Market. Effective competition in the Single Market is fundamental for creating jobs, growth and prosperity in the EU, just as it is a prerequisite for European companies' possibility to compete successfully in the global economy.

Responding to the public consultation, the Danish Government would like to present the following factors of importance for the evaluation:

Bringing the market definition notice up to date, but no need for fundamental changes

We welcome the initiative of the European-Commission to evaluate and possibly updating the 1997 market definition notice. The Danish Government finds that the approach set out in the market definition notice still serves as a solid foundation for the assessment of the relevant market. Therefore, there is no need for a fundamental revision of the notice. The focal point of market definition must continue rests on credible empirical evidence.

Therefore, the Danish Government finds that the upcoming review should focus on updating the notice in order to introduce recent case law and new

investigative techniques and economic methods. It should also address questions of how to define markets in markets involving new technologies or situations that are not explicitly addressed in the existing notice, including e.g. multi-sided markets and products with a monetary price of zero.

Effective and independent enforcement

It is still important that the competition law enforcement continue to take due account of global competition, among others when assessing the relevant geographical market in for instance a merger case. Moreover, it is essential to guarantee independent enforcement in order to ensure effective competition within the Single Market. However, the Danish Government agree that there is a need to address distortions from foreign subsidies. Unregulated foreign subsidies risk distorting competition in the Single Market leading to unfair competition between subsidized and non-subsidized companies. But these challenges should be tackled with other instruments than the competition and merger framework. Hence, we welcome a new legal instrument to ensure that foreign subsidies do not distort our market as proposed in the White Paper on levelling the playing field as regards to foreign subsidies. In this regard, we would like to use the opportunity to refer to our response on the public consultation on the Commission's White Paper.

Current approach is able to handle inherently dynamic nature of geographic market definition

The inherently dynamic nature of market definition is emphasised by the considerable increase in the share of the Commission's merger decisions, where the Commission found geographical markets to be at least EEA-wide or wider. Furthermore, we note that competitive constraints from outside the geographical market are clearly taken into consideration in current practise, when such competitive constraints are demonstrated. Thus, the Danish Government finds the current approach to market definition is fully suited for taking changing market conditions into account, including analyses of importance of global competition when relevant.