Art. 102 TFEU - market definition - relevant temporal market

1. Introduction

The definition of the relevant market is distinctly important with regards to the application of the competition law rules. While it is not an aim in itself, the definition of the relevant market serves as a tool in establishing the basic ground for the competition rules to assess the competition in a given market. For example, to apply Article 102 TFEU (for which the existence of a dominant position in a given market is a precondition for application) the relevant market has to be defined in the first place. It is also crucially important to define the relevant market as a first step to the application of the merger regulation. Moreover, it is essential to define the relevant market in relation to the application of Article 101 TFEU, in order to determine whether or not an agreement which has as its effect the prevention, restriction or distortion of competition and to the determination of whether or not the agreement in question considerably restricts or eliminates competition in the common market. The relevant market often has three dimensions: the product dimension, the geographic dimension and the time dimension. However, in some markets the temporal dimension does not exist. We are concerned, here, with the temporal dimension of the relevant market, its definition, importance and how it is applied in practice.

2. The Definition and Importance of the Relevant Temporal Market

Due to the fact that in some cases the competition conditions in a given market may change over specific periods of time, it may be necessary to consider the time dimension when the relevant market is defined. This is particularly related to markets where the demand and supply fluctuations occur as a result of the variation of the time of day or year. The UK’s OFT guidelines present some examples that illustrate how the market could change from time to time. One example is peak and off peak markets; this is the case with transport services and electricity supply when, for instance, the consumers change their consumption of electricity according to the time of the day, as the prices for the service during the day are different from those charged at night. Another example is the seasonal variations, where the demand and supply of a product change according to seasonal variations in the market (e.g. ice cream or Christmas decorations). Also the relevant market could have a temporal dimension in the case of the innovation/ inter-generational products. Due to technological progress, consumers may delay the purchase of a certain product for their belief that a newer version will be launched soon.

The time dimension of the relevant market should be considered from the perspective of both consumers and suppliers as time periods might not be regarded as substitutable for consumers and/or suppliers. For instance, on the one hand, peak and off peak train tickets might not be substitutable from the consumer’s point of view. One the other hand, suppliers might not be able to provide a fresh seasonal fruit throughout the whole year.

3. The Relevant Temporal Market in Practice

While the relevant market has three dimensions: product, geographical and temporal, only the first two dimensions are more employed in practice. In fact, the time dimension is usually considered a factor in the relevant product market dimension and not as an independent dimension by itself. The relevant temporal market is not mentioned in the EU commission notice; however, it has been discussed in few cases.

For instance, in the United Brands v. Commission it was claimed that the demand for bananas was influenced during the summer months by the availability of other types of seasonal fruits. This raised the question about whether the banana market should be considered a market which is sufficiently distinct from the other fresh fruit markets throughout the whole year or it should be regarded at least in the summer months as forming a part of a wider fresh fruit market. Finally, the ECJ adopted the first view and defined the banana market as a single temporal market. Another example could be found in the commission decision relating to ABG Oil case. In this decision, the commission considered the time dimension of the oil market and defined it only at the time of the world oil crisis in the seventies of the last century.

4. Conclusion

In addition to the relevant product and geographic dimension of the market, it is considerably important, in some cases, to consider the time dimension in the relevant market identification. This is the case when the changing from a certain period of time to another affects demand and supply in the market. In practice, the temporal dimension is considered as a relevant factor when the product dimension of a given market is defined.
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Author: Aly Elberry
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