Principles of the Fair Trade Commission Regarding the Definition of Relevant Markets

Passed by the 1213th Commission Meeting on February 4, 2015
Promulgated by the order Gong-Zi-Zi No. 10421600251 on March 6, 2015

1. Purpose

The Fair Trade Commission (hereinafter referred to as the "Commission") formulated these principles specifically to make explicit the definitions of relevant markets, so as to facilitate case reviews and business compliance.

2. Definition of Terms

Terms used in these principles are defined as follows:

(1) Relevant Markets: refers to the regions or scopes within which the enterprises of particular goods or services are competing.

(2) Demand Substitution: refers to the circumstances where trading counterparts can switch to other goods or services to replace the specific goods or services provided by the enterprises when the enterprises adjust the prices or compensation for the specific goods or services.

(3) Supply Substitution: refers to circumstances where existing or potential competitors can provide substitutable goods or services to replace the specific goods or services provided by the enterprises when the enterprises adjust the prices or compensation for the specific goods or services.

(4) Product Market: refers to the scope comprising goods or services that are considered to have high demand or supply substitutability in terms of functionality, features, uses or prices.

(5) Geographic Market: refers to a region where trading counterparts of certain goods or services provided by an enterprise can easily choose or switch to other trading partners.

3. Basic Principles in Defining Relevant Markets

The Commission regards Demand Substitution as the primary review item in defining Relevant Markets, and depending on the features of such goods or services, the Commission may consider Supply Substitution.

The Commission defines the scope of Relevant Markets from the perspective of Product Market and Geographic Market; additionally, depending on concrete cases, the Commission also measures the impact of time factors on the delineation of Relevant Markets.

4. Factors to be considered in Defining Product Market

The Commission will consider the following factors when defining product market by demand and supply substitution of the goods and services in question pursuant to the preceding Point:

(1) Changes in product prices.
(2) Features and uses of the products.
(3) The occurrence of substitutions between products.
(4) The cost to trading counterparts when switching between different products.
(5) During product price adjustment, the extent of switching purchases by trading counterparts in response to price changes.
(6) The viewpoints of the trading counterparts and business competitors on the substitutions between products.
(7) The provisions of relevant laws or administrative regulations.
(8) Other evidences relating to the definition of product market.

5. Factors to be considered in Defining a Geographic Market

The Commission will consider the following factors when defining geographic market by demand and supply substitution of goods and services in question pursuant to Point 3:

(1) Price variations between different regions, and shipping costs.
(2) Features and uses of the products.
(3) The trading costs to trading counterparts when making product purchases from different regions.
(4) The convenience to trading counterparts in obtaining the products.
(5) The status when trading counterparts choose to make purchases in different regions when an adjustment is made to product prices.
(6) The viewpoints of the trading counterparts and business competitors on the substitution between product regions.
(7) The provisions of relevant laws or administrative regulations.
(8) Other evidences relating to the definition of a geographic market.

6. The Analytical Method used in Defining Markets

When defining Relevant Markets, the Commission shall review reasonable substitutability between the goods or services in question and their geographic regions and other goods or services and their geographic regions. Additionally, the Commission shall also apply the cross-elasticity test and the hypothetical monopolist test to define Relevant Markets. However, the handling of each case is not limited to the abovementioned analytical methods, and there is no set prioritization to the use of any of analytical methods.

7. The Analytical Method used in Defining Markets: Reasonable Substitutability Analysis

The reasonable substitutability analysis refers to, when defining a product market or geographical market, the reviewing of whether or not there is reasonable substitutability in functionality, features, uses, prices, and the competition of the geographical regions, in accordance with the trading counterparts' knowledge, between the goods or services involved in the case in question and other goods or services. In terms of the extent that such a substitution of goods or services constitutes the same relevant market shall be determined in accordance with the specific facts of each case.

8. The Analytical Method Used in Defining Markets: Cross Elasticity Test

Cross elasticity refers to the ratio value when the price change rate of one product affects the quantity change rate of another product.

The cross elasticity between the product and its substitutes, or between geographical regions, can be used to test the substituting relationship between the two products or geographical regions, and then used in defining the Relevant Market.

The following items must be taken into consideration when defining the Relevant Market while using the cross elasticity test:

(1) The focus of cross elasticity is on a single substitute or geographical region, and not on all substitutes or all geographical regions, with the precondition that "all other trading terms remain unchanged". Whether or not the values of the cross elasticity between the two products or geographical regions are sufficient to constitute the same relevant market must be determined in accordance with the specific facts of each case.

(2) Competitive pricing should be adopted in the evaluation of cross elasticity, so as to determine whether or not the products or geographical regions constitute the same relevant market.

(3) When adopting cross elasticity test to define relevant markets, factors listed under Point 4 and 5 must also be taken into consideration.

9. The Analytical Method Used in Defining Markets: Hypothetical Monopolist Test

The Hypothetical Monopolist Test refers to, under the hypothesis that there is a monopolist in the market, the test of the profitability of the hypothetical monopolist when imposing a small but significant and non-transitory increase in price. If the profit of the hypothetical monopolist decreases when prices are increased, it means that the relevant market as defined is too small, and that other substituted products or geographical regions must be included and then retested. The test is repeated until the profit of the hypothetical monopolist no longer decreases when prices are increased, at which point the definition of the relevant market is also completed.

The following items must be taken into consideration when using the hypothetical monopolist test:

(1) When using the hypothetical monopolist test to define relevant markets, the base prices used in the test must be market competitive prices.
(2) In general, the price increase is between five percent and ten percent; however, when making a determination for each case, the price increase is adjusted according to the industry or market features involved.
(3) When the hypothetical monopolist test is used to define relevant markets, factors listed under item 4 and 5 must also be taken into consideration.

10. The Opinion of Industry Competent Authority

In delineating market of a specific industry, the Commission may refer to the opinion of the competent authority in charge of the specific industry.

11. Reviewing Standards for Specific Industries

Where other principles or regulations are provided by the Commission for the definition of the relevant markets of specific industries , the Commission shall comply with such principles or regulations.