

国务院反垄断委员会
Anti-Monopoly Committee of the State Council
关于相关市场界定的指南
Guidelines on Relevant Market Definition
(二〇〇九年五月二十四日)
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第一章 总则

CHAPTER I General Provisions

第一条 指南的目的和依据

Article 1 Purpose and Basis of the Guidelines

为了给相关市场界定提供指导，提高国务院反垄断执法机构执法工作的透明度，根据《中华人民共和国反垄断法》（以下称《反垄断法》），制定本指南。

The Guidelines are enacted in accordance with the Anti-Monopoly Law of the People's Republic of China (AML) for the purposes of providing guidance on relevant market definitions and improving the transparency of law enforcement of the anti-monopoly law enforcement agency under the State Council.

第二条 界定相关市场的作用

Article 2 Functions of Relevant Market Definition

任何竞争行为（包括具有或可能具有排除、限制竞争效果的行为）均发生在一定的市场范围内。界定相关市场就是明确经营者竞争的市场范围。在禁止经营者达成垄断协议、禁止经营者滥用市场支配地位、控制具有或者可能具有排除、限制竞争效果的经营者集中等反垄断执法工作中，均可能涉及相关市场的界定问题。

Any competitive behavior (including any behavior that has resulted or may result in eliminating or restricting competition) occurs within a particular market scope. The relevant market definition is to define the market scope within which the business operators compete with each other. In the work of anti-monopoly law enforcement, such as prohibiting monopoly agreements among business operators, prohibiting the abuse of dominant market positions and controlling the concentration of business operators that has resulted or may result in eliminating and restricting competition, issues related to the relevant market definition may be involved.

科学合理界定相关市场，对识别竞争者和潜在竞争者、判定经营者市场份额和市场集中度、认定经营者的市场地位、分析经营者的行为对市场竞争的影响、判断经营者行为是否违法以及在违法情况下需承担的法律法律责任等关键问题，具有重要的作用。因此，相关市场的界定通常是对竞争行为进行分析的起点，是反垄断执法工作的重要步骤。

Defining the relevant market in a scientific and reasonable manner plays an important role in key issues such as recognising competitors and potential competitors, determining the market share of the business operators and the degree of market concentration, deciding the market position of the business operators, analysing the impact of the business operators' behaviors on the market competition, judging whether the business operators' behaviors are illegal or not and the legal liabilities they need to bear if their behaviors are illegal. As a result, the relevant market

definition is usually the starting point of conducting an analysis on competitive behavior and an important step of anti-monopoly law enforcement.

第三条 相关市场的含义

Article 3 Concept of Relevant Market

相关市场是指经营者在一定时期内就特定商品或者服务（以下统称商品）进行竞争的商品范围和地域范围。在反垄断执法实践中，通常需要界定相关商品市场和地域市场。

Relevant market refers to the product scope and geographic scope within which the business operators compete with each other in a certain period regarding particular products or services (hereinafter collectively referred to as products). In the practice of anti-monopoly law enforcement, it is usually required to define relevant product market and relevant geographic market.

相关商品市场，是根据商品的特性、用途及价格等因素，由需求者认为具有较为紧密替代关系的一组或一类商品所构成的市场。这些商品表现出较强的竞争关系，在反垄断执法中可以作为经营者进行竞争的商品范围。

Relevant product market is a market comprised of a group or a category of products that are considered by the consumers to have a relatively close substitution relationship based on factors such as characteristics, uses and prices of the products. These products illustrate a relatively intense competition relationship, which may be considered as the product scope within which business operators compete with each other in the anti-monopoly law enforcement.

相关地域市场，是指需求者获取具有较为紧密替代关系的商品的地理区域。这些地域表现出较强的竞争关系，在反垄断执法中可以作为经营者进行竞争的地域范围。

Relevant geographic market is a geographic area within which the consumers acquire the products that have relatively strong substitution relationships. Such geographic area illustrates a relatively intense competition relationship, therefore it may be considered as the geographic scope within which business operators compete with each other in the anti-monopoly law enforcement.

当生产周期、使用期限、季节性、流行时尚性或知识产权保护期限等已构成商品不可忽视的特征时，界定相关市场还应考虑时间性。

Where production cycle, lifetime, seasonal features, fashion style or protection period of intellectual property rights have become the product's characteristics that cannot be ignored, the factor of timing shall be considered in the relevant market definition.

在技术贸易、许可协议等涉及知识产权的反垄断执法工作中，可能还需要界定相关技术市场，考虑知识产权、创新等因素的影响。

In the anti-monopoly enforcement of technology trade, license agreements or others involving intellectual property rights, the relevant technology market may need to be defined with influences of factors such as intellectual property rights and innovation being taken into account.

第二章 界定相关市场的基本依据

CHAPTER II Basis for Relevant Market Definition

第四条 替代性分析

Article 4 Substitution Analysis

在反垄断执法实践中，相关市场范围大小主要取决于商品（地域）的可替代程度。
In the practice of anti-monopoly law enforcement, the scope of the relevant market is mainly determined according to the substitution degree of the products (geographic area).

在市场竞争中对经营者行为构成最直接和有效的竞争约束的，是市场里存在需求者认为具有较强替代关系的商品或能够提供这些商品的地域，因此，界定相关市场主要考虑从需求者角度进行需求替代分析。当供给替代对经营者行为产生的竞争约束类似于需求替代时，也应考虑供给替代。

That there are products that have a relatively strong substitution relationship, or that there are geographic areas in which such products can be provided in the market from the perspective of consumers, constitutes the most direct and effective competition constraint on the business operator's behaviors in market competition. Therefore, demand substitution analysis from the consumers' perspective shall be conducted in the relevant market definition. Where supply substitution has a constraining influence on the business operator's behaviors that is similar to that of demand substitution, supply substitution shall be considered in the relevant market definition.

第五条 需求替代

Article 5 Demand Substitution

需求替代是根据需求者对商品功能用途的需求、质量的认可、价格的接受以及获取的难易程度等因素，从需求者的角度确定不同商品之间的替代程度。

Demand substitution is to determine the degree of substitution among different products from the perspective of consumers according to the products' functions and uses, quality recognition, price acceptance and their availability for the consumers.

原则上，从需求者角度来看，商品之间的替代程度越高，竞争关系就越强，就越可能属于同一相关市场。

In principle, from the perspective of consumers, the greater the degree of substitution among products, the fiercer the competition, and the more likely that the products fall into the same relevant market.

第六条 供给替代

Article 6 Supply Substitution

供给替代是根据其他经营者改造生产设施的投入、承担的风险、进入目标市场的时间等因素，从经营者的角度确定不同商品之间的替代程度。

Supply substitution is to determine the degree of substitution among different products from the perspective of business operators according to the investment made by the other business operators for renovations of the production facilities, risks to be assumed and time to enter into the target market.

原则上，其他经营者生产设施改造的投入越少，承担的额外风险越小，提供紧密替代商品越迅速，则供给替代程度就越高，界定相关市场尤其在识别相关市场参与者时就应考虑供给替代。

In principle, the less investment made by other business operators for renovations of the production facility, the smaller the extra risks to be assumed, and the swifter the supply of closely substitutable products, the greater the degree of supply substitution. Therefore, in the relevant market definition, especially in recognising the participants in the relevant market, supply substitution shall be taken into account.

第三章 界定相关市场的一般方法

CHAPTER III General Method for Relevant Market Definition

第七条 界定相关市场的方法概述

Article 7 General Methods for Relevant Market Definition

界定相关市场的方法不是唯一的。在反垄断执法实践中，根据实际情况，可能使用不同的方法。界定相关市场时，可以基于商品的特征、用途、价格等因素进行需求替代分析，必要时再进行供给替代分析。在经营者竞争的市场范围不够清晰或不易确定时，可以按照“假定垄断者测试”的分析思路（具体见第十条）来界定相关市场。

There is no exclusive method for relevant market definition. In the practice of anti-monopoly law enforcement, different methods may be used according to specific circumstances. In relevant market definition, demand substitution analysis may be conducted based on factors such as characteristics, use and price of products, and supply substitution analysis may be conducted when necessary. However, if the market scope for competitive business operators is unclear or hard to determine, the relevant market can be defined through analysis using the “hypothetical monopolist test” (detailed in Article 10, below).

反垄断执法机构鼓励经营者根据案件具体情况运用客观、真实的数据，借助经济学分析方法来界定相关市场。

The anti-monopoly law enforcement agency encourages business operators to define the relevant market according to specific conditions of the case by using objective and true data and through the economic analysis method.

无论采用何种方法界定相关市场，都要始终把握商品的满足消费者需求的基本属性，并以此作为对相关市场界定中出现明显偏差时进行校正的依据。

Whichever method is undertaken to define the relevant market, it must grasp the products’ basic attributes of meeting consumers’ needs at any time, based on which rectification can be made on the significant deviation occurring in relevant market definition.

第八条 界定相关商品市场考虑的主要因素

Article 8 Main Factors to be Considered in the Definition of Relevant Product Market

从需求替代角度界定相关商品市场，可以考虑的因素包括但不限于以下各方面：From the perspective of demand substitution in the relevant product market definition, factors to be considered include, but are not limited to, the following aspects:

（一）需求者因商品价格或其他竞争因素变化，转向或考虑转向购买其他商品的证据。

Evidence showing consumers shift to or consider a shift to purchasing other products due to a change of the products’ price or change of other competitive factors.

（二）商品的外形、特性、质量和技术特点等总体特征和用途。商品可能在特征上表现出某些差异，但需求者仍可以基于商品相同或相似的用途将其视为紧密替代品。

Products’ overall characteristics and uses including the products’ exterior shapes, peculiarities, qualities, technical features ,etc. There may be certain differences among the characteristics; nevertheless, consumers may regard the products as close substitutes based on the identical or similar uses thereof.

(三) 商品之间的价格差异。通常情况下, 替代性较强的商品价格比较接近, 而且在价格变化时表现出同向变化趋势。在分析价格时, 应排除与竞争无关的因素引起价格变化的情况。

Products' price variance. Usually, products having a strong substitution relationship share a similar range of prices and present the same trend in price changes. In price analysis, circumstances that are irrelevant to competition and causes such price changes shall be excluded.

(四) 商品的销售渠道。销售渠道不同的商品面对的需求者可能不同, 相互之间难以构成竞争关系, 则成为相关商品的可能性较小。

Products' distribution channel. Products that have different distribution channels may face different consumers, and it is difficult for such products to constitute competition among each other. Therefore, the possibility that such products constitute relevant products is relatively slim.

(五) 其他重要因素。如, 需求者偏好或需求者对商品的依赖程度; 可能阻碍大量需求者转向某些紧密替代品的障碍、风险和成本; 是否存在区别定价等。

Other important factors. For example, the consumers' preference for or reliance on the products; barriers, risks and costs associated with a large number of consumers switching to substitutes; and whether differential pricing exists.

从供给角度界定相关商品市场, 一般考虑的因素包括: 其他经营者对商品价格等竞争因素的变化做出反应的证据; 其他经营者的生产流程和工艺, 转产的难易程度, 转产需要的时间, 转产的额外费用和 risk, 转产后所提供商品的市场竞争力, 营销渠道等。

From the perspective of supply, the following factors are commonly considered in the relevant product market definition: evidence showing other business operators' reactions over competitive factor changes such as a price change, the business operators' production process and crafts, difficulties in relation to a production switch, the time required for a production switch, extra costs and risks in relation to a production switch, the competitiveness of the products supplied after a switch, the marketing channels, etc.

任何因素在界定相关商品市场时的作用都不是绝对的, 可以根据案件的不同情况有所侧重。

No factor is absolute in the relevant product market definition. Emphasis may be alternated in accordance with the different circumstances of cases.

第九条 界定相关地域市场考虑的主要因素

Article 9 Main Factors to be Considered in the Definition of Relevant Geographic Market

从需求替代角度界定相关地域市场, 可以考虑的因素包括但不限于以下各方面: From the perspective of demand substitution, factors to be considered include, but are not limited to, the following aspects:

(一) 需求者因商品价格或其他竞争因素变化, 转向或考虑转向其他地域购买商品的证据。

Evidence showing consumers shift to or consider to a shift to other geographic areas to purchase products due to change of the products' price or change of other competitive factors.

(二) 商品的运输成本和运输特征。相对于商品价格来说, 运输成本越高, 相关地域市场的范围越小, 如水泥等商品; 商品的运输特征也决定了商品的销售地域, 如需要管道运输的工业气体等商品。

Products' transportation cost and transportation characteristics. Relative to the products' price, the higher the cost of transportation, the smaller the scope of the relevant geographic market is (e.g., in the case of cement); the transportation characteristics of the products also determine the geographic area of sales (e.g., in the case of industrial gas supplied through pipeline transportation).

(三) 多数需求者选择商品的实际区域和主要经营者商品的销售分布。

The actual regions where the majority of consumers choose their products and the product distribution locations of the main business operators.

(四) 地域间的贸易壁垒, 包括关税、地方性法规、环保因素、技术因素等。如关税相对商品的价格来说比较高时, 则相关地域市场很可能是一个区域性市场。

Trade barriers among geographic areas, such as tariffs, local regulations, environmental factors, technological factors, etc. When the tariff is relatively higher as compared with the price of the products, the relevant geographic market is very likely to be a regional market.

(五) 其他重要因素。如, 特定区域需求者偏好; 商品运进和运出该地域的数量。

Other important factors. For example, the consumers' preference in a particular area or the amount of products transported into/out of this geographic area.

从供给角度界定相关地域市场时, 一般考虑的因素包括: 其他经营者对商品价格等竞争因素的变化做出反应的证据; 其他地域的经营者供应或销售相关商品的即时性和可行性, 如将订单转向其他地域经营者的转换成本等。

From the perspective of supply, the following factors are commonly considered in the relevant geographic market definition: evidence showing other business operators' reactions over a competitive factor change such as a price change; instantaneity and feasibility of supply or distribution of the relevant product by the business operators in other geographic areas (for example, the costs associated with switching the orders to the operators in other geographic areas), etc.

第四章 关于假定垄断者测试分析思路说明

CHAPTER IV Elaboration on Analysis of Hypothetical Monopolist Test

第十条 假定垄断者测试的基本思路

Article 10 Basic Method of Hypothetical Monopolist Test

假定垄断者测试是界定相关市场的一种分析思路, 可以帮助解决相关市场界定中可能出现的不确定性。目前为各国和地区制定反垄断指南时普遍采用。依据这种思路, 人们可以借助经济学工具分析所获取的相关数据, 确定假定垄断者可以将价格维持在高于竞争价格水平的最小商品集合和地域范围, 从而界定相关市场。

The hypothetical monopolist test is an analytical method that is used for the relevant market definition, which may assist in resolving the uncertainty that may arise from the relevant market definition. It is currently being widely adopted in the formulation of anti-monopoly guidelines of various countries and regions. According to this method, people may use economic tools to analyse relevant data obtained so as to

determine the minimum products aggregation level and geographic area in which the hypothetical monopolist is able to maintain a price higher than the competitive price level, thereby defining the relevant market.

假定垄断者测试一般先界定相关商品市场。首先从反垄断审查关注的经营者提供的商品（目标商品）开始考虑，假设该经营者是以利润最大化为经营目标的垄断者（假定垄断者），那么要分析的问题是，在其他商品的销售条件保持不变的情况下，假定垄断者能否持久地（一般为1年）小幅（一般为5%-10%）提高目标商品的价格。目标商品的涨价会导致需求者转向购买具有紧密替代关系的其他商品，从而引起假定垄断者销售量下降。如果目标商品涨价后，即使假定垄断者销售量下降，但其仍然有利可图，则目标商品就构成相关商品市场。

The hypothetical monopolist test usually begins with the relevant product market definition. Starting with the product (target product) supplied by the business operator concerned in the anti-monopoly examination, it hypothesizes that the business operator is a monopolist aiming at profit maximisation (hypothetical monopolist), and the issue that will be analysed is whether the hypothetical monopolist is able to maintain the price of the target product to increase at a small scale (normally 5 to 10 per cent) continuously (normally one year), provided that the sales conditions of other products remain the same. A price increase of the target product will result in consumers' shifting to other closely substitutable products, which consequently leads to a sales reduction for the hypothetical monopolist. Subsequent to the increase of the target product price, if the hypothetical monopolist is still able to gain a profit after experiencing a sales reduction, the target product constitutes the relevant product market.

如果涨价引起需求者转向具有紧密替代关系的其他商品，使假定垄断者的涨价行为无利可图，则需要把该替代商品增加到相关商品市场中，该替代商品与目标商品形成商品集合。接下来分析如果该商品集合涨价，假定垄断者是否仍有利可图。如果答案是肯定的，那么该商品集合就构成相关商品市场；否则还需要继续进行上述分析过程。

If the price increase leads the consumers to shift to other products having a close substitution relationship, and making the act of price increase by the hypothetical monopolist becomes an unprofitable act, such close substitutes shall be added into the relevant product market, forming a product group that consists of such substitutes and the target product. Thereafter, examination shall be conducted on whether the hypothetical monopolist would still make a profit after the price increase of the product group. If the result is affirmative, then the new product group constitutes the relevant product market; otherwise, the aforesaid analytical process shall continue.

随着商品集合越来越大，集合内商品与集合外商品的替代性越来越小，最终会出现某一商品集合，假定垄断者可以通过涨价实现盈利，由此便界定出相关商品市场。

With the expansion of the product group, the products inside and outside the group become increasingly less substitutable. Eventually, a particular product group emerges, in which the hypothetical monopolist can attain profit through a price increase. Hence, the relevant product market is defined.

界定相关地域市场与界定相关商品市场的思路相同。首先从反垄断审查关注的经营者经营活动的地域（目标地域）开始，要分析的问题是，在其他地域的销售条件不变的情况下，假定垄断者对目标地域内的相关商品进行持久（一般为1年）小幅涨价（一般为5%—10%）是否有利可图，如果答案是肯定的，目标地域就构成相关地域市场；如果其他地域市场的强烈替代使得涨价无利可图，就需要扩大地域范围，直到涨价最终有利可图，该地域就是相关地域市场。

Methods for the definition of relevant geographic market and the definition of relevant product market are identical. It starts from the geographic area concerned in the anti-monopoly examination (target geographic area), within which business operators carry out operational activities, and the issue that will be analysed is whether it is profitable for the hypothetical monopolist to maintain the price of the relevant product in the target geographic area to increase at a small scale (normally 5 to 10 per cent) continuously (normally one year), provided that the sales conditions of other geographic areas remain the same. If the result is affirmative, then the target geographic area constitutes the relevant geographic market. If the massive substitution in other geographic areas makes the price increase an unprofitable act, the geographic area needs to be expanded until the price increase finally becomes profitable, which is then defined as the relevant geographic market.

第十一条 假定垄断者测试的几个实际问题

Article 11 A Few Practical Questions regarding Hypothetical Monopolist Test

原则上，在使用假定垄断者测试界定相关市场时，选取的基准价格应为充分竞争的当前市场价格。但在滥用市场支配地位、共谋行为和已经存在共谋行为的经营者集中案件中，当前价格明显偏离竞争价格，选择当前价格作为基准价格会使相关市场的界定的结果不合理。在此情况下，应该对当前价格进行调整，使用更具有竞争性的价格。

In principle, the benchmark price selected to define the relevant market via the hypothetical monopolist test shall be the current fully competitive market price. However, in cases of concentration of business operators where there is abuse of dominant market position, collusion and already existent collusion, if the current price departs notably from the competitive price, the current price used as the benchmark price may lead to an unreasonable definition of the relevant market. In such circumstances, an adjustment to the current price is necessary for selecting a price that is more competitive.

此外，一般情况下，价格上涨幅度为5%—10%，但在执法实践中，可以根据案件涉及行业的不同情况，对价格小幅上涨的幅度进行分析确定。

In addition, normally the price increase is at a scale between 5 per cent to 10 per cent. However, in the practice of law enforcement, the scale of a small price increase may be determined through analysis in light of the various different circumstances such as industries involved in a case.

在经营者小幅提价时，并不是所有需求者（或地域）的替代反应都是相同的。在替代反应不同的情况下，可以对不同需求者群体（或地域）进行不同幅度的测试。此时，相关市场界定还需要考虑需求者群体和特定地域的情况。

When a business operator sets a small margin of price increase, not all consumers (or geographic areas) have the same reaction to substitution. Where substitution reactions

are different, tests with different margins are given to different consumer groups (or geographic areas). In this case, the relevant market definition shall take into account the specific circumstances of consumer groups and geographic areas.