Merger Policy for Small and for Micro Economies

Prof. Michal S. Gal
University of Haifa

Stockholm, November 9, 2012

Introduction

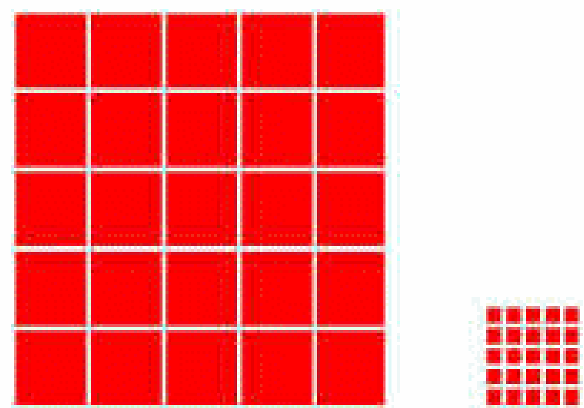
- Number growing
- Need a specially tailored merger law?
  - Extreme case: Micro Jurisdictions

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

  - Challenge similar: effective and efficien
  - 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

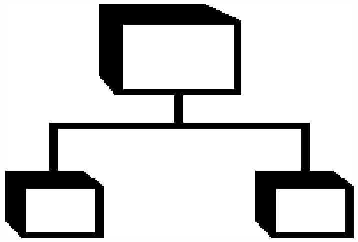
- High industrial concentration levels
- High entry barriers
  - Minimum efficient scales
  - Supply constraints
- Sub-Optimal Levels of Production
  - *Malta study*: Interdependence
- Aggregate Concentration

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
  - Michal S. Gal, Competition Policy for Small Market Economies (Harvard U. Press, 2003)

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

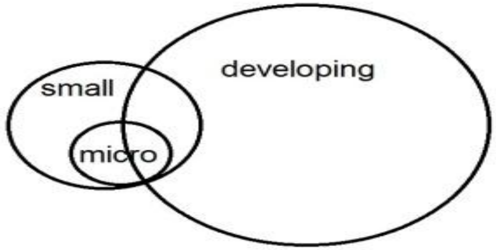
- Less emphasis on rigid structural variables
- Regional or International competition:
  - *Nippon Steel and Sumitomo Metal Industries*
- NZ LET test: Likely, sufficient in Extent, and Timely
  - *South Pacific Seeds/Yates*
  - What is the time horizon?
  - Concessions in the meantime?

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

Jurisdiction	**Population**	**GDP (US$)*** [1] (2011 unless otherwise indicated)	**Island**	**Competition Law**	**Merger Law**	**Part of Regional Agreement with merger law**
American Samoa	54,947	$575.3 million (2007)	yes	no	no	no
Antigua and Barbuda	89,018	$1.595 billion	yes	no	no	in the process of developing a merger law
Anguilla	15,423	$175.4 million (2009)	yes	no	no	in the process of developing a merger law
Aruba	107,635	$2.258 billion (2005)	yes	no	no	no
British Virgin Islands	31,148	$853.4 million (2004)	yes	no	no	in the process of developing a merger law
Cook Island	10,777	$183.2 million (2005)	yes	no	no	no

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
  - *Regional Competition Law Agreements* (Bakhoum et al. eds., Edgar Elgar, 2012).

- 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