SPEECH/01/439

Speech by Commissioner Mario Monti

European Commissioner for Competition Policy

Market definition as a cornerstone of EU Competition Policy

Workshop on Market Definition - Helsinki Fair Centre

Helsinki, 5 October 2001

Ladies and Gentlemen,

Many articles and chapters of antitrust book manuals have been and remain to be written about market definition for antitrust purposes. Today, I would like to focus on two aspects of this issue:

- First, I will explain how, in recent years, our increased economic approach to competition policy has put market definition at the centre of the process of application of the EU competition rules.
- Secondly, I will devote some time to explain how we define geographic markets. I believe that I should use this opportunity to reply to some criticisms that have been formulated, often in the Nordic countries, with regard to our policy in this area. This follows our allegedly strict market definitions in the prohibition decision in the *Volvo-Scania* merger last year that re-surfaced - not very strongly, though - after the abandonment two weeks ago of the merger between SEB and FSB, two leading Swedish Banks.

I. Introduction: the purpose of market definition

Let me start by saying that, market definition is not an end it itself but a tool to identify situations where there might be competition concerns.

As in most other competition jurisdictions around the world, our competitive analysis focuses on market power. We use market definition and market shares as an easily available proxy for the measurement of the market power enjoyed by firms. In effect, the main objective of defining a market is to identify the competitors of the undertakings concerned by a particular case that are capable of constraining their behaviour[1].

The necessity of defining markets, and the methodology for doing so, have been parts of the competition policy of the EU from its inception. Indeed, the definition of a relevant market has always been a pre-condition both to assess dominance under Article 82 of the Treaty and for the evaluation under Article 81(3) of whether a notified agreement afforded the parties the possibility of eliminating competition. Most of our current practice and expertise in recent years comes, however, from the application of the Merger Control Regulation.

The progressive adoption of a more sophisticated economic approach in the application of the competition law of the European Union has meant, however, that market definition has come to play an increasingly important role under Article 81.

For example, very substantial changes have taken place since 1999 concerning the Commission's approach to vertical and horizontal agreements. At present, in the absence of hardcore restrictions, Article 81 can only be infringed if the parties have some degree of market power and therefore, its application also requires a proper market definition.

[1] See Commission Notice on the definition of the relevant market for the purposes of Community competition law. OJ n°*C 372 of 9/12/1997*.

The guidelines on vertical agreements[2], for instance, indicate that competition concerns can only arise if there is some degree of market power at the level of the supplier or the buyer or both. Furthermore, the new block exemption regulation takes the line that vertical agreements which do not contain hardcore restrictions are generally compatible with Article 81, where the market share of the supplier or buyer does not exceed 30%.

The same approach has been taken in both the horizontal guidelines[3] and the two new block exemption regulations concerning R&D[4] and specialisation agreements[5], respectively [6].

In the horizontal guidelines, the market power of the parties to a co-operation agreement, together with other factors relating to the market structure, are crucial for the assessment of the likely market impact of the agreement.

The new regulations also include upper thresholds to the benefit of automatic exemption: 25% in the R&D Regulation and 20% in the specialisation block exemption Regulation. Furthermore, the horizontal guidelines indicate that, for purchasing/selling markets, it is unlikely that there is market power below 15% market share in any or both markets.

The competition's standards used to define markets will soon be used beyond the border of competition policy, in the pure regulatory field. In effect, the draft *guidelines on market analysis and the calculation of significant market power,* developed by the Commission as part of the new telecommunications regulatory package, are built on the Commission's experience in defining markets in the field of competition law.

---

2 Commission Notice-Guidelines on Vertical Restraints. OJ n° C 291/1 of 13.10.2000.

3 Guidelines on the applicability of Article 81 of the EC Treaty to horizontal cooperation agreements. OJ n° C 3/2 of 06.01.01.

4 Commission Regulation (EC) No 2659/2000 of 29 November 2000 on the application of Article 81(3) of the Treaty to categories of research and development agreements. *OJ n° L 304/7 of 05/12/2000.*

5 Commission Regulation (EC) No 2658/2000 of 29 November 2000 on the application of Article 81(3) of the Treaty to categories of specialisation agreements. OJ n° *L 304/3 of 05/12/2000*.

6 The same line was taken in the Notice on agreements of minor importance which do not fall under Article 85(1)[now Article 81(1] of the Treaty establishing the European Community. OJ n° C372 of 09.12.7997.

II. The Notice on the definition of the relevant market for the purposes of Community competition law

This increased relevance of the notion of market power and, therefore, of the use of market definition as a tool to identify it, were bound to require from the Commission a clarification of its policy in this area. On October 1997, anticipating these requests, the Commission adopted a set of guidelines on the definition of the relevant market for the purposes of Community competition law, applicable both to mergers and to antitrust cases under Articles 81 and 82.

By rendering public the procedures that it follows and by indicating the criteria and evidence upon which it relies, the Commission gave clear guidance to companies in its 1997 Notice on market definition. This Notice increased the transparency of Commission policy and reduced compliance costs for industry. The giving of clear guidance is particularly relevant in view of the ongoing process of modernisation of the EU antitrust rules, which increases the need for undertakings to self-assess their compliance with competition rules.

Basic principles in the Notice on market definition

- The Notice on market definition follows a classical “constrains” approach. In essence, this is based on the notion that the exercise of market power can be constrained by demand substitutability, by supply substitutability and by potential competition.

We look first, and above all, at demand substitutability, that is to perfect or near perfect substitutes readily available in the geographic area or in an alternative area, to which consumers or users can actually switch should the price increase.

In order to measure demand substitution, we use the hypothetical monopolist test, better known as SSNIP test, as it is referred to in the US horizontal merger guidelines. For those of you to which these abbreviations do not say much, as it was my case not long time ago, let me clarify that SSNIP stands for ‘small but significant non-transitory increase in price’.

The question that this test asks is whether the parties' customers would switch to readily available substitutes or to suppliers located elsewhere in response to an hypothetical small (in the range 5%-10%), permanent relative price increase in the products and areas being considered. If substitution would be enough to make the price increase unprofitable, because of the resulting loss of sales, additional substitutes and areas are included in the relevant market. This theoretical test allows us to identify a set of products and a geographic area small enough to allow permanent increases in relative prices that would be profitable. This set of products or this geographic area is what we consider a relevant market for antitrust purposes[7].

Supply substitutability is considered then. It refers to producers who are able to switch production to the relevant products as a response to a price increase. Supply substitutability is only taken into account when its effects are equivalent to those of demand substitution in terms of effectiveness and immediacy. That requires that the alternative producer has already all of the important assets (fixed inputs and distribution networks) required. In addition, the Notice says that supply side substitution should occur "within a period that does not imply a significant adjustment of existing tangible and intangible assets". In practice, this means the very short term.

Potential competition is not taken into account for market definition. Instead competitive constraints coming from potential competition will be assessed at a later stage of the process to identify market power.

Commission's practice

In practice, the starting hypothesis for our analysis is the market definition provided by the notifying parties. A substantial part of Form CO (the notification form for mergers) and Form A/B (the notification form under Article 81) is devoted to market definition issues. Parties are asked to define the relevant product and geographic markets and to provide very detailed additional information to allow the Commission to check that definition.

This position is contrasted with the experience of the Commission in the sector as well as with the views of customers and competitors. Both customers and competitors receive requests for information, sometimes very detailed, so as to assist the Commission in defining both product and geographic markets. We are, of course, aware that competitors might be sometimes tempted to influence the Commission in one or another direction, but I believe my services have enough experience to be able to distinguish between objective facts and subjective opinions and are therefore not unduly influenced in their assessments.

[7] The SSNIP test has limitations. We are for instance aware of the cellophane fallacy-type of situation, under which a monopolist sets prices at such a level that any further increase, would be unprofitable. The application of the SSNIP test in that case would look as if the theoretical price increase was not profitable and, hence, will lead to overly wide markets being defined and to market shares that understate the firm's real market power. The Notice recognises that risk, in particular for cases concerning abuses of a dominant position under Article 82. Thus, prices other than prevailing market prices could be taken into account when considering the SSNIP.

In some cases the parties, as well as competitors or customers, support their views with econometric analyses that try to show whether correlation exists between the prices of different products or that try to estimate cross-elasticity between different products. If data is abundant and reliable (which is normally the case for mass consumer goods) these studies can contribute positively to our analysis. They should not substitute, however, other more traditional aspects of it. As an economist, I know well the limitations of our discipline !

On the basis of all this information, we are usually in a position to establish the relevant markets concerned by the operation or, at least, the few alternative possible relevant markets. In fact, in view of our limited resources, we define markets only when strictly necessary. In merger cases, for instance, if none of the conceivable alternative market definitions for the operation in question give rise to competition concerns, the question of market definition will normally be left open[8].

Let me conclude this brief tour of the major aspects of market definition by indicating that before we adopt a final definition that could lead to a finding of competition concerns, the parties always receive a copy of our reasoning (in the form of an statement of objections) and are given the opportunity to reply in writing and orally to it. I hope this will reassure companies involved in our procedures: the Commission will not reach a conclusion different from the one of the parties without fully taking their views into account. In fact, it will only do so if it has strong evidence and arguments that which its believes overrides those of the opposing parties.

III. Relevant Geographic market definition

Let me turn now in more detail to the issue of geographic market definition.

The Court of Justice states that “the relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of the relevant products or services, in which the conditions of competition are sufficiently homogeneous, and which can be distinguished from neighbouring geographic areas because, in particular, conditions of competition are appreciably different in those areas.”

In order to identify this area where conditions of competition are sufficiently homogeneous, the Commission takes different elements into account. Factors like past evidence of diversion of orders to other areas, the examination of the customers' current geographic pattern of purchases and trade flows are, of course, very relevant.

In addition, 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 life style, and the need for a local presence are all important factors in defining the appropriate relevant geographic market.

[8] That would particularly be the case when there are no affected markets, meaning that either the combined market shares is below 15% or that no party has a market share exceeding 25% in a vertically related or conglomerate market.

Furthermore, barriers and switching costs for companies located in other areas are also considered. 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 physical geographic characteristics of some countries or regions can have a serious impact on transport costs and hence on the scope of the geographic market.

Finally, the existence or absence of regulatory barriers (for example, those arising from public procurement, price regulations, quotas and tariffs limiting trade or production, technical standards, legal monopolies, requirements for administrative authorisations, or other regulations), is very important for geographic market definition. For instance, in two recently adopted decisions against Deutsche Post and in a case against the Italian tobacco monopolist adopted in 1998[9], the scope of the markets was defined as national because entry was impossible in view of the existence of exclusive rights or fiscal monopolies.

I believe that the fact that the EU is a union of sovereign States makes geographic market definition far more complex than, for instance, in the US; where, arguably, issues like market integration, cultural/linguistic differences, regulatory barriers or national preferences are not so relevant.

In addition, these differences do not impede the US antitrust agencies and courts from reaching the conclusion that markets are local. On the contrary, there are many examples in the US of very narrow geographic markets[10].

Geographic market definition and small Member States

Some voices, particularly in the Nordic countries, have recently questioned the way the Commission defines geographic markets because, they say, it could lead to discrimination towards small Member States.

The criticism could be formulated as follows: when the Commission defines a national market in a small country it prevents companies from that country to merge because they would quickly reach dominance in the national market. This would prevent these companies from reaching the dimension necessary to compete world-wide. In large Member States such a problem would not arise because companies could reach the necessary dimension without approaching the level of dominance.

---

9 *AAMS*. Commission Decision of 17.6.98 relating to a proceeding pursuant to Article 82 (ex Article 86) of the EC Treaty. OJ L252/47 of 12.9.98.

Deutsche Post AG. Commission decision of 20.03.2001 relating to a proceeding under Article 82 of the EC Treaty (case Comp/35.141). OJ L125/27 of 5.5.2001.

Deutsche Post AG - British Post Office . Commission decision of 25.07.2001 relating to a proceeding under Article 82 of the EC Treaty (case Comp/36.915).

10 To name just a few: in the case *Fair Allocation System* Inc the FTC decided upon a geographical market comprising only eastern Washington, Idaho and western Montana. In the case *Dairy Farmers of America – Sodiaal*, the market was defined as the sales of branded stick and branded whipped butter in the Philadelphia and New York metropolitan areas. In the *Brown Shoe* case the relevant geographic markets were defined as "every city with a population exceeding 10,000 and its immediate contiguous surrounding territory in which [both parties] sold shoes to retail through stores they either owned or controlled". In the case *Aspen Ski Company v. Aspen Highland Skiing*, the Supreme Court defined a market for skiing services in Aspen, Colorado. Frozen dessert pie manufacturing in Utah or motion picture exhibition in Texas are additional examples of very narrow markets in the US.

I believe this criticism is somehow flawed and could have negative implications. Let me explain why to you.

First of all, let me repeat one important point at this stage. The Commission's objective in defining geographic markets is simply to identify the competitive constraints that the companies concerned will face. When national companies do not face serious competition constraints from abroad, the market can only be defined as national.

That was the case, for instance in our decision on *Volvo-Scania*[11], where we defined national markets for heavy trucks. In addition to differences of prices with neighbouring countries and legal barriers (the "crash test"), in this sector; the sale of the product is inherently linked to the provision of after-sales services (maintenance and overhaul, spare parts). Therefore, the geographical dimension of the market is not only determined by the geographic scope of the manufacturing level, but also by the conditions of competition for the provision of after-sales services. If such services require a substantial local presence in order to provide effective and timely support to customers and to maintain close and frequent contact with them, the geographic market could be narrower than that indicated on the production side[12].

To give you another example, the Commission has recently imposed a substantial fine on *Michelin*[13] for abuse of its dominant position in the French market, a "large Member State", for replacement tyres for trucks. Again, we considered that the importance of a distribution and after sales network across the country pointed towards a national market definition.

Hence, there was nothing exceptional about the market definition in *Volvo-Scania.* We used normal market definition standards that supported the conclusion of the existence of national markets. In view of the strong position of the parties involved, the result of the analysis was that the merger would have led to serious competition problems on the relevant truck and bus markets in the Nordic countries (the parties would have held almost 90% of the market in Sweden) as well as in Ireland and in the United Kingdom.

---

[11] Case n° COMP/M.1672 – Volvo-Scania. Commission decision of 15.03.2000 under Article 8(3) of Regulation (EEC) n° 4064/89.

[12] An additional example of the above can be found in the *Metso-Svedala* case, where national markets were found to exist for A&C products.

[13] Commission decision of 20.06.2001 relating to a proceeding pursuant to Article 82 of the EC Treaty (case n° COMP/36.041 – Michelin PO).

The same criticisms about discrimination towards small Member States are being made in relation of the abandoned *FöreningsSparbanken/SEB*[14] bank merger in Sweden. As you probably know, the parties withdrew their notification on 19 September last, shortly after a statement of objections was issued, but before the hearing. I have to say that this course of action is most unusual -in fact, it is only the second time such a withdrawal has occurred since the entry into force of the Merger control regulation (and out of a total of more than 1800 cases notified and of more than 110 second phase investigations)- because two months remained for the parties to try to convince the Commission about their approach and to propose remedies. I believe this opens the door to speculation that competition concerns might not have been the only reason behind the withdrawal.

Anyway, I do not see how market definition could be at all an issue in this case. We defined the market for banking services to households and SME's as national, mainly because it is unrealistic to assume that retail-banking customers would go abroad to do their day-to-day banking. In fact, many national competition authorities, and notably those in the US[15], have defined even narrower, i.e. local, markets for retail banking. I want to stress that there was full agreement with the parties on this part of the analysis.

Let me point out, in relation to this issue, that retail markets tend to be normally of a local or, at maximum, of a national nature. This is the case for retail banking, but also for the retail of consumer products in general. There are several cases involving concentration in the retail distribution markets where the Commission has taken this line. You will probably remember the *Kesko-Tuko*[16] merger, which the Commission examined at the request of the Finnish authorities, and eventually prohibited. This is because it would have created a dominant position in the Finnish market for retail of daily consumer goods. The Commission's prohibition decision was subsequently confirmed by the Court of First Instance.

By way of comparison, the Commission raised objections to the *Generali- INA*[17] transaction in Italy and in the case *Bank Austria-CA*[18] in Austria. In both cases the combined market shares at stake were clearly below those in this transaction[19].

---

[14] Case COMP/M.2380. See press release IP/01/1290 of 19.09.2001.

[15] The *Chittenden Corp. -- Vermont Finantial Services* (see DOJ's press release of 12.05.1999) and the *Firstar Corp – Bancorp Inc*. (see DOJ's press release of 05.02.2001) are good examples of local banking markets being defined.

[16] Case n° COMP/M.784 – KESKO-TUKO; Commission decisions of 20.11.1996 under Article 8(3) and of 19.02.1997 under Article 8(4) of Regulation (EEC) n° 4064/89.

[17] Case n° COMP/M.1712 –Generali-INA. Commission decision of 12.01.2000 under Article 6(2) of Regulation (EEC) n° 4064/89. The parties would have reached between 30 and 40% of the Italian life insurance market.

[18] Case n° COMP/M.873 –Bank Austria-CA. Commission decision of 11.03.1997 under Article 6(2) of Regulation (EEC) n° 4064/89.

[19] In the UK, the authorities prohibited the *Lloyds-Abbey National* merger on the basis of market shares in the current account market of 27%.

Returning to the assessment of the FSB-SEB's merger, the position of the new entity in the Swedish retail banking market would have been unprecedented in any EEA country, even among small economies. The parties would have had significantly higher combined market shares than the respective market leaders in the other more concentrated markets, including Finland, Norway and Denmark.

I do not see, therefore, how *Volvo-Scania* or *FSB-SEB* could be presented as examples of cases where the Commission discriminated against small Member States. We applied to these cases the same criteria that we normally apply, in the interest of preserving healthy competition.

It cannot be argued, either, that the Commission is biased when defining geographic markets. We approach this exercise with an open mind, without a preference for any particular outcome.

We have done some research on our merger decisions adopted over the last 5 years in order to see whether any bias could be found. Out of 1295 decisions, in 184 (14.2%) markets were defined as national. In 187 (14.4%), markets were wider than national. In the remaining 924 (71.4%) the scope of markets was left open, because competition concerns would not arise under any alternative definition (either EEA-wide, regional or national).

When the same exercise is repeated, this time looking only at cases involving companies from Nordic countries, the results show a somewhat larger predominance of 'wider than national' markets. Thus, in 24 out of 228 decisions (10.5%), markets were considered national. Wider than national markets were found in a further 30 (13.2%) and markets were left open in the remaining 174 (76.34%).

Of course, the majority of these cases are positive decisions adopted in first phase. It could be argued that the proportion of narrow markets would exceed wider markets in in-depth second phase investigations, i.e. cases were serious doubts were raised. We have looked into second phase investigations involving Nordic companies since 1996. Again it is difficult to find any bias. In fact, in 6 out 12 cases serious doubts were raised in at least one market defined as either "regional" (often covering the entire Nordic area) or "EEA-wide". In the remaining 6, only national markets were considered.

I hope you are now convinced that we do not have any particular prejudice in favour of narrow market definitions in small countries and that we, in fact, apply the same criteria all across the Union. Some of our critics, however, believe that it is precisely the fact that we apply the same rules everywhere that discriminates against companies from small Member States by preventing them from merging domestically. As Mr Persson[20], the Swedish Prime Minister, recently said *"the present rules are disadvantageous to us since we tend to dominate our market fraction to such a great extent"*. He added *"there is a structural error in the EU's competition rules".*

[20] Quoted in Dagens Industri on 20 Sept 2001.

This way of thinking seems to imply that companies can only acquire the necessary dimension by dominating their national market. I believe companies in small Member States have many other means to grow and become competitive worldwide than a merger with another leading company from the same Member State that would create competition concerns.

- First, they can grow internally. Our rules do not oppose that a company becomes dominant in its own national market when it reaches such a position by offering lower prices or better products and services than its competitors. There are plenty of examples of successful international companies from small Member States that have followed this path. Being today in Finland, I should express my admiration for companies such as Nokia or the paper industry, which by producing very competitive products have become worldwide leaders.
- Secondly, companies can expand by merging with companies that operate in other countries. The *Volvo-Renault*[21] operation and the strategic partnership concluded between Scania and Volkswagen, following the prohibition of the *Volvo-Scania* merger, clearly show that there were alternative ways for these companies and less harmful for competition than a merger of two big domestic players.
- Finally, domestic mergers are not totally excluded. We approve them when they do not lead to excessively high market shares or, even in cases of relatively high market shares, when the market in question is open enough. In some of these cases, we would ask the parties to give adequate remedies, to ensure that, if the new entity were to raise prices, competitors from abroad would have incentives and not face strong difficulties to enter the market. A good example of this was the *Neste-IVO*[22] case relating to electricity. Some other mergers between companies from different Nordic countries where we accepted high market shares are *Enso/Stora*[23], relating to the paper industry or even *Telia/Telenor*[24], which was cleared by the Commission; but that, in the end, did not materialise for other reasons.

---

[21] Case n° COMP/M.1980 –Volvo-Renault VI. Commission decision of 01.09.2000 under Article 6(2) of Regulation (EEC) n° 4064/89.

[22] Case n° COMP/M.931 –Neste-IVO. Commission decision of 02.06.1998 under Article 6(2) of Regulation (EEC) n° 4064/89. IVO had between 60-70% of the Finnish electricity market and its leading position in this market could have been strengthened by the operation because Neste held joint control over the natural gas monopoly in Finland. The operation was cleared after the parties accepted to relinquish such a controlling position.

[23] Case n° COMP/M.1225 –Enso-Stora. Commission decision of 25.11.1998 under Article 8(2) of Regulation (EEC) n° 4064/89. The new entity would have achieved more than 60% of the EEA liquid packaging board market, but the operation was cleared mainly in view of the existing countervailing buyer power.

[24] Case n° COMP/M.1439 –Telia-Telenor Commission decision of 13.10.1999 under Article 8(2) of Regulation (EEC) n° 4064/89. The two parties to the operation where the former monopolists in the telecommunication markets in Sweden and Norway respectively. The operation would have strengthened the respective dominant positions of the parties. It could have been cleared only after the parties agreed to open their respective markets (inter alia, by unbundling the local loop).

Other implications of this type of criticism are more worrying. Merger control is about protecting the competitive process in the market and thereby aims at ensuring consumers a sufficient choice of products at competitive prices. By preventing a merger from creating a dominant position in a small country the Commission protects the customers who live there.

I believe that consumers deserve a high degree of protection from dominant suppliers irrespective of the size of the country. If we were to approve mergers that create national champions in small markets even if they implied the creation or strengthening of dominant positions, as our critics seem to suggest, we would be guilty of serious discrimination. We would, indeed, be discriminating against customers of small Member States, who would eventually suffer from higher prices and lower quality.

Moreover, I fail to see in which way the creation of a company with significant domestic market power will bring any benefit to the economy of that country. Indeed, experience shows that companies that are successful abroad are, in most cases, those facing a competitive environment back home. They are trained to be competitive and, therefore, are better prepared to enter new markets. I am sure that Volvo and Scania became worldwide leaders, in part thanks to their healthy face-to-face competition in Sweden.

Effects of EU legislation on market definition

In addition to all these reflections, let me say that market definitions are not immutable and that they can change in time.

The opening up to competition of markets as a result of EU liberalisation efforts or harmonisation resulting from EU harmonisation directives will normally result in the widening of the scope of markets at some point in time.

The telecommunications sector is a very good example of the above as regards both equipment and services.

As regards equipment, markets were defined as national in early merger cases[25]. However, today, several years after liberalisation of the equipment market, many parts of this industry are being assessed on the basis of cross-border markets that may be regional, EU-wide or even worldwide[26].

As regards services, while most telecommunication service markets have traditionally been defined as national, deregulation has opened up markets. Provided that the introduction of new technology provides the customer with an effective opportunity to source such services in an area that is wider than national, the Commission will accept that the relevant antitrust market is indeed wider than the traditional national service markets.

[25] For instance cases M.42 - Alcatel/Telettra (Spain), decision of April 1991 and M.468 - Siemens/Italtel (Italy, decision in February 1995).

[26] Examples include M.2056 involving Sonera, the Finnish TO, decision in August 2000 (see also M.1880 - Minesota Mining/Quante and M.1908 - Alcatel/Newbridge Networks, both decided in 2000).

Examples can be found in *AOL/Time Warner*[27] where the markets for on-line music delivery was found to be at least EEA wide and in *Vodafone Airtouch-Mannesmann*[28]*,* where an emerging market for pan-European seamless mobile telephony services to multinational companies was found.

The widening of markets, resulting basically from EU legislative action, can also be found in more traditional sectors, like power cables and in steel tubes.

The Pirelli-BICC[29], case illustrates the result of a process where deregulation and harmonisation of the power supply industry has effectively led to a widening of the relevant antitrust markets. In this case, the market was indeed confirmed to be EEA-wide because customers increasingly source power cables at a European level on the basis of the procedures provided for in the Community public procurement directives.

This case contrasted with earlier cases involving the same industry. In 1992, markets were still considered to be national in scope. In 1998 a transition was recognised, but the assessment was still made at the national level. It may be of interest to note that when such a transition is detected on the basis of evidence submitted by the parties (or elsewhere found in the investigation), the Commission will normally still assess the market as national, but may be less concerned with moderately high market shares.

Regarding steel tubes, in the *Mannesmann/Hoesch*[30] merger case*,* the market for certain steel tubes used in various industrial applications was defined as national in scope (Germany). Despite high degrees of concentration, the merger was still cleared, inter alia, with reference to ongoing trends towards a transition to a wider market (partly owing to European procurement directives). These trends have subsequently been confirmed in other cases[31] that were assessed on the basis of EEA-wide or even worldwide markets[32].

---

[27] Case n° COMP/M.1845 –America On Line –Time Warner. Commission decision of 11.10.2000 under Article 8(2) of Regulation (EEC) n° 4064/89.

[28] Case n° COMP/M.1795 –Vodafone Airtouch-Mannesmann. Commission decision of 12.04.2000 under Article 6(2) of Regulation (EEC) n° 4064/89.

[29] Case n° COMP/M.1882 –Pirelli-BICC. Commission decision of 19.07.2000 under Article 8(2) of Regulation (EEC) n° 4064/89.

[30] Case n° COMP/M.222 –Mannesmann-Hoesch. Commission decision of 12.11.1992 under Article 8(2) of Regulation (EEC) n° 4064/89.

[31] *British Steel/Europipe* and *Salzgitter/ Mannesmanröhrenwerken*,

[32] However, the existence of harmonisation directives may not be sufficient in itself to define EEA-wide markets if other elements point to narrower markets. That was the situation in *Smith & Nephew + Beiersdor,* a joint venture to be active in certain medical supplies. In that case, the implementation of the Medical Device Directive was not sufficient to consider EEA-wide markets because of the existence of some national specifications, price differences between Member States, discrepancies in market shares and national sourcing of supplies.

I would like to make a final couple of points about the effects of market integration in the EU. First, the faster barriers fall and markets become integrated, the easier it will be for companies from small Member States to consolidate, even domestically, without infringing competition rules. However, until dependable data confirms that the process of widening is truly underway, competition analysis must base itself on the observable facts, not on wishful thinking. This essentially means that large companies in small markets should have a strategic interest in promoting the opening up of markets, rather than, as has often been the tendency in the past, protecting entrenched positions.

Secondly, it is possible that restrictions of competition having as their object or effect the partitioning of the internal market, narrow a market that would otherwise be EEA-wide. That was the situation in the *JCB*[33] case, where JCB took active measures to ensure absolute territorial protection in exclusive territories. Another example is that of measures intended to impede that foreigners buy cars in given countries where they are cheaper. In *Volkswagen I*[34] and in *Opel Nederland*[35] national markets were considered, in particular, because the practices were aimed at impeding cross-border sales.

IV. Conclusion

To conclude, let me simply recall that market definition is a cornerstone of competition policy, but not the entire building. Market definition is a tool for the competitive assessment, not a substitute for it. What is ultimately important is to understand the nature of the competitive situation facing the firms involved in a certain practice or in a proposed merger. The market definition is a first - and very important - step in the analysis.

I hope my presentation has shed some light on how the Commission performs this step. I will be satisfied if I have managed to convey to you the idea that we do not have prejudices in relation to market definition, but that we approach each case with an open mind. We do not discriminate against companies in small and large member States. Our objective is to protect consumers everywhere.

---

[33] JCB. Commission decision of 21.12.2000 relating to a proceeding pursuant to Article 81 of the EC Treaty (case Comp/35.918). Fine imposed: million € 39.6.

[34] *Volkswagen*. Commission Decision of 28.1.98 relating to a proceeding pursuant to Article 81 (ex Article 85) of the EC Treaty. OJ L124/60 of 25.4.98. Fine imposed: million € 90.

[35] Opel Nederland. Commission decision of 20.09.2000 relating to a proceeding pursuant to Article 81 of the EC Treaty (case Comp/36.653). Fine imposed: million € 43.