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EC could review notice on relevant market definition - chief economist

 PaRR Strong evidence

- Clarification of fast-evolving market definitions desired
 - Economic analysis could be decisive in several EC Phase II reviews
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The European Commission (EC) could consider a review of the notice on the definition of relevant market, said Massimo Motta, chief economist at the EC's Directorate General for Competition (DG Comp) this week at an event organised by antitrustitalia, a Brussels-based association of antitrust experts.

DG Comp officials have initiated a reflection on whether the existing [notice](#) on relevant markets is still fit for the purpose, Motta said.

The notice – which dates back to 1997 – provides guidance on how the EC defines relevant product and geographic markets in the enforcement of competition law. It applies to all areas – from merger control to cartels and abuse of dominance.

The chief economist team is likely to examine whether there is a need to review this instrument, Motta said. There could also simply be a need to specify in which way the same instrument can be applied to different markets, he added.

It would be useful if the EC could clarify how to apply the notice to fast-evolving markets such as technology, a competition lawyer commented. High-tech markets have evolved since 1997 and pose new challenges, especially in merger review, he said. This lawyer and a competition economist pointed to the example of the EC's review of *Microsoft/Skype*, where the regulator was faced with defining markets for novel products and software applications.

A potentially useful clarification would be on the definition of “two-sided markets” in which companies like Google operate, the competition economist said. Google has both a search and an advertising function, he explained.

But the importance of market definition in EC merger review is decreasing – it is shifting to different methods such as upwards pricing pressure (UPP) tests, added the competition economist.

A second competition lawyer said that the importance of the notice in everyday practice has been limited, and that previous decisions were much more relevant when preparing a merger filing.

The notice certainly needs some updating, as it still refers to articles in the old EU treaty, the lawyer said. But it is based on “common good sense” so a review would likely not be revolutionary, he thought.

Economic analysis is an integral part of merger review, while the space for economics is still limited in other areas of antitrust, such as cartels or abuse of dominance, Motta said. In several Phase II cases currently reviewed by the EC, economic analysis can tip the balance determining the outcome, he said.

The EC is currently examining five Phase II merger cases, including two closely watched deals in mobile telecoms: *Telefonica/Hutchison* in Ireland and *KPN/Telefonica* in Germany. Europe's competition watchdog is also currently scrutinising a deal between cement companies **Holcim** and **Cemex** in Germany, the proposed creation of a joint venture between the chemicals companies **INEOS** and **Solvay**, and the planned acquisition by **Huntsman** of a number of equity interests held by **Rockwood**.

by Francesca Micheletti in Brussels