

In accordance with article 6 paragraph 5 of the Law on Protection of Competition (“Official Gazette of Montenegro”, No 44/12) Ministry of Economy, hereby adopts

Rules of procedure on manner and criteria for definition of relevant market

Subject matter

Article 1

This Rules of procedure lays down manner and criteria for definition of relevant market.

Relevant product market and relevant geographic market

Article 2

Relevant product market shall be defined taking into account particularly price, conditions of procurement, supply, intended use, purchase or sale of products or services deemed to have very substitutive character from the aspect of the seller, purchaser/buyer or user.

Relevant geographic market can be defined, depending on exchangeability of demand and supply of product in shorter time period, and in the absence of significant expenses, as the territory of Montenegro, geographic area smaller than the territory of Montenegro, or geographic area larger than the territory of Montenegro.

If the relevant market is being defined in such a way to cover geographic area larger or smaller than the area included in administrative borders of the territory of Montenegro, particular attention shall be given to purchase power of purchasers or consumers at those areas, namely the possibility of participants’ involvement at the market in those areas regarding the supply of goods or services to purchasers or consumers at defined relevant geographic market.

When determining relevant geographic market outside the territory of Montenegro, particular attention shall be given to presence of procurement system of the group of purchasers with registered office in Montenegro who procure relevant product from natural persons or legal entities from the territory of other country.

For the purpose of defining relevant geographic market, the analysis shall be made containing characteristics of observed market based on data submitted and collected during the procedure, and particularly on data on market shares of national and international market participants who are considered direct or potential competition, importance of business at certain relevant geographic area, practice of purchase and sell via other geographic markets, difference of relevant product from other products and services as well as indicators of price and price difference within or outside the territory of Montenegro.

In the analysis referred to in paragraph 5 of this article, particular attention is given to conditions of market access, and specially to costs of transport and limitations or road infrastructure, possibility of establishment of distribution channels and access to them and related expenses, presence and influence of regulations defining the market participation (customs, contingents, quotas, regulated prices and conditions of the turnover, licences, public procurement requirements, technical regulations and standards and other similar requirements), habits and practices of consumers, as well as other facts important for determining degree of market integration of Montenegro with other countries and international organisations.

Criteria for definition of relevant market

Article 3

The criteria to be applied for definition of relevant market shall be the criteria of demand exchangeability of relevant product, namely the supply exchangeability by the particular product, depending on the evaluated conditions of competition, the existence and degree of development of potential competition, namely the obstacles for entering the market.

Demand exchangeability

Article 4

The demand exchangeability of certain product regarding this Rules of procedure is definition of type and group of products the consumers consider mutually substitutive. The product and the prices don't have to be identical in order to be considered substitutive.

Demand exchangeability shall be additionally evaluated based on criteria of assessment of possibility of purchasers and customers to provide appropriate or substitutive product in relatively short time period and without significant additional expenses.

The possibility of demand exchangeability shall be evaluated on grounds of data submitted and collected during the process, and particularly on grounds of:

- 1) general characteristics of goods and services, intended use and quality features;
- 2) the price of relevant product and complementary products in Montenegro or its part and other, neighbouring markets;
- 3) amount of material and non-material expense for procurement of acceptable substitutive product;
- 4) long term sustainability of supply and demand of substitutive product;
- 5) results of investigations of purchasers, consumers, market participants, conclusions of expert studies and market analyses;
- 6) possibility of use of substitutive product in established production and technical-technological system;
- 7) market dynamics and obstacles for entry, elasticity of demand, research and development of new products, price correlation, etc.

The product shall be considered substitutive in case:

- 1) when with certainty or in accordance with data referred to in paragraph 3 of this article it can be predicted that the purchasers, or customers of relevant product shall fulfil their need of procurement with other product which is already available at the market as a response to potentially small (5% to 10%), but lasting increase of the price of relevant product; and/or
- 2) when with certainty or in accordance with data referred to in paragraph 3 of this article it can be predicted that the purchasers or consumers of relevant product will accept substitutive product of different supplier as a response to hypothetically small (5% to 10%), but lasting increase of price of relevant product.

For the purpose of this Rules of procedure, potentially small but lasting increase of price in the amount of 5% to 10% shall have only character of indicative range.

When determining the exchangeability of demand for certain product, group of consumers, or purchasers unable to accept substitutive product shall be taken into account, due to the established production process, observance of quality or trademark and defined credibility and integrity of the product or other similar product features.

When determining the exchangeability of demand of relevant product, time the suppliers need for establishment of system of continuing and long-term supply of the market with substitutive product and particularly product features and production cycle of planning production and delivery for specific type of goods, shall be taken into account.

In the process of definition of relevant market, and particularly regarding the products or services with specific intended use, the Agency for Protection of Competition shall not conduct testing laid down in paragraph 5 points 1 and 2 of this article in accordance with the needs of running the procedure and determining the important facts.

Supply exchangeability

Article 5

Supply exchangeability for certain product shall imply the possibility of producer and/or supplier, in case of increased price of the relevant product in short time period and without significant expenses or business risk, to start the production or increase the production and/or distribution of substitutive product and to provide supplies to buyers and consumers on continuous and long-term base.

The possibility of supply exchangeability shall be evaluated on grounds of all available data, and it can particularly be evaluated on grounds of:

- 1) amount of additional investment and changes of technical-technological process of production, change of business strategy, investment in procurement of capital assets of production and turnover;
- 2) market dynamics, practice of exchangeability in the previous time period and the research process and development of new products and anticipated influences of development and turnover of new product to the sale of relevant product;
- 3) economical and financial strength of market participants and potential competition;
- 4) development of production and sale of relevant product and possibility to increase sale and demand;
- 5) analyses, studies and opinions of professional public on possibility of supply exchangeability;
- 6) application of quantity tests of elasticity of supply and cross price elasticity in the previous time period.

Potential competition and barriers to market entry

Article 6

When determining conditions for availability of products and services of potential competition, the anticipated changes of market business conditions, particularly related to administrative, business investments and other limitations for entering the market shall be taken into account, and particularly:

- 1) initial investment expenses in capital assets and operating funds, employees, promotion and marketing of substitutive product;
- 2) economic potential of the relevant market and economy of scope of relevant product;
- 3) procedures for issuance of approvals essential for market participation;
- 4) disabling availability of relevant or substitutive product by additional requirements of standardisation measures or fulfilment of other administrative conditions which are not related to nature and objective of turnover;
- 5) presence of subvention measures, state interventionism and/or state aid;
- 6) acts and activities of undertakings, producers and/or distributors of relevant product, preventing or significantly aggravating the availability of substitutive product in the relevant market.

Manner of definition of market shares

Article 7

Market share of each undertaking involved in defined relevant market shall be calculated in accordance with their market shares in production and/or sale of relevant product in relevant market in certain time period.

Market share referred to in paragraph 1 of this article shall be calculated using value of production and/or sale and/or quantitatively using quantity of production and/or sale (per unit of measure).

Quantitative determination of market share shall be performed in case of determining market share of the producers and/or distributors of the homogenous product of equal or similar value per product unit.

Calculation of market shares

Article 8

All the available data, analyses and studies shall be used for calculation of market shares, and particularly the data:

- 1) collected from the undertakings, including legal entities and natural persons that don't have to act as parties in individual process;
- 2) expert or economic professional associations;
- 3) state administration bodies, public enterprises and bodies with vested public authorisations;
- 4) independent institutions involved in researching of market conditions;
- 5) units of local administration and local self-government;
- 6) the Agency for protection of Competition.

Article 9

Rules of procedure on criteria for definition of relevant market (“Official Gazette of Montenegro”, No 77/05) shall be repealed with effect from the date of entry into force of this Rules of procedure.

Article 10

This Rules of procedure shall enter into force on the eighth day following its publication in the “Official Gazette of Montenegro”.

Number: 0901–389/6
Podgorica,
03 April 2013

The Minister
Dr Vladimir Kavarić