

**The Trade Competition Commission Notice on
Guidelines for the Assessment of Market Definition and Market Shares
B.E. 2561 (2018)**

As Section 5 of the Trade Competition Act B.E. 2560 (2017), which specifies the definition of market and for the purposes of assessing status of business undertakings and their practices under the Trade Competition Act, obliges to identify market definition in relevant cases, therefore, the Trade Competition Commission, pursuant to Section 17 (3) of the Trade Competition Act B.E. 2560, announces this Notice, to clarify the procedure of identifying market definition for the purposes of applying the Trade Competition Act B.E. 2560 effectively and complaint with international practices, as follow:

1. This Notice is called “The Trade Competition Notice on Guidelines for the Assessment of Market Definition and Market Shares.”

2. This Notice shall be effective on the following day after the day that this Notice being published in the Government Gazette onwards.

3. In this Notice,

“Relevant Market” means relevant product market and relevant geographic market;

“Relevant Product Market” means a market comprises of all products or services which are interchangeable or substitutable by consumers, when products’ characteristics, prices, or intended use are considered;

“Relevant Geographic Market” means a market comprises of the area in which products or services are interchangeable or substitutable by consumers and subject to the similar conditions of competition;

“Market Definition” means the analysis of facts related to products or services that are interchangeable or substitutable by assessing relevant product market and relevant geographic market to identify the boundaries of competition between firms for the purposes of enforcing the Trade Competition Act B.E. 2560.

4. The Chairperson of the Trade Competition Commission shall be in charge of this Notice.

Chapter 1

Principles of Identifying Market Definition

5. To identify market definition, conditions that may restrict competition of products or services in terms of demand substitutability, supply substitutability, and potential competition shall be considered together.

6. Demand substitutability shall consider consumers' perception and perspective on the extent of products or services that are interchangeable or substitutable, by reasons of products'/services' characteristics, prices, or intended uses and geographic reason.

7. Supply substitutability shall consider suppliers' abilities to switch from a product or service in question to other related products or services without incurring significant increase in costs or risks resulted from the change in price of that product or service.

8. Potential competition shall consider all possible factors and circumstances that may affect conditions for market access of a relevant product market resulting in the level of competition in that market.

9. In the case where the Trade Competition Commission deem complicated, the Commission may appoint the Sub-Committee pursuant to Section 20 of the Trade Competition Act B.E. 2560 to identify the market definition. The Sub-Committee consists of 5 to 8 members representing related governmental, academic, private, and general public sectors and the official of the Office of the Trade Competition Commission shall serve as a member of the Sub-Committee and acts a secretary to the Sub-Committee. The market definition shall be identified within 30 days with a possibility for the extension of no more than another 30 days.

Chapter 2

Assessment of Demand Substitutability

10. The assessment of demand substitutability to identify market definition in relevant market shall consider one or more following data and/or information:

(1) Historical data within the last five (5) years representing substitutability of products or services, such as significant economic phenomenon indicating shift or change in consumption of that product or service in question by reasons of characteristics, prices, or intended uses of that product or service;

(2) Quantitative and qualitative tests including price elasticity of demand, cross elasticity of demand, price series analysis, price levels, or price convergence;

(3) Data gathering or interviews of involved trading parties, consumers, and competitors on their opinion and perspective towards characteristics, prices, or intended uses or purposes of such products or services through internationally acceptable statistical or economic sampling methods;

(4) Data or documents published by businesses, educational institutions, and/or experts that have analyzed consumer preferences; for example, market studies, consumers' surveys or questionnaires, patterns of customers purchase of such product or service, or opinion of retailers;

(5) Rules or regulations that may hinder or obstruct the substitution of products or services on characteristics, prices, or intended uses or purposes of that products or services;

(6) Any other obstacles, constraints, or restrictions to substitute one product or service to another in terms of characteristics, prices, or intended uses or purposes of such products or services; for instance, restrictions from downstream markets, uncertainty on quality and suppliers' or distributors' reputation;

(7) Different groups of customers.

11. The assessment of demand substitutability to identify market definition in relevant geographic market shall consider one or more following data and/or information:

(1) Historical data within the last five (5) years representing changes in patterns of purchases or purchasing orders of product or service in question from one area to other areas due to the increase in price of product or service in the area in question;

(2) Data pertaining to demand-side characteristics of product or service in question, such as consumer preferences on domestically made, local brand, or imported; common languages in the area in question (*lingua franca*); cultural and way of life of consumers;

(3) Data gathering or interviews of involved trading parties, consumers, and competitors on their opinion and perspective towards areas that product or service in question is distributed;

(4) Geographic pattern of purchases by trading parties or consumers of such products or services in question;

(5) Trade flow, distribution channels, or pattern of shipments for such products or services in question;

(6) Rules or regulations that may hinder or obstruct the substitution of products or services from one area to any other areas;

(7) Any other obstacles, constraints, or restrictions to substitute one product or service to another from one area to any other areas, such as restrictions from downstream markets or customers' locations.

12. If the demand substitutability cannot be assessed by using what described in 10 and 11, the assessment of demand substitutability shall be identified by using a SSNIP test or an economic test for a switch to alternative products or service when there is a Small but Significant and Non-transitory Increase in Price which have the following steps:

(1) Determining the range of products or services which are viewed as substitutes by consumers by starting from the type of products or services in question that the undertakings involved sell and the area in which they sell such products or service;

(2) Then, additional products or services and areas will be included in (1) and the assessment should evaluate the consumers' response to an approximately 10 percent increase in the price of such product or service in question whether significant numbers of consumers would switch to readily available substitutes or to suppliers located elsewhere within the additional products or services and areas included;

(3) Additional products or services and areas shall be continuously included into the assessment until consumers can no longer switch to alternative products or services or to supplier located elsewhere.

Chapter 3

Assessment of Supply Substitutability

13. The assessment of supply substitutability is to examine an ability of a producer or a distributor of a particular product or service to switch to produce and sell alternative products or services without incurring significant increase in costs or risks as a result of a price change.

This assessment shall be considered together with the assessment of demand substitutability.

Chapter 4

Assessment of Potential Competition

14. The assessment of potential competition to identifying market definition in relevant market shall consider specific factors and circumstances related to the conditions of entry into relevant market that affect competitive constraints and the level of competition in that market in question.

Chapter 5

Market Share

15. The assessment of market share of each undertaking in relevant market shall be expressed in the percentage of quantity sold, sales revenue, quantity produced, or production capacity of such product or service, where applicable.

This Notice is announced on 4 October B.E. 2561 (2018)

Sondhirat Sondhijirawong

Minister of Commerce acting as the Chairperson of
The Trade Competition Commission