



**MINISTRY OF INDUSTRY, BUSINESS
AND FINANCIAL AFFAIRS**

8. marts 2022

The Danish Government's response to the initiative regarding an update of the market definition notice

The Danish Government welcomes the opportunity to comment on the Commission's public call for evidence regarding the initiative on updating the market definition notice.

The notice offers highly relevant and useful guidance for companies and their advisers as well as for national competition authorities when considering questions on how to define the relevant market in antitrust and merger cases.

The Danish Government agrees with the findings of the Commission's evaluation that the market definition notice – dating back to 1997 – would benefit from an update taking into account, among others, recent case law, technological developments, and developments in the ways companies offer their goods and services. An updated notice would continue to serve as important guidance and a useful tool for companies and competition authorities.

The Danish Government would like to repeat the following factors of importance which the Commission should have in mind when drafting of the updated market definition notice:

Bringing the market definition notice up to date, but no need for fundamental changes

We welcome the initiative of the Commission to update the 1997 market definition notice. The Danish Government finds that the approach set out in the market definition notice still serves as a solid foundation for the assessment of the relevant market. Thus, there is no need for a fundamental revision of the notice. The focal point of market definition must continue to rest on credible empirical evidence. Therefore, the Danish Government finds that the update of the notice should focus on introducing recent case law as well as new investigative techniques and economic methods. The updated notice should also address questions of how to define markets involving new technologies or new ways of offering goods and services, including in relation to situations that are not explicitly addressed in the existing notice, e.g. multi-sided markets and products with a monetary price of zero.

Effective and independent enforcement that continues to handle inherently dynamic nature of market definition

It is essential to guarantee independent competition law enforcement in order to ensure effective competition within the Single Market. Effective competition benefits European consumers through lower prices, higher quality, more choice and increased innovation. Moreover, it is important that competition law enforcement take due account of global competition and other market dynamics, among others when assessing the relevant geographical market in a merger case.

The inherently dynamic nature of market definition is exemplified by the fact that the Commission finds the geographical markets to be at least EEA-wide or wider in an increasing share of its merger decisions. Furthermore, competitive constraints from outside the geographical market are taken into consideration in current practice, when such competitive constraints are demonstrated. While the Danish Government finds the current approach to market definition fully suited for taking changing market conditions into account – including analyses of the importance of global competition when relevant – we agree with the Commission’s intention to update the notice in order to better reflect the practice and methods concerning, among others, the globalised nature of some commercial exchanges.

We hope these comments will be useful for your further work. The Danish Ministry of Industry, Business and Financial Affairs would be at your disposal for further elaboration or any follow-up questions you may have.