



**FEDERAL COMPETITION AND CONSUMER
PROTECTION COMMISSION**

COMMISSION'S NOTICE ON MARKET DEFINITION

2021

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**NOTICE PURSUANT TO SECTION 71 OF THE FEDERAL COMPETITION AND CONSUMER
PROTECTION ACT, 2019**

INTERPRETATION

In this Notice, any word or expression to which a meaning has been ascribed in the Act bears the same meaning as in the Act unless the context indicates otherwise.

CITATION

This Notice may be cited as: “The Notice on Market Definition of 2021”.

DEFINITIONS

In this Notice, unless the context provides otherwise:

“Act” means the Federal Competition and Consumer Protection Act 2019;

“Commission” means the Federal Competition and Consumer Protection Commission established by Section 3 of the Act;

“Competition” means the striving or potential striving of two or more persons or organisations engaged in production, distribution, supply, purchase or consumption of goods and services in a given market against one another which results in greater efficiency, high economic growth, increasing employment opportunities, lower prices and improved choice for consumers;

“Consumer” includes any person-

(a) who purchases or offers to purchase goods otherwise than for the purpose of resale but does not include a person who purchases any goods for the purpose of using them in the production and manufacture of any other goods or articles for sale; and

(b) to whom a service is rendered;

“Dominant position” means a dominant position as stipulated in Section 70 of the Act;

“Goods” when used with respect to particular goods, includes any other goods that are reasonably capable of being substituted for them, taking into account ordinary commercial practice and geographical, technical and temporal constraints;

“Market” means a market in Nigeria when used in relation to any goods or services, includes a market for those goods or services and other goods or services that are substitutable for, or otherwise competitive with, the first-mentioned goods or services;

“Merger” means merger as defined by Section 92 of the Act;

“Person” means a natural or legal person;

“Potential competition” implies competition likely to occur as a result of entrance of new market players;

“Platform” is an undertaking that brings together economic agents and actively manages external effects between them with these external effects typically being network effects;

"Products" includes goods or services;

“Services” includes the sale of goods, where the goods are sold in conjunction with the rendering of a service;

“Trade” includes any business, industry, profession or occupation relating to the supply or acquisition of “goods” or “services”;

“Undertaking” includes any “person”, public or private, involved in the production of, or the trade in, goods, or the provision of services.

SECTION 1 – PREAMBLE

1. Under Section 71 of the Act, the Commission is required to take into account certain criteria for delineating the relevant market. Market definition is a tool to identify and define the boundaries of competition between undertakings. It is important to understand what a proper market definition is designed to accomplish. Delineating markets is not useful for its own sake; rather, market boundaries are helpful in identifying the anticompetitive effects of firms engaging in exclusionary conduct or merging to thwart the competitive process. The main purpose of market definition is to identify in a systematic way the competitive constraints that the undertakings involved face and also establish the framework within which competition policy is applied by the Commission.

2. A market is commonly understood to consist of both buyers and sellers of a product in a certain geographic area. However, the term 'relevant market' has a specific meaning for competition law purposes as specified under Section 71 of the Act. The relevant market has two dimensions, namely the relevant product market and relevant geographic market. The objective of defining a market in both its product and geographic dimensions is to identify those actual competitors of the undertakings involved that are capable of constraining those undertakings' behaviour and of preventing them from behaving independently of any effective competitive pressure.
3. It is from this perspective that the exercise of identifying the relevant market(s) makes it possible inter alia to calculate market shares that would convey preliminary indications about an undertaking's ability to behave independently on the market. The definition of the relevant market in both its product and its geographic dimensions often has a decisive influence on the outcome of a competition case. By rendering public the procedures which the Commission will follow to reach a conclusion on the relevant market, the Commission aims to increase the transparency of its policy and decision-making in the area of competition policy. Depending on the characteristic and conditions of each case, the Commission will generally rely upon the criteria and appropriate evidence as set out in these Guidelines to assess the relevant market(s).
4. In addition to its value in providing a framework for competition analysis, an appropriately defined relevant market may provide information that allows an investigation to be closed at an early stage. The Commission has already outlined its market definition principles for mergers in the Merger Review Regulations 2020 and Merger Review Guidelines 2020 which will continue to apply.
5. Increased transparency will also result in undertakings and their advisers being able to better anticipate the possibility that the Commission may raise competition concerns in an individual case. Undertakings could, therefore, take such a possibility into account in their own internal decision-making when contemplating, for instance, the creation of joint ventures, or the establishment of certain agreements. It is also intended that undertakings should be in a better position to understand what sort of information the Commission considers relevant for the purposes of market definition.

Section 2 Definition of Relevant Market

Definition of relevant product market and relevant geographic market

6. The relevant market within which to assess a given competition issue is established by the combination of the product and geographic markets.
7. The relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices, brand, and their intended use.
8. The relevant geographic market is defined in terms of the location of suppliers, and it includes those suppliers that customers consider to be feasible substitutes, which may be local, statewide, regional, national or wider (transcending national boundaries).

Section 3: Basic Principles for Market Definition

Competitive constraints

9. Undertakings are subject to three main sources or competitive constraints: (i) demand substitutability, (ii) supply substitutability and (iii) potential competition.
10. The definition of a market should comprise a number of parameters, including the specific type(s) of product(s) in that market and the geographical boundaries of that market.
11. The parameters of a 'market' for a particular product ("Product X") are defined by the ease with which:
 - (a) the customers for Product X may use a different product: as a substitute for Product X ("demand-side substitution");
 - (b) the producers of other products, and the suppliers of other services, are able to switch to producing or supplying Product X ("supply-side substitution"); and
 - (c) the customers within the defined 'market' may 'import' Product X from producers/suppliers outside the defined market's geographical boundaries, and the producers/suppliers who are outside those geographical boundaries may 'export' Product X to customers within the defined 'market'.

12. If customers can easily switch to a different product or service, then the price of Product X cannot be significantly increased before there will be demand-side substitution. Similarly, the price of Product X cannot be significantly increased within a defined 'market' if the customers who are within the geographical boundaries of that market can easily 'import' Product X from outside that 'market'. If the producers of other products, and the suppliers of other services, can easily switch to producing or supplying Product X then the price of Product X cannot be significantly increased before there will be supply-side substitution. Similarly, the price of Product X: cannot be significantly increased within a defined 'market' if producers/suppliers of Product X who are outside the geographical boundaries of that market can easily 'export' Product X: into that 'market'.
13. A standard test of whether a particular market definition is correct for competition purposes is the SSNIP test. 'SSNIP' is an acronym for 'Small but Significant Non-transitory Increase in Price' ("SSNIP"). The SSNIP test considers whether the suppliers/producers within the 'market' (i.e. the market as it is defined by the proposed market definition) are able to increase the price of Product X by around 5% to 10% (i.e. the good or service which they produce or supply) without experiencing demand-side substitution or supply-side substitution as a measure of the competition within that market. If suppliers/producers within a market (however described) cannot collectively increase the price of Product X without worrying about substitution then the SSNIP test concludes that there must be 'close competition' within that market.
14. If the SSNIP test is used to test whether a market definition for a particular product or service (i.e. Product X) is correctly defined in terms of its geographic boundaries, then that test will entail:
 - a. Firstly, an assumption that the market for the Product X is a monopoly (i.e. it assumes one of the producers/suppliers of Product X has acquired or merged with all other producers/suppliers of Product X within the relevant geographical boundary).

- b. Secondly, a consideration of whether demand-side substitution and/or supply-side substitution would take place if the monopolist increased the price of Product X by a SSNIP. Typically, the Commission will pay particular regard to demand-side factors but may also consider supply-side characteristics (for example, when assessing two-sided markets).
 - c. If the SSNIP is likely to cause some substitution of Product X in those circumstances, then the SSNIP test is indicating that the market definition is too narrow. In that event, the definition of the market can be expanded and the SSNIP test can be undertaken again. The correct market definition will be determined when the market is defined in terms which are as narrow as possible while still allowing a hypothetical monopolist to increase the price of Product X without any substitution taking place. The logical extreme of this, in terms of the geographical area of the market, would be defining the market of Product X as a global market.
15. Challenges may arise in the application of the hypothetical monopolist test where services are offered at a zero-monetary price (for instance, where services are offered for free to attract users to a multi-sided platform that depends on advertisers for monetization). In such cases, undertakings may compete on dimensions other than monetary price, such as product quality. Although the Commission may seek to analyze whether a hypothetical monopolist would find it profit maximizing to decrease a relevant non-price dimension of competition by a small but significant amount for a non-transitory period of time, this may not be feasible in practice. As a result, the Commission's analysis may focus on alternative tests based on quality or costs.

Potential Competition

16. The third source of competitive constraint, potential competition, is not considered when defining markets, since the conditions under which potential competition will actually represent an effective competitive constraint depend on the analysis of specific factors and circumstances related to the conditions of entry. If required, this analysis is

only carried out at a subsequent stage once the position of the undertakings involved in the relevant market has already been ascertained, and when such position gives rise to concerns from a competition point of view.

Evidence Relied on to Define Relevant Markets

The process of defining the relevant market in practice

Product Dimension

17. There is a range of evidence permitting an assessment of the extent to which substitution would take place. In individual cases, certain types of evidence will be determinant, depending very much on the characteristics and specificity of the industry and products or services that are being examined. The same type of evidence may be of no importance in other cases. In most cases, a decision will have to be based on the consideration of a number of criteria and different items of evidence. The Commission follows an open approach to empirical evidence, aimed at making an effective use of all available information which may be relevant in individual cases. The Commission does not follow a rigid hierarchy of different sources of information or types of evidence.
18. The process of defining relevant markets may be summarized as follows: based on the preliminary information available or information submitted by the undertakings involved, the Commission will usually be in a position to broadly establish the possible relevant markets within which, for instance, a concentration or a restriction of competition has to be assessed. In general, and for all practical purposes when handling individual cases, the question will usually be to decide on a few alternative possible relevant markets. For instance, with respect to the product market, the issue will often be to establish whether product A and product B belong or do not belong to the same product market, it is often the case that the inclusion of product B would be enough to remove any competition concerns.
19. In such situations it is not necessary to consider whether the market includes additional products, or to reach a definitive conclusion on the precise product market. If under the conceivable alternative market definitions, the operation in question does not raise

competition concerns, the question of market definition will be left open, reducing thereby the burden on companies to supply information.

Geographic Dimension

20. The Commission's approach to geographic market definition might be summarized as follows: it will take a preliminary view of the scope of the geographic market on the basis of broad indications as to the distribution of market shares between the parties and their competitors. This initial view is used basically as a working hypothesis to focus the Commission's enquiries for the purposes of arriving at a precise geographic market definition.
21. The reasons behind any particular configuration of prices and market shares need to be explored. Companies might enjoy high market shares in their local markets just because of the weight of the past, and conversely, a homogeneous presence of companies throughout the nation might be consistent with national or regional geographic markets. The initial working hypothesis will therefore be checked against an analysis of demand characteristics (importance of national or local preferences, current patterns of purchases of customers, product differentiation/brands, product perishability etc.) in order to establish whether companies in different areas do indeed constitute a real alternative source of supply for consumers. The theoretical experiment is again based on substitution arising from changes in relative prices, and the question to answer is again whether the customers of the parties would switch their orders to companies located elsewhere in the short term and at a negligible cost.
22. If necessary, a further check on supply factors will be carried out to ensure that those companies located in differing areas do not face impediments in developing their sales on competitive terms throughout the whole geographic market. This analysis will include an examination of requirements for a local presence in order to sell in that area the conditions of access to distribution channels, costs associated with setting up a distribution network, and the presence or absence of regulatory barriers arising from public procurement, price regulations, quotas and tariffs limiting trade or production, technical standards, monopolies, freedom of establishment, requirements for administrative authorizations, packaging regulations, etc. In short, the Commission will

identify possible obstacles and barriers isolating companies located in a given area from the competitive pressure of companies located outside that area, so as to determine the precise degree of market interpenetration at national or even global level.

23. The actual pattern and evolution of trade flows offers useful supplementary indications as to the economic importance of each demand or supply factor mentioned above, and the extent to which they may or may not constitute actual barriers creating different geographic markets. The analysis of trade flows will generally address the question of transport costs and the extent to which these may hinder trade between different areas, having regard to plant location, costs of production and relative price levels.

The Process of Gathering Evidence

24. When a precise market definition is deemed necessary, the Commission will often contact the main customers and the main companies in the industry to enquire into their views about the boundaries of product and geographic markets and to obtain the necessary factual evidence to reach a conclusion. The Commission might also contact the relevant professional associations, and companies active in upstream markets, so as to be able to define, in so far as necessary, separate product and geographic markets, for different levels of production or distribution of the products/services in question. It might also request additional information from the undertakings involved.
25. Where appropriate, the Commission will address written requests for information to the market players mentioned above. These requests will usually include questions relating to the perceptions of companies about reactions to hypothetical price increases and their views of the boundaries of the relevant market. They will also ask for provision of the factual information the Commission deems necessary to reach a conclusion on the extent of the relevant market. The Commission might also discuss with marketing directors or other officers of those companies to gain a better understanding on how negotiations between suppliers and customers take place and better understand issues relating to the definition of the relevant market. Where appropriate, they might also carry out visits or inspections to the premises of the parties, their customers and/or their competitors, in order to better understand how products are manufactured and sold.

With respect to merger control, site inspections are typically only undertaken in Phase II reviews.

Evidence to Define Markets — Product Dimension

26. An analysis of the product characteristics and its intended use allows the Commission, as a first step, to limit the field of investigation of possible substitutes. However, product characteristics and intended use are insufficient to show whether two products are demand substitutes. Functional interchangeability or similarity in characteristics may not, in themselves, provide sufficient criteria, because the responsiveness of customers to relative price changes may be determined by other considerations as well. For example, there may be different competitive constraints in the original equipment market for car components and in spare parts, thereby leading to a separate delineation of two relevant markets. Conversely, differences in product characteristics are not in themselves sufficient to exclude demand substitutability, since this will depend to a large extent on how customers value different characteristics.
27. The type of evidence the Commission considers relevant to assess whether two products are demand substitutes can be categorized as follows:

A. Evidence of substitution in the recent past-

28. In certain cases, it is possible to analyse evidence relating to recent past events or shocks in the market that offer actual examples of substitution between two products. When available, this sort of information will normally be fundamental for market definition. If there have been changes in relative prices in the past (all else being equal), the reactions in terms of quantities demanded will be determinant in establishing substitutability. Launches of new products in the past can also offer useful information, when it is possible to precisely analyse which products have lost sales to the new product.

29. There are a number of quantitative tests that have specifically been designed for the purpose of delineating markets. These tests consist of various econometric and statistical approaches estimates of elasticities and cross-price elasticities for the demand of a product, tests based on similarity of price movements over time, the analysis of causality between price series and similarity of price levels and/or their convergence. The Commission takes into account the available quantitative evidence capable of withstanding rigorous scrutiny for the purposes of establishing patterns of substitution in the past.

B. Views of customers and competitors-

30. The Commission often contacts the main customers and competitors of the companies involved in its enquiries, to gather their views on the boundaries of the product market as well as most of the factual information it requires to reach a conclusion on the scope of the market. Reasoned answers of customers and competitors as to what would happen if relative prices for the candidate products were to increase in the candidate geographic area by a small amount (for instance of 5 % to 10 %) are considered when they are sufficiently backed by factual evidence.

C. Consumer preferences-

31. In the case of consumer goods, it may be difficult for the Commission to gather the direct views of end consumers about substitute products. Marketing studies that companies have commissioned in the past and that are used by companies in their own decision-making as to pricing of their products and/or marketing actions may provide useful information for the Commission's delineation of the relevant market. Consumer surveys on usage patterns and attitudes, data from consumer's purchasing patterns, the views expressed by retailers and more generally, market research studies submitted by the parties and their competitors are taken into account to establish whether an economically significant proportion of consumers consider two products as substitutable, also taking into account the importance of brands for the products in question. The methodology followed in consumer surveys carried out ad hoc by the undertakings involved or their competitors for the purposes of a merger procedure will

usually be scrutinized with utmost care. Unlike pre-existing studies, they have not been prepared in the normal course of business for the adoption of business decisions.

D. Barriers and costs associated with switching demand to potential substitutes-

32. There are a number of barriers and costs that might prevent the Commission from considering two prima facie demand substitutes as belonging to one single product market. It is not possible to provide an exhaustive list of all the possible barriers to substitution and of switching costs. These barriers or obstacles might have a wide range of origins e.g. regulatory barriers or other forms of Federal intervention, constraints arising in downstream markets, need to incur specific capital investment or loss in current output in order to switch to alternative inputs, the location of customers, specific investment in production process, learning and human capital investment, retooling costs or other investments, uncertainty about quality and reputation of unknown suppliers, and others.

E. Different categories of customers and price discrimination-

33. The extent of the product market might be narrowed in the presence of distinct groups of customers. A distinct group of customers for the relevant product may constitute a narrower, distinct market when such a group could be subject to price discrimination. This will usually be the case when two conditions are met: (a) it is possible to identify clearly which group an individual customer belongs to at the moment of selling the relevant products to him, and (b) trade among customers or arbitrage by third parties should not be feasible.

Evidence for Defining Markets — Geographic Dimension

34. The type of evidence the Commission considers relevant to reach a conclusion as to the geographic market can be categorized as follows:

A. Past evidence of diversion of orders to other areas-

35. In certain cases, evidence on changes in prices between different areas and consequent reactions by customers might be available. Generally, the same quantitative tests used for product market definition might as well be used in geographic market definition, bearing in mind that international comparisons of prices might be more complex due to a number of factors such as exchange rate movements, taxation and product differentiation.

B. Basic demand characteristics-

36. The nature of demand for the relevant product may in itself determine the scope of the geographical market. Factors such as national preferences or preferences for national brands, language, culture and lifestyle, and the need for a local presence have a strong potential to limit the geographic scope of competition.

C. Views of customers and competitors-

37. Where appropriate, the Commission will contact the main customers and competitors of the parties in its enquiries, to gather their views on the boundaries of the geographic market as well as most of the factual information it requires to reach a conclusion on the scope of the market when they are sufficiently backed by factual evidence.

D. Current geographic pattern of purchases-

38. An examination of the customers' current geographic pattern of purchases provides useful evidence as to the possible scope of the geographic market. When customers purchase from companies located anywhere in the country on similar terms, or they procure their supplies through effective tendering procedures in which companies from anywhere in the country bids, usually the geographic market will be considered to be nationwide trade flows.
39. When the number of customers is so large that it is not possible to obtain through them a clear picture of geographic purchasing patterns, information on trade flows might be used alternatively, provided that the trade statistics are available with a sufficient degree

of detail for the relevant products. Trade flows, and above all, the rationale behind trade flows provide useful insights and information for the purpose of establishing the scope of the geographic market but are not in themselves conclusive.

40. Barriers and switching costs associated to divert orders to companies located in other areas- The absence of trans-border purchases or trade flows, for instance, does not necessarily mean that the market is at most national in scope. Still, barriers isolating the national market have to identified before it is concluded that the relevant geographic market in such a case is national. Perhaps the clearest obstacle for a customer to divert its orders to other areas is the impact of transport costs and transport restrictions arising from legislation or from the nature of the relevant products. The impact of transport costs will usually limit the scope of the geographic market for bulky, low-value products, bearing in mind that a transport disadvantage might also be compensated by a comparative advantage in other costs (labour costs or raw materials). Access to distribution in a given area, regulatory barriers still existing in certain sectors, quotas and custom tariffs might also constitute barriers isolating a geographic area from the competitive pressure of companies located outside that area. Significant switching costs in procuring supplies from companies located in other countries constitute additional sources of such barriers.
41. Based on the evidence gathered, the Commission will then define a geographic market that could range from a local dimension to a global one.
42. The paragraphs above describe the different factors which might be relevant to define markets. This does not imply that in each individual case it will be necessary to obtain evidence and assess each of these factors. Often in practice the evidence provided by a subset of these factors will be sufficient to reach a conclusion, as shown in the past decisional practice of the Commission.

Calculation of Market Share

43. The definition of the relevant market in both its product and geographic dimensions allows the identification the suppliers and the customers/consumers active on that market. On that basis, a total market size and market shares for each supplier can be calculated on the basis of their sales of the relevant products in the relevant area. In

practice, the total market size and market shares are often available from market sources, i.e. companies' estimates, studies commissioned from industry consultants and/or trade associations. When this is not the case, or when available estimates are not reliable, the Commission will usually ask each supplier in the relevant market to provide its own sales to calculate total market size and market shares.

44. If sales are usually the reference to calculate market shares, there are nevertheless other indications that, depending on the specific products or industry in question, can offer useful information such as capacity, the number of players in bidding markets, units of fleet as in aerospace, or the reserves held in the case of sectors such as mining.
45. As a rule of thumb, both volume sales and value sales provide useful information. In cases of differentiated products, sales in value and their associated market share will usually be considered to better reflect the relative position and strength of each supplier.

Additional Considerations

46. There are certain areas where the application of the principles above has to be undertaken with care. This is the case when considering primary and secondary markets, in particular, when the behaviour of undertakings at a point in time has to be analysed. The method of defining markets in these cases is the same, i.e. assessing the responses of customers based on their purchasing decisions to relative price changes, but taking into account as well, constraints on substitution imposed by conditions in the connected markets. A narrow definition of market for secondary products, for instance, spare parts, may result when compatibility with the primary product is important. Problems of finding compatible secondary products together with the existence of high prices and a long lifetime of the primary products may render relative price increases of secondary products profitable. A different market definition may result in significant substitution between secondary products is possible or if the characteristics of the primary products make quick and direct consumer responses to relative price increases of the secondary products feasible.

47. In certain cases, the existence of chains of substitution might lead to the definition of a relevant market where products or areas at the extreme of the market are not directly substitutable. An example might be provided by the geographic dimension of a product with significant transport costs. In such cases, deliveries from a given plant are limited to a certain area around each plant by the impact of transport costs. In principle, such an area could constitute the relevant geographic market. However, if the distribution of plants is such that there are considerable overlaps between the areas around different plants, it is possible that the pricing of those products will be constrained by a chain substitution effect, and lead to the definition of a broader geographic market. The same reasoning may apply if product B is a demand substitute for products A and C. Even if products A and C are not direct demand substitutes, they might be found to be in the same relevant product market since their respective pricing might be constrained by substitution to B.
48. From a practical perspective, the concept of chains of substitution must be corroborated by actual evidence, for instance related to price interdependence at the extremes of the chains of substitution, in order to lead to an extension of the relevant market in an individual case. Price levels at the extremes of the chains would have to be of the same magnitude as well.

Zero Price and Digital Platforms

49. In digital markets, undertakings play an important role in influencing the interaction possibilities of users. The value of the services offered often not only depends on the inherent service features provided to a user but is also and possibly primarily determined by whether and how intensively they are used by other users. When such a connection exists between individual benefits and others' decisions, one speaks of external or network effects. Central to the understanding of many undertakings in digital markets are network effects that describe the relationship between the value of a service from the user's perspective and the behaviour of other users. In light of the increasing importance of digital markets, the concepts of "networks" and "multi-sided markets" were introduced into the German Competition Act,⁶ emphasising the special role of network effects. We subsume "networks" and "two-sided markets" under the

term “platform”. Our definition of platform is as follows: a platform is an undertaking that brings together economic agents and actively manages external effects between them. These external effects are typically network effects.

50. In order to meet the challenges of competition practice in the digital era, the terms “networks” and “multi-sided markets have become relevant in the analysis of market dominance. The term “network” captures the idea that users are connected with each other and derive benefits from these connections. Because of such connectedness, the value of a service to a user depends possibly on which and how many users also use the services. In other words, the undertaking takes the role of a platform that enables or facilitates interactions between users.
51. In the case of two-sided platforms, market definition raises a number of issues that do not arise on conventional markets. In market environments with two-sided platforms, the question arises whether the relationship between the platform and the respective market sides can be considered separate markets or whether there is a single market. There is also the issue as to whether there are circumstances under which a market can be viewed in isolation of the other side, or whether the interplay between both sides is always to be taken into account. Another question is how to treat a side on the platform that does not need to make a monetary payment to consume the platform’s service and effectively pays a zero price.
52. As the name implies, “zero price” products are simply “products for which firms set the price to customers at ~~N~~0.” Business models built around zero price products or services are not particularly new: ad-supported broadcast TV and radio, as well as many types of publications and credit cards, have long provided products for “free.” However, with the rise of the Internet, zero price business has exploded.
53. Indeed, “zero price” does not necessarily mean “free” or that there is no cost to a consumer. Instead of making a monetary payment, consumers of zero price products or services pay with something else. For example, a “free” online service may grant a user access, but in return, the user may be paying with their attention to advertisements, creative labor, privacy, or personal data. In this regard, many zero price markets may be thought of as “attention markets,” wherein users also act as producers, supplying the input—their personal data or browsing activity—to a platform that acts as a distributor

by selling access to or products based upon that input, such as targeted advertising services, with advertisers in this scenario counter-intuitively playing the role of consumer.

54. Technology companies offering zero price products typically compete largely on the quality of their products because they are not competing on price. Traditional methods of defining markets, such as the SSNIP test, do not capture non-price forms of consumer harm in zero price markets and are likely to lead to erroneous identification of markets. There are additional market definition tools, which are discussed below.
55. Consumer responses to qualitative and functional differences may reveal close substitutes and relevant product markets missed by merely price-based analysis. To that end, the Commission may rely on *any* reasonably available and reliable evidence, including all evidence of customer substitution in identifying product markets. This evidence includes switching behaviors in response to price and non-price changes; industry participants' behavior in tracking and responding to rivals' price changes; and evidence of "sellers' informed beliefs concerning how customers will substitute among products in response to relative changes in price. Such evidence of customer substitution may be equally evident where only qualitative data is available; price effects are not necessarily more important than non-price effects. Indeed, evidence of competitive effects can inform market definition, and anticompetitive effects can also be manifested in *non-price* terms and conditions that adversely affect customers, including reduced product quality, reduced product variety, reduced service, or diminished innovation.
56. Consumer substitution behavior in response to quality changes might potentially be measured as a modification to the SSNIP framework. The Commission might consider SSNIP variants like "SSNIQ," which is a small but significant non-transitory change in quality and examines switching once quality is reduced (rather than when price is increased). Another possibility is "SSNIC," which measures changes in the costs consumers pay for a free good in a non-monetary currency, such as attention or information. While reliably measuring such changes may be challenging compared to measuring price differences, sophisticated suppliers in digital markets likely already

have data needed for such analyses, and the Commission will require the submission of such data.

57. As such, the SSNIP test, as a concept, is applicable to two-sided platforms, albeit in an adapted form. Significant cross-group external effects and their interplay must be included. The SSNIP test is to be applied on each side of the platform. If an increase in price on one side of the platform is likely to cause an adjustment on the other side, this requires an assessment of how the respective platforms optimally adjust their price structure. The SSNIP test serves conceptual clarity in the application of demand-side substitutability.
58. As in standard competition analysis, for market definition and assessment of market power of a two-sided platform it is essential to investigate the substitutability of the different services offered by a two-sided platform with the services available elsewhere. The economic concept to do so is through cross-price elasticities of demand. In cases where a monetary price is not charged modified concepts will need to be used.
59. The Commission also considers the commercial realities faced by consumers of digital platforms and the unique economic features that characterise digital platforms in the market definition process such as:
 - i) strong network effects (the more people use a product, the more appealing this product becomes for other users);
 - ii) strong economies of scale and scope (the cost of producing more or of expanding in other sectors decreases with company's size);
 - iii) marginal costs close to zero (the cost of servicing another consumer is close to zero);
 - iv) high and increasing returns to the use of data (the more data you control, the better your product); and
 - v) low distribution costs that allow for a global reach.

60. The combination of these features makes markets tend towards a single dominant player, ultimately reaching a point at which “tipping” occurs and the winner takes all. Once a market has tipped, entrants will find it extremely difficult, if not impossible, to quickly and cost-effectively surmount the barriers to entry presented by the incumbent’s control of massive amounts of data and economies of scale. This also highlights the dangers of requiring evidence of net harm to all sides of platforms with high network effects and in markets with high concentration.
61. An adequate competition analysis of two-sided platforms requires that market definition does not (finally) determine whether or not pro- and anti-competitive effects, or the welfare effects on different groups of consumers, can be balanced. Thus, it is acknowledged that a weighing of different and diverging effects is allowed or even required if these effects relate to a single market, then it must be allowed or required just in the same way to apply such a weighing if it concerns cross-group external effects on different sides of a two-sided platform that belong to different markets.
62. If only transaction platforms (but no non-transaction platforms) coexist offering services that facilitate transaction between two sides, these offers may compete with vertically integrated offers to one side. In such cases, it would be erroneous to restrict the relevant market to consist of only the transaction service to both sides. Thus, adopting the single- market approach may lead to neglecting close substitute offers on one side of the market, which merely shows that there is not a single market since substitutable product offerings are very different for the two sides. Consequently, because of the risks of creating false positives the Commission will base its analysis on a multi- markets approach. The linkage between those markets through cross-group effects should be considered separately, in particular when assessing if a firm enjoys market power.

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