



Joint statement by the European Competition Network (ECN) on the European Commission's review of the Market Definition Notice

With the present statement the ECN welcomes the initiative to review the Commission's Market Definition Notice used in EU competition law (OJ C 372, 9.12.1997, p. 5 – 13, 'the Notice'). The ECN has been actively participating in the process led by the European Commission.

The draft revised text of the Notice published for public consultation on 8 November 2022 ('Draft Revised Notice') provides helpful updates to make the Notice fit for purpose in a digital and globalised economy.

In this respect, the Draft Revised Notice recalls the role and the basic principles of market definition as stemming from the case practice and confirmed by the case law of European courts. While not binding on the National Competition Authorities part of the ECN, the Market Definition Notice is often taken into account in the enforcement practice at national level.

The ECN considers that, in line with the Draft Revised Notice, market definition is usually an important first step for facts-based and rule-based competition law enforcement. When used in antitrust and merger proceedings, market definition needs to follow a robust and transparent methodology in order to identify, in a systematic way, the constraints on a company's decision-making, such as their pricing decisions. Market definition is based on the facts of the case under examination and, while precedents may be considered as a starting point for the analysis, there is no obligation to apply the definition from past decisions in future cases. The ECN finds that market definition increases predictability and legal certainty, all while not prejudging the outcome of the competitive assessment that needs to be subsequently conducted in both antitrust and merger proceedings.