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Competition Law

1. Introduction to Competition Law & Market Definition	
1. Introduction to Competition Law	1-7
2. Establishing the Relevant Market	8-13
3. Extracts from the Market Definition Notice	14-15
4. Summary of United Brands Co v Commission	16-18
2. Anti-Competitive Horizontal Agreements	
1. Article 101 TFEU	19-29
2. The Chapter I Prohibition	30-40
3. Summary - Breaches of Art 101 & Chapter I	41-46
3. Anti-Competitive Vertical Agreements	
1. Vertical Block Exemptions	47-55
2. Differences Between the VBER and VABEO	56-58
4. Public Enforcement	
1. Powers of Enforcement of the Commission	59-69
2. How the Commission Calculates Fines	70-71
3. Relationship Between the European Commission and National Regulators	72-73
4. Powers of Enforcement of the CMA	74-81
5. The CMA Leniency Programme	82-84
5. Compliance with Competition Law	
1. Horizontal Agreements	85-92
2. Compliance Programmes	93-95
6. Abuse of Market Dominance	
1. Article 102 TFEU	96-110
2. The Chapter II Prohibition	111-120
3. Summary of Article 102 & Chapter II	121-126
4. Summary of Napp Pharmaceutical Holdings v Director General of Fair Trading	127-128
7. Competition Law & Intellectual Property	
1. The Technology Transfer Block Exemption	129-135
8. Merger Control	
1. The EU Merger Regulation	136-139
2. Process if EU Merger Controls Apply	140-150
3. UK Merger Controls - the Enterprise Act 2002	151-154
4. Process if UK Merger Controls Apply	155-160
5. Application of Merger Controls to Joint Ventures	161-163
9. Private Enforcement	
1. Private Enforcement	164-167
2. Summary of P-O Elevators and Escalators	168-169
3. Bid Rigging	170-171

**Colour Coding
Guide**

- ❖ **Blue Text** – Reference to statutes and case law.
- ❖ **Green Text** – Reference to textbook¹ paragraphs, workshop tasks² and other notes in this guide.
- ❖ **Orange Text** – References to guidance notes from the European Commission and the CMA.

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¹ Textbook references are to the CLP Legal Practice Guides by CLP Publishing.

² References to Workshop tasks are to University of Law workshop tasks (which may be adopted by other LPC institutions). The content and structure of Workshops is subject to change at short notice and so task references should be treated as a general guide only.

1. Introduction to Competition Law & Market Definition



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3. Extracts from the Market Definition Notice	14-15
4. Summary of United Brands Co v Commission	16-18

Introduction to Competition Law

❖ [Competition Law, Chapter 1](#)

<p>Overview of Competition Law</p>	<ul style="list-style-type: none"> ❖ Competition law is designed to uphold free markets, operating on the basis that businesses operating in a competitive market provide greater benefits to society. ❖ UK competition law derives from both: <ul style="list-style-type: none"> ➤ EU Law: in particular: <ul style="list-style-type: none"> ▪ Article 101 and 102 of the Treaty on the Functioning of the European Union (TFEU); and ▪ The EU Merger Regulation 139/2004; ➤ UK domestic legislation: which, broadly, implemented the EU’s Competition Law regime, in particular: <ul style="list-style-type: none"> ▪ The Competition Act 1998 (CA 1998); and ▪ The Enterprise Act 2002 (EA 2002). ❖ An overview of each area, and how these have been impacted by Brexit is explained below. ❖ There are three main areas which the law covers: <ul style="list-style-type: none"> ➤ Prohibition of anti-competitive agreements, decisions, and practices; ➤ Controls on abuses of a dominant position in the market; ➤ Merger controls.
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<p>Competition Authorities</p> <p>Competition Law, 1.3.2</p>	<p>The Competition and Markets Authority (CMA).</p>	<ul style="list-style-type: none"> ❖ The CMA is the main competition authority in the UK. ❖ Its primary responsibilities include: <ul style="list-style-type: none"> ➤ Investigating and pursuing infringements under the Competition Act 1998; and ➤ Evaluating mergers under the Enterprise Act 2002. ❖ In addition to its core legislative responsibilities, the CMA: <ul style="list-style-type: none"> ➤ Provides guidance to businesses and legal advisers on the application of the UK's competition regime; ➤ Offers information on avoiding breaches; and ➤ Promotes competition policy.
	<p>UK Sectoral Regulators</p>	<ul style="list-style-type: none"> ❖ The CMA works alongside specialist sectoral regulators which possess concurrent powers to investigate breaches of the CA 1998. ❖ These regulators oversee specific sectors of the economy, including: <ul style="list-style-type: none"> ➤ The Gas and Electricity Markets Authority (OFGEM);

	<ul style="list-style-type: none"> ➤ The Office of Communications (OFCOM); ➤ The Water Services Regulation Authority (OFWAT); ➤ The Financial Conduct Authority (FCA). <p>❖ Additional agencies involved in the UK competition regime include:</p> <ul style="list-style-type: none"> ➤ The Serious Fraud Office: which can bring prosecutions for the criminal cartel offence under the EA 2002 (although the CMA generally handles such prosecutions); and ➤ The Competition Appeal Tribunal (CAT): which considers appeals from decisions made by the CMA and sectoral regulators.
The EU Commission	<p>❖ The EU Commission is the authority responsible for investigating breaches of Articles 101 and 102; in practice, it investigates the most serious pan-European breaches.</p>
Local EU Competition Authorities	<p>❖ Local competition authorities in each EU Member State also have responsibility for enforcing Articles 101 and 102, and investigate cases that they are best placed to deal with locally.</p> <p>❖ This was the position of the CMA pre-Brexit.</p>

Key areas that competition law covers.

- ❖ The table below summarises the three main areas that UK and EU competition law cover. These are:
 - Prohibition of anti-competitive agreements, decisions and practices;
 - Controls on abuses of a dominant position in the market; and
 - Merger controls.

Area	What is it?	EU Legislation	UK Legislation
Prohibition of anti-competitive agreements, decisions and practices.	<ul style="list-style-type: none"> ❖ UK and EU law prohibit certain agreements, decisions and practices which are deemed to be anti-competitive. ❖ They prohibit: <ul style="list-style-type: none"> ➤ <u>Agreements, decisions and practices between undertakings (or “concerted practices” per UK law);</u> ➤ <u>Which may affect trade</u> (either in the UK, or between EU Member States); and 	Article 101 TFEU	Chapter I of the Competition Act 1998

	<p><u>Controls on abuses of a dominant position in the market.</u></p>	<ul style="list-style-type: none"> ➤ <u>Which have as their object or effect the restriction, prevention, or distortion of competition.</u> <ul style="list-style-type: none"> ❖ The UK and the EU both have legislation which: <ul style="list-style-type: none"> ➤ Prohibits certain market practices which are deemed to be abusive. ➤ Where the party committing the act is in a “dominant position” in the market. ❖ These include, for example: <ul style="list-style-type: none"> ➤ Predatory pricing (i.e., reducing prices to such a level that a competitor is forced to exit the market as it cannot match the very low prices being offered); or ➤ Refusing to supply products. 	<p>Article 102 TFEU</p>	<p>Chapter II of the Competition Act 1998</p>
	<p><u>Merger controls.</u></p>	<p>Merger controls impose regulatory oversight on the change of control of undertakings (such as companies), (e.g., through acquisitions (takeovers), and mergers) on the basis these can have an adverse impact on competition.</p> <ul style="list-style-type: none"> ❖ Their intention is to enable competition authorities to block mergers/acquisitions where these create or strengthen a dominant position in a particular market. ❖ In a simplistic hypothetical example, if one UK supermarket proposed to acquire every other supermarket, consumers would be left with no choice of where to shop and this would likely have an adverse impact on consumers and the competitive market environment. 	<p>EU Merger Regulation 139/2004</p>	<p>The Enterprise Act 2002</p>
<p><u>Impact of Brexit</u></p>	<ul style="list-style-type: none"> ❖ The UK’s departure from the EU on 31 December 2020 created “retained EU law”. ❖ This is a category of UK law created under s2 to s4 European Union (Withdrawal) Act 2018 (EUWA 2018), which operated to take a “snapshot” of EU law as it applied to 			

Competition Law, 1.3.3

the UK on 31 December 2020, and provided for it to **continue to apply in domestic law**.

- ❖ EU law that was brought into domestic legislation through this method is now referred to as “retained EU law”.
- ❖ [s2 to 4 EUWA 2018](#) resulted in the following effects:
 - **Existing EU-derived domestic legislation was retained**, including any UK legislation implementing EU directives or relating otherwise to the EU or the European Economic Area (EEA).
 - **Most (but not all) directly applicable EU legislation (such as EU regulations) were saved and converted into UK law**. These retained the same effect as they had in EU law immediately before the end of the transition period, but only in so far as they applied to the UK under the UK-EU transitional arrangements.
 - **Most EU rights that existed before the end of the transition period and were recognised and available in the UK were saved and converted into UK law**.
- ❖ UK courts **remain bound by retained case law** (both domestic decisions on EU law, and CJEU decisions) where the decisions were made before the end of the transition period. The Supreme Court and the Court of Appeal can depart from retained EU case law where it “appears right to do” so.

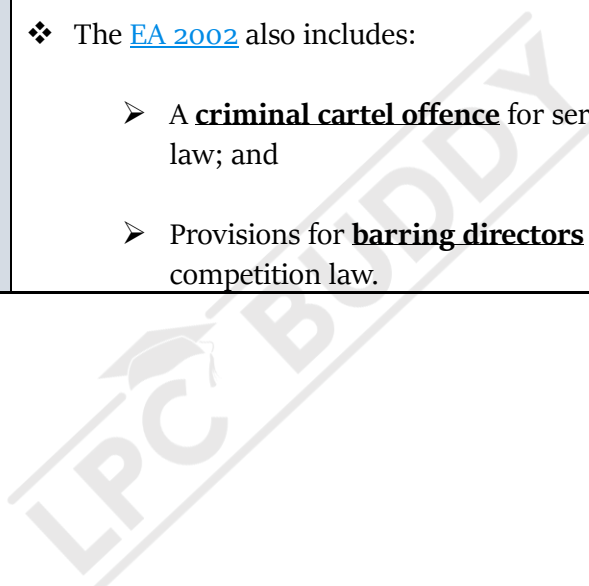
What does this mean in practice – Competition Law

- ❖ From 1 January 2021, *UK competition authorities* no longer have jurisdiction to enforce [Articles 101 and 102 TFEU](#), meaning if a UK business breaches [Articles 101 and 102](#), the **UK** Competition and Markets Authority will not enforce this directly.
- ❖ However:
 - EU Competition Law is **extraterritorial**; i.e., it can be breached **regardless of the geographic location of the enterprises concerned or where the conduct occurred**, whenever the conduct has the necessary effect on competition in the EU and trade between member states.
 - Therefore [Articles 101 and 102 TFEU continue to apply](#) to agreements or conduct of **UK companies** that have an **effect within the EU, on the basis that these can be enforced by the European Commission**.
 - Further, if a business is breaching [Article 101 or 102](#), it will very likely be in breach of [Chapter I](#) or [Chapter II of the CA](#)

		<p>1998 respectively, and so will still likely attract enforcement by the CMA.</p> <ul style="list-style-type: none"> ❖ The CMA now gains jurisdiction to investigate anti-competitive behaviour that affects the UK even if the European Commission begins an investigation into the same behaviour; previously this was not possible as the European Commission would obtain exclusive jurisdiction.
	<p>What does this mean in practice – merger control.</p>	<ul style="list-style-type: none"> ❖ UK companies doing business in the EU, or involved in transactions that meet the relevant thresholds of the EU Merger Regulation, will still be subject to EU competition law and merger control, enforced by the European Commission. ❖ The fact that the UK is no longer a Member State does, however, have an impact on the relevant financial thresholds that an entity needs to meet in order to come within the scope of the Regulation (in short, one of the tests is that the combined turnover of all of the undertakings more than €100m in at least 3 Member States. UK turnover is no longer relevant as it is not an EU Member State); see notes on The EU Merger Regulation. ❖ As above, the CMA now gains jurisdiction over mergers that it would not have previously been able to, due to these being reviewed at the EU level under the exclusive jurisdiction of the European Commission.
<p>Sources of Competition Law</p>	<p>Source</p>	<p>Explanation</p>
	<p>Article 101 TFEU</p>	<ul style="list-style-type: none"> ❖ Art 101 prohibits anti-competitive agreements, decisions, and practices. ❖ Explained more comprehensively, it prohibits: <ul style="list-style-type: none"> ➤ All agreements, decisions and practices between undertakings; ➤ Which may affect trade between EU Member States; and ➤ Which have as their object or effect the restriction or distortion of competition within the internal market. ❖ It is no longer directly enforceable by the CMA post-Brexit, but UK companies can still breach its provisions and face enforcement action from the EU Commission.
	<p>Article 102 TFEU</p>	<ul style="list-style-type: none"> ❖ Art 102 controls abuses of a dominant position in the market. ❖ It prohibits: <ul style="list-style-type: none"> ➤ Certain market practices which are deemed to be abusive.

		<ul style="list-style-type: none"> ▪ Such as predatory pricing (i.e., reducing prices to such a level that a competitor is forced to exit the market as it cannot match the very low prices being offered), or refusing to supply products; ➤ <u>Where the party committing the act is in a “dominant position” in the market.</u> <p>❖ It is no longer directly enforceable by the CMA post-Brexit, but UK companies can still breach its provisions and face enforcement action by the EU Commission.</p>
	<p>The Competition Act 1998</p>	<p>❖ The UK Competition Act 1998 originally operated to:</p> <ul style="list-style-type: none"> ➤ <u>Bring the provisions of Art 101 TFEU into UK Law;</u> <ul style="list-style-type: none"> ▪ (by Chapter I of the CA 1998 (often referred to as “the Chapter I Prohibition”)). ➤ <u>Bring the provisions of Art 102 TFEU into UK Law.</u> <ul style="list-style-type: none"> ▪ (by Chapter II of the CA 1998 (often referred to as “the Chapter II Prohibition”)). <p>❖ The CA 1998 thus contains domestic provisions which very closely mirror the provisions of Articles 101 and 102 TFEU (and continue in full force post-Brexit).</p> <p>❖ The CA 1998 thus contains the UK law on:</p> <ul style="list-style-type: none"> ➤ <u>Prohibitions of anti-competitive agreements, decisions and practices</u> (Chapter I). ➤ <u>Controls on abuses of a dominant position in the market</u> (Chapter II).
	<p>Merger Regulation 139/2004 (“the EU Merger Regulation”)</p>	<p>❖ Contains the EU’s merger regime.</p> <p>❖ The EU Merger Regulation provides that:</p> <ul style="list-style-type: none"> ➤ “[a] concentration... ➤ Which would <i>significantly impede effective competition in the common market</i> or in a substantial part of it... ➤ In particular as a result of the <i>creation or strengthening of a dominant position</i>... ➤ Shall be declared <i>incompatible</i> with the common market”. <p>❖ Where a proposed merger or acquisition triggers the provisions of the EU Merger Regulation, the merger cannot complete unless and until</p>

		<p><u>the European Commission gives clearance for the transaction to proceed.</u></p> <ul style="list-style-type: none"> ❖ The Commission may not clear the transaction where it finds that the transaction would <i>"significantly impede effective competition in the common market"</i>.
	<p>The Enterprise Act 2002</p>	<ul style="list-style-type: none"> ❖ The EA 2002 contains the UK's merger regime. ❖ Where a proposed merger or acquisition triggers the provisions of the EA 2002, the parties <i>may</i> refer this to the CMA. The merger cannot then complete unless and until the CMA gives clearance for the transaction to proceed. ❖ The CMA may not clear the transaction where it finds that the transaction poses a <i>"real prospect of a substantial lessening of competition"</i>. ❖ The EA 2002 also includes: <ul style="list-style-type: none"> ➤ A criminal cartel offence for serious breaches of competition law; and ➤ Provisions for barring directors of businesses that breach competition law.



Establishing the Relevant Market¹

❖ [Competition Law, 3.1.1](#)

Overview	<ul style="list-style-type: none">❖ One aspect of EU Competition Law which has a bearing on a number of different sub-areas is identification of the “relevant market” in which a party is operating.❖ In particular, this is relevant to the following areas of competition law (considered individually in more detail separately in this guide):<ul style="list-style-type: none">❖ Art 102 TFEU provides that:<ul style="list-style-type: none">➤ Any abuse;➤ By one or more undertakings;➤ Of a dominant position within the internal market or in a substantial part of it;➤ Shall be prohibited as incompatible with the internal market;➤ In so far as it may affect trade between Member States.❖ There are thus four component elements to establishing a breach of Article 102:<ul style="list-style-type: none">➤ Element 1: There must be an undertaking.➤ Element 2: Which is in a “dominant position”.➤ Element 3: Which engages in conduct which amounts to “abuse”.➤ Element 4: That conduct is such that it “may affect trade” between Member States.❖ Determining the relevant market becomes relevant when considering Element 2.❖ A party will be in a “dominant position” where it satisfies the test in Case 27/76 United Brands v Commission [1978] ECR 207; which requires the undertaking to be:<ul style="list-style-type: none">➤ In a position of economic strength;➤ Which enables it to prevent effective competition from being maintained on the “relevant market”;➤ By affording it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers.❖ It is therefore necessary for the “relevant market” to be established, which is assessed using the method set out below.
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¹ See also: <https://uk.practicallaw.thomsonreuters.com/4-107-3710>

² See notes on [Art 102 TFEU](#).

	<p>Determining market share thresholds under block exemptions³.</p>	<ul style="list-style-type: none"> ❖ UK Law and EU Law both recognise “block exemptions” which provide “safe harbours” for certain agreements that would otherwise breach competition law. ❖ A <i>vertical agreement</i> that is otherwise in breach of either Article 101, or Chapter I Competition Act 1998, will be exempt from that breach where it meets the requirements of one of two relevant block exemptions: <ul style="list-style-type: none"> ➤ The Vertical Block Exemption Regulation (VBER): the EU’s block exemption; this is no longer applicable to the UK, but the UK’s (now separate) block exemption is heavily based on this. ➤ The Vertical Agreements Block Exemption (VABEO): this is the UK’s block exemption; despite being separate, the VABEO remains extremely similar to the EU’s VBER. ❖ The VBER / VABEO apply where four elements are satisfied: <ul style="list-style-type: none"> ➤ Element 1 - There is a vertical agreement... ➤ Element 2 - Which does not exceed certain market share requirements; ➤ Element 3 - Which does not contain hardcore restrictions. ➤ Element 4 - The restrictions are not <i>excluded</i>. ❖ Determining the relevant market becomes relevant when considering Element 2. The VBER / VABEO, can only apply where: <ul style="list-style-type: none"> ➤ The seller’s market share does not exceed 30% of the “relevant market” on which it sells the products; and ➤ The buyer’s market share does not exceed 30% of the “relevant market” on which it purchases the products. ❖ This therefore requires that the “relevant market” be established, which is assessed using the method set out below.
	<p>Merger Control</p>	<ul style="list-style-type: none"> ❖ Merger control is a process where regulators in particular territories (for the EU, the European Commission, for the UK, the Competition and Markets Authority), review and assess the potential impact of mergers and acquisitions on competition. ❖ Under the EU Merger Regulation, certain transactions must be referred to the Commission and, where a referral is made, the transaction cannot proceed unless and until the Commission clears this. Transactions may not be cleared where it will result in a concentration that would “<i>significantly impede effective competition</i>”. ❖ In assessing whether the transaction significantly impedes effective competition, the Commission will have regard to the factors set out in Art 2(1)(b) EU Merger Regulation, which requires the Commission to

³ See notes on [Vertical Block Exemptions](#).

		<p>consider, amongst other things, “<i>the market position of the undertakings concerned and their economic and financial power</i>”.</p> <ul style="list-style-type: none"> ❖ As above, this requires identification of the relevant market that the parties are operating in, which will be determined in accordance with the method below. ❖ See notes on Process if EU Merger Controls Apply.
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The Test for Establishing the “Relevant Market”⁴

Overview	<ul style="list-style-type: none"> ❖ The Commission’s Notice on the definition of relevant market for the purposes of Community competition law [1997] OJ C372/03 (the “Market Definition Notice”) provides that the “relevant market” has two elements: <ul style="list-style-type: none"> ➢ The relevant product market; and ➢ The relevant geographic market.
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<p>Product Market</p> <p>Competition Law, 3.1.1.1</p>	<ul style="list-style-type: none"> ❖ The Market Definition Notice provides that a product market comprises: <ul style="list-style-type: none"> ➢ “...all those products and/or services which are regarded as interchangeable or substitutable by the consumer... by reason of the products’ characteristics, their prices and their intended use”. ❖ In order to determine this, it is necessary to consider two elements: <ul style="list-style-type: none"> ➢ Demand-side substitution; and ➢ Supply-side substitution. ❖ The Market Definition Notice provides that demand-side substitution is the most immediate and effective force, and should be given the most consideration.
<p>Demand side substitution</p>	<ul style="list-style-type: none"> ❖ “Demand side substitution” is a method of defining the boundaries of a product market by identifying which products, if any, are regarded by customers as effective substitutes for those under consideration. ❖ This involves identifying the smallest set of products over which a hypothetical monopolist would need to have control to be able profitably to raise prices by a small but significant amount (generally taken to be between 5% and 10%). ❖ This is known as the “small but significant non-transitory increase in price (SSNIP) test”. ❖ If customers would switch to the closest available substitute products following a 5% to 10% price increase, then there is high demand-side substitutability, and the market includes those substitute products.

⁴ [Workshop 1, Prep Task; Workshop Task](#)

	<ul style="list-style-type: none"> ❖ It is then necessary to ask the same question again in relation to the widened set, to establish whether that wider group now forms the relevant product market. ❖ If customers would not switch to the closest available substitute products following a 5% to 10% price increase (i.e., there is low demand side substitutability), that set of products forms the relevant product market and the substitute does not. ❖ So, for example, if a hypothetical monopolist of bottled water were to raise prices by 5% to 10%, would customers switch to other beverages like soft drinks or juices? If the answer is yes, this suggests that the relevant product market would include these alternative beverages. ❖ Another example is Case T-30/89 Hilti AG v Commission [1991] ECR II-1439, [1992] 4 CMLR 16⁵, in which the court found that the markets for nail guns, cartridge strips, and nails were separate. These items were not interchangeable with nail guns, rather strips and nails were specifically manufactured and purchased for use in the gun. The court also considered the fact that specialist producers existed <i>for nails</i> (and only nails) was significant, and to treat all three as being part of the same product market would essentially allow producers to exclude the use of consumables other than their own branded products in their tools.
<p>Supply-side substitution</p>	<ul style="list-style-type: none"> ❖ Demand-side substitution on its own has limitations; products may still not necessarily constitute a relevant product market even if there are no alternatives available. ❖ Consider, for instance, a size 7 shoe. Demand-side substitution alone would suggest that size 7 shoes, and size 10 shoes, form separate markets, because a consumer’s response to a 5% to 10% increase in price of a size 7 shoe likely would not see them switch to a size 10 shoe. However, this is not necessarily realistic. ❖ It is thus necessary, in addition to “demand-side substitution”, to consider “supply-side substitution”; (Case 6/72 Continental Can v Commission [1973] ECR 215) that is, the hypothetical response of suppliers to a 5% to 10% price increase. ❖ If other producers would respond to a 5% to 10% increase in the price of a set of products by switching their existing assets into the production of the products whose price has risen, then this suggests that the other products that the producer has switched from form part of the same market.

⁵ [Workshop 1, Prep Task, Part 1](#)

		<ul style="list-style-type: none"> ❖ This is on the basis that the supplier is able to easily switch production, and there are, therefore, minimal barriers to entry between production of its current products and the products under consideration. ❖ So, for example, if the price of apples increases 5% to 10%, would this lead to suppliers of oranges switching production to apples? ❖ If suppliers can easily switch production, the relevant product market may include both apples and oranges. This involves an assessment of the barriers to entry, such as the need for different equipment, licenses, or the existence of strong brand loyalty to specific apple producers.
<p>Geographic Market</p> <p>Competition Law, 3.1.1.2</p>	<p>Demand-side</p>	<ul style="list-style-type: none"> ❖ The relevant geographic market is “...<i>the area... in which the conditions of competition are sufficiently homogeneous [meaning, uniform] and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas” (Market Definition Notice).</i> ❖ For example, in Case 27/76 United Brands v Commission [1978] ECR 207 the ECJ held that the relevant geographic market for bananas constituted Germany, Denmark, Ireland, the Netherlands, Belgium and Luxembourg (because the trading conditions in those markets were completely free and the same for all suppliers of bananas), but excluded France, Italy, the United Kingdom who had preferential arrangements with banana suppliers based in their former colonies. ❖ This “homogeneous area” is identified in a similar way to the product market; it again involves asking what customer behaviour will be in response to price increases by a hypothetical monopolist. ❖ The goal is to determine the smallest geographical area within which a monopolist could sustain a price increase of 5% to 10%. ❖ It is again necessary to consider both demand-side and supply-side factors. ❖ Beginning with the smallest geographical area that might plausibly form a market, if a hypothetical monopolist of a set of products sought to increase the price by, say, 5% to 10%, would customers then switch to suppliers of the products in another area? ❖ If no: that smallest geographical area forms the relevant product market. ❖ If, on the other hand, customers would switch to suppliers in another area: that other area forms part of the geographic market. ❖ Additional areas are added to the geographic market until an area is found within which it would be possible to raise prices by 5%

		<p>without customers switching, at which point the geographic market is identified.</p> <ul style="list-style-type: none"> ❖ So, for example, if a hypothetical monopolist of petrol stations in a geographical area (say, a city) raised prices by 5% to 10%, would customers start purchasing petrol from stations in neighbouring cities? If the answer is that they probably would, that wider area would incorporate the relevant geographic market. ❖ This involves consideration of various factors which might prevent consumers from going outside of the relevant geographical area, such as languages (and the type of product being sensitive to languages, e.g., a newspaper); national tax regimes; and the relative cost of transport.
	<p>Supply-side</p>	<ul style="list-style-type: none"> ❖ It is also necessary to consider whether the price change will result in a supply-side response, such that the region in which those suppliers are located should be deemed to be part of the geographical market. ❖ For example, suppliers in one region might react to a relative price change by directing more of their production to the area in which prices have increased. ❖ So, if producers in France react to an increase in fizzy orange drinks prices in Germany by diverting production from France to Germany, then France may be deemed to encompass the market for fizzy orange drinks.
	<p>Chains of substitution</p>	<ul style="list-style-type: none"> ❖ The geographic market may be expanded in circumstances where there is a “chain of substitution”. ❖ A chain of substitution occurs where a supplier’s “area of natural supply” overlaps with a competitor’s “area of natural supply”, and this operates to transmit a competitive pressure from one area to the other. ❖ For example, suppose there are three neighbouring cities: City A, City B, and City C. If a hypothetical monopolist in City A increases the price of its product by 5% to 10%, customers might switch to suppliers in City B. In response to a similar price increase in City B, customers could then switch to suppliers in City C, indicating that the relevant geographic market comprises all three cities (City A > City B > City C) even if there was no <i>direct</i> substitution from City A to City C.

Extracts from the [Commission Notice on the definition of relevant market for the purposes of Community competition law \(97/C 372/03\)](#)¹

Overview	<ul style="list-style-type: none"> ❖ Students at the University of Law are required, in Workshop 1, to read relevant extracts of the Commission Notice on the definition of relevant market for the purposes of Community competition law (97/C 372/03). ❖ These outline the European Commission's approach to defining relevant markets in competition law, focusing on both product and geographic markets
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Product Market Paras 13 – 24	Competitive constraints.	<ul style="list-style-type: none"> ❖ The guidelines explain that identifying the relevant market is a question of identifying the effective alternative sources of supply for customers of the undertakings involved, in terms both of products/services and of geographic location of suppliers.
	Demand substitution.	<ul style="list-style-type: none"> ❖ Demand substitution aims to determine the range of products viewed as substitutes by consumers. ❖ The question to be answered is whether customers would switch to available substitutes or suppliers in response to a hypothetical small (5% to 10%) but permanent relative price increase. ❖ If customers would switch, such that the price increase could not be sustained, those substitutes form part of the relevant market. This continues until a set of products and areas is identified where small, permanent increases in relative prices can be sustained.
	Supply substitution.	<ul style="list-style-type: none"> ❖ Supply-side substitution concerns when suppliers can switch production to relevant products and market them in the short term without significant additional costs or risks in response to small and permanent changes in relative prices. ❖ In these cases, the relevant product market will encompass all products that are substitutable in demand and supply, and the current sales of those products will be aggregated to determine the total value or volume of the market. ❖ If switching production requires significant adjustments to existing tangible and intangible assets, additional investments, strategic decisions, or time delays, it will not be considered at the stage of market definition.
	Potential competition.	<ul style="list-style-type: none"> ❖ Potential competition is not taken into account when defining markets.
Geographic Market	Initial hypothesis.	<ul style="list-style-type: none"> ❖ The guidelines provide that the Commission’s approach to defining the geographic market definition starts with a preliminary view based on broad indications.

¹ This is required reading for [Workshop 1, Prep Task 1, Part 2](#); this largely just fleshes out points covered in our note on [Establishing the Relevant Market](#).

Paras 28 - 32		<ul style="list-style-type: none"> ❖ This serves as a working hypothesis to focus inquiries for a precise geographic market definition.
	Demand characteristics	<ul style="list-style-type: none"> ❖ The hypothesis is then checked against demand factors such as consumer preferences, purchase patterns, and product differentiation, to determine if companies in different areas constitute an alternative source of supply for consumers. ❖ The question is whether the customers of the parties would switch their orders to companies located elsewhere in the short term and at a negligible cost, in response to a relative change in prices.
	Supply characteristics	<ul style="list-style-type: none"> ❖ If necessary, supply factors are examined to make sure companies in different areas can compete throughout the entire geographic market. ❖ The Commission identifies any obstacles that might prevent companies in one area from competing with companies in another, to determine the boundaries of the market. ❖ The Commission will also examine trade flows (i.e., movements of goods) and consider factors such as transport costs, plant locations, production costs, and relative price levels.
	Market integration.	<ul style="list-style-type: none"> ❖ The Commission also takes into account anticipated market integration. ❖ If the market is expected to integrate more in the short term, leading to larger geographic markets, this will be taken into account when defining the geographic market for assessing mergers and joint ventures.

