

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА
Конкуренијски савјет

BOSNIA AND HERZEGOVINA
Council of Competition

**REGULATION
ON THE DEFINITION OF A RELEVANT MARKET**

January, 2006

Pursuant to Article 25 paragraph (1) item a) and Article 3 paragraph (5) of the Act on Competition (Official Gazette of BiH, No. 48/2005), the Competition Council, in its 22nd session held on 24 January 2006, has adopted the following

REGULATION ON THE DEFINITION OF A RELEVANT MARKET

Article 1

Subject Matter

This Regulation shall determine the method, criteria and procedures for defining the relevant market, pursuant to Article 3 of the Act on Competition (hereinafter: the Act), as the basis for the calculation of market shares of undertakings in the market, for the purpose of enforcing the Act.

Article 2

Relevant Market

- (1) A relevant market is defined as a market of certain products which are the subject of business operations, performed by the undertakings in a defined geographic territory.
- (2) A relevant market shall be defined separately for each case concerned.

Article 3

Definition of a Product

According to this Regulation, the term “product”, in broader sense, comprises products and/or services, intellectual property rights, technological and other forms (hereinafter: a product) that become available at a market.

Article 4

Relevant Product Market

A relevant product market comprises all products which consumers and/or users consider mutually substitutable, under acceptable conditions, having in mind the product's main characteristics, quality, general use, method of use, conditions for sale and prices.

Article 5

Relevant Geographic Market

- (1) The relevant geographic market comprises the whole or a significant part of the territory of Bosnia and Herzegovina, in which the undertakings are involved in the sales and/or purchase of relevant product under equal or sufficiently homogeneous conditions and which can be distinguished from neighboring geographic markets because the conditions of competition are appreciably different in those areas.
- (2) As an exception from paragraph (1) of this Article, in special cases, a relevant geographic market may be determined on an international level.
- (3) Geographic areas, in which the conditions of the market competition are extremely different, shall not be taken into consideration in defining the relevant geographic market.

Article 6
Criteria for Definition of a Relevant Market

For the purpose of the relevant market definition, the following criteria are to be particularly taken into account:

- a) demand substitutability for the particular product,
- b) supply substitutability for the particular product,
- c) existence of potential market competition, and
- d) barriers to entry to the relevant market.

Article 7
Criteria for Assessment of Demand Substitution

- (1) The assessment of demand substitutability of specific product shall refer to the determination of products which are viewed by customers as mutually substitutable, pursuant to Article 4 of this Regulation.
- (2) To determine whether demand substitutability for the specific product exists the time period that suppliers need to adjust to normal supplying the market with a substitute product shall be taken into account.
- (3) The prevailing market price of the particular product shall be taken into account in the process of the relevant market assessment, except in case when the prevailing market price is determined in absence of effective competition.

In case when a market price is determined in absence of another competitive product, it shall be taken into account the fact whether the price has already been increased due to lack of competition.

- (4) In assessment of the demand substitutability of certain product, the consumers (buyers) who are not able, despite of the change in the price of relevant product, to accept the substitute product (substitute) shall be taken into consideration.

Article 8
Substitute Product (Substitute)

- (1) Substitute product is a product which, due to its characteristics, price, intended use and customers' (buyers') habits, may substitute another (relevant) product and therefore satisfy the equivalent needs of a consumer (buyer).
- (2) The substitutability of the certain product (substitute) can be foreseen logically when a significant number of consumers (buyers) of the relevant product switch to another product, or to another supplier of the equal (similar) product, in response to a hypothetically small, in the range 5% to 10%, but permanent price increase of the relevant product.
- (3) The assessment that one product is viewed as a substitute product (substitute) is taken from the consumer's/ buyer's point of view.
- (4) Information given by real or potential buyers/consumers or other relevant institutions may be considered within assessment of the possible substitutability of the certain product.

- (5) Information about specific product substitutability may be, particularly, required from interested market participants, their actual and potential competitors, and business associations in the relevant market, institutions for consumer protection and other institutions.

Article 9

Supply Substitutability for the Specific Product

Supply substitutability for a specific product means the ability of the producer (distributor) to, in a case of increase in price of the relevant product, switch to production or distribution of a substitute product in a short time, without incurring significant additional costs or risks.

Article 10

Assessment of the Potential Competition

- (1) To estimate the existence of potential market competition, it is necessary to determine its level and conditions in the relevant market under which the new market participants, that is the undertakings may enter the relevant market.
- (2) The existence of potential competition pursuant to paragraph (1) hereof, shall be determined on the basis of foreseeable changes of the existing market conditions, particularly taking into account the following criteria:
- a) structure of relevant market;
 - b) behavior of existing participants in a relevant market and influence on other actual and potential market participants;
 - c) economic and financial powers of the market participants and their ability to choose suppliers and users;
 - d) economic, legal and other barriers to entry to a relevant market;
 - e) trends in the market in respect of supply, demand, economic and technical development of a relevant product;
 - f) the market share indicators among market participants (national and international);
 - g) analysis of price changes and price discrepancies at national and international level.
- (3) In special cases, some other objectives for entry to a relevant market (e.g. humanitarian goals and similar) may be considered.

Article 11

Barriers to Entry to a Relevant Market

- (1) Barriers to entry to a relevant market (relevant product market, relevant geographic market) comprise all obstacles which limit and restrict free access to the market to potential market participants (undertakings).
- (2) Barriers to entry to a relevant market are in particular:
- a) legal barriers, law regulations, by-law acts and administrative regulations (ex. duty and other import taxes, quantitative and value restrictions, policy on taxes and prices, state monopoly, technical regulations, norms and standards, and like wise);
 - b) economic barriers, especially:

- structural barriers (initial capital, capital investments, patents, know-how, economy of scale, transportation costs, differentiation of products, supply and demand level, and similar barriers);
- strategic barriers for access to a relevant market created by the existing participants, whose behavior and activities preclude and prevent the other potential market participants to enter to the relevant market.

Article 12

Definition of Relevant Market in Specific Cases

- (1) A relevant product market may be defined for a specific product or a group of products, depending on the structure of the relevant market, customers' habits and needs of the specific analysis.
- (2) In order to define a relevant market pursuant to paragraph (1) of this Article, the markets of complementary products may be analyzed, especially when the price rising of any of the product (secondary product, that is a secondary market), which is the constituent of the complementary product, directly affects the price rising of the relevant product (primary product, that is a primary market).

Article 13

Definition of Relevant Geographic Market in Specific Cases

In reference to Article 5 paragraph (2) of this Regulation, the relevant geographic market shall be defined particularly as it follows:

- a) when one product is being bought by particular group of buyers (consumers) or undertakings with their residence or seat in Bosnia and Herzegovina from natural or legal persons or their associations or undertakings with their residence or seat outside the territory of Bosnia and Herzegovina (e.g. when, due to the transportation costs, the relevant products in the final borders of the market determined in the Article 5 paragraph (1) of this Regulation, are not mutually substitutable), and/or
- b) when undertakings from Bosnia and Herzegovina sell the products to buyers, natural or legal persons or their associations with their residence or seat outside the territory of Bosnia and Herzegovina (e.g. when undertakings from Bosnia and Herzegovina express interest in international public bids).

Article 14

Market Share

- (1) The market share for the undertakings operating in a particular relevant market shall be calculated on the basis of the market share of production and/or sales of the relevant product in the relevant market within a determined period of time.

The market share is a corresponding size standard of each individual undertaking in the relevant market.

- (2) The market share under paragraph (1) of this Article, shall be calculated on the basis of total value and production and/or sales volume (expressed in the total amount of corresponding units and value measures) of the relevant product.

Additional calculation criteria shall be the utilization of data on production capacities of an individual undertaking in comparison with total capacities utilized in production of a relevant product.

- (3) Other indicators (quantity and market value of natural resources reserves possessed or controlled by undertaking) are used for determination of market share of the participants or undertaking in the market.
- (4) The time period referred to in paragraph (1) of this Article, is determined on annual basis or, according to needs, it may be determined for a shorter or a longer time period (monthly, quarterly) depending on the products and on data that is to be collected.
- (5) The total time limit for collection of the market shares data, in a sense of this Article, may not exceed 5(five) years.
- (6) The selection of methods and criteria for determination of a market share for each case concerned depends on the availability, accuracy and reliability of existing data.

Article 15 ***Calculation of Market Shares***

- (1) For the purpose of calculating the market shares, all available data and documentation shall be used, and in particular: data and information supplied by undertakings-parties to the proceedings and others, different associations, employers' associations, agencies for statistics, the Central Bank of Bosnia and Herzegovina, banking agencies, respective ministries and other state administration authorities, regulatory bodies, independent institutions involved in market researches, local self-government units and data collected by the Competition Council.
- (2) When it appears to be necessary, the data may be collected through the responses to surveys done among customers and/or undertakings.

Article 16 ***Total Turnover***

- (1) The total annual income of an undertaking shall be calculated on the basis of sales of products as presented in the final account in the last completed year.
- (2) The total annual income shall not include turnover realized within specific undertaking or within the group of undertakings under the joint control.
- (3) The calculation of total annual income accomplished by sales of a relevant product in a geographic market includes the undertakings that directly or indirectly, legally or factually, have decisive influence on management, particularly if they:
 - a) posses more than half of shares in shares capital or stocks;

- b) can exercise more than half of voting rights;
 - c) have the right to appoint more than half of total number of members of managers and members of directors and supervisors board;
 - d) have, in any other way, the right to manage business operations of controlled undertaking.
- (4) For the purpose of determination of total income in banks, other financial institutions and insurance companies, instead of total annual income the following parameters shall be taken into account:
- a) as for the legal persons that provide financial services, after the deduction of direct taxes related to them, the following sum of incomes shall be added up:
 - interest income and similar income;
 - securities income;
 - claims for commission;
 - net profit generated from financial operations;
 - other incomes generated from business operations.
 - b) as for insurance and re-insurance companies, the value of gross premiums that includes amounts paid and outstanding amounts related to insurance contracts concluded by or on behalf of the insurance companies, including re-insurance premiums, after deduction of taxes and parafiscal levies that are collected on the basis of individual premiums or in comparison with total amount of premiums.

Article 17
Additional Data

The Competition Council may use EC Regulations, EU legislation and European Court case law for the purpose of defining a relevant market in specific cases.

Article 18
Termination of the Previous Regulation

On the day when this Regulation enters into force, the Regulation on the definition of a relevant market (Official Gazette of BH, No. 01/2005) terminates.

Article 19
Publication and Entry into Force

This Regulation shall enter into force on the eighth day following its publication in the Official Gazette of Bosnia and Herzegovina and shall be published in official gazettes of Entities and Brčko District of Bosnia and Herzegovina.

C.C. No. 01-01-26-101-I/06

24 January 2006
Sarajevo

President

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