

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

**-CONSOLIDATED TEXT-**



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

**REGULATION ON THE DEFINITION OF A RELEVANT MARKET  
(CONSOLIDATED TEXT)**

**I GENERAL PROVISIONS**

**Article 1**

**(Subject Matter)**

This Regulation determines the method, criteria and the procedures for defining the relevant market, in terms of Article 3 of the Competition Act (hereinafter: the Act), as the basis for the calculation of market shares of undertakings concerned, in order to enable enforcement of provisions of 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 every 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, technology and other forms (hereinafter: product) that become available on a market.

## **II RELEVANT PRODUCT MARKET AND RELEVANT GEOGRAPHIC 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 of 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 operate in the sales and/or purchase of relevant product under equal or sufficiently homogeneous conditions, distinguishing that particular market from the competition conditions on neighboring geographic markets.
- (2) As an exception from paragraph (1) of this Article, in special cases, a relevant geographic market may be determined on international level.
- (3) Geographic areas, in which the conditions of the market competition are significantly different, shall not be taken into consideration in defining the relevant geographic market.

### **Article 6**

#### **(Criteria for Definition of a Relevant Market)**

- (1) For the purpose of definition of the relevant market, the following criteria are to be particularly taken into account:
  - a) demand substitutability for the particular product;
  - b) supply substitutability of the particular product;
  - c) existence of potential market competition;
  - d) barriers to entry to the relevant market.

### **III ASSESSMENT CRITERIA FOR DEMAND SUBSTITUTION**

#### **Article 7**

##### **(Assessment Criteria for Product Demand Substitution)**

- (1) The demand substitutability assessment entails a determination of the products, considered by customers as mutually substitutable (substitutes), pursuant to Article 4 of this Regulation.
- (2) The time period that suppliers need to adjust to normal supply to the market with a substitute product, will be taken into account in the process of assessment the demand substitutability for the specific product.
- (3) The prevailing market price of the particular product will be taken into account in the process of relevant market assessment except in case when the prevailing market price is determined due to lack of effective competition.
- (4) 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.
- (5) During the assessment of the demands substitutability of certain product, those consumers/buyers who are not able, despite of the change of price of the 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, regarding its characteristics, price, intended use and customers' 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 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 is deemed 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 on possible substitutability of the certain product.
- (5) Information about specific product substitutability can 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.

#### **IV SUPPLY SUBSTITUTABILITY**

##### **Article 9**

##### **(Supply Substitutability for the Specific Product)**

Supply substitutability for a specific product means that, in case of price increase of relevant product, producers (distributors) are able to start production or distribution of a substitute product in relatively short period without incurring significant additional costs or risks.

##### **Article 10**

##### **(Assessment of the Potential Competition)**

- (1) To estimate the presence of the potential competition on the market, it is necessary to determine its level and conditions on the relevant market under which new market participants, i.e. undertakings are allowed to entry to the relevant market.
- (2) The presence of potential competition pursuant to paragraph (1) hereof, is determined on the basis of foreseeable changes of market conditions, particularly the following criteria:
  - a) structure of relevant market;
  - b) conduct of existing participants in a relevant market and effects to other actual and potential market participants;
  - c) economic and financial strength of market participants and their possibility to choose suppliers and users;
  - d) economic, legal and other barriers to entry to a relevant market;
  - e) market trends in supply, demand, economic and technical development of a relevant product;
  - f) indicators of market share among market participants (national and international);
  - g) analysis of price changes and price discrepancies at national and international level.
- (3) Other goals to entry to a relevant market (e.g. humanitarian goals and similar) may be considered in special cases.

#### **V BARRIERS TO ENTRY TO A RELEVANT MARKET**

##### **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 limitations which disable and restrict free access to the market for potential market participants (undertakings).

- (2) Barriers to entry to a relevant market are in particular:
- a) legal barriers, laws, by-laws and administrative regulations (ex. duty and other import taxes, quantitative and value based restrictions, policy on taxes and prices, state monopoly, technical regulations, norms and standards, and likewise);
  - b) economic barriers, especially:
    - 1) structural barriers (initial capital, capital investments, patents, know-how, economy of scale, transportation costs, differentiation of products, supply and demand level, and similar barriers);
    - 2) strategic barriers for access to a relevant market of the existing participants, whose conduct and activities preclude and prevent the other potential market participants to enter to the relevant market.

## **VI DEFINITION OF RELEVANT MARKET IN SPECIFIC CASES**

### **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 the process of the definition of the relevant market pursuant to paragraph (1) of this Article, markets of complementary products may be analyzed, especially when the price rising of any of the product (secondary product i.e. secondary market), which is the constituent of the complementary product, directly affects the price rising of the relevant product (primary product i.e. 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 is defined as follows:

- a) when products are bought by particular group of buyers/consumers, i.e. undertakings with their residence or seat in Bosnia and Herzegovina, from natural or legal persons or their associations, i.e. 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 person or their associations with their residence or seat outside the territory of Bosnia and Herzegovina (e.g. when undertakings from Bosnia and Herzegovina participate in international public bids).

## **VII MARKET SHARE AND TOTAL ANNUAL INCOME**

### **Article 14 (Market share)**

- (1) The market share for an undertaking operating in a particular relevant market is calculated on the basis of the market share of their 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 any undertaking in the relevant market.

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

Additional criteria is the use of data on production capacities of a specific undertaking in comparison with total production capacities utilized in production of a relevant product.

- (3) Other indicators (quantity and market value of natural resources reserves possessed or controlled by an undertaking) can be used for determination of market share of a specific market participant, i.e. undertaking.
- (4) The time period referred to in paragraph (1) of this Article, is determined on annual basis or, if needed, it may be determined for a shorter or a longer time period (monthly, quarterly) depending on the products concerned and data to be collected.
- (5) The total time limit for collection of data on market share, in terms of this Article, may not exceed 5(five) years.
- (6) The selection of the methods and the 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 is 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, different regulatory bodies, independent institutions involved in market research, local and regional self-government units and data collected by the Council of Competition.
- (2) When deemed necessary, the data may be collected through surveys conducted among customers and/or undertakings.



## **Article 16**

### **(Total annual income)**

- (1) The total income of an undertaking concerned shall be calculated on the basis of sales of products as presented in the final account in the previous completed year.
- (2) The total 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 from the 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) own more than 50% shares in the stocks;
  - b) can acquire more than 50 % of voting rights;
  - c) have the right to appoint more than a half of members of management, steering and supervisory boards.
  - d) have, in any other way, the right to manage business operations of controlled undertaking.
- (4) For the purpose of calculation of total income in banks, other financial institutions and insurance companies, instead of total annual income, the following shall be taken into account:
  - a) for the legal persons that provide financial services, the following sources of income shall be added up after the deduction of related indirect taxes:
    - 1) interest income and similar income;
    - 2) securities income;
    - 3) claims for commission;
    - 4) net profit generated from financial operations;
    - 5) other income generated from business operations.
  - b) 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 upon deduction of taxes and parafiscal levies that are collected on the basis of individual premiums or in relation to total amount of premiums.

## **VIII TRANSITIONAL AND FINAL PROVISIONS**

### **Article 17**

#### **(Additional information)**

The Council of Competition may use regulations and case law of European Court and decisions of European Commission 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 BiH, No. 01/05) 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. Number: 01-01-26-101-I/06**

**President of  
the Council of Competition**

**Sarajevo, 21<sup>st</sup> February 2006.**

**Sena Hatibovic**