ESI Preprints **Not Peer-reviewed**

The Acceptance of Relevant Market in Moroccan and European Competition Law: Origins and Evolution

Mohamed El Azhary
Legum Doctor in Private Law, Senior lecturer, Permanent member of the Research Laboratory: <<ESSOR>>: Droit, Philosophie et Société, Faculty of Legal, Economic and Social Sciences, Sidi Mohamed Ben Abdellah University of Fez, Kingdom of Morocco

Doi: 10.19044/esipreprint.9.2025.p220

Approved: 05 September 2025
Posted: 07 September 2025

Cite As:
El Azhary, M. (2025). *The Acceptance of Relevant Market in Moroccan and European Competition Law: Origins and Evolution.* ESI Preprints.
https://doi.org/10.19044/esipreprint.9.2025.p220

Abstract

The assessment of barriers to market access requires, first and foremost, the implementation of an approach that views any infringement of equal opportunities between firms as a restriction on free competition. Such an approach, which is likely to contribute to preserving equality in competition and even encouraging dynamic competition between market players, remains dependent on the interest shown in the legal implementation of the definition of the relevant market itself. This research aims to establish a conceptualization of the legal criteria that promote the organization of competitive inflows within the market. In pursuing this goal, we will draw upon the definition of the relevant market according to Moroccan and European legal standards, which are the subjects of our research. Consequently, in order to reach this target, it is imperative to focus on a totalizing approach, enabling us to grasp the origins of the relevant market, to gauge and foresee its implementation, especially in accordance with economic thought and law.

Keywords: Competition and Economic Law, Relevant Market, Monopoly, Regulatory Law, Praetorian Jurisprudence

Introduction

Under competition law, companies and market operators are constantly urged to change their egocentric perception of their own legal security (SPECTOR, D. 2006). It is no longer a question of them digging in their heels to preserve their acquired rights, but rather of playing an active role in establishing and even sustaining legal certainty within the competitive arena, namely by opting for fair competition that guarantees the objective of ensuring the greatest possible equality of access to the market (LE ROY, F. 2004).

In fact, equality in competition is assessed in terms of freedom of trade between operators and even from the perspective of the guarantee granted to competing parties to access the market without any restrictions (DUMEZ, H. & JEUNEMAITRE, A. 2005). In this respect, competition law complements the law on freedom of movement (STUYCK, J. 1999). Restrictions on freedom of trade or violations of the principle of free competition constitute an infringement of access to and exercise of economic activity, and such restrictions on freedom of trade are classified as anti-competitive or restrictive of the normal functioning of the competitive system. This requires an examination of the relevant market. This is justified by the need to understand the situation that is hindering market access. This examination is carried out by defining the relevant market.

Research question:

Given the significance of understanding the relevant market in assessing the dynamic reality of the competitive market, it is pertinent to consider the following question: ‹‹How has the process of defining the relevant market been implemented in the Moroccan and European competition legal systems?››

Methodology and plan of the study :

In seeking to resolve this issue, we will use the form appropriate to legal dissertations according to the approach taken by private law specialists. The methodology we will adopt is rooted in a two-pronged approach. First, it is a comparative approach that determines, in a thematic and chronological manner, the acceptance of the relevant market and its evolving functions in the history of economic thought (industrial economics, monopoly economics, antitrust economics). Second, it is a legal approach tracing the process of the gradual implementation of the definition of the relevant market in Moroccan and European competition law. It is therefore appropriate to outline the content of these two approaches in turn.

In other terms, in order to highlight the necessity of using the relevant market tool to maintain equality between companies in the competitive

arena, the stakes are high. The aim is to outline the historical evolution of the concept of the relevant market and to reveal the extent to which it has been established for the purposes of applying competition law, through two fundamental, distinct but complementary movements. First, we will outline the evolution of the concept in relation to the doctrinal schools of economic thought and its deployment, with the aim of identifying the environment in which companies compete. Second, the gradual implementation and incorporation of the concept of the relevant market by Moroccan and European competition courts in order to understand the infringement causing market partitioning.

To be honest, understanding the contours of the relevant market has not been an easy task. The first difficulty in defining the relevant market was the disregard for proven economic models in relation to the requirement to define the market in order to measure and assess the extent of competitive pressures **(A)**. However, despite being a key principle of economics, understanding the relevant market remains a legal masterpiece, based on a concrete assessment of the prominent factual elements that enable the rule of law to be properly applied **(B)**.

Results of the study:

This study has therefore enabled us to highlight two key characteristics that are central to the very essence of the relevant market: its factual aspect **(a)** and its teleological function **(b)**.

a. **Recourse to the relevant market is a factual issue, not a legal one:**

From the outset, the relevant market is a concept that has its origins in the early roots of fundamental economic theories and has been adopted by competition law. This economic analysis tool has an ancestral genealogical lineage, as it appears in the writings of the founding authors of political economy, sometimes under the terms industry, relevant market, reference market, or simply market.

Naturally, from the point of view of economic theory, the definition of the relevant market has always been a key consideration, particularly for the pioneers of classical economics. However, there is no single definition of the concept of market. In fact, there are several. For some, the market is primarily a geographical location where competition between trading operators is freely exercised. It is also seen as a force field defined by competition, which operators must comply with (SMITH, A. 1776). For others, the market is understood primarily as a variable dependent on the capitalist mode of production (BOYER, R. 1986). Similarly, the market is considered a form of organization of exchanges between economic agents, one of whose essential characteristics is that economic transactions take place on the basis of prices (DIEMER, A. 2006).

Indeed, legal doctrine is reluctant to accept the relevant market, which had been defined in a rather rudimentary way as the abstract domain of goods trading. According to legal doctrine, the market serves as an ideal gathering place for those seeking to acquire goods and those seeking to sell them (SAVATIER, R. 1959). In competition law, it is exceptional case law that has given the relevant market the place it deserves. It is for this very reason that it is referred to as a praetorian concept (BOUSAOUF, M. 2021). However, the concept of the relevant market that we have studied in this research paper corresponds more precisely to the term "relevant market" as it is currently understood in practice.

b. **The function of the relevant market was the underlying reason for its implementation :**

Certainly, the jurisprudence of the Moroccan and European legal systems highlights a meticulous analysis of a context presented as economic in terms of understanding the relevant market, which is conceived as a drastic precept insofar as it allows the competitive arena to be defined and, in this way, the framework within which the activities of the company or companies concerned are carried out (LIARTE, S. AND CAILLUEL, L. 2008). In fact, the analysis of the competitive field is based on the prism of contemporary economic reality, which implies that competition only exists between competing agents who share the same playing field on an equal footing, because by the nature of things, one cannot compete with oneself. Thus, it would only be possible to assess competition (measure its variations) on the basis of the scope of the area of action in which this competition takes place (BOUCHARD, C. 2005). Consequently, defining the relevant market is an inevitable step in the process of establishing legal certainty within the market and, as a corollary, preserving entrepreneurial equilibrium.

In practice, this means that defining the relevant market is not an end in itself; rather, it is an effective means of understanding the behavior of companies and determining whether that behavior is likely to undermine free competition. The idea is that defining the relevant market only makes sense when it aims to reframe the actions of companies in the market, which is why understanding the market is considered a first step in assessing market stability.

This fundamental phase is an integral part of the process of maintaining effective competition. How could it be otherwise, since it is unanimously accepted that the outcome of the market definition determines the outcome of the case? It follows, therefore, that any attempt to shed light on equal conditions of access to the market and the principle of free competition in the Moroccan and European legal systems necessarily involves understanding the relevant market. This exercise aims to trace the boundaries of the competitive arena by locating the source of the

infringement of competition and to measure the competitive constraints weighing on the market, which is a favorite area for both economic actors and consumers.

Assessing the relevant market also involves identifying the players involved in establishing mechanisms for deploying correlations between companies and evaluating the market shares held by a company or group of companies, which are, in this case, the source of practices that prevent, restrict, or distort competition.

Discussion :

A. The disregard of economists towards the recourse to the relevant market:

It is now widely accepted that the holistic approach to business practices (particularly through economic tools) has always been valued by the international economic community for its focus on the issue of a company's position within a competitive environment. This interest in studying the business environment has grown considerably with the emergence of industrial economics (HOUSSIAUX, J. 1958), whose treatment of the uncertainty of the degree of rivalry between companies in the market remains the primary concern (DIAWARA, K. 2008).

Despite the extremely delicate context, which even reveals the degree of uncertainty involved in competition between companies in the market, most economists, with the exception of industrial economics theorists, are not in favor of defining the relevant market in order to understand and comprehend the phenomenon of competition. The first thing that becomes apparent when studying economic writings on the relevant market is the lack of credibility or even a complete lack of interest that some economists have in the issue (WERDEN, G. 1983).

Such disaffection, revealed by theorists of corporate behavior in the relevant market, draws its inspiration from the emergence of the theory of imperfect or monopolistic competition **(a)**. But still following in the footsteps of the proponents of imperfect competition, the extent of this discredit (the subject of the founding debate urged and supported by the Harvard School and the Chicago School) can be explained in part by different considerations related mainly to the concept of economic efficiency **(b)**.

a. **The impassiveness of Monopolistic Competition regarding the relevant market:**

This disregard on the part of economists for the established requirement to understand the relevant market (as a benchmark for identifying the behavior of companies in the competitive arena) draws its intrinsic value from the emergence of the theory of imperfect competition

(ETNER, F. 2012) or monopolistic competition (CHAMBERLIN, E- H. 1949).

Theorists of monopolistic economics (KEPPLER, J-H. 2004) or imperfect competition (the first critics of the concept of relevant market) believe that products are not homogeneous or substitutable, particularly when incorporating indicators of product differentiation and sales costs (RAINELLI, M. 2003). These theorists of monopolistic economics categorically and similarly reject the theory of general equilibrium (WALRAS, L. 2018) based on pure and perfect competition (GABSZEWICZ, J. 2003) as defended by the classical school of industrial economics.

By incorporating the indicators of product differentiation and sales costs (RAINELLI, M. 2003), this resurgent theory of monopolistic economics or imperfect competition has thus demonstrated that most companies have monopoly power over their products while competing with each other.

Moreover, based on the product differentiation indicator, the theory of imperfect competition rejects the use of the relevant market by assuming that each company sells products and seeks to attract consumers by differentiating its offering from that of its competitors. According to the theory of imperfect competition, each product is different from that marketed by the competitor, as the products are not substitutable for one another. The situation can be analyzed as a set of monopolies where each product is a market in itself. Therefore, defining a relevant market by establishing boundaries that include or exclude products is absurd according to theorists of monopolistic economics (CHAMBERLIN, E-H. 1950). In fact, it is the very idea of substitutability that is rejected by these economists, who consider that all products are necessarily different from each other and cannot belong to the same market.

The reasoning of monopolistic competition theorists regarding the indicator of product differentiation still resonates in today's economy, given that the lack of product substitutability in the market is a direct consequence of the differentiation and segmentation strategy employed by competing companies (CHAVONNAND-VALADES, N. 2019).

By way of illustration, we can cite the recent position taken by the European Commission in its decision of September 6, 2018. In light of this decision, the European Commission declared Apple's proposed acquisition of Shazam compatible with the internal market and with the functioning of the EEA Agreement. Through this decision, the Commission gives concrete expression to the product differentiation indicator used by monopolistic economics theorists. In this decision, the Commission concludes by noting the lack of substitutability between music streaming services and video

streaming services, indicating that the music streaming market consists of all music streaming services (i.e., Spotify, Deezer, Google Play, Amazon Music, and Apple Music) forming a market or monopoly in their own right, distinct from the video streaming services market, even though both services are used on the same mobile device (COMMISSION EC, Commission Decision of September 6, 2018 declaring a concentration compatible with the internal market and the functioning of the EEA Agreement, Case M.8788-Apple/Shazam, Official Journal No. 2018/C 417/04 of 16/11/2018, § 99).

Product or service differentiation can be seen even within the same mobile streaming service monopoly, despite the fact that, at first glance, these platforms offer streaming services with music libraries at similar prices. Indeed, when looking at the interactions between mobile devices and these platforms, it is clear that these services are not homogeneous and that their substitutability is not self-evident, particularly given that Apple's operating system, iOS, allows for synergies between Apple products and the Apple Music service that do not exist with other music services. For example, it is possible to launch an Apple Music playlist via the iPhone's Siri feature, whereas it is not possible to do the same for a Spotify playlist. It could therefore be argued that the specificity sought by the Apple brand in the very architecture of its solutions segments the market and contradicts the substitutability between these services.

Therefore, the original and conceptual criticism of monopolistic competition theorists regarding the indicator of product differentiation cannot simply be dismissed as an eccentricity of economic history.

Furthermore, in order to better understand the contextual framework that conditioned the antagonism surrounding the use of the relevant market definition in monopolistic competition theory, we must go back to Marshallian theory (SAMUELSON, P-A. 1972), which was the first to advocate dividing economic activity into industries in order to determine equilibrium prices (GLAIS, M. & LAURENT, P. 1983). According to the principle of partial equilibrium, the market is understood as “the space where product prices tend towards equality, easily and over a short period of time” (MARSHALL, A. 1920). Clearly, based on Marshallian theory, the market remains an effective mechanism offering the opportunity to bring together all companies with sufficiently similar technical equipment, experience, and knowledge to manufacture goods.

This narrow-minded, even static approach to grouping economic activity made it possible to demonstrate, through Marshallian perception, that the competitive process is based on prices that tend toward equilibrium. This theory of partial equilibrium, which is based on pure and perfect competition, was to be spectacularly challenged by the proponents of monopolistic competition.

However, we know that the main criticism levelled at the theory of pure and perfect competition focuses particularly on its utopian and unrealistic nature. It follows that, given this situation, it is not surprising to see the same utopian pretext used and brandished as a recursive argument against the understanding of the relevant market in competition cases.

Thus, the theory of imperfect or monopolistic competition tends to vexatiously reject the use of the relevant market, challenging the very concept of industry, which (at the time of the resurgence of industrial economics theory) was synonymous with market. The same applies to the content of the concept of industry, which proves to be inappropriate to reality (ROBINSON, J. 1933).

This isolationist and unsympathetic attitude towards the use of the relevant market concept stems from the blatant combination of various arguments to construct an absolute dogma that categorically rejects anything that favors consolidating the definition of the relevant market for the purposes of regulating competition. In addition, the indirect knock-on effects are spreading, with the result that this situation has influenced the position of the economic community, which continues to challenge the doctrinal structures that maintain a favorable position towards the use of the relevant market definition. Thus, the essential debate focused on opposition to or observation of the relevant market - with the aim of increasing economic efficiency and improving competitiveness - has gained momentum in the history of economic thought on antitrust and competition protection since the 1950s, particularly between the close rivals: the Harvard School and the Chicago School.

b. **The dissensions on the relevant market across the Antitrust History:**

The Harvard School, or structuralist school, considers that given the absence of pure and perfect competition in real economic life and its potentially significant repercussions on the economic environment, competition can be assumed to exist when the structural mechanisms of the market are functioning sufficiently smoothly.

In line with the thinking of structuralist theorists, the competition paradigm revolves specifically around three groups of specific, interdependent, and essential factors. The first is market structure, which is characterized by the presence or absence of barriers to entry. Secondly, there is the behavior of market players, which can take the form of either intense rivalry between competitors or tacit or explicit collusion between market players. Thirdly, there is market performance, taking into account price levels, production, and innovation.

According to the paradigm developed by the Harvard School, market structure determines the nature of competition within that market. In other

words, the relationship between market structure and the power exercised within it depends essentially on the conditions of entry into the market, through the existence of barriers to entry (BAIN, J. 1968). According to the Harvard School, the goal of establishing a modern liberal economy - within the framework of competition policy - is the top priority. Market power is therefore seen as a negative factor that must be prohibited by nature, with the aim of increasing economic efficiency and improving competitiveness.

In terms of its impact on economic growth, the Harvard School believes that achieving efficiency is linked to the protection of competitors. Indeed, structuralists see barriers to entry as the catalyst for increased market inefficiency. The Harvard School therefore supports structural action by public authorities to restore effective competition, particularly through the enforcement of competition law.

The Chicago School, for its part, proposes a dynamic approach to competition, which is viewed as a process in its own right, designed to select the most efficient companies to support the development of their industries. In this view, proponents of the Chicago School believe that it is the behavior of companies and their overall performance that influences market concentration in the same way as they influence economic growth and development, and they emphasize this point. Thus, a company that offers a product tailored to demand (particularly in terms of better quality than its competitors) acquires new customers without losing its existing ones, and can thus achieve a dominant position. Market concentration, the position of competitors and their number, and the stability of market shares over time undoubtedly remain a function of differences in performance between companies, with a dominant position being simply attributable to a company's better positioning relative to its competitors. Consequently, a market must be judged on the basis of its efficiency rather than its structure, as a concentrated structure is invariably the result of a long evolutionary process in which the efficient behavior of the company plays a decisive role.

Taking issue with the doctrines of the Harvard School, which are based on a static, vague, and counterproductive conception of competition (POSNER, R. 1979), the Chicago School proposed a dynamic approach to competition based on the concept of laissez-faire, laissez-aller, which values non-intervention by the state, more unreservedly embedding the conviction that the market works best when the government leaves it alone (FREEDMAN, V-L. 2013). This dogma refutes the argument that barriers to entry allow undue market power to be exercised. Indeed, for the Chicago School, apart from legal barriers, barriers to entry are a manifestation of the greater efficiency of companies already established in the market. According to this theory, the dynamism of competition should not be judged on the basis of the structure of a market at a given moment, but rather on the basis

of the ever-necessary exercise of freedom to act without outside interference, so that new competitors can position themselves in that market.

The extent of this ongoing controversy between the Harvard School and the Chicago School can be explained, de facto, by widely differing views on the cumulative nature of market concentration and economic efficiency, which translate into distinct conceptions of what competition law should be. As a result, throughout the historical evolution of these doctrinal schools, the concept of the relevant market has always been the main arena for ideological confrontations between proponents of more active intervention by competition law and their opponents from the Chicago School (IANOS, L. 2007), heralding the birth of a capitalist, fiercely neoliberal school of thought.

Initially based on the fundamental principles of non-interventionism by the state and the enshrinement of free competition in an open space, the Chicago School challenged the very idea of defining a relevant market. According to the Chicago School, the ultimate goal of competition policy should be to ensure that there are no barriers to entry for companies into markets, particularly regulatory barriers (BROZEN, V- Y. 1969).

Nevertheless, once the need for state regulation of the economic sphere was widely accepted, the economic community sought to directly measure the degree of market concentration of entities creating barriers to market entry. In this regard, a certain consensus emerged in favor of the need for the concept of the relevant market. However, despite clear statements in favor of the gradual formalization of the concept of the relevant market, it should not be overlooked that the content of the concept in question is neither clearly defined nor clearly arranged.

The relevant market subsequently became a source of disagreement among economists. Supporters of the structuralist school defend a narrow definition of the relevant market, in which the company's market share (represented by the percentage of sales made by the company in a given market compared to the total sales of the same product or a substitutable product made by its competitors and itself) is significant. Meanwhile, economists from the Chicago school argue for a relevant market in which the market share ratio is diluted and therefore has a particularly soothing effect on the assessment of the company's position.

In a line of thinking that tends to favor structuralist theory, US federal case law has introduced the idea of submarkets within the relevant market. This resurgent concept was first defined in the Brown Shoe Co. case (United States Supreme Court, Brown Shoe Co. Inc. v. United States, 370 U.S. 294, 1962, p.325). According to this ruling, there is a smaller and even more relevant market within the relevant market. This involves defining a narrow space in which products share a high degree of substitutability (a

relevant market within a relevant market where the products on sale have characteristics that differ little from those that already exist, but which meet the same need and provide the same degree of satisfaction to consumers) in order to rigorously assess the position of the company concerned. However, assuming that it is officially confirmed that the submarket exists in pro-structuralist case law, one should question the usefulness and relevance of defining a submarket within a relevant market. One thing that is not obvious is that the submarket seems to be the relevant market tout court. It is rightly noted that the US Court of Appeals (for the Fourth Circuit) considers the concept of a submarket to be an unusual curiosity compared to the rigorous definition of the relevant market alone (United States Court of Appeals for the Fourth Circuit, Satellite Television & Associated Resources, Inc. v. Continental Cablevision of Virginia, Inc., Citation No. F.2d No. 714, 1983, footnote No. 5).

For its part, the Chicago School found in the theory of contestable markets a compelling argument in favor of reviving the theory of dynamic efficiency rather than studying market structure. In this regard, it should be noted that, overall, this theory provides a new analysis of market structures, and in particular a novel framework for understanding monopoly situations. Contestable markets theory emphasizes the vital role of potential competition as a constraint on companies in a given sector. The two main vectors are the absence of barriers to entry and the absence of barriers to exit from the market. A market in which entry is completely free and exit is cost-free is a contestable market. The functioning of a contestable market is reflected in the following mechanism: existing companies keep their prices at competitive levels because of the constant threat posed by potential entrants. If existing companies raise their prices, new companies will enter the market. Thus, unlike the paradigm of a market in a situation of pure and perfect competition, a contestable market can bring together any number of companies, including a dominant company (DEMSETZ, H. 1974).

While the relevant market has been the source of the most persistent disagreements between, on the one hand, proponents of the structuralist school and, on the other, those of the Chicago school, it has been acknowledged that the concept has always been the main arena for ideological confrontations among antitrust economic theorists. For observers specializing in strategic issues, and more particularly in the history of antitrust, the definition of the relevant market has played a decisive role in the implementation of competition policy, particularly with regard to corporate mergers. The definition of the relevant market has served two purposes: first, to identify the strong a priori suspicion against large companies and concentrated market structures, and second, to address the growing problem of simplifying to the extreme the burden of proof

incumbent on competition regulators, which formed the basis of a policy aimed at strengthening economic efficiency, in particular by limiting the market power of large companies suspected of engaging in practices that are contrary to free competition. However, despite historical factual assertions clearly in favor of defining the relevant market in order to address concerns about business competitiveness, it should not be overlooked that the content of the concept in question is not clearly defined or enshrined in legislation.

Considering the above, it is reasonable to infer that the symptoms of apprehension surrounding the concept of the relevant market have evolved considerably, aligning themselves in particular with the considerations and aims of the dominant school of thought of the moment and its political history, to become a complex set of factors involving economic, political, and legal proportions. This dynamic and evolving path is not reprehensible in itself. Any use, concept, idea, or knowledge contained in the information received can evolve in step with advances in science and technology and the ideological currents taking hold in the economic arena, becoming more precise and closer to the reality of the facts. On the other hand, it can hardly be said that the concept of the relevant market is absolutely objective, independent, and detached from any ideological doctrine or opinion. Expressis verbis, between supporters in sharply reduced numbers and opponents on the rise, the definition of the relevant market benefited from establishing a dialogue, albeit antagonistic, between them. However, interpreted factis et verbis, the opponents won the day and tipped the balance against the definition of the relevant market, considering the relevant market to be an instrument devoid of interest or even imperfect for achieving progress towards the establishment of an area of freedom, security, and equal access to markets.

But if most liberal economic and political theorists show little faith in the effectiveness of defining the relevant market, coupled with a complete lack of interest and detachment from anything related to it, the relevant market, in addition to providing a benchmark of stability for both regulators and litigants, remains an important tool that competition law has gradually assimilated. Therefore, any inclination to abandon the definition of the relevant market would prove to be a perilous undertaking due to the significant changes that this would entail in the practice of law itself. This is inevitably why, following the example of European case law, we see that the Competition Council of the Kingdom of Morocco has diligently established the requirement to define the relevant market as an essential step toward establishing a model for assessing the regularity of market players actions.

B. The acceptance of the relevant market by the competition law authorities:

The task of defining the relevant market is not an end in itself, but rather an integral part of the framework for analyzing the contours of the economic sphere. It is an essential step in establishing economic peace within the market. In fact, it is required by the dynamic nature of the influx of operators trading goods and services on the market. Such substance, the understanding of which depends above all on the location of the operators, is not only a matter of legal definition, but also a matter of economic reality. It is, in fact, required by the dynamic nature of the influx of operators trading goods and services on the market. Such a concept, the understanding of which depends above all on the location of the sphere of action of these antagonistic protagonists, is necessary in order to properly assess the legitimacy of their behavior. The definition of the relevant market has no other purpose than to outline the framework for the application of competition rules, which the competition authorities of the systems under review (both the Competition Council of the Kingdom of Morocco and the European Court of Justice) are required to implement. Otherwise, these authorities will not be able to apply the rule of law ex aequo et bono.

The understanding of the relevant market by competition law authorities is based on a legal logic of implementing provisions of law that regulate the actions of competitors in the competitive arena, namely when such alleged conduct is deemed to have the object or effect of preventing, restricting, or distorting competition in a market. This logic is based on the normative and regulatory dimension of competition law. However, analysis through the prism of the arguments put forward by the regulatory authorities of the legal systems under review only allows them to consider the relevant facts, as revealed by the prominent factual elements that enable them to apply the rule of law appropriately. It is in this context that we should understand the imperative that an understanding of the relevant market is essential for fulfilling the first condition for combating practices that are contrary to free market access.

This is without doubt why, following the example of European case law, the Competition Council of the Kingdom of Morocco has diligently imposed the requirement to define the relevant market as an essential step in assessing the legality of market players' actions, operating, where necessary, a remarkable shift of the economic concept of the market into the legal sphere, namely through the opinions and decisions issued by it in its capacity as competition authority, as part of its mission to monitor markets and reflect on the best ways to make them competitive, as well as in the context of its summary studies on the competitiveness of certain sectors.

Furthermore, in both Moroccan and European competition law, recognition of the need to codify the concept of the market can be conceptualized chronologically in a triad of consecutive stages. Initially, case law was subject to narrow views, leading to a subtle or even implicit reference to the legitimate need to define the relevant market. This necessity led to the recommendation that the concept be fully established as an assessment criterion for companies engaging in practices that restrict market access **(a)**. Secondly, we will follow a pragmatic approach by the court, tending towards the gradual emergence of the concept of the relevant market, which was more or less instigated by an abrupt re-evaluation of market data at the sole final stage of assessing possible restrictions on competition **(b)**.

a. A modest benchmark for the statutory instrumentalisation of the relevant market:

The analysis of the evolution of the content and internal structure of European case law clearly shows that the first cases in which the European courts referred in broad terms to the relevant market concerned antitrust litigation.

During the initial application of Article 81(1) EC (now Article 101(1) TFEU), it was observed that European courts tended to focus on the market in which the parties to the agreement were active.

During the first series of applications of Article 81(1) EC (now Article 101(1) TFEU), it can be seen that the European Court of Justice took into consideration the importance of highlighting the economic and legal context in which the disputed agreement was widespread and produced its effects.

It must be noted that Article 81(1) EC was drafted in such a way that, in order to determine whether an agreement falls within its scope, its effects on the market must be assessed in advance. In other words, in order to determine whether the alleged prohibited agreement is likely to have an appreciable effect on competition, the undertaking must hold a certain position of dominance on the relevant market, which requires that significantly greater importance be attached to the automatic reference to the relevant market.

This is how the Court of Justice of the European Community simply emphasizes the need to refer to certain aspects of the relevant market. This interest in the relevant market is evident in its judgment in La Technique Minière (ECJ, Société Technique Minière (L.T.M.) v. Maschinenbau Ulm GmbH (M.B.U.), June 30, 1966, Case 56-65, Rec. 1966 00337), since the Court of Justice of the European Community states unequivocally that in assessing whether a contract should be considered prohibited under the regulations in force, particular attention must be paid to the nature and quantity of the products covered by the agreement, but also to the position of

the licensor and the licensee in relation to competition on the market for the products in question. This is without overlooking the specific features of the suspected agreement (whether it is an isolated agreement or, on the contrary, an agreement that is part of a set of agreements). Similarly, the strictness of the clauses governing the licensor-licensee relationship, which are intended to preserve exclusivity, must be taken into account. In the same vein, the Court of Justice of the European Community affirms the need to identify any opportunities left open to other commercial channels for the same products covered by the exclusivity agreement, if such opportunities exist.

This unprecedented ruling by the European Court of Justice would go on to become a well-known and economically significant legal precedent. It would subsequently be consistently and proactively reaffirmed in cases involving Article 85(1) EC. Thus, in the Brasserie de Haecht case (ECJ, SA Brasserie de Haecht v. Consorts Wilkin-Janssen, Dec. 12, 1967, Case C-23/67, ECR 1967 00525), the Court of Justice of the European Community took the same approach, stating that the application of Article 85(1) EC requires, among other things, consideration of the economic and legal context in which the suspected agreements are situated and where they have the potential to compete with others. The Court of Justice of the European Community thus considers, in its Brasserie de Haecht judgment, that it is pointless to target an agreement without taking into account the market in which it has an impact. Following the reasoning of the Court of Justice of the European Community, in order to assess whether the agreement falls within the scope of Article 85(1) EC, it is not permissible under any circumstances to isolate the agreement in question from its context. In other words, from all the factual or legal circumstances that have the effect of preventing, restricting, or distorting competition. Likewise, in the Gnmdig-Consten case (ECJ, Établissements Consten SARL and Grundig-Verkaufs-GmbH v. Commission, July 13, 1966, joined cases 56 and 58-64, Rec. 1966 00429), the Court of Justice of the European Community ruled that, in order to characterize a contractual situation suspected of negatively impacting free competition, it is essential to first place the contract in the economic and legal context in which the parties entered into it.

Along the same lines (and without further delay on the arguments reinforcing the case for or against defining the market in relation to cartels), it is appropriate at this stage to raise certain points regarding specific cases in which reference to the economic and legal context of the cartel itself, interpreted differently, is self-evident. In reality, these specific cases mainly concern agreements that give rise to a certain degree of market power on the part of either the players involved or at least one of the parties to the agreement (DIAWARA, K. 2008, pp. 44-45).

It is important to bear in mind that this original case law trend, established in the Brasserie de Haetch case and reaffirmed in the Gnmdig-Consten case, arose in the exceptional circumstances of assessing the compatibility of certain types of beer contracts with Article 81(1) EC (now Article 101 TFEU). However, it is well known that in this type of agreement (LAMBERT, T. 2000), the supplier effectively holds a certain position in the market that enables it to undermine free competition, in particular by concluding a large number of similar distribution agreements. Nevertheless, the Délimitis case (ECJ, Stergios Delimitis v. Henninger Bräu AG, February 28, 1991, Case C-234/89, Rec. 1991 I-00935) provides a remarkable illustration of this, with the Court of Justice of the European Community establishing the principle that beer agreements are not harmful per se to competition in the market. This is a significant ruling, which must, however, be interpreted in the light of the context in which these agreements were concluded and implemented, and this must be done, in particular, on the basis of the framework for analysis as defined by the Brasserie de Haetch case law.

Further still from the line of reasoning evoked in the Brasserie de Haetch case, the Court of Justice of the European Community has repeatedly and consistently affirmed the need to conduct an analysis focused primarily on the criterion of access to the market in question, an analysis in which the definition of the market is the cornerstone.

In other terms, the Court of Justice of the European Community summarizes its thinking on the cumulative effect of beer contracts on access to the relevant market in its Délimitis case law, reaffirming its belief in the use of the relevant market, while rigorously asserting that, in the event that an examination of all similar distribution agreements concluded on the market, combined with other elements of the economic and legal context of the suspected agreement, reveals that the contracts do not have the cumulative effect of foreclosing access to the market for the rest of the competition, the contracts cannot therefore affect the play of competition and would subsequently escape the reprehensible scope of Article 85(1) EC. However, if analysis of the legal and economic framework of the distribution agreements in question reveals that the market is difficult to access, it is necessary, according to the Court of Justice of the European Community, to focus primarily on the imperative requirement to assess, in the light of the facts and the law, the extent to which the agreements in question contribute to the emergence of the cumulative effect produced and to its consolidation. In this case and in this particular case, the definition of the relevant market is a sine qua non condition for the development of satisfactory solutions to ensure the efficient functioning of the competitive ecosystem.

In Moroccan law, reference to the concept of the relevant market is purely a matter of case law. Thus, the definition of the relevant market was used in the context of the application of Law No. 06-99 on freedom of prices and competition governing the sphere of activity of companies engaged in economic activity. In this regard, the Moroccan competition regulatory authority effectively assigns a relatively preliminary meaning to the concept of relevant market, which was gradually formulated during the first series of advisory opinions, investigations and studies on the competitiveness of the country's economic sectors, carried out in accordance with the provisions aimed at improving the competitive environment, so that the reference to the relevant market has taken the form of a dualistic bifurcation. On the one hand, the reference to the definition of the relevant market is brief but precise, particularly with regard to the Council's opinions on monopoly issues (Competition Council of the Kingdom of Morocco. 2013, Annual Report, Opinion on the proposed acquisition by the Strategic Investment Fund of 6% of the capital of CMA-CGM through the subscription of bonds redeemable in shares, pp. 41-44) and concentrations (Competition Council of the Kingdom of Morocco. 2013, Opinion on the acquisition by China Merchants of 49% of the shares and voting rights of Terminal Link, pp. 44-46). And secondly, in a more transposed manner, with regard to summary studies relating to the competitiveness of certain sectors of activity, including the telephony sector (Competition Council of the Kingdom of Morocco. 2011, Annual Report, Study on the Competitiveness of the Mobile Telephony Sector, pp. 69-98), the banking sector (Competition Council of the Kingdom of Morocco. 2013, Annual Report, Study on the Banking Sector, pp. 65-117), the television and radio broadcasting sector, and the pharmaceutical industry.

The spectacular shift in the economic concept of the relevant market in the legal sphere by the Moroccan courts is evident in the study on the competitiveness of the television and radio broadcasting sector (Competition Council of the Kingdom of Morocco. 2013, Annual Report, Study on the Competitiveness of the Television and Radio Broadcasting Sector, pp. 153-162), conducted internally by the Competition Council in 2013 with the aim of assessing the state of competition in the television and radio broadcasting sector at the national level, particularly after its liberalization in 2002 (pursuant to Decree-Law No. 2-02-663 of September 10, 2002, abolishing the state monopoly on radio and television broadcasting) and thus enable the regulator to feed its retrospective and prospective database on the state of competition in all economic sectors in the Kingdom.

Furthermore, based on the study of the impact of the competitive environment in the television and radio broadcasting sector in Morocco, the aim was to determine whether access to the television market faces real and

potential obstacles that discourage investment and the development of competition within this sector.

In this regard, the Competition Council proceeded to define the relevant market, establishing the classic distinction between the material and territorial aspects of the market. First, with regard to the material aspect of the relevant market, the Competition Council considers that the reference market is that of television and radio communication services, which is intended to deliver broadcast content to the general public. Moreover, in line with the sector study initiated by the Moroccan regulator, the relevant market for television and radio communication services also covers associated production and broadcasting services, which consist of providing content or exercising responsibility for such content. Furthermore, according to the substance of the study on the competitiveness of the television and radio communication sector, the relevant market for television and radio communication services is also a market open to advertising, which is the main source of revenue, excluding public subsidies, for operators in the sector. The Competition Authority therefore considers it useful to point out that the interdependence between the television and radio broadcasting services market and the advertising market makes these two markets extremely interconnected. With regards to the territorial aspect of the relevant market, it is essentially a question (according to the report drawn up by the Competition Council) of outlining the geographical scope of the provision of television and radio communication services, which corresponds to the geographical area of broadcasting of television and radio communication services. However, taking into account, where applicable, linguistic and cultural barriers, the market for television and radio broadcasting services is considered to be national in scope.

Therefore, following the chronological approach adopted by the court in preparing the sectoral study in question, and after defining the relevant market for the purposes of applying competition law, the Moroccan Competition Council proceeded – pursuant to Articles 6 and 7 of Law No. 06-99 on freedom of prices and competition – to examine the conditions for new competitors entering and exiting the television and radio broadcasting services market, with a view to identifying any barriers that could perpetuate a position of strength in the market and thus slow down the move towards genuine liberalisation. The Moroccan Competition Council has identified various obstacles to the liberalisation of the television and radio market, which new entrants to this sector face. Among these, the study on the competitiveness of the television and radio communications sector in Morocco mentions three types of barriers to free competition. First, there are regulatory or administrative barriers that condition investors' access to the Moroccan market in order to obtain a licence. In the Council's view, the

licensing system is generally seen as a potential barrier to competition, as it usually comes with restrictions that can make it harder or more expensive for operators to offer services. Furthermore, the criteria for granting licences in Morocco include not only economic factors but also social, cultural and general interest factors, which, in the view of the Moroccan competition regulator, constitute a barrier to entry into the television market. According to the Kingdom's Competition Authority, the development of competition remains dependent on the removal of these barriers and the introduction of transparent rules that encourage potential competitors to enter the market. Secondly, in its report on the competitiveness of the television and radio broadcasting sector, the Council identifies a third type of barrier to market access: barriers to access to transmission infrastructure, resulting in a monopoly on terrestrial transmission infrastructure exercised by the Moroccan National Broadcasting and Television Company (SNRT), a prominent factor which puts it in a dominant position and gives it a dissuasive competitive advantage. The study of competitiveness in the television and radio broadcasting sector in Morocco also identified a third category of barriers to entry into the television and radio broadcasting market, namely barriers related to access to spectrum or radio frequency resources. Indeed, as indicated in the Competition Council's report on the subject, the extent of competition in the television and radio broadcasting sector also depends on competitors' access to the spectrum, which is a scarce resource and whose restricted access or lack thereof would constitute a real barrier to market entry. Nevertheless, spectrum limitations should no longer constitute a barrier to entry, given that the transition from analogue to digital spectrum would reduce the scarcity of spectrum resources and allow a greater number of competing channels to be carried on a smaller number of waves. Furthermore, the report on the competitiveness of the television and radio broadcasting sector in Morocco points out that the transition to digital broadcasting – which began in Morocco in 2007 and is expected to cover the entire country by 2015 – should offer more opportunities to new broadcasters and thus bring about changes in existing services.

Hence, for the purposes of this study on the competitiveness of the television and radio broadcasting sector in Morocco, it can be observed that the Competition Council has provided a practical demonstration of the potential for analysing the competitive environment, and more specifically, in terms of the deployment of legal and economic factors influencing the context in which operators in the television and radio broadcasting sector operate. This analysis was carried out on the basis of the integration of various indices and aspects of economic evaluation, and these different vectors of analysis undoubtedly constitute the key elements for defining the relevant market for the purposes of applying competition law.

In short, in line with the simple observation that competition law authorities attach great importance to the definition of the relevant market in the legal systems under review, and with a view to describing the current state of affairs with regard to the impact of the relevant market on the outcome of disputes falling within the scope of competition regulation, one can only be mindful of the fact that we are in the early stages of implementing the reference to the relevant market. In this sense, the action of the authorities concerned consisted first of all in measuring the position held by the companies concerned on the market, then the European judge and the Moroccan competition authority analysed the competitive structure of the market, and finally, the two magnates defending the competitive ecosystem combined the two aforementioned elements to identify constraints on competition. This first phase, which constitutes the initial steps taken by the Moroccan and European courts to define the relevant market, will be followed by a second phase that amounts to a concrete affirmation of the usefulness of defining the market in question.

b. A praetorian orientation in favor of consolidating recourse to the relevant market:

The praetorian establishment of the definition of the relevant market emerged in Moroccan law when referrals were received for the purpose of investigating requests for opinions initiated by the Competition Council at the request of the parties to the disputes, particularly in the context of highlighting the provisions of Law No. 06-99 on freedom of prices and competition; in the context of the need to ensure that companies' actions comply with competitive standards, thereby giving the Moroccan competition authority the task of contributing to the regulation of economic governance. The same assertion was made in European law in cases relating to Article 86 of the EC Treaty (now Article 102 TFEU).

An analysis of the decisions taken by the Moroccan Competition Council (in cases relating to provisions aimed at regulating the competitive ecosystem) illustrates once again the extent to which the opinions issued by this constitutional body have played a decisive role in establishing the concept of the relevant market in Moroccan positive law.

Indeed, among the cases pending before the Competition Council in which the need to define the relevant market is affirmed is the case concerning the port transit of imported cereals at the port of Casablanca (Competition Council of the Kingdom of Morocco. 2010, Annual Report, Decision No. 13/10 on the port transit of imported cereals at the port of Casablanca, pp. 39-40), which concerns the controversial case of the interpretation of the restriction on free competition.

In fact, the Kingdom's Competition Council was promptly and effectively seized of the matter in the order of appeal, first by the Association

of Compound Feed Manufacturers on 23 November 2009, and then by the National Federation of Cereal and Legume Traders on 5 January 2010. Within the limits of their respective interests, the two professional organisations jointly sought the opinion of the Competition Council on the consequences of the facts that they considered likely to restrict competition in the market for the transit of imported cereals at the port of Casablanca.

In this instance, and according to the writs of summons, the plaintiffs accuse the National Ports Agency of having taken decisions at the port of Casablanca that run counter to the implementation of healthy competition. De facto, the parties bringing the action consider that by raising the tariffs for the aforementioned services, the National Ports Agency is abusing its power and that this increase is contrary to the very principle of responsible governance of the sector and even of port liberalisation, and will therefore have a direct upward impact on animal feed prices and even on the price of soft wheat.

In doing so, the petitioners believe that by prohibiting the unloading of grain at the quay, the National Ports Agency is forcing these cargoes to be transhipped through the two specialised facilities at the port of Casablanca. The parties also point out that this decision reduces the number of workstations from five (four at the quay and one at the port silos) to two (two at the port silos: one is old and public, and the other is new and private), which may lead to unusual congestion at the port.

The Association of Compound Feed Manufacturers and the National Federation of Cereal and Legume Traders are asking the Competition Council to conduct a fair arbitration procedure in order to settle and put an end to the dispute between them and the National Ports Agency and are seeking its support to ensure that the National Ports Agency maintains healthy and fair competition between all port service providers.

It was in this case that the then dissenting Competition Council clearly set out the importance of defining the relevant market in order to assess the arguments put forward by the applicants. Following this same line of reasoning and, above all, the Competition Council, in its analytical examination of the facts submitted to it, takes stock of the actions required of it and asks the right questions before providing the right answers, which questions deserve to be repeated in full.

The competitive assessment of the relevant market for the transit of imported cereals at the port of Casablanca was based on both a descriptive and comparative analysis focusing on three main areas. The first area of focus was the analysis of the market and its functioning before and after port reform. The second focused on a particularly substantial aspect, namely the analysis and assessment of the facts invoked and the evaluation of their compliance with competition law under the provisions of Law No. 06-99 on

freedom of prices and competition. The third parallel approach developed by the Competition Council in a longitudinal and transversal sense shed light on the issue of material jurisdiction with regard to the port authority, as well as on the applicability of competition law to the National Ports Agency – in accordance with the provisions of Law No. 06-99 – for port operating activities, particularly in light of European case law.

Consequently, based on the findings of the relevance study conducted by the Competition Council on the market for the transit of imported cereals at the port of Casablanca, and taking into account the nature of the case that is the subject of the request by the parties involved, and on the basis of a comparative analysis of the various facts transposed constituting the allegations of the parties to the case in dispute, and considering the material framework for the functioning of the market in question established by the Moroccan regulator in strict accordance with competition law. It follows that the Competition Council has decided that the referrals in question are inadmissible on the grounds of lack of jurisdiction in the matter. Firstly, on the grounds that the National Ports Agency, which is a party to the disputed facts, exercises - de jure and de facto - the prerogatives of public authority and public service. Secondly, because activities relating to the management of the rules and conditions of operation of port facilities are not considered - in the context of this case - to be activities of an economic nature, given that they are directly related to the public authority prerogatives vested in the National Ports Agency and do not fall within the scope of Law No. 06-99 on freedom of prices and competition, in accordance with the provisions of the third paragraph of its first article.

It is clear, therefore, that with this clear statement appearing in abstracto in the explanatory memorandum included in the Competition Council's opinion on the port transit of imported cereals at the port of Casablanca, the Moroccan regulator is likely referring to the relevant market as the framework for analysing the competition dispute, emphasising its fundamental importance in understanding the competitive phenomenon, without, however, neglecting to take into account the legal requirement to classify the nature of the dispute in accordance with the regulations in force.

The same line of reasoning regarding the legal necessity of defining the relevant market has been applied in other cases submitted to the Competition Council for its opinion, particularly those relating to the market for building and public works laboratories (Competition Council of the Kingdom of Morocco. 2010, Opinion No. 14/10 of 29 November 2010 on the market for building and public works laboratories, pp. 38-39) and the request for an opinion made by the Moroccan Plastics Association concerning the safeguard measures filed by the National Electrolysis and Petrochemical Company with the Ministry of Foreign Trade (Competition

Council of the Kingdom of Morocco. 2010, Decision of the Competition Council No. 12/10 of 14 October 2010 on the request for an opinion from the Moroccan Plastics Industry Association on the safeguard measures filed by the National Electrolysis and Petrochemical Company with the Ministry of Foreign Trade, pp. 138-139).

For its own part, European law has more or less followed the same path as its Moroccan counterpart, namely, without mincing words, with regard to the judicial establishment of the definition of the relevant market. Indeed, European judges have shown interest in the idea that, in order to assess the position of an undertaking in the market, the definition of the relevant market remains of vital importance, given that the possibilities for competition within markets can only be assessed on the basis of the characteristics of the products in question, by virtue of which characteristics these products would be capable of satisfying the constant needs of consumers and would therefore be largely non-interchangeable with others (ECJ, Europemballage Corporation and Continental Can Company Inc. v Commission, 21 Feb. 1973, Case 6-72, ECR 1973-00215).

The judicial emergence of the concept of the relevant market began to take shape in a subtle way with the Sirena ruling, in which the European Court of Justice already used the fundamental concept of the relevant market in cases of abuse of a dominant position. In other words, the Court of Justice of the European Community made a radical and unprecedented statement in the Sirena ruling that for a trademark owner to effectively enjoy a dominant position on the market within the meaning of Article 86 EC (now Article 102 TFEU), it must have the power to impede effective competition in a substantial part of the common market (ECJ, Sirena S.R.L. v. Eda S.R.L. and others, 18 February 1971, Case 40-70, ECR 1971-00069). Shortly afterwards, the concept of the relevant market was adopted by the Continental Can case law (ECJ, Europemballage Corporation and Continental Can Company Inc. v Commission), then consistently reaffirmed, notably in the Hoffmann-La Roche judgment, in which the Court of Justice of the European Community clearly stated that in order to assess whether the undertaking holds the alleged dominant position, it is necessary to define the relevant market (ECJ, Hoffmann-La Roche & Co. AG v Commission, 13 February 1979, Case 85/76, ECR 1979-00461).

As a result, it was undoubtedly the application of Article 86 EC (now Article 102 TFEU) that allowed the European Court of Justice to clearly affirm the need to define the relevant market. Similarly, the interpretation of Article 86 EC by the Commission and the Court of Justice of the European Community made it possible to quickly understand, in addition to simple situations of dominant position, corporate mergers. Consequently, the European Commission announced in its Memorandum on the problem of

concentration in the common market (EEC COMMISSION, The problem of concentration in the common market, Competition Series 3, Brussels, 1966) that it would apply the provisions of Article 86 EC to mergers between undertakings which, in certain cases, may constitute an abuse of a dominant position in the common market or in a substantial part of it. This is what it did for the first time in the Continental Can case, with the blessing and support of the judicial authorities.

Thanks to the fact that European law got to grips with the concept of the relevant market pretty quickly, especially since the interpretation of Article 86 EC (now Article 102 TFEU) allowed European case law to pave the way through theories about the economic and legal context of abuses of dominant positions, but also mergers in relation to the appreciable effect on competition.

For its part, the Court of First Instance of the European Communities did not stand idly by in the face of the imminent wave of judicial recognition of the definition of the relevant market. The importance of taking into account the understanding of the relevant market in competition cases is clearly demonstrated in the Societé Italiana Vetro judgment (CFI, Società Italiana Vetro SpA, Fabbrica Pisana SpA and PPG Vernante Pennitalia SpA v Commission of the European Communities, 10 March 1992, joined cases T-68/89, T-77/89 and T-78/89, Rec. 1992 II-01403, § 159), in which the Court of First Instance of the European Communities held that the definition of the relevant market is a necessary prerequisite for any judgment on allegedly anti-competitive behaviour. On the basis of the considerations set out in the Societé Italiana Vetro judgment, the Court of First Instance of the European Communities therefore clearly establishes the general obligation to apply the definition of the relevant market, particularly in the context of the application of Article 86 EC, in order to assess the sensitivity of the infringement of competition, since (according to the Court) it is necessary, well before establishing the existence of an abuse of a dominant position, to establish the existence of the commercial entity's dominance in a given market, something which presupposes, in the logical order and progression of things, that this market has been previously defined.

Conclusion

It is abundantly clear that addressing barriers to market access requires, above all, the adoption of an approach that views any violation of equal opportunity between companies as a restriction. This approach, which is likely to contribute to the preservation of equality in competition and even to the promotion of dynamic competition between market players, remains dependent on the importance attached to the definition of the relevant market itself.

Relevant market definition is not an end in itself, but rather an integral part of the framework for analyzing the contours of the economic sphere. It is an essential step in establishing economic peace within the market. It is, in fact, required by the dynamic nature of the influx of operators trading goods and services on the market. Such a substance, the understanding of which depends above all on the location of the sphere of action of these antagonistic protagonists, before the legitimacy of their behavior can be properly assessed. The definition of the relevant market has no other purpose than to outline the scope of application of competition rules, because otherwise the competition authorities of the systems studied will not be able to apply the rule of law ex aequo et bono.

Delineating the relevant market is a necessary step in combating practices that could undermine the competitive balance, through the provisions of competition law relating to cartels or concerted practices, or even more so, abuse of a dominant position. The delimitation of the relevant market is essential, as it allows the law to examine the existence or absence of the very essence of the infringement of effective competition in the market.

Hence, from a legal standpoint, the relevant market constitutes the framework for all behavior on the part of companies, whether they are competitors or antagonists, hence the importance of defining the relevant market in order to be able to assess the variables of competition. In fact, the need to define the relevant market stems from its generic function, which applies regardless of the legal category of the restriction in question. The relevant market therefore forms the basis of a complex reality that is assessed according to the formal origin of the restriction on competition.

The predominance of the definition of the relevant market has been established gradually. In the legal systems under review, the spectacular shift of the economic concept of the relevant market into the legal sphere is purely a matter of case law. A study of the evolution of the content and internal structure of case law shows more clearly that the first cases in which the competition regulatory authorities of the systems in question referred in broad terms to the relevant market concerned litigation involving anti-competitive practices.*

The recognition of the definition of the relevant market emerged in Moroccan law when referrals were received for the purpose of issuing opinions initiated by the Competition Council at the request of the parties to the disputes, particularly in the context of highlighting the provisions of Law No. 06-99 on freedom of prices and competition; in the context of the need to ensure that companies' actions comply with competitive standards. The same assertion was made in European law in cases relating to Article 86 of the EC Treaty (now Article 102 TFEU). The European Court of Justice has

shown interest in the consequence that, in order to assess the position of the undertaking on the market, the definition of the relevant market remains of vital importance, given that the possibilities for competition within markets can only be assessed on the basis of the characteristics of the products in question which make up the undertaking's market..

As a result, once the compelling need to define the market has been proclaimed by the European courts, economic regulators will draw conclusions from this by issuing guidelines that provide for stricter and more precise enforcement measures in order to clarify and refine their competition policies. In Moroccan law, following the example of its northern neighbor's case law, the decisions of the Competition Council (crystallizing the appropriateness of using the relevant market to settle disputes) have indeed served as a catalyst for the reform of Law No. 06-99 on price freedom and competition (Law No. 06-99 on price freedom and competition promulgated by Dahir No. 1 -00- 225 of 2 Rabii I 1421, corresponding to June 5, 2000, repealed by Law No. 104-12 on freedom of prices and competition promulgated by Dahir No. 1-14-116 of 2 Ramadan 1435, corresponding to June 30, 2014, Official Bulletin No. 6280 of 10 Chaoual 1435 of August 7, 2014), as well as the implementing decree (Decree No. 2-00-854 of 28 Joumada II 1422, adopted for the implementation of Law No. 06-99 on freedom of prices and competition, Official Gazette of October 4, 2001, repealed by Decree No. 2-14-652 of December 1, 2014, corresponding to Safar 1436, adopted for the application of Law No. 104-12 on freedom of prices and competition, Official Bulletin No. 6314 of 11 Safar 1436 corresponding to December 4, 2014).

The relevant market concept has undergone a certain maturation, a certain gestation period, first during the incorporation process prior to its integration and development as a strategic reference point by the competition authorities of the systems under review (for the purposes of implementing the provisions of competition law governing corporate behavior) and then in the process of its adoption into the legal corpus as a measure of effectiveness in the field of economic regulation. A calibrated evolutionary timeline beginning with the near absence of the concept in legislative texts, then affirmed at the level of case law in the context of assessing obstacles likely to hinder the proper functioning of the common organization of the internal market and lead to distortions of competition, to finally be fully enshrined in law.

The rather tortuous, slow, and long path, coupled with a sharp turn on a steep slope, which ultimately led to the establishment of the concept of the relevant market, already amply demonstrates why, today, successfully managing changes in the economic landscape with a view to establishing and ensuring the functioning of the internal market is closely linked to the

definition of the relevant market. Thus, by making the definition of the relevant market necessary for the legal treatment of contentious cases, case law has assigned it a specific purpose, which is to serve as a framework for legal analysis in the preservation of economic public policy.

Conflict of Interest: The author reported no conflict of interest.

Data Availability: All data are included in the content of the paper.

Funding Statement: The author did not obtain any funding for this research.

References:

1. AZEVEDO, J-P. AND WALKER, M. (2002), Dominance : Meaning and Measurement, *European Competition Law Review*, 23(7), 363-367.
2. BAILLERGEAU, D. (2006), *Les stratégies de positionnement : les voies de la légitimité : le cas de l'industrie du surfwear*, Thèse d'Etat, Université de Pau et des Pays de l'Adour (UPPA).
3. BEN DLALA JENHANI, S. (2007), *Le positionnement des marques internationales dans un contexte globalisé : analyse critique des principaux déterminants et des axes décisionnels clés*, Thèse d'Etat, Université Paris 1 Panthéon-Sorbonne.
4. BENAMOUR, A. (2010), La concurrence et les grandes problématiques de l'heure, Collection Thèmes Actuels : Culture de la concurrence – L'an I du Conseil de la Concurrence-, *REMALD*, Rabat, (68).
5. BENNION, F. (2008), *Statutory Interpretation*, Butterworths Law, 5th Edition, London.
6. BIENAYMÉ, J. (1998), *Principes de concurrence*, Economica.
7. BOSCO, D. ET PRIETO, C. (2013), *Droit européen de la concurrence : ententes et abus de position dominante*, Bruylant, Bruxelles.
8. BOY, L. (2005), L'abus de pouvoir de marché : contrôle de la domination ou protection de la concurrence, *Revue Internationale de Droit Économique*, T.9, Éd. De Boeck Supérieur, 2005/1, 27-50.
9. BROCK, W. (December, 1983), Contestable Markets and the Theory of Industry Structure : A Review Article, *Journal of Political Economy*, 91(6), 1055–1066.
10. BROZEN, Y. (1975), The Competitive Economy, New Jersey General Learning Press.
11. BROZEN, Y. (November/December 1969), Competition, Efficiency and Antitrust, *Journal of World Trade*, Vol. 3, (6), 659-670.

12. CHANDLER, A. (1972), *Stratégies et structures de l'entreprise*, Éditions d'Organisation.
13. CHEVALIER, M. ET DUBOIS, P-L. (2009), *Les 100 mots du marketing*, Presses Universitaires de France, Coll. « Que sais-je ? ».
14. COMANOR, W. AND WHITE, L. (1992), Market Power or Efficiency : A Review of Antitrust Standards, *Review of Industrial Organization*, 7(2), 105-116.
15. COMBE, E. (2020), *Économie et politique de la concurrence*, 2ème édition, Dalloz, Paris.
16. DE GRAMONT, D. (1996), Propos impertinents sur le marché pertinent dans le droit de l'Union, *Dalloz Affaires*, (5).
17. DEFFAINS, B. ET PELLEFIGUE, J. (2018), Vraiment pertinent ? Une analyse économique des marchés pertinents, *Revue Trimestrielle de Droit Commercial*, (3), 555-573.
18. DESAUNETTES-BARBERO, L. ET THOMAS, E. (2019), *Droit matériel européen des abus de position dominante : textes et commentaires*, Bruylant, Bruxelles.
19. DIAWARA, K. (2008), *Le contrôle de la puissance de marché par les droits canadien et européen de la concurrence : Contribution à une approche juridique du marché*, Thèse de Doctorat, Université Laval, Québec.
20. DRIEDGER, A. (1983), *Construction of Statutes*, Butterworth & Co., 2d Edition, Canada.
21. DUBOIS, P-L., JOLIBERT, A., GAVARD-PERRET, M-L. ET FOURNIER, CH. (2013), *Le Marketing. Fondements et pratique*, 5ème éd., Economica, Paris.
22. DUSSANGE, P. (1986), *L'industrie de l'arme Economique*, Dunod, Paris.
23. EL AZHARY M. (2022), L'instrumentalisation de la définition du marché pertinent aux fins de la mise en œuvre des droits marocain et européen de la concurrence : Etat des lieux et réflexion prospective. European Scientific Journal (ESJ), 18 (35), 169.
24. EL AZHARY, M. (2021), *L'égalité de traitement entre entreprises en droit marocain et européen de la concurrence*, Thèse de Doctorat en Sciences Juridiques et Politiques, Faculté des Sciences Juridiques, Economiques et Sociales, Université Sidi Mohamed Ben Abdellah de Fès.
25. FEYDEL, R. (2015), *La fluidité du marché : essai en droit des marchés*, Librairie Eyrolles, Paris.
26. GENICOT, N. (2020), L'Index de la sécurité juridique, ou comment promouvoir le droit continental par le biais d'un indicateur, *Droit et société*, Vol. 104, (1), 211-234.

27. GREEN, D.H. AND RYANS, A-B. (March 1990), Entry Strategies and Market Performance Causal Modeling of a Business Simulation, *Journal of Product Innovation Management*, Vol. 7, (1), 45-58.
28. HOULE, D. AND SHAPIRO, O. (2014), *Brand Shift : The Future of Brands and Marketing*, David Houle & Associates.
29. KAPLOW, L. (December 2010), Why (ever) define Markets?, *Harvard Law Review*, Vol. 124, (2), 437-517.
30. KORAH, V. (2007), *An Introductory Guide to EC Competition Law and Pratice*, Hart Publishing, 9th Edition.
31. LAMBIN, J-J. ET DE MOERLOOSE, CH. (2016), *Marketing stratégique et opérationnel : La démarche marketing dans l'économie numérique, Management Sup*, Dunod.
32. LE ROY, F. (2007), La concurrence, entre affrontement et connivence, *Revue Française de Gestion*, 1(158), 147-152.
33. LESQUINS, J- L. (1994), Innovation et délimitation des marchés pertinents, *Revue d'économie industrielle*, Vol.4, 70, 7-15.
34. LIANOS, I. (2007), *La transformation du droit de la concurrence par le recours à l'analyse économique*, Bruylant.
35. LIEBELER, W. (1978), Market Power and Competitive Superiority in Concentrated Industries, *The University of California, Los Angeles School of Law Review* (UCLA), 25(1231), 1260-1266.
36. LOPATKA, J. (June 2011), Market Definition?, *Review of Industrial Organization*, Vol. 39, 69-93.
37. MARCH, J. (1999), *The Pursuit of Organizational Intelligence*, Oxford, Blackwell.
38. MINITER, R. (2002), *The Myth of Market Share. Why Market Share Is the Fool's Gold of Business*, Crown Business Briefings.
39. PERUZZETTO, S. ET JAZOTTES, G. (2008), *Droit de la concurrence, contraintes et opportunités*, in *Qu'en est-il du droit de la recherche?*, (pp. 373-387), Jacques Larrieu (dir.), Presses de l'Université Toulouse Capitole, Collection « Travaux de l'IFR ».
40. PORTER, M. (1982), *Choix Stratégique et Concurrence*, Economie, Paris.
41. POSNER, R., (April, 2002), Pragmatism versus Purposivism in First Amendment Analysis, *Stanford Law Review*, 54(4), 737-752.
42. PRIETO, C. (2018), Ententes : concours de volontés, *JurisClasseur Europe Traité*, fasc. 1405.
43. RIES, A. AND TROUT, J. (1981), *Positioning : The battle for your mind*, McGraw-Hill Inc., New York.
44. SIBONY, A-L. (2008), *Le juge et le raisonnement économique en droit de la concurrence*, LGDJ, Coll. Droit & Économie, Paris.

45. TROUT, J. (June 1969), Positioning is a game people play in today's me-too market place, *Industrial Marketing*, Vol. 54, (6), 51–55.
46. TROUT, J. AND RIVKIN, S. (1996), *The New Positioning : The latest on the worlds #1 business strategy*, McGraw Hill.
47. VANDENCASTEELE, A. (1999), *La part de marché est-elle la clé de voûte du droit européen de la concurrence ?*, in *Mélanges M. Waelbroeck*, Bruxelles, Bruylant, Vol. 2.
48. WHISH, R. AND BAILEY, D. (2021), *Competition Law*, Oxford University Press, 31th Edition.