Merger Policy for Small and for Micro Economies

Prof. Michal S. Gal
University of Haifa

Stockholm, November 9, 2012
Introduction

- Number growing
- Need a specially tailored merger law?
  - Extreme case: Micro Jurisdictions

- Two forces of significance
  - The Follower Push
  - Unique Characteristics Pull

- Challenge similar: effective and efficient
- Change the content of the rule
- Mostly: increase its necessity
Definition: Small Economy

- Definition: independent sovereign jurisdiction that can support only a small number of competitors in most of its industries, when catering to demand.

- No magic number

- Three main factors:
  - Population size
  - Population dispersion
  - Openness to trade
Basic Economic Characteristics

- High industrial concentration levels
- High entry barriers
  - Minimum efficient scales
  - Supply constraints
- Sub-Optimal Levels of Production
  - *Malta study*: Interdependence
- Aggregate Concentration
General Implications

- Basic tension:
  - Efficient scales of production
  - Once created, market power difficult to erode
  - Resource issue: Rules vs. Standards

- Implications:
  - Balancing approach: long-term dynamic considerations; concentration necessary evil
  - Illegality test to capture also coordinated act
  - Credible threat limitations
Aggregate Concentration

- **The reality**: A small group of economic entities control a large part of the economic activity through holdings in many markets
  - Israel and Singapore: 16 hold 50%
  - Hong Kong: 16 hold 84%

- **The implications**:
  - Overcome entry barriers (Missing institutions)
  - Reciprocal status quo
  - Entry deterrence: stagnation and inefficiency
  - Political economy implications
  - Too big to fail
Merger Law solutions?

- The freestanding firm not always relevant unit for analysis, but rather the economic unit of which it is part of
  - Practical: not “competition in a market”
  - Wider lens, beyond portfolio effects
  - Columbus Capital/Cur Industries
- Partial (tax, corporate, etc.)
Dynamic Analysis of Market

- Less emphasis on rigid structural variables
- Regional or International competition:
  - Nippon Steel and Sumitomo Metal Industries
- NZ LET test: Likely, sufficient in Extent, and Timely
  - South Pacific Seeds/Yates
- What is the time horizon?
- Concessions in the meantime?
Micro Economies

Definition

- WTO: "small, vulnerable economies" with very low share of world merchandise trade

- A sovereign economy which (1) has a population of up to 200,000 and (2) is not economically immersed into a large jurisdiction (e.g. Andorra)
  - Subgroup: miniscule economies with up to 50,000: regional solutions only

- 23 jurisdictions
  - Mostly Caribbean and East Asia and the Pacific
  - Mostly islands
Definition (2)

- mostly low-middle income

- Correlation: operational merger law and high income.

- Correlation: political dependency of a large jurisdiction

- Greenland, Guernsey, Jersey, Faroe Island, US Virgin Islands
<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Population</th>
<th>GDP (US$)*</th>
<th>Island</th>
<th>Competition Law</th>
<th>Merger Law</th>
<th>Part of Regional Agreement with merger law</th>
</tr>
</thead>
<tbody>
<tr>
<td>American Samoa</td>
<td>54,947</td>
<td>$575.3 million (2007)</td>
<td>yes</td>
<td>no</td>
<td>no</td>
<td>no</td>
</tr>
<tr>
<td>Antigua and Barbuda</td>
<td>89,018</td>
<td>$1.595 billion</td>
<td>yes</td>
<td>no</td>
<td>no</td>
<td>in the process of developing a merger law</td>
</tr>
<tr>
<td>Anguilla</td>
<td>15,423</td>
<td>$175.4 million (2009)</td>
<td>yes</td>
<td>no</td>
<td>no</td>
<td>in the process of developing a merger law</td>
</tr>
<tr>
<td>Aruba</td>
<td>107,635</td>
<td>$2.258 billion (2005)</td>
<td>yes</td>
<td>no</td>
<td>no</td>
<td>no</td>
</tr>
<tr>
<td>British Virgin Islands</td>
<td>31,148</td>
<td>$853.4 million (2004)</td>
<td>yes</td>
<td>no</td>
<td>no</td>
<td>in the process of developing a merger law</td>
</tr>
<tr>
<td>Cook Island</td>
<td>10,777</td>
<td>$183.2 million (2005)</td>
<td>yes</td>
<td>no</td>
<td>no</td>
<td>no</td>
</tr>
</tbody>
</table>

1 Population and GDP estimates based on the CIA World Factbook. Estimates relate to 2012 unless otherwise indicated.
Basic Economic Traits

- High entry barriers:
  - High concentration to produce efficiently
  - High transport costs from their major trading partners
  - High costs of keeping stock
- Limited diversification
  - Vulnerability to external shocks and natural disasters
  - Many products produced elsewhere
- Significant diseconomies of scale in public services
Should mergers be regulated?

- Far from trivial; not dichotomic
- Question necessity of everything: procedural and substantive
- In favor
  - market power, once created, is very difficult to erode
  - some mergers have a very large impact on economy (Ferryspeed/CHannel Express)
  - other competition law tools might be difficult to apply

- Cost effective?
  - High "fixed" costs of merger review- especially in relative terms
  - Often effects --in absolute financial terms-- would be minimal
  - even a small regulatory burden (in absolute size) might limit incentives to enter into welfare-enhancing mergers
  - many firms located elsewhere

- Bottom line: Carefully truncated review
Partial Institutional Solutions

- Regional competition law agreements
  - OECS
  - Channel Islands Competition Authority

- Combine regulatory functions
  - Guernsey

- Technical Assistance
Substantive and Procedural Rules

- Very limited merger regulation
- What does not change?
- Limiting application to domestic firms
  - List potentially harmful industries?
  - Narrow thresholds that change in some markets
  - Domestic thresholds that capture absolute harm
- Limiting application to foreign firms
  - 88% between firms in developed jurisdictions.
  - Credible threat
  - List?
  - Corridor notification; but can impose local remedies
- Conditional remedies
Conclusion

- Size affects merger law
  - Sometimes- change content
  - Mostly- similar, but more costly not to follow
  - The smaller the jurisdiction, the more severe the effects

Follower Push will be justified in many cases, but not in all
Thank you!

mgalresearch@gmail.com

http://papers.ssrn.com