

EVALUATION ROADMAP

Roadmaps aim to inform citizens and stakeholders about the Commission's work in order to allow them to provide feedback and to participate effectively in future consultation activities. Citizens and stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have.

TITLE OF THE INITIATIVE	Evaluation of the Commission Notice on the definition of relevant market for the purposes of Community competition law
LEAD DG – RESPONSIBLE UNIT	DG COMP – A1 and A2 – HT.5789
LIKELY TYPE OF INITIATIVE	Evaluation
INDICATIVE PLANNING	Start date: Q1/2020 End date: Q2/2021
ADDITIONAL INFORMATION	https://ec.europa.eu/competition/antitrust/overview_en.html https://ec.europa.eu/competition/mergers/overview_en.html

This Roadmap is provided for information purposes only and its content might change. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described by the Roadmap, including its timing, are subject to change.

A. Context, Purpose and Scope of the evaluation

Context

The Commission Notice on the definition of relevant market for the purposes of Community competition law (OJ C 372, 9.12.1997, p. 5–13, “the Market Definition Notice”) was published in 1997 to provide guidance as to how the Commission applies the concept of relevant product and geographic market in its enforcement of EU 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 expected to increase the transparency of its policy and decision-making in the area of competition policy.

The concept of relevant product and geographic market is a technical term used to identify and define the boundaries of competition between firms. Market definition is used both in the Commission's antitrust enforcement pursuant to Articles 101 and 102 of the Treaty on the Functioning of the European Union and in the Commission's merger control enforcement pursuant to Council Regulation (EC) No 139/2004. Market definition allows identifying the actual competitors of the undertakings involved and makes it possible, among other things, to calculate market shares. Market definition is an intermediate step for structuring the analysis, followed by a full analysis of competition among the companies active in the relevant market or potentially entering it.

Purpose and scope

The purpose of this evaluation is to gather evidence on the functioning of the Market Definition Notice in order to assess whether this Notice is still “fit-for-purpose” in light of developments since its adoption in 1997. The assessment will be based on the following evaluation criteria:

- **Effectiveness:** The Commission will evaluate the extent to which the Market Definition Notice has proven effective to provide guidance and transparency to all stakeholders, taking into account market developments since 1997, evolving approaches to market definition since 1997 and evolving quantitative and qualitative techniques used in defining markets since 1997.
- **Efficiency:** The Commission will evaluate whether the Market Definition Notice has contributed to provide guidance and transparency in sufficiently clear terms in relation to defining the relevant markets, in particular for (i) undertakings and (ii) the competent competition authorities and whether this has led to increased benefits and reduced costs.
- **Relevance:** The Commission will evaluate whether the objective of the Market Definition Notice to provide clear and transparent guidance on the criteria it uses in its market definition assessments is still pertinent, taking into account market developments since 1997 and evolving techniques, for instance for assessing competitive effects.
- **Coherence:** The Commission will evaluate how well the different components set out in the Market Definition Notice operate together, but also whether the Notice is in line with the judgments of the EU

courts and changes in the legal competition framework since 1997, and the EU competition policy and practice.

- **EU added value:** Under this heading, the Commission will evaluate the extent to which the Market Definition Notice has contributed to ensuring a consistent approach to market definition by the Commission and the EU national competition authorities.

B. Better regulation

Consultation strategy

The objective of the stakeholder consultation is to deliver an in-depth evaluation of high quality on whether the Market Definition Notice fulfilled its objectives of guidance and transparency and whether there is a need to update it in light of developments since 1997, in particular the digitalisation and the globalisation of the economy. Allowing interested parties to provide feedback and make suggestions will also ensure transparency and accountability of the evaluation process.

A diverse group of stakeholders is expected to have valuable information and an interest in the evaluation. As many EU national competition authorities take into account the Commission's Market Definition Notice (either when applying EU antitrust law or when applying national competition law), the experience gathered by the EU national competition authorities will be of particular interest for this evaluation. Moreover, the evaluation will be of interest for (i) undertakings with business operations in the EU across different sectors of the economy and associations of such undertakings, (ii) consumers and consumer associations, (iii) foreign national competition authorities, (iv) the academic community specialized in competition matters and (v) legal and economic advisers.

The following consultations are planned during the evaluation process:

- A **public consultation** of at least 12 weeks will be launched in Q2 2020. The questions will be published in the three working languages of the European Commission (English, French and German), while replies will be welcome in any official EU language. The consultation will be published on the Commission's [central public consultation portal](#).
- A **conference or workshop** with technical experts as well as representatives from all main stakeholder groups on areas of particular interest for the review of the Market Definition Notice may be carried out in Q4/2020.

Discussions with the **EU national competition authorities** will be held in the framework of the different Working Groups of the European Competition Network.

A synopsis report will summarise the results of all consultation activities and will be annexed to the evaluation staff working document.

Data collection and methodology

The **evaluation of the effectiveness, efficiency and relevance** of the Market Definition Notice requires *inter alia* an analysis of the jurisprudence of the EU courts as well as of the main Commission decisions since the Notice was adopted in 1997. This would be with a view to identifying pertinent methodologies and approaches to market definition that may not be reflected in the current Market Definition Notice. Moreover, the evaluation may require a review of latest economic thinking on market definition principles and practice, a targeted comparative review of international practices in market definition as well as a review of other academic research on the topic. The Commission will therefore consult other agencies (within and outside the EU) and international experts on the topic of market definition. The evaluation will also need to analyse new technical and market developments – mainly deriving from the digitisation and globalisation of the economy – that could have an influence on the competitive constraints faced by undertakings and that may already be reflected in the case practice of competition authorities in the EU and elsewhere as well as in academic research.

Information will be collected through desk research, a literature and case review (to be carried out internally or externally), as well as from stakeholders in the public consultation and in targeted consultations and possibly during a stakeholder conference or workshop.

The **evaluation of the coherence** of the Market Definition Notice requires an assessment of the internal coherence of the different components of the Market Definition Notice, but also an assessment of coherence with EU jurisprudence and law as well as with the overall EU competition policy and practice, based on similar sources as outlined for effectiveness, efficiency and relevance above.

The **evaluation of the EU added value** of the Market Definition Notice – beyond the consideration that applying EU merger control laws is an exclusive competence of the EU – requires an analysis of its application (either directly or indirectly) by the EU national competition authorities. This analysis will be carried out on the basis of discussions with the competition authorities of the EU Member States in the framework of different Working Group of the European Competition Network and of information gathered through the public consultation.