

Company's Behavior, Time Factor and Teleological Logic in Relevant Market Definition under Morocco-EU Law

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[Doi:10.19044/esj.2026.v22n2p1](https://doi.org/10.19044/esj.2026.v22n2p1)

Submitted: 22 October 2025

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Accepted: 26 January 2026

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Published: 31 January 2026

OPEN ACCESS

Cite As:

El Azhary, M. (2026). *Company's Behavior, Time Factor and Teleological Logic in Relevant Market Definition under Morocco-EU Law*. European Scientific Journal, ESJ, 22 (2), 1.

<https://doi.org/10.19044/esj.2026.v22n2p1>

Abstract

This study explores the legal and economic foundations of the concept of the relevant market within the Moroccan and European Union competition law systems. It proceeds from the idea that both Moroccan Law No. 104-12 and the EU framework under Articles 101 and 102 TFEU require a precise delineation of the competitive space in which undertakings operate in order to ensure the effective enforcement of competition rules. The objective is to analyse how competition authorities in Morocco and within the EU define the relevant market to identify competitive constraints, assess corporate behaviour, and determine whether practices such as cartels or abuses of dominant position are capable of preventing, restricting, or distorting free competition.

Methodologically, the research adopts a comparative and analytical approach, combining legal interpretation, industrial economics principles and organisational analysis. It draws on the Structure-Behaviour-Performance paradigm, integrates both macro- and microeconomic considerations, and incorporates temporal and finalistic dimensions that influence the deployment of undertakings within their respective competitive environments. This multidisciplinary method provides a clearer understanding of how market

definition functions as both a normative requirement and a factual diagnostic tool.

The findings reveal three decisive factors that shape a pragmatic understanding of the relevant market in both systems: the structuring role of corporate behaviour; the importance of temporal factors, as cartels and dominance assessments rely on past and present market conditions; and the relevance of purpose, since the strategic intent of undertakings is essential for evaluating anti-competitive effects.

Keywords: Relevant Market; Competition Law (Morocco–EU); Market Power/Dominance; Temporal Factors–Teleological Logic Analysis; Structure–Behaviour–Performance Paradigm

Introduction

The legal analysis of competition requires a methodological approach capable of rigorously articulating economic data with normative requirements, so as to produce reasoning that is intelligible, controllable, and justifiable. The main difficulty is not merely to identify conduct likely to affect competition, but to reconstruct the analytical framework within which that conduct arises, operates, and produces effects. This reconstruction requires disciplined selection of explanatory variables, assessment of competitive constraints, and structured treatment of evidence linking economic observation to legal qualification. Competition analysis, therefore, cannot be reduced to a finding of irregularity or a descriptive economic exercise; it presupposes an analytical construction that renders complex, evolving, and often ambiguous phenomena legally intelligible.

In this perspective, a comparative examination of Moroccan and European approaches has distinct methodological value. It allows assessment of how two legal systems, pursuing functionally similar objectives, structure reasoning, stabilise analytical standards, and integrate economic tools into legal argumentation. The comparison highlights common functional foundations, while also revealing differences in technique, intensity of scrutiny, handling of indicia, and modes of justification. It further enables evaluation of the role effectively assigned to economic analysis within legal reasoning and the effects of that integration on coherence of qualification, predictability of outcomes, and rationality of competitive control.

The present development is situated within this framework and organised around a central inquiry into the conceptual and methodological conditions of sound competition analysis. It clarifies the choices governing the identification of relevant parameters, the structuring of factual examination, and the orientation of legal qualification, while stressing the internal coherence required when moving from economic observation to normative

assessment. Particular attention is given to the epistemic posture involved in transforming economic information into legally operative premises and, thereafter, into reasoned conclusions. The introductory framework thus sets the analytical context, delineates methodological stakes, and justifies the approach, preparing the reading of the sections devoted to epistemic paradigms, the study's interest, and the methodology applied.

1. The context and epistemic paradigms of the study

Cartels concerning prices or market allocation, as well as abuses of dominance, have been observed in the modern history of the Moroccan market, within EU Member States, and worldwide (Combe, E. 2005). These harmful practices pursue two primary aims: enabling a single entity to corner a market or allowing multiple entities to collude to fix prices or divide markets. In both cases, they generate insecurity that undermines freedom to act, the very freedom that enables operators to compete fairly and effectively, and may weaken national economic development (Brozen, Y. 1969).

Economic decline is widely acknowledged to foster legal and economic uncertainty and to increase risks of violence and conflict, particularly in a context of integration into continental and global environments. Where markets are insufficiently harmonised, effective competition cannot properly operate; as a consequence, the free movement of goods, services, and capital is hindered. Such insecurity affects large segments of the economy: markets lacking effective competition tend to stagnate or decline. The elimination or hindrance of competition thus becomes a source of insecurity and may generate inefficiencies, including lower investment and penetration rates, and lags in innovation and productivity compared with competitive markets (Genicot, N. 2020).

For the competitive economy to fulfil its role, attention must be paid to a stable competitive environment that facilitates access and encourages investment, without fear of fictitious, unfair, or biased competition. This is demanding, especially when restoring a healthy environment depends on revitalising competition law (Whish, R. and Bailey, D. 2021).

Competition law seeks to establish and maintain free competition by ensuring fair access conditions and safeguarding freedom of trade. It aims to preserve business structures and impose healthy behaviour necessary to a liberal economy; its ultimate objective is public policy, protecting business interests insofar as this strengthens collective cohesion centred on free competition (Peruzzetto, S. and Jazottes, G. 2008). Historically, both Moroccan and European systems emphasise the internal market and the four freedoms, free movement of persons, services, goods, and capital, reflecting an ambition to entrench laissez-faire across the territory of the sovereign State

(Morocco) and EU Member States, and more broadly in external economic relations.

In Morocco, competition rules are primarily grounded in Law No. 104-12 on freedom of prices and competition. In the EU, they are grounded in the Treaty on the Functioning of the European Union (TFEU), rooted in the Treaty of Rome (1957) and renamed after the Lisbon Treaty (2009), whose rationale rests on integration and harmonisation of trade rules between Member States.

Today, both regimes are marked by pragmatism and increasing empiricism. They appear favourable to development insofar as they tolerate private initiative within freedom of contract, yet they allow restriction where initiative harms the economy or a market, treating such restriction as public order. This reflects a refusal of unbridled or crony capitalism, observable in Morocco and most EU Member States.

The teleological purpose of competition law is to secure conditions for competitiveness by ensuring effective competition and preventing behaviour with the object or effect of preventing, restricting, or distorting competition. Authorities must assess both present and future effects of suspected conduct (Korah, V. 2007).

Within this trajectory, defining the relevant market is a central analytical tool. It enables authorities to identify obstacles faced by operators, assess how firms deploy, understand competitive functioning, identify key players, draw boundaries, and determine the extent of effective competition (Lianos, I. 2007). Barriers are assessed to identify constraints faced by a firm, determine market power, and evaluate whether practices may create or consolidate dominance. Authorities pursue these aims notably through relevant market definition, based on analysis of competitive conditions and firm behaviour in the market concerned (Lopatka, J. 2011).

More fundamentally, relevant market definition is grounded in legal logic: it operationalises competition-law provisions by situating conduct within the competitive arena, especially where behaviour is suspected to prevent, restrict, or distort competition. This reflects the normative and regulatory dimension of competition law (De Gramont, D. 1996). Through the prism of Moroccan and European authority reasoning, analysis retains only relevant facts supported by salient evidence, with the ultimate aim of restoring effective competition (Kaplow, L. 2010).

This explains why relevant market definition is considered essential for legal certainty in trade and as a first condition for combating anti-competitive practices: identifying and assessing acts in light of the applicable regulatory framework (Deffains, B. and Pellefigue, J. 2018). Its purpose is to establish the scope of competition rules through syllogistic reasoning combining legal norms and factual context, reasoning that binds both the Moroccan Competition Council and the Court of Justice of the European

Union. Without it, the rule of law could not be applied; pragmatic reasoning is inherent to legal science and transcends geographical boundaries.

2. *Study objectives*

In competition law, relevant market definition is the methodological operator that provides legal analysis with an objectifiable framework capable of transforming heterogeneous economic data into legally actionable criteria for qualification and control. It cannot be reduced to a neutral description or a merely technical preliminary step, since it conditions the normative intelligibility of firm behaviour, identification of relevant constraints, and assessment of market power, elements that ultimately determine the legal characterisation of restrictive practices. From this standpoint, the study pursues three complementary objectives.

Objective -1- Clarify the legal function of the relevant market as an instrument of qualification and control

The study first aims to establish, on solid theoretical grounds, that relevant market definition is neither a purely technical prerequisite nor a neutral descriptive operation, but a decisive instrument for rationalising competition-law reasoning. It will show how market delimitation renders firm behaviour legally intelligible by reconstructing the competitive framework within which conduct emerges, unfolds, and produces effects. The objective is to clarify the market's normative scope by explaining how it conditions identification of constraints, assessment of market power, and, ultimately, legal qualification of anti-competitive practices.

Objective -2- Produce a structured comparison between Moroccan and European approaches (criteria, method, evidentiary use)

The second objective is a comparative analysis of Moroccan and European regimes to show how two systems with aligned purposes organise reasoning, select variables, and hierarchise the economic indicators they mobilise. The goal is not a descriptive inventory of similarities and differences, but identification of the underlying logics guiding authorities and courts when articulating facts, economic analysis, and legal norms, including conditions of comparability enabling a methodologically controlled reading of market definition in both systems.

Objective -3- Construct an operational analytical framework linking market structure, temporality, and the finalistic logic of conduct in cartel and dominance assessment

Finally, the study develops an operational framework to guide the application of competition law by articulating market structure and effective

strategies with two underused dimensions: time and the finalistic logic of conduct. It argues that assessment requires, on the one hand, an objectifiable reading of past and present configurations (market shares, entry/exit barriers, substitutability) and, on the other, an interpretation of the economic meaning and functional role of contested conduct, considering context, strategic coherence, and any potential anti-competitive purpose. The aim is to improve intelligibility and controllability of decisions by organising evidence around a methodical reasoning that distinguishes, rather than conflates, market configuration, presumed intent, and observed effects, while articulating them coherently.

3. *The interest and issues involved in the study*

Competition analysis often begins with defining the relevant market, based on identifying competitors and examining firm behaviour in light of the position of suspected undertakings. This approach was strengthened by the Structure-Behaviour-Performance paradigm in industrial economics, which assumes that structure guides behaviour and behaviour shapes performance. It influenced US, EU, and Moroccan competition law, leading the systems under review to emphasise structure and to suggest a link between market position and resistant behaviour.

This organisational emphasis implies a methodological consequence: relevant market definition cannot be uniform. It must account for the nature and origin of the infringement and the legal category at issue, since cartels raise different issues from abuses of dominance. Market definition should therefore be oriented toward the competitive environment, delineate its nature, and integrate the facets of firm behaviour that generate restrictions of competition, whether cartel or dominance abuse.

The underlying question is thus: what epistemic posture should be adopted when defining the relevant market for the purposes of applying Moroccan and European competition law?

4. *Methodology and rationale for the study*

Defining the relevant market (economic and legal) cannot rely on a single approach, given the coexistence of multiple approaches and idiomatic concepts, which sustains definitional plurality. Business development also produces diverse configurations that are not fully comparable, with products and services varying accordingly.

To identify market characteristics, one must analyse its constitutive elements, present notions specific to certain market forms, and then integrate them into an overall definition of the competitive business environment. Assessing the relevant market as a safeguard of effective competition requires comprehensive methods: while not strictly belonging to the concept, their

deployment and reasoning must be considered to identify facets shaping market contours in practice and to subject them to competition-law obligations, both legal and economic.

The study conducts a comparative analysis of the legal and factual understanding of the relevant market in Moroccan and European regimes applicable to cartels and abuses of dominance. It focuses on the competitive environment and thus on the behavioural facets that generate restrictions of competition in both categories.

More broadly, the analysis emphasises the organisational phenomenon in its core dimensions, market structure, market position, and firm behaviour. Consequently, market definition cannot remain identical across cases: it must incorporate macro- and microeconomic factors and examine the nature, origin, purpose, and duration of the conduct at issue, differentiating between cartel and dominance cases, and doing so within Moroccan and European legal frameworks.

Several reasons justify selecting Moroccan and European systems. Both have adopted relatively similar legal arsenals against distortions of competition. The European framework, approached through French, is linked to the training of francophone lawyers. The Moroccan framework is examined to explore a comparatively young regime that remains under-analysed in French and has received limited analysis in national languages, particularly Arabic.

Beyond benchmarks, the study seeks a comprehensive examination of factual and normative approaches, treating the relevant market broadly and contributing to the knowledge base. At the same time, comparison requires precautions and checks to ensure conceptual comparability and avoid contradictions and later methodological errors.

The anti-competitive practices law is closely tied to the development of the liberal economy, requiring observation of its emergence and establishment in European and Moroccan societies, and of any specific forms within each legal system. In the EU, this trajectory is anchored in the TFEU, aiming at the proper functioning of the internal market and a borderless area with free movement of goods, persons, services, and capital; EU authorities intervene under Articles 101 and 102 TFEU against conduct affecting inter-State trade or with the object or effect of restricting competition. In Morocco, the regime responds to renewed practices restricting competition, including agreements and concerted practices, cartels or coalitions, and abuse of dominance; Law 06-99 was replaced by Law 104-12, which must be analysed alongside its implementing decree and emerging facts.

A common basis for comparison follows: both systems are pragmatic and increasingly empirical, tolerating private initiative within freedom of contract, but treating restriction as public order where initiative undermines

the economy or a market, reflecting refusal of unbridled or crony capitalism, observable in Morocco and most EU Member States.

5. *Plan for implementing the study*

The legal framework of the competitive environment rests on two key elements, giving it a clear normative dimension while relating to function and context. Accordingly, the relevant market will be defined primarily to detect reprehensible practices by strengthening the correlation between the relevant market and competitor behaviour (**A**). The approach varies with the nature and origin of conduct undermining competition, cartel or abuse of dominance, hence the need to apply the correlative logic of relevant market and restrictive effect (**B**).

6. *Findings of the study*

The study identifies three conclusive factors that Moroccan and European authorities should consider for a pragmatic understanding of the relevant market: an approach oriented toward demarcating the competitive environment through player behaviour (**a**) ; an approach grounded in the temporal context of prohibited behaviour for the undertaking within the arena (**b**) ; and an approach focused on the intrinsic and extrinsic purpose of behaviour, reflecting the strategic dimension of the suspected undertaking's activity (**c**).

a - Company behaviour's prevalence in defining the relevant market

A perimeter-oriented market approach can serve legal certainty in trade only if it is oriented toward firm behaviour within the competitive arena. Legal certainty depends on the protection of rights and interests: where an undertaking is sufficiently protected, it can focus on its activities without fear of rights infringements or of infringing competitors' rights.

The competitive environment is the space of rivalry: it concerns how a firm is constrained by competitors and adapts its practices to remain competitive, through pricing strategies, distribution channels, promotion, and other parameters. The business environment is therefore exposed to uncertainties generated by corporate behaviour.

Behaviour influences market structure, especially in competitive contexts. Decisions on quantities, pricing conditions, and product characteristics shape market position and market power; they may strengthen dominance through legitimate or illegitimate value creation. Even with autonomous behaviour, where collusion is plausible, authorities must determine whether behaviours lead to market partitioning. Hence, market definition must delineate the competitive environment and integrate

behavioural facets, generating restrictions of competition in both cartel and dominance cases.

The correlation between market definition and firm behaviour is therefore significant and should be explored by Moroccan and European authorities within their mandate. Effective legal apprehension of competition depends on understanding the environment, assessing performance, and verifying compliance; investigations must examine how firms function domestically, including value chains, networks, and expansion strategies (Dussange, P. 1986). To limit complexity and uncertainty, authorities must conduct a strategic diagnosis covering structure and performance and providing consolidated knowledge of competitors (Bienaymé, J. 1998).

Performance depends on economic actors' behaviour: pricing, short-term or implicit cooperation, production strategies, communication, investment policy, and resources mobilised to defend interests (Porter, M. 1982). Behaviour in turn depends on structure: number and weight of players, substitutability, and entry/exit barriers (Chandler, A. 1972). Implementing market definition is thus imperative: it strengthens the legal arsenal governing the competitive sphere and consolidates economic public order. It is not an end in itself; by identifying sources of supply exerting sufficient pressure, it helps identify market characteristics and verify actual or potential restrictions (El Azhary, M. 2022). Since firms seek competitive advantage and market share through competitive means, authorities must diagnose behaviour by reference to the business environment to qualify the intensity of conduct likely to harm competition.

b - Temporal factors' scale in defining the relevant market

Relevant market definition is now treated as fluid and repositioned as an efficient tool for competition policy. Its analytical framework must take account of the nature of the competition problem and its context. A time-based approach aligns the undertaking's activity with the space in which it takes shape, by conceptualising activity through time as part of a broader paradigm focused on material deployment and behaviour, aiming to apprehend the environment accurately.

Time is a conclusive vector for understanding practices distorting competition and for determining when market demarcation must occur. In cartel and dominance cases, market definition is largely retrospective: the future has limited relevance, and analysis focuses primarily on past and present data, using performance indicators such as positioning and market share (Lesquins, J.-L. 1994).

Analysis involves an objective dimension (chronological time and corporate development) and a subjective one (assessment of behaviour and repercussions on dynamics and competition), captured through strategies and

market share; these dimensions converge in practice, as companies integrate them into activity (Sibony, A.-L. 2008). Given the nature of disputes and legal categories, prohibition texts should envisage the time variable within the relevant market definition for the undertakings concerned.

c - Finalistic logic's role in defining the relevant market

In organisational analysis, conventional meaning is not decisive; what matters is meaning emerging from interaction with the ecosystem, taking economic circumstances into account. Authorities may need indicators reflecting the strategic dimension of activities initiated by the firm suspected of distorting competition. Purpose, and even recalcitrant intent, is derived from the substance through exploration of context, intrinsic logic, strategies, aims, and objectives (Posner, R. 2002).

Authorities thus develop purpose-based reasoning concerning intrinsic and extrinsic purpose, inferring prohibited behaviour from market position. This contextual, case-by-case approach is anchored in the pioneering role of relevant market definition, supporting provisions on cartels and abuses of dominance. Although both undermine competition, they are not identical; market definition must reflect their contextual dissimilarity (Bosco, D. and Prieto, C. 2013).

In abuse cases, market definition supports demonstration of dominance: one defines the market where dominance is presumed, then assesses abuse (Desaunettes-Barbero, L. and Thomas, E. 2019). In cartel cases, it serves to determine whether the cartel is likely to produce a significant competitive effect (El Azhary, M. 2021). Identifying the purpose behind recalcitrant behaviour requires a value judgment handled case by case, dependent on facts and legal category, aiming to reduce uncertainty about competitive harm and to clarify the interaction between the undertaking and its ecosystem through the market-definition framework.

Discussion :

A- The correlation between the relevant market and the company behaviour

A holistic approach to the market can serve legal certainty in trade only if it is explicitly oriented toward examining economic actors' behaviour within the competitive arena. Relevant market analysis is therefore not a merely descriptive exercise: its function is to make the company conduct legally readable within a defined competitive environment. Legal certainty in trade depends on effective protection of firms' rights and interests: when protection is sufficient, a firm can develop without fear of being infringed or infringing others. This presupposes that the authority reconstructs the environment in which the conduct emerges, operates, and produces effects, by reading market

performance through two complementary sets of variables: structural parameters (number and weight of competitors, substitutability, barriers to entry or exit) and strategic variables (pricing, coordination, production choices, communication, investment, defensive allocation of resources).

Accordingly, the relevant market definition should delineate the nature of the competitive environment while integrating the behavioural facets that generate restrictions of competition, whether by cartel or abuse of dominance. Once constraints are identified, the decisive issue becomes the operational appraisal of market power and appreciable effects: under EU law, conduct must be capable of affecting trade between Member States; under Moroccan law, it must be capable of affecting the internal market or distorting free competition. At this stage, thresholds and probability requirements frame the evidentiary burden and prevent enforcement from sliding into formalism or arbitrariness, including through filters such as *de minimis*.

Hence, the correlation between defining the relevant market and assessing firm behaviour within that market is fundamental; it should be clarified in its content (1) and then in its implications (2).

1- The content of the correlation between the relevant market and the company behaviour

The competitive environment refers to the system within which firms compete through marketing channels, strategic orientations, and pricing methods. Understanding it is essential to assess market performance because it reveals the concrete conditions of competitive interaction. Particular attention must be paid to how firms operate within the domestic market and to the deployment of value chains, including networks and expansion strategies, to capture entry into new markets and transformations of existing ones (Dussange, P. 1986).

The objective is to limit complexity and uncertainty by carrying out a strategic diagnosis of market structure and market performance, clarifying constraints and opportunities, and producing consolidated knowledge of competitors, through variables both external and internal to the organisation (Bienaymé, J. 1998). In practice, performance depends on firms' behaviour: pricing mechanisms, short-term coordination or implicit cooperation, production strategies, local communication, investment policy, and resources devoted to protecting market interests (Porter, M. 1982). Behaviour is itself conditioned by structure: number and weight of market participants, substitutability (which shapes competitive intensity), and barriers to entry or exit (Chandler, A. 1972).

Within the competitive environment, barriers may block entry or exit. Some are technical or regulatory (exogenous); others stem from incumbents' strategic conduct, including maintaining prices above average costs over time

or restricting supply (March, J. 1999). Barriers to entry can make entry effectively impossible, and thus occupy a central place in competition policy because they affect market contestability and may reinforce economic dependence by limiting credible alternatives (Feydel, R. 2015). Barriers to exit also matter: they compel a firm to remain in an unprofitable market due to onerous contractual termination, operational interdependence, or expectations of cost recovery; they may also function as barriers to entry by locking in capacities, assets, or strategic positions (Brock, W. 1983).

Market definition is therefore not an end in itself but a component of the analytical framework delineating the economic sphere. Legally, it characterises the market and verifies actual or potential restrictions by identifying sources of supply exerting sufficient competitive pressure, the operational indicator that makes assessment intelligible (El Azhary, M. 2025). A firm's market position shapes strategy: dominance may enable the creation of entry barriers through strategies that profitably raise prices over time while weakening rivals' disciplining force, harming the market and consumers. Market definition aims to verify such behaviour; absent the alleged behaviour, intervention is unnecessary (Liebeler, W. 1978).

This correlation applies in both cartel and dominance cases: identifying the competitive arena remains a prerequisite for evaluating the nature and intensity of the alleged restriction (El Azhary, M. 2024). It is also rooted in texts and enforcement practice, though expressed differently across jurisdictions.

In EU law, the Court recognised the correlation before the Commission's 1997 Notice. In Michelin, the Court reaffirmed the need to define the relevant market to assess whether the undertaking can impede effective competition and behave to an appreciable extent independently of competitors, customers, and consumers (ECJ, NV Nederlandse Banden Industrie Michelin v Commission, 9 Nov. 1983, Case 322-81, Rec. 1983-03461, pt. 37). The Commission later systematised this approach (EC Commission, Notice on relevant market definition, OJ C 372, 3 Dec. 1997), consolidating what case law had made conceptually unavoidable. The 1997 Notice states that market definition identifies the area of competition and the framework for policy, its main purpose being to identify systematically the constraints that competition imposes on the firms concerned (OJ C 372, 3 Dec. 1997, pt. 2). This line is reiterated in subsequent case law (e.g., Tetra Pak, Kish Glass, Airtours, Schneider Electric), confirming market definition is a functional step conditioning the legal assessment. Market definition thus serves to understand competitive pressures, which vary with market position: a strong position may allow a firm to escape pressure; its absence implies competition is not distorted (Diawara, K. 2008).

Moroccan law reflects similar reasoning. Article 9 of Law No. 104-12 provides that Articles 6 and 7 do not apply to agreements of minor importance that do not significantly restrict competition, notably between SMEs, thus presupposing an evaluative framework in which market impact is assessed before repression. Moroccan law similarly affirms the correlation between market definition and behaviour (toward competitors and especially consumers), framing intervention via identifiable thresholds and criteria (El Azhary, M. 2021). This is reinforced by Decree No. 2-23-273 (22 May 2023), amending Decree No. 2-14-652 implementing Law No. 104-12, and by Competition Council practice. Article 9 of Decree No. 2-23-273 sets an objective of defining the market when analysing the activity of the companies or groups concerned to determine whether these practices affect a market, confirming market definition is embedded structurally within the analysis. The decree also provides a definition of the relevant market and conditions for affected markets, notably market share thresholds and the disappearance of a potential competitor in merger contexts (Decree No. 2-23-273, Appendix -2-, Notification file for a merger, pt. 3, p. 1242). The Competition Council likewise stresses this correlation, for example Decision No. 12/10 (14 Oct. 2010) on the Moroccan Plastics Industry Association request, linking safeguard measures, market structure and general interest (Competition Council, 2010 Annual Report, pp. 38–39).

Under Moroccan law, market definition thus links the affected market to operator behaviour to safeguard legal certainty in domestic trade and anchor intervention in a demonstrable competitive context. This requires examining explicit and implicit strategies, objectives, strengths and weaknesses, and responses to pressure to distinguish vigorous competition from distortion. It enables assessment of competitive degree, anticipation of resistance strategies, and detection of anti-competitive behaviour, guiding authorities toward the ultimate objective of maintaining free competition.

Overall, the market-behaviour correlation rests on concrete parameters, structure, substitutability, entry and exit barriers, read together with strategic variables, since behaviour both responds to and reshapes constraints. It is grounded in legal reasoning and institutional practice in both systems, operating as a cross-system methodological anchor. Market definition connects competitive environment to operator behaviour and structures assessment around measurable competitive pressure, not impressionistic claims.

Yet identifying the correlation's content is only a first step: its decisive value lies in how it shapes the legitimacy, intensity, and limits of intervention. Once the market is defined, analysis shifts from identifying constraints to evaluating whether the behaviour produces an appreciable restriction of

competition, where thresholds (de minimis), probability, and significance become central.

2- The extent of the correlation between relevant market and company behaviour

Competition law carries an economic dimension (objectives, market functioning, analytical tools) and a symbolic dimension linked to preserving peace within the human community, often expressed through the internal market ideal (Benamour, A. 2010). It targets restrictive practices by prohibiting anti-competitive agreements and abuses of dominance, seeking to restore equality and freedom of market access (ex ante equal treatment). Intervention is required when market forces, reinforced by corporate behaviour, would otherwise generate economic power that benefits some while constraining others. Competition law is thus both protective and restrictive: it preserves equilibrium while disciplining strategic excesses.

Because this research focuses on the market-behaviour correlation, analysis must examine how it operates in practice to identify acts capable of distorting competition. Competition assessment focuses on the firm's economic power and how activity is strategically deployed; this is operationalised through relevant market definition, which provides the reference framework for evaluating constraints and strategies (Vandencasteele, A. 1999). Market definition, read with behaviour, identifies the economic power held by the entity and is decisive in analysing prohibited agreements and abuses of dominance (Le Roy, F. 2007).

For agreements and concerted practices, authorities assess penetration capacity and the power of colluding firms. The relevant market is defined using factual elements that evaluate impact on product and geographic markets and may include financial strength, within a broader factual assessment. Behaviour matters because coordination's content and effects depend on strategic intent and modalities, including distribution network management, competitor position, brand portfolio structure, and countervailing buyer and supplier power (Boy, L. 2005).

For abuse of dominance, authorities first determine dominance within a defined market; dominance and conduct must be read together. Market shares are used ex ante, while behavioural assessment considers investment strategies and technological advancement relative to competitors, as indicators of ability to withstand pressure and shape market conditions (Azevedo, J.-P. and Walker, M. 2002). Defining the market in light of behaviour also helps identify constraint sources (rivals, customers, suppliers, innovation dynamics, structural limits on strategic freedom).

Under EU law, the practice must be capable of affecting trade between Member States; under Moroccan law, it must be capable of affecting the

internal market or distorting free competition. On objective legal and factual elements, it must present sufficient probability and be capable of influencing trade flows directly or indirectly, actually or potentially. The restriction must also be significant, assessed by reference to the defined market and the firm's behaviour, since gravity cannot be detached from strategic implementation; it must not be negligible (Peruzzetto, S. and Jazottes, G. 2008).

This is where *de minimis* thresholds operate. Typically, significance is evaluated mainly via market shares (without excluding behavioural indicators of qualitative severity). If firms are competitors, an agreement is generally not significant when the combined market share does not exceed 10 % ; for non-competitors, the threshold is 15 %, except for hardcore restrictions, where object-based restriction is presumed (European Commission, *De minimis* Notice, OJ C368/13, 22 Dec. 2001). Moroccan law similarly enshrines a minor-importance threshold: Article 9 of Law No. 104-12 (promulgated by Dahir No. 1-14-116 of 30 June 2014, as amended by Law No. 40-21) provides that minor agreements not significantly restricting competition, especially between SMEs, are not subject to Articles 6 and 7.

Sanctions thus rest on a combined condition: market position plus anti-competitive behaviour. Without this combination, the restriction is not significant. Appreciability hinges on dominance, or meaningful power, corroborated by behaviour aimed at partitioning markets, restricting access, or neutralising pressure via coordination. In both systems, assessing the competitive environment is therefore a prerequisite for distinguishing lawful strategy from conduct that meaningfully distorts competition.

Ultimately, the correlation shows why market definition is essential to enforcement (Diawara, K. 2008): it frames behaviour within concrete market realities and prevents arbitrary intervention in a complex environment. It transforms abstract competition appraisal into an operational legal assessment by linking power indicators (shares, barriers, financial strength, technological lead) with strategic deployment (distribution, investment, portfolio strategies, countervailing power). It also stabilises the normative balance: it legitimises intervention where behaviour and position plausibly produce appreciable restrictions, and limits intervention through thresholds, probability requirements, and contextual verification. In that sense, it operates as both a compass and a safeguard.

Concluding Remarks – Chapter (A)

An interdisciplinary market approach can support legal certainty only if oriented toward firms' behaviour in the competitive arena. Relevant market definition is neither self-standing nor purely descriptive: it clarifies the competitive environment and makes behaviour legally and economically intelligible. By combining structure, substitutability, and entry and exit

barriers with strategic variables shaping pricing, coordination, investment, and competitive responses, it reduces uncertainty and frames market performance assessment. It enables evaluation of whether a firm can impede effective competition or behave appreciably independently of competitors, customers, and consumers.

This explains the early consolidation of the correlation in EU law (notably Michelin) and its formalisation in the 1997 Notice, as well as its consistent reception as a methodological constant. It is also decisively normative: it structures the conditions for legitimate intervention, reflecting both the economic and symbolic dimensions of competition law.

In practice, defining the relevant market in light of behaviour identifies economic power and tests whether conduct can produce an appreciable restriction of competition in cartel and dominance contexts, where probability and significance (including *de minimis* thresholds) become central, without prejudice to hardcore restrictions. The same logic is observable under Moroccan law through Law No. 104-12, its implementing and amending decrees (notably Decree No. 2-23-273), and Competition Council practice: market definition links the affected market to operator behaviour to safeguard legal certainty and competition in the domestic market.

The conclusion follows: relevant market definition is the legal gateway for disciplining company behaviour; ignoring it would make enforcement arbitrary in an already complex and demanding economic environment.

B- The correlation between relevant market definition and restrictive effects on competition

Defining the relevant market is never a neutral cartographic exercise; it is the methodological hinge that connects an observed competitive environment to the conduct of the undertaking under scrutiny. Repositioned as an efficient tool for implementing competition policy, relevant market definition must be treated as fluid, because its analytical framework depends on the nature of the competition problem, its context, and its purpose. Since infringements crystallise over time and unfold through strategies, market definition should be approached as a dynamic framework rather than a static snapshot. Competitive reality becomes legally intelligible only when reconstructed within the temporal horizon in which corporate behaviour takes shape, and when the environment is read in light of the origin, structure, and purpose of the suspected infringement.

Accordingly, although market definition always aims to delineate the competitive environment, it is not conducted identically in cartel matters and in abuse of dominance cases. In practice, both analyses rely largely on a retrospective and objectifiable reading of market configurations, using past and present indicators such as positioning strategies and market shares to

identify constraints, room for manoeuvre, and effects already produced. Time does not merely locate the analysis; it disciplines it, stabilises evidence, and allows authorities to test whether the conditions of infringement already exist at the moment of assessment, as illustrated by institutional practice in both EU and Moroccan systems. Market definition is thus calibrated to the alleged conduct, the risks identified, and the standard of proof required to ground intervention.

Yet temporal reconstruction, though indispensable, cannot alone yield legal qualification, because it does not fully capture what ultimately matters in competition law: the function and meaning of conduct within its competitive ecosystem. The analysis must therefore move from observation to purpose, without losing evidentiary rigour. This is where finalistic logic becomes necessary: it reads contested behaviour through objectives, internal coherence, and strategic rationality linking choices to market outcomes, so that market definition operates not only as delimitation, but also as an interpretative device explaining why conduct emerges, how it operates, and what harm it is structurally capable of producing.

Under this combined perspective, market definition plays distinct roles. In abuse cases, it is constitutive for establishing dominance, since dominance and constraints cannot be assessed outside a properly delimited market, as EU case law, including Volkswagen, confirms; in cartel matters, it mainly serves to evaluate appreciable restrictive effects, except where restriction is manifest by object and effects analysis is attenuated. By articulating time as an objectifying framework and purpose as a key to legal understanding, the following developments show how market definition strengthens coherence, legal certainty, and the legitimacy and intensity of intervention. Two distinctions follow: market definition through the time variable, grounded in behaviour and market structure in real chronological time (1); market definition through finalistic logic, focusing on purpose, strategic meaning, and functional role, whether cartel or abuse (2).

1- The relevant market as assessed in terms of the time factor

Approaching the economic subject through time aims to align the undertaking and its activity with the space in which activity unfolds. This requires conceptualising corporate deployment through the time factor, within a paradigm that seeks to apprehend the competitive environment as accurately as possible by observing market behaviour. The time factor is therefore a decisive vector for understanding practices aimed at distorting competition, because it integrates the moment at which market demarcation must be carried out.

In cartel and abuse cases, market definition is essentially retrospective. The future is of limited relevance; analysis focuses mainly on past and present

indicators of performance, notably positioning and market shares (Lesquins, J.-L. 1994). Positioning refers to the image a firm seeks to project at a given time within a specific sector; present perception reflects earlier strategy, and effective positioning exists when current perception is consistent with the strategy previously implemented (Lambin, J.-J. and De Moerloose, Ch. 2016). Firms design strategic choices to shape influence, sometimes dominance, within markets; competition may be direct, indirect, differentiated, or latent. The positioning performance index captures how an undertaking (or group) is characterised as forming part of the relevant market (Trout, J. and Rivkin, S. 1996). Positioning may also occur through diversification and segmentation, including positioning each product or service within a specific segment (Ries, A. and Trout, J. 1981). It helps differentiate the undertaking, secure a distinctive place, and avoid being locked into an undesirable competitive position, including mismatches between supply and demand (Trout, J. 1969).

Beyond these immediate effects, positioning also serves as tangible evidence of economic power capable of harming competition, particularly where multiple firms align with a common marketing policy, especially on price or product strategy, to strengthen dominance (Ben Dlala Jenhani, S. 2007). This leverage often materialises through concerted practices enabling aligned entities, possibly linked to a single decision-making centre, to impose their will on other market players (Baillergeau, D. 2006).

Positioning is closely linked to market share, a numerical indicator situating the undertaking relative to competitors, expressed as a percentage of total sales and reflecting comparison with similar offerings (Miniter, R. 2002). Market share is generally the ratio between a firm's sales and total market sales; the clearer the market concept becomes through market definition, the more pertinent competition analysis is (Chevalier, M. and Dubois, P.-L. 2009). Accurate calculation requires comparing the firm's turnover or volume to that of the whole relevant market over the same period (Dubois, P.-L., Jolibert, A., Gavard-Perret, M.-L. and Fournier, Ch. 2013). Market share thus underpins assessment of the firm's position and can signal economic power, raising suspicions of practices affecting competition (Houle, D. and Shapiro, O. 2014). Where market share exceeds 50 % and the remainder is fragmented, dominance is presumed and abuse may be suspected, given the firm's bargaining strength and ability to shape structure, including by creating barriers restricting access (Green, D.-H. and Ryans, A.-B. 1990).

Analysing behaviour therefore, requires combining objective aspects of corporate development in real time (past and present) with subjective assessment of behaviour and repercussions on the market, especially via positioning and market share; these time-governed dimensions converge in business activity (Sibony, A.-L. 2008). This predominance of time reflects the

nature of disputes and the need to test whether prohibited situations already exist when assessed.

While Moroccan practice may sometimes underuse the time factor in partitioning-risk cases, EU practice illustrates temporal integration to restore internal market functioning, relying on past behaviour and current market structure (European Commission, Notice on relevant market definition, OJ C 372, 3 December 1997, pt. 12). Authorities in both systems must therefore remain aligned with corporate dynamics to ensure legitimacy, credibility, and effective intervention powers (Competition Council of the Kingdom of Morocco, 2010, Annual Report, Chapter III, Summary of the proceedings of the second Competition Conference in Fez, p. 69).

Temporal analysis shows that market definition is anchored in retrospective, objectifiable configurations. It organises the factual record, stabilises the analytical framework, and makes visible effects already materialised. However, a purely temporal reading remains insufficient to qualify the practice, because it does not by itself capture the meaning, function, or purpose of the observed behaviour. This is why finalistic reasoning must follow as a continuation of temporal discipline, not a rupture.

2- The relevant market discernment in light of the finalistic logic

Finalistic reasoning aims to determine the purpose of the behaviour exhibited by the entity suspected of practices capable of distorting effective competition. It reads contested conduct through function and contextual meaning, using variables such as importance, scope, value, and complexity, including the perpetrator, the behaviour, and the environment in which it occurred (Bennion, F. 2008). Where necessary, authorities deploy performance indicators and relevant indices reflecting the strategic dimension of the undertaking's activity; purpose, and even rebellious intention, is inferred from the substance through exploration of context, intrinsic logic, strategies, goals, and ultimate ends (Posner, R. 2002). What matters is not the conventional meaning, but the meaning emerging from the interaction between conduct and ecosystem.

Finalistic interpretation is invoked to dispel uncertainty and, where appropriate, restrict or extend scope. Teleological analysis mobilises the goal pursued by the institution or the conduct as the decisive interpretative lever (Driedger, A. 1983). This contextual, case-by-case reasoning is anchored in the pioneering role of relevant market definition in applying cartel and dominance provisions. Although both categories infringe free competition, their contextual architectures differ; the specific finalistic interpretation conveyed by market definition must therefore reflect their dissimilarity (Bosco, D. and Prieto, C. 2013).

In abuse of dominance cases, market definition is integral to demonstrating dominance. The market in which dominance is alleged must be defined before abuse can be assessed; the process presupposes identification of the product market and then the geographic market, after which dominance can be examined credibly (Desaunettes-Barbero, L. and Thomas, E. 2019). Dominance alone is not sufficient for incrimination, but it imposes a special responsibility not to undermine effective competition (Combe, E. 2020). The Court confirmed, in Volkswagen, that proper market definition is a prerequisite to assess allegedly anti-competitive behaviour under Article 102 TFEU, since abuse presupposes dominance in a given market, which presupposes prior market definition (ECJ, Volkswagen AG v Commission, 6 July 2000, Case T-62/98, ECR 2000 II-02707).

Moroccan law follows the same logic. Decree No. 2-14-652 implementing Law No. 104-12, as amended by Decree No. 2-23-273 (22 May 2023), requires market definition as an essential step for understanding the suspected firm's behaviour, including to justify whether the firm falls outside Article 7. Article 6 of the decree provides that, in certain cases under Article 9, the file must include, *inter alia*, the definition of the relevant market.

In cartel matters, however, market definition is not primarily used to demonstrate dominance, but to determine whether the cartel is likely to have an appreciable effect on competition. EU law recognises that market definition serves to assess whether the agreement or concerted practice is capable of affecting trade between Member States or preventing, restricting, or distorting competition; Moroccan law similarly uses market definition to assess significant effects, including access to block exemptions under Article 9 of Law No. 104-12, with the preliminary definition requirement reiterated in the amended decree. This role differentiation is fundamental and clarifies when market definition is necessary, particularly in cartel cases, because it enables assessment of appreciable effects (see TPICE, European Night Services, 15 Sept. 1998, joined cases T-374/94, T-375/94, T-384/94 and T-388/94, Rec. 1998 II-03141, paras. 93-95).

In practice, the key issue is whether the cartel produces a noticeable effect. Where harm is established by object, market definition may be unnecessary; likewise, it may be omitted where the agreement is a clear and manifest restriction (Prieto, C. 2018). Ultimately, the assessment remains centred on the purpose and strategic meaning of the recalcitrant behaviour, through a case-by-case value judgment depending on whether conduct constitutes a cartel or an abuse. Market definition anchors this judgment in context by clarifying the undertaking's interaction with its ecosystem. It generally remains a prerequisite, because before concluding an infringement exists, it must be established that the conduct occurs within a given market, and proof is built through context, intrinsic logic, and object or purpose.

Concluding Remarks – Chapter (B)

The analysis shows that the relevant market cannot be treated as static or purely descriptive; it is an analytical framework intrinsically connected to the temporal dynamics of corporate behaviour. The time factor situates activity and allows practices to be assessed at a given moment. In cartels and abuse cases, analysis is largely retrospective, grounded in past and present indicators such as positioning and market share, which reflect cumulative strategy effects. Time thus rationalises assessment by revealing the genesis and consolidation of economic power and providing an objective basis for evaluating an undertaking's capacity to influence structure, restrict competitive pressure, or erect entry barriers.

At the same time, finalistic reasoning confirms the interpretative function of market definition by revealing meaning, purpose, and strategic logic. Although its role differs by infringement type, as a prerequisite for establishing dominance in abuse cases and as a tool for assessing appreciable effects in cartel cases, it remains a central methodological anchor. By combining temporal discipline with finalistic interpretation, relevant market definition enhances legal certainty, strengthens analytical coherence, and legitimises the scope and intensity of intervention by competition authorities.

Conclusion

This study examined the legal and economic foundations of the concept of the relevant market under Moroccan and European competition law, starting from the premise that market definition is not a purely formal exercise but a decisive analytical tool for ensuring effective competition. Through a comparative and multidisciplinary approach, the analysis showed that the relevant market is the indispensable framework through which authorities identify competitive constraints, assess company behaviour, and determine whether practices such as cartels or abuses of a dominant position are capable of preventing, restricting, or distorting free competition. Far from being abstract, the relevant market emerges as a functional and contextual instrument that bridges legal norms and economic reality. By integrating industrial economics, organisational analysis, and legal reasoning, the study confirmed that market definition fulfils both a diagnostic and a normative function: it clarifies the structure of the competitive environment while guiding the legal qualification of anti-competitive practices.

From this perspective, the relevant market is neither an end in itself nor a purely technical prerequisite. It is the cornerstone of pragmatic, empirically grounded enforcement in both Moroccan and European systems, because it renders company conduct legally intelligible within a defined competitive arena. Competition law intervenes at the heart of entrepreneurial freedom and strategic autonomy; it cannot legitimately rely on intuition,

impressionistic reasoning, or the mechanical application of legal categories. Market definition operates as the methodological gateway through which economic observations are transformed into legally controllable judgments. It structures the evidentiary framework, delineates responsibility, and constrains administrative discretion through requirements of rationality, proportionality, and foreseeability. Without this gateway, enforcement risks degenerating into formalism or sliding into arbitrariness.

A first implication follows. Identifying barriers to market access presupposes an analytical approach that treats predatory or opportunistic behaviour as an infringement of equal opportunities between undertakings and, therefore, as a restriction on the free play of competition within the business environment. Yet this implication remains theoretical unless authorities demonstrate sufficient analytical rigour when defining the relevant market. Equality of opportunity and dynamic competition cannot be operationalised unless the competitive arena itself is coherently delineated. Market definition must therefore be understood as an integral component of the broader framework used to analyse the contours of the economic sphere commonly referred to as the business environment.

Defining the relevant market consequently plays a decisive role in establishing economic peace within the internal market. Markets are shaped by the continuous influx of undertakings trading goods and services, and the legitimacy of their conduct cannot be assessed without identifying the sphere in which these protagonists and antagonists operate. Market definition determines the scope of application of competition rules; without it, authorities are deprived of the analytical foundation required to apply the rule of law coherently and effectively. It follows that market definition is central to combating practices capable of undermining the balance of the competitive arena, particularly in relation to cartels and concerted practices, and even more so in cases involving abuses of a dominant position. Beyond procedure, it enables legal actors to assess the existence, or absence, of the substance of effective competition within the market under scrutiny.

The normative architecture of competition law becomes particularly visible here. Competition is not an abstract ideal preserved at all costs but an order protected against significant distortions. Market definition functions as a filter of gravity by allowing assessment of whether a restriction is appreciable. Under EU law, the test focuses on the capacity of conduct to affect trade between Member States; under Moroccan law, it concerns distortion of the internal market or the free play of competition. In both systems, probability requirements and sensitivity thresholds, including de minimis rules, operate as structural guarantees of economic due process. They ensure that competition law does not become a general supervisory regime over legitimate business strategies and that intervention is triggered only

where market position and behaviour converge to produce non-negligible competitive harm.

In this sense, the correlation between the relevant market and company behaviour is not merely methodological; it is decisively normative. Competition law does not sanction economic power as such, but the distortive use of power within an identified framework of competitive constraints. Without a defined market, power remains a suspicion; with a defined market, it becomes a legally qualifiable fact. Without a defined market, conduct is merely observed; with a defined market, it becomes susceptible to classification as restrictive or abusive. This explains why market definition must articulate two complementary sets of variables: structural parameters, such as the number and relative weight of competitors, substitutability patterns, and barriers to entry or exit; and strategic variables, including pricing, coordination, production choices, communication practices, investment policies, and defensive allocation of resources. Read together, these variables show how competitive pressure is formed, how it constrains behaviour, and how behaviour may reshape the structure of constraints.

The study also showed that market definition must account for the formal legal origin of the suspected harm. Although its general purpose is to delineate the competitive environment, the exercise is not identical in cartel cases and in abuse of dominance cases. It must be conducted case by case, factoring in the temporal dimension, the nature and context of the conduct, and the applicable standard of proof. In abuse cases, market definition is constitutive because it conditions the demonstration of dominance itself and grounds the special responsibility not to impair effective competition. In cartel cases, market definition primarily serves to assess appreciable restrictive effects, except where restriction is manifest by object. Even then, normative caution is required so that the by object category does not become a shortcut that dispenses with contextual analysis.

This differentiation highlights the need to integrate two complementary analytical orientations into market definition. The first is the time variable. Competition assessment is initially anchored in a retrospective and objectifiable reading of market configurations, based on past and present indicators such as market shares and positioning strategies. Time disciplines the analysis by stabilising the evidentiary record and making visible the economic effects already produced. The second is finalistic logic. Temporal reconstruction alone is insufficient to deliver legal qualification, because competition law evaluates the function and meaning of conduct within its ecosystem. Finalistic analysis thus completes temporal objectification by testing the strategic coherence and normative significance of behaviour against the competitive environment. Only by articulating these two lenses can market definition function both as delimitation and as legal intelligibility.

Against this background, the study identified a structural limitation. Methodological advances driven solely by administrative practice remain incomplete without clearly articulated normative foundations. Legislative clarification becomes essential to determine the scope of market definition, its legal nature, and the procedures governing its implementation. Pending such clarification, the development of operational analytical tools remains incumbent upon competition authorities, particularly the Competition Council of the Kingdom of Morocco, in order to strengthen legal certainty, enhance predictability, and provide undertakings with a coherent framework for assessing their conduct.

In this perspective, the study supports the adoption of a structured methodological framework for defining the relevant market in Moroccan competition law, drawing inspiration from European practice, notably the approach formalised following the European Commission's 1997 Notice. Moroccan law should enable the Competition Council and market participants to rely on clear methodological guidelines or a charter of good practices for the internal market. Such a reference framework should specify the steps required to define the relevant product and geographic market, account for sectoral specificities, and systematically identify the constraints that competition imposes on undertakings. It should also provide a coherent basis for calculating market shares, assessing market power, and determining whether effective competitors exist that constrain behaviour or prevent firms from acting independently of competitive pressure.

Ultimately, this study confirms that the relevant market operates as a unifying analytical framework integrating behaviour, time, and purpose into a coherent methodology of competition law. The comparative analysis reveals a shared pragmatic orientation, characterised by a rejection of excessive formalism and a sustained focus on economic reality. Through this articulation, market definition strengthens competition law's capacity to preserve economic public order, ensure legal certainty in trade, and safeguard the integrity of the competitive process. It functions simultaneously as a compass and a safeguard: a compass, because it directs analysis toward real competitive constraints; a safeguard, because it prevents intervention without sufficient demonstration and keeps enforcement proportionate, intelligible, and subject to judicial control.

Without calling these foundations into question, contemporary economic evolution places competition law before new sectoral configurations that test the relevance and adaptability of market definition. In emerging and innovation-driven markets, boundaries are more fluid, constraints are more indirect, and economic power is less observable through traditional price-based indicators. Rivalry is increasingly structured around access conditions rather than price alone, including access to essential inputs, data, interfaces,

users, and critical infrastructures. In this context, market definition becomes constitutive: it determines which constraints are legally and economically relevant and which dependencies must be recognised as sources of market power.

This shift is especially evident in renewable energy markets, artificial intelligence, and digital platform ecosystems. In renewable energy, constraints may depend on grid access, storage capacity, dispatch rules, long-term contractual arrangements, and regulatory asymmetries. In artificial intelligence, advantage often stems from data accumulation, privileged access to computational resources, and integration into broader technological ecosystems, generating cumulative feedback effects. In digital markets, platforms may operate as intermediaries and gatekeepers, shaping access through ranking mechanisms, interoperability choices, self-preferencing strategies, and data monetisation, sometimes in environments characterised by zero monetary pricing. In such settings, defining the relevant market is the primary gateway through which authorities can locate real centres of constraint, assess market power meaningfully, and prevent exclusionary or structurally distortive practices from crystallising into durable dominance before traditional signals of harm become apparent.

The conclusion follows with normative clarity. Defining the relevant market is the legal gateway through which company behaviour becomes subject to competition discipline and the method by which enforcement remains both effective and bounded. Neglecting market definition renders intervention arbitrary; reducing it to a mere formality renders competition law abstract and ineffective. Treating it as a dynamic, temporal, and purpose-sensitive framework allows competition law, in both Moroccan and European systems, to reconcile rigorous enforcement with the protection of economic freedoms and legal certainty. In short, the relevant market is not simply where competition law begins; it is where competition law earns the right to intervene.

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 (Positioning strategies:

paths to legitimacy: the case of the surfwear industry), Doctoral Thesis (PhD), University of Pau and 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* (The positioning of international brands in a globalised context: critical analysis of the main determinants and key decision-making factors), Doctoral Thesis (PhD), University of 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- (Competition and the major issues of the day, Current Issues Collection: The Culture of Competition – The first year of the Competition Council of The Kingdom of Morocco), REMALD, Rabat, (68).
5. Bennion, F. (2008), *Statutory Interpretation*, Butterworths Law, 5th Edition, London.
6. Bienaymé, J. (1998), *Principes de concurrence* (Principles of Competition), Economica.
7. Bishop, S., and Walker, M. (2010). *The economics of EC competition law: Concepts, application and measurement* (3rd ed.). Sweet AND Maxwell.
8. Bosco, D. and Prieto, C. (2013), *Droit européen de la concurrence : ententes et abus de position dominante* (European Competition Law: Antitrust and Abuse of Dominant Position), Bruylant, Bruxelles.
9. Boy, L. (2005), *L'abus de pouvoir de marché : contrôle de la domination ou protection de la concurrence* (Abuse of Market Power: Control of Domination or Protection of Competition), Revue Internationale de Droit Économique, Tome 9, Ed. De Boeck Supérieur, 2005/1, 27-50.
10. Boyer, R. (1986). *The regulation school: A critical introduction*. Columbia University Press.
11. Brock, W. (December, 1983), *Contestable Markets and the Theory of Industry Structure : A Review Article*, *Journal of Political Economy*, 91(6), 1055–1066.
12. Brozen, Y. (1975), *The Competitive Economy*, New Jersey General Learning Press.
13. Brozen, Y. (November/December 1969), *Competition, Efficiency and Antitrust*, *Journal of World Trade*, Vol. 3, (6), 659-670.
14. Carlton, D. W., and Perloff, J. M. (2005). *Modern industrial organization* (4th ed.). Pearson.
15. Chandler, A. (1972), *Stratégies et structures de l'entreprise* (Strategies and company structures), Éditions d'Organisation.

16. Chevalier, M. et Dubois, P-L. (2009), *Les 100 mots du marketing* (The 100 marketing terms), Presses Universitaires de France, Coll. « Que sais-je ? ».
17. Comanor, W. and White, L. (1992), Market Power or Efficiency : A Review of Antitrust Standards, *Review of Industrial Organization*, 7(2), 105-116.
18. Combe, E. (2020), *Économie et politique de la concurrence* (Economics and Competition Policy), Deuxième édition, Dalloz, Paris.
19. Cremer, J., De Montjoye, Y.-A. and Schweitzer, H. (2019), *Competition policy for the digital era*, Brussels, European Commission.
20. De Gramont, D. (1996), *Propos impertinents sur le marché pertinent dans le droit de l'Union* (Uppity statements on the Relevant Market in European Union Law), Dalloz Affaires, (5).
21. Deffains, B. and Pellefigue, J. (2018), Vraiment pertinent ? Une analyse économique des marchés pertinents (Really Relevant? An Economic Analysis of the Relevant Markets), *Revue Trimestrielle de Droit Commercial*, (3), 555-573.
22. Desaunettes-Barbero, L. et Thomas, E. (2019), *Droit matériel européen des abus de position dominante : textes et commentaires* (European Substantive Law on Abuse of Dominance: Legal Texts and Commentaries), Bruylant, Bruxelles.
23. 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* (The supervision of Market Power by Canadian and European Competition Law: Contributing to a Legal Approach to the Market), Doctoral Thesis (PhD), Laval University, Quebec.
24. Driedger, A. (1983), *Construction of Statutes*, Butterworth and Co., 2d Edition, Canada.
25. Dubois, P-L., Jolibert, A., Gavard-Perret, M-L. and Fournier, Ch. (2013), *Le Marketing. Fondements et pratique* (Marketing: fundamentals and practices), 5th ed., Economica, Paris.
26. Dumez, H., and Jeunemaitre, A. (2005), *La régulation économique et le droit de la concurrence* (Economic regulation and competition law), Presses Universitaires de France.
27. Dussange, P. (1986), *L'industrie de l'arme Economique* (The Economic Arms Industry), Dunod, Paris.
28. El Azhary, M. (2021), *L'égalité de traitement entre entreprises en droit marocain et européen de la concurrence* (Equal Treatment of Companies in Moroccan and European Law on Competition), Doctoral Thesis (PhD) in Legal and Political Sciences, Faculty of Legal,

Economic, and Social Sciences, Sidi Mohamed Ben Abdellah University of Fez.

29. 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 (The instrumental use of the relevant market definition for the purposes of implementing the Moroccan and European competition laws: Current situation and forward-looking considerations), European Scientific Journal (ESJ), 18 (35), 169.
30. El Azhary, M. (2024). L'Approche juridique, épistémique et finalistique du marché pertinent en droits marocain et européen de la concurrence : état des lieux, enjeux et réflexion prospective (The Juridical, Epistemical, and Finalistical Approaching of the Relevant Market in The Moroccan and European Competition Law: State of Affairs, Challenges, and Prospective Reflection), European Scientific Journal, ESJ, 20(8), 49.
31. El Azhary, M. (2025). The Relevant Market as a Juridical Construct: Its Origins and Evolution under Moroccan and European Competition Law. European Scientific Journal, ESJ, 21(29), 87.
32. Ezrachi, A. and Stucke, M. E. (2016), Virtual competition: The promise and perils of the algorithm-driven economy, Harvard University Press.
33. Feydel, R. (2015), La fluidité du marché : essai en droit des marchés (Market fluency: an essay on the law of markets), Librairie Eyrolles, Paris.
34. Genicot, N. (2020), L'Index de la sécurité juridique, ou comment promouvoir le droit continental par le biais d'un indicateur (The Index of Legal Security, or how to improve Continental Law through an indicator), Droit et société, Vol. 104, (1), 211-234.
35. 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.
36. Houle, D. and Shapiro, O. (2014), Brand Shift : The Future of Brands and Marketing, David Houle and Associates.
37. Kaplow, L. (December 2010), Why (ever) define Markets?, Harvard Law Review, Vol. 124, (2), 437-517.
38. Korah, V. (2007), An Introductory Guide to EC Competition Law and Practice, Hart Publishing, 9th Edition.
39. Lambin, J-J. and De Moerloose, Ch. (2016), Marketing stratégique et opérationnel : La démarche marketing dans l'économie numérique (Strategic and operative marketing: approaching marketing in the digital economy), Management Sup, Dunod.

40. Le Roy, F. (2004). Droit de la concurrence et régulation économique (Competition law and economic regulation), LGDJ.
41. Le Roy, F. (2007), La concurrence, entre affrontement et connivence (Competition, between clash and collusion), *Revue Française de Gestion*, 1(158), 147-152.
42. Lesquins, J- L. (1994), Innovation et délimitation des marchés pertinents (Innovation and delineation of relevant markets), *Revue d'économie industrielle*, Vol. 4, 70, 7-15.
43. Lianos, I. (2007), La transformation du droit de la concurrence par le recours à l'analyse économique (The reshaping of competition law through economic analysis), Bruylant.
44. 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.
45. Lopatka, J. (June 2011), Market Definition?, *Review of Industrial Organization*, Vol. 39, 69-93.
46. March, J. (1999), *The Pursuit of Organizational Intelligence*, Oxford, Blackwell.
47. Minter, R. (2002), *The Myth of Market Share. Why Market Share Is the Fool's Gold of Business*, Crown Business Briefings.
48. Motta, M. (2004). *Competition policy: Theory and practice*. Cambridge University Press.
49. Peruzzetto, S. and Jazottes, G. (2008), Competition law, constraints and opportunities, in *Qu'en est-il du droit de la recherche?* (What about research law?), (pp. 373-387), Jacques Larrieu (ed.), Presses de l'Université Toulouse Capitole, Collection « Travaux de l'IFR », (Personal Translation).
50. Porter, M. (1982), *Choix Stratégique et Concurrence* (Strategic Choice and Competition), Economie, Paris.
51. Posner, R. A. (2001). *Antitrust law* (2nd ed.). University of Chicago Press.
52. Posner, R. A., (April, 2002), *Pragmatism versus Purposivism in First Amendment Analysis*, *Stanford Law Review*, 54(4), 737-752.
53. Prieto, C. (2018), Ententes : concours de volontés (Agreements: combination of wills), *JurisClasseur Europe Traité*, fasc. 1405.
54. Ries, A. and Trout, J. (1981), *Positioning : The battle for your mind*, McGraw-Hill Inc., New York.
55. Sibony, A-L. (2008), *Le juge et le raisonnement économique en droit de la concurrence* (The court and economic reasoning in Antitrust Law), LGDJ, Coll. Droit et Economie, Paris.
56. Smith, A. (1776). *An inquiry into the nature and causes of the wealth of nations*. W. Strahan and T. Cadell.

57. Spector, D. (2006). Competition law in theory and practice. Oxford University Press.
58. Stuyck, J. (1999). European competition law: A practical guide. Kluwer Law International.
59. Trout, J. (June 1969), Positioning is a game people play in today's me-too market place, *Industrial Marketing*, Vol. 54, (6), 51–55.
60. Trout, J. and Rivkin, S. (1996), The New Positioning : The latest on the worlds #1 business strategy, McGraw Hill.
61. Vandecasteele, A. (1999), La part de marché est-elle la clé de voûte du droit européen de la concurrence ? (Is market share the keystone of the European antitrust law?), in *Mélanges M. Waelbroeck*, Brussels, Bruylant, Vol. 2.
62. Vives, X. (2008). Competition policy: Theory and practice. MIT Press.
63. Werden, G. J. (1983). Market delineation and the Justice Department's merger guidelines. *Duke Law Journal*, 1983(2), 295–326.
64. Werden, G. J., and Froeb, L. M. (2018). The antitrust enterprise: Principle and execution. MIT Press.
65. Whish, R. and Bailey, D. (2021), Competition Law, Oxford University Press, 31th Edition.