Size Does Matter: competition Policy in Small States[1]
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It is a great pleasure to be here today, to discuss the issue of competition policy in small, open, developing economies. I wish to thank the Barbadian Fair Trading Commission, and especially Ms. Peggy Griffith and Mr. DeCourcey Eversley, wholeheartedly for this wonderful opportunity to take part in the discussion at this formative time for Barbadian and CSM competition policy.

As I mentioned this morning, with the establishment of the CSME and the current debate regarding the scope and structure of a joint competition commission, and the first years of the Barbadian Commission's activity, this is a time that institutional economists would call "critical juncture" in competition law- that is, the choices that are made now will set the stage for years to come. They will serve as the foundation for the building of a competition culture, and will determine, to a large extent, its relative strength. That's why it is important to "get it right".

What I intend to do tonight is to shed some light on some of the conditions necessary for having an efficient and effective competition policy. More particularly, I will focus on the effects of two specific conditions: small size and the level of economic development. I will start with the former and add the latter as the analysis develops. The fundamental question that I seek to address here is whether size and the level of development matter. TO put it more bluntly: can such economies simply copy the laws of larger ones? I will try to convince you that the answer is a definite no- both size and level of development matter, and to a considerable extent, at least in some circumstances. I will also elaborate on some of the implications of such an answer.

So- let me start by focusing on the effects of small size on competition law.

The effects of small size of a domestic market on the *economic characteristics and performance* of markets have long been recognized by economists, including Richard Caves, Michael Scherer and Nobel Laureate Michael Spence from Harvard. They have argued that the fundamental structural traits of small economies are so pronounced that

[1] The subject of how size affects competition law was elaborated in the book Michal S. Gal, Competition Policy for Small Market Economies" (Harvard University Press, 2003).

small economies belong to a "different class of market economies." Yet, surprisingly, there has been no serious attempt to analyze the implications of this "different class of market economies" on competition law and policy. I took the first step in my book on small economies. Fortunately, today there are several wonderful scholars who are working on the area (including Dr. Taimoon Stewart from University of the West Indies) and several organizations such as the world-bank, UNCTAD and the OECD which are beginning to understand that small economies might sometime require special treatment in competition law.

I should say that when I wrote my book I had the examples of larger countries that the Caribbean states in mind. I also tried top separate the issue of size, to the extent possible, from the other issues, including the level of development and the level of transition. However, many of the research's finding have relevance for micro-economies as well.

Let me first **define a small economy**. There are many ways to define a small economy. Yet for the definition to be meaningful for competition policy, it should focus on what is significant for it: market conduct and performance.

The definition I suggest, therefore, is as follows: a small economy is an independent sovereign jurisdiction that can support only a small number of competitors in most of its industries, when catering to demand. This definition captures the fundamental trait of smallness: the highly concentrated nature of most of its markets.

The definition for small economies is arbitrary in the sense that there is no "magic number" that distinguishes a small economy from a large one. Jurisdictions can be placed on a continuum in accordance to their size. Some jurisdictions are very small, such as Faro Islands (with a population of approximately 40,000), Jersey (90,000), and Malta (350,000) or Barbados. These are also geographically small island states and some of them are even considered micro-states, as many CARICOM states are characterized. New Zealand can be considered a small economy, but is much larger given a population of approximately 3 million. Of course, the smaller the economy the more concentrated its industries are likely to be and *vice versa*. Yet, all small economies are characterized by monopolistic or oligopolistic structures in most of their industries.

Market size is **influenced by three main factors**: population size, population dispersion, and openness to trade. Small population size decreases domestic demand and reduces the number of firms that can efficiently serve the market. Population dispersion over a large geographic size is also an important factor, as it may create several small local markets within a geographically large jurisdiction.

The size of an economy is also influenced by the height of its artificial and natural trade barriers. Primarily, the relevance of the jurisdiction in economic analysis is dependent on the international trade environment in which it is placed. Liechtenstein, Andorra and Monaco, for example, are so economically integrated with their larger neighboring states that they can be economically regarded as part of their markets. In these jurisdictions a high degree of openness to trade negates a conclusion of smallness, based on population size alone.

Yet in most cases openness to trade cannot or does not remove all trade boundaries. Government-made barriers may still exist in some industries even among jurisdictions that have adopted a generally liberal free trade policy, and geographic and cultural differences cannot be simply bridged-over by liberal trade policy. For example, high freight costs, such as in the case of the Caribbeans, creates significant barriers to trade and segregates at least some domestic markets from world markets.

Why are small economies a "different class of market economies"? Research has shown that there are three main economic characteristics of small economies.

High Industrial Concentration Levels

Small economies are characterized by high industrial concentration levels in many of their industries. Industrial concentration signifies the concentration of an industry as determined by the number and size of firms operating in it. One of the main factors that leads to industrial concentration is the size of a unit of production that is just sufficiently large to achieve lowest average costs of production relative to demand. Let me give you a simplified example. Suppose a firm has to produce at least 10,000 units in order to achieve lowest costs, and domestic demand is 20,000, then the market can economically support only two efficient sized firms. If market demand is only 10,000, then the market can support only one efficient sized firm. Naturally, the smaller market demand is, the fewer production units can operate in the market, and the higher the industrial concentration levels.

Studies of firm concentration levels confirm that small economies have a smaller number of firms per industry than larger economies. This table compares industrial concentration levels of the three leading firms in a survey of twelve industries in 1970 based on studies by Scherer and Schaefer. The correlation between concentration levels and the size of the market is striking.

High Entry Barriers

Apart from high concentration levels, smallness of an economy also creates high entry barriers into its industries. The main entry barrier is created by scale economies, by the need to produce at levels that cater to a large portion of demand in order to achieve minimum costs. Additional entry barriers can be created by a *supply constraint* on factors of production. Small population size necessarily constrains the availability of labor, especially skilled labor. Moreover, most, although certainly not all, of the small economies are also small in geographic size. Small geographical size often implies a limited and a less diversified supply of natural, irreproducible resources. This, I understand, is true in regard to Barbados- which has a limited number of natural resources—tourism and agricultural commodities.

A low level of development might exacerbate this problem. The reason is that in many developing economies the infrastructure which is necessary in order to run businesses- be it transportation vehicles, financial markets, government-granted licenses- is usually inefficient and creates further barriers- this time artificial- to competition in the market.

Sub-Optimal Levels of Production

On top of high concentration levels and high entry barriers, the most important cause of small economies' inefficiencies is the problem of sub-optimal levels of operation. A recurring observation in studies of manufacturing industries in small economies is that a considerably larger fraction of all output is produced in sub-optimal volumes and sub-optimal plants, much lower than pure MES considerations would suggest. Such small-scale operation can have a significant impact on the efficiency of firms if penalties for such operation are significant. For example, in the example I used, where demand is 20,000 and costs are minimized at 10,000 units, we might find two firms producing 9,000 units each.

There are numerous reasons for the persistence of sub-optimal plants. Yet the most influential factor is the high levels of interdependence between firms in concentrated markets. Simply put, the lower the number of firms operating in a market and the higher the barriers to entry, the greater the influence of each firm on each other. Firms recognize this by seeking cooperative policies that are more profitable to them than when each firm aggressively seeks a larger market share. Of course, collusive behavior does not necessarily justify sub-optimal production. However, the relatively large size of production MES may blunt incentives to adopt efficiency-enhancing measures and creates, in many situations, output levels which are sub-optimal but yet profit-maximizing for the firms.

The basic Dilemma

These economic characteristics of small economies create a basic dilemma between productive efficiency and competitive conditions. If a given number of firms can operate efficiently in the market, *productive efficiency* requires that the market contain only this given number of firms, all operating at efficient productive levels.

At the same time, productive efficiency imperatives often cause industrial concentration in a small market to be high enough in many industries to allow some market power to be realized. Higher levels of concentration can also cause income distributions caused by increased market power, it can dampen entrepreneurial vigor, and create the social and political malaise that follow from excessive concentration of economic power. In developing economies, such outcomes might be especially problematic if they enhance the existing distribution of wealth and do not allow new entrepreneurs to enter the market easily. This dilemma affects almost every area of competition policy.

These salient characteristics have important policy implications as they require small economies to devise appropriate policies that offset at least some of the adverse effects of their small size.

To be sure, many of the principles and doctrines that apply to large jurisdictions apply equally to small ones. The main goal of competition law- to increase social welfare, and its main tool- competition law, are similar. Yet the comparative prevalence of concentrated market structures in a small economy creates a set of trade-offs that may require a different set of rules to regulate the conduct of market participants.

I suggest two types of effects. First are cases in which small size simply strengthens the need for an efficient competition policy. The second are cases in which small size affects the content of the rule itself. Let me exemplify both.

I will start by focusing on those cases in which smallness simply strengthens the case for some type of competition law. I will use four examples to exemplify my point.

Example I: Goals of competition policy

While there seems to currently exist a consensus that efficiency should be the primary goal of antitrust, the dilemma between efficiency and other social goals, such as distributive justice, is much more pronounced in small, developing economies than in large ones.

The reason is that in small economies protecting other goals, such as distributive justice, by way of enabling small competitors to stay in the market regardless of their efficiency, comes at a higher price.

In large economies social values are served, to a considerable extent, by the competition policies that promote economic efficiency and progressiveness. The goals of dispersed power and better business opportunities are achieved, in many cases, by a competition policy that eliminates monopoly not attributable to economies of scale or superior skill and that prevents mergers, agreements, or practices that obstruct competition. In a small economy, on the other hand, economies of scale in production or distribution reduce, by definition, the number of firms necessary to supply any given demand and may reduce or altogether eliminate competition in the affected market. The price to be paid by a small economy for enhancing distributive justice goals is much higher and involves keeping in the market inefficient firms, and on-going regulation of the market. Accordingly, economic and social objectives may substantially diverge when efficiency dictates displacement of small firms by larger business units.

Efficiency also better enables firms to compete in global markets, or to compete more effectively with foreign firms in their domestic markets. If firms are prevented from reaching level of production that enable then to reduce their costs, then they would not survive once the market is open to foreign competition, or it would cost the state a high price to subsidize it in order for it to stay alive.

Finally, the importance of economic efficiency as primary objective becomes highlighted in a small or a developing economy in which interdependencies in the interests of various stakeholders are likely to be more significantly affected by a particular market transaction. This reality increases the probability of lobbying, rent-seeking behavior, and political posturing aimed at the ‘safeguarding’ or pursuit of other objectives that a public benefit or interest criteria promotes if not facilitates. If competition policy is influenced by non-economic considerations, the risk of costly industrial policy in the guise of competition policy becomes high.

At the same time, however, competition policy, especially in developing economies, should not completely disregard distributional issues. If the increase in efficiency is only passed on to the firm owners and there is no public benefit from it, in the form of lower prices for consumers, higher level of technical knowledge to domestic workers, etc., then the case for allowing the conduct is much weaker. It should also be noted that at least in the early stages of creating a competition culture, it might be hard to explain why strong firms are allowed to get stronger, at the expense of the local consumer. This problem might be mitigated by receiving concessions from the firms such as a promise to not raise prices, etc. Also, the ownership of the firm might also be a relevant factor. If all or most benefits accrue to foreign firms, this fact should be taken into account as well. Moreover, the introduction of competition policy must be framed in the context of the level of insertion of these economies into the global economy, and the inequality of the international trading system.

Example II: Merger review

Competition policy in small economies must reconcile the technical constraints that productive efficiency places on the number of competitors with the undesirability of certain types of industry behavior created by high degrees of concentration on allocative and dynamic efficiency.

In small economies, large firm or plant size may be required in order to achieve efficient scales of production. One key implication of this fact is that high levels of concentration may be a necessary evil in order to achieve efficiency. Accordingly, competition policy in small economies should be sympathetic to the enhancement of output by individual firms, through either internal growth or mergers, which allow for the exhaustion of economies of scale that were not exhausted by previous market structures, and could not be exhausted in less anticompetitive ways.

The drawback of such a policy is that high levels of concentration might result in higher industrial concentration or absolute monopoly control. Accordingly, competition policy should strive to strike an optimal balance between structural efficiency and competitive vigor so that firms operate at efficient scales and pass at least some of the benefits of greater efficiency on to consumers. The key question involves degree, that is, how large are the benefits as compared to the drawbacks of a larger size of operation. The above consideration affects almost every area of competition policy. This is well illustrated in two areas: policies toward horizontal mergers and policies directed toward cooperative agreements among potential rivals.

By definition, a horizontal merger reduces the number of competitors in the market, and the resulting entity ordinarily has a larger market share than either of the merging parties had before the merger. This reduction in the number of firms, and increase in market share, may substantially lessen competition At the same time, a merger may enhance efficiency by allowing firms to attain scale economies that were unattainable under the pre-merger market structure—either because of firm interdependence or the absolute size of firms. The benefits of reduced costs may even be passed on to consumers if the cost advantage is great enough that the new price is lower than the pre-merger price.

Large economies tend to use structural variables as the main guide in determining the likely competitive consequences of mergers. Thus, many large economies adopted a common approach that signifies the absolute value of competition over increased total efficiency. The underlying assumption was that there was no need for high concentration levels to achieve efficiency. Such an assumption holds true in most industries in large economies, as they tend to have a large number of firms that can operate efficiently. Moreover, an erroneous assessment of the economic effects of a merger is likely to have a relatively small impact on a large economy compared to a smaller one.

Such a policy would necessarily have detrimental results for small economies, in which concentration is a necessary evil in order to realize scale economies. Therefore, prohibiting all mergers that increase concentration above relatively low thresholds would be economically harmful. An overly aggressive or rigid stance toward mergers may prevent desirable efficiency-enhancing mergers from taking place. A small economy should, instead, adopt a merger policy that is more accommodating of efficiency defenses, and that relies less on structural variables alone or on rigid and limiting structural assumptions.

The main policy vehicle for achieving this goal is the adoption of an approach that balances the potential pro-competitive and anticompetitive effects of a proposed merger. Given that efficiencies vary widely from one industry to another, such that no general presumptions can be made based on market structure alone, this requires a case by case or industry-specific analysis of the potential efficiencies in each specific market setting. The adopted rules should enable the merging parties to prove their claim of efficiencies realistically, where such efficiencies exist. This requires that legal presumptions, burdens of proof, and the balancing rule be specified reasonably.

The Barbadian test for merger analysis follows these guidelines. The test is whether the merger's benefits from real efficiencies- as differentiated from pecuniary ones –outweigh its anti-competitive effects on competition. This test seems like a sound one- it balances the pro- and anti-competitive effects of a merger, and allows the Commission to allow mergers whose overall effect is positive.

Let me say, that in the Barbadian context, the displacement of small firms by larger firms dictated by efficiency considerations would, in most cases, mean foreign firms or imports displacing local firms and the resulting outflow of welfare from the economy. Such considerations should be taken into account by the Commission, in its balancing consideration. This is done also by larger economies, such as New Zealand and Israel.

Example III: Cooperative Agreements Among Rivals

The small size of an economy also exacerbates some of the issues involved in the regulation of cooperative agreements among rivals, such as specialization agreements or joint ventures and strategic alliances for shared production, or distribution.

Such agreements raise trade restraint concerns, especially the facilitation or enhancement of cooperation among competitors in an already concentrated market. At the same time, cooperative agreements may enable a group of firms to carry on an activity on a more efficient scale; to reduce information or transaction costs; to engage in expensive innovative projects; or to eliminate free rider problems. Absent such agreements, many firms in small economies must incur high costs because they cannot reach scale economies on their own.

Accordingly, small economies should reject a policy that views agreements that have the potential to increase productive or dynamic efficiency as illegal per se. Rather, small economies should opt for a rule that balances possible efficiency enhancements against anticompetitive effects of the cooperative conduct, and allows arrangements in which the benefits offset the restrictions on competition.

Australia and New Zealand have recognized the importance of a rule of reason analysis of cooperative agreements for the ability of small businesses to compete with larger ones. Both jurisdictions exempt joint buying and selling activities from per se illegality as price fixing if the price-fixing agreement relates to the price for goods or services to be acquired collectively by the parties or the joint advertising of the price for the sale of goods or services collectively acquired. These jurisdictions have recognized that such agreements enable smaller entities to compete effectively with larger ones.

Small size may also increase the dilemma between domestic consumer welfare and total welfare or international competitiveness. One interesting example, which I've learned from Prof. Richard Whish, involves Caribbean rum producers. The Caribbean domestic market for rum is very competitive. At the same time, high distribution and marketing costs in potential foreign markets create significant obstacles to the export of rum. A joint venture among rum producers that would enable them to realize scale economies in distribution and marketing abroad and to export rum would increase total welfare if the revenues from sales in other markets are significant. However, unless domestic firms are prevented from charging different prices for their products abroad and in their home markets, consumers in the domestic markets will most likely be worse off given probable cooperative conduct among rum producers, if the cost savings do not affect the production or distribution prices in the domestic market. In such situations, the goals of increasing total welfare as well as the international competitiveness of firms should be given priority. Again, the solution might have to be found in cost concessions of rum producers of prices to be charged in the domestic market

Outcome: The Relative Importance of Conduct Regulation

A policy that is more lenient towards mergers and the internal growth of firms must be accompanied by legal rules minimizing the effect of more concentrated market structures on industry efficiency. Competition policy in a small economy should thus pursue a policy that minimizes the undesirable economic effects of concentrated market structures and that supports the dynamic, long-run market forces leading to more efficient market structures.

One method to achieve this goal is to apply strict rules to collusive anti-competitive behavior. Such a policy may help to induce oligopolists to operate at higher levels of output and lower prices than they would have in the absence of legal consequences. This, in turn, will enhance efficiency.

Similarly, a strict policy should be adopted towards exclusionary practices with no offsetting benefits, when practiced by monopolies. Given the prevalence of dominant firms in small economies and the relative inability of market forces to erode them, a small economy cannot afford to leave the regulation of monopoly power to market forces alone. Competition policy must focus particularly on deterring the creation and maintenance of artificial barriers to entry, to permit new firms to enter and to expand in monopolistic industries and increase competition. New entrants must have the opportunity to enter a market without handicaps other than those arising from the first-mover advantages enjoyed by existing competitors, have such as well-established ties with consumers and skilled employees.

Second category: examples in which size affects content

Apart from the effects of small size on enhancing the need for more efficient policies, size may also affect the content of the law. Let me try to drive this point home by using three examples.

Example I: Substantive Criteria for Analyzing Anti-Competitive Effects

Competition law is sometimes based on general assumptions regarding market behavior instead of applying rules that require the regulator to analyze each case anew. In some cases, the assumptions on which such rules are based are overall efficient in large economies, but would not create such results in small ones. The reason is that the marginal cases of large economies are oftentimes the main cases for small ones. Accordingly, assumptions and the rules that are based on them might in some cases need to be changed. This can be easily exemplified by Merger illegality standards.

Most economies tend to use structural variables as the main guide in determining the likely competitive consequences of mergers. These variables usually focus on the level of concentration in the market as measured by the sum of the market shares of the three or four largest firms, by the firms' turnover, or by the HHI index, which sums the square roots of the market shares of all firms operating in the relevant market.

These parameters must be fine-tuned to the small economy, especially if they create a strong assumption of illegality, once they are crossed. For example, the EC turnover rates might be too high for Barbadian firms.

The HHI levels adopted by the U.S. antitrust authorities illustrate the importance of fine-tuning legal presumptions to economic size. Although it is only a prima facie indicator of the anticompetitive effects of a merger, its thresholds are important for setting merger review standards, as they create presumptions of illegality, absent a clear showing to the contrary. The U.S. HHI levels create such a presumption, for example, in a merger between the two smaller firms in a market with six businesses, four holding 20% market shares and two holding 10%.

This choice of index may be suitable to the nature of U.S. markets, in which it might be presumed that absent clear showings to the contrary, firms in markets that meet this threshold have already exhausted their scale economies. Yet such a presumption does not hold true in small economies. Objection to the merger of the two smaller firms that will reduce competitors from six to five will usually prohibit firms from achieving efficient scales.

This is not to say that small economies should reject the use of legal presumptions altogether. Such presumptions are important as they enhanced predictability and they reduce the need for a costly case-by-case analysis. At the same time, Small economies need to fine-tune these presumptions to their markets by adopting, for example, much higher concentration thresholds than those adopted in the U.S.

Example II: Remedial issues

The concentrated nature of an economy also raises a structural consideration that is almost absent in large economies. In using its remedial powers, a competition authority in a small economy should take into account, when attempting to restore competition in the market, the effect of its remedy on the current market equilibrium. Otherwise, it might create a situation which is counter-productive to competition.

This will happen if several conditions are met: the remedy necessarily leads to the exit of a competitor from the market; the market can support only a small number of firms which actually compete in the market; entry barriers are high, and the assets of the exiting firm may not be utilized by a new firm (for example, where reputation is an important factor in the consumer's decision) or the process of establishing a competitor in the market is lengthy. In such situations, it is important to exercise caution with regard to the viability of competitors, if their viability is crucial for competition.

Take, for example, a market situation in which the relevant market can support only two firms, the number of competitors that actually exist in the market. Assume that one firm is found to engage in anti-competitive behavior, and that the authority does not exercise enough caution in its decision such that the firm has to exit the market due to a significant comparative disadvantage created by the remedy. If a new entrant faces high barriers to entry, this change in market structure may affect pricing, as there is only one firm remaining.

Example III: International firms

Let me also say a word about the regulation of international firms as there, as well, size matters and should be taken into account when framing competition rules or guidelines. I will use the example of mergers with extra-territorial effects.

Assume that the main air-carriers into Barbados decide to merge. Small economies are very limited in their ability to prevent foreign mergers that negatively affect their domestic markets. This is due to two main reasons: First, lack of resources to analyze the effects of the merger on their jurisdiction. Second, and more importantly- their inability to create a credible threat to prohibit a merger of foreign firms. Given that trade in the small economy is usually only a small part of the foreign firm's total world operation, were the small jurisdiction to place significant restrictions on the merger the foreign firm would, most likely, choose to exit the small economy and trade only in other jurisdictions.

In addition, political obstacles might also stand in the way of a small economy attempting to prevent a merger among foreign firms. If the effects of such a merger are positive in the home jurisdiction or in other jurisdictions (higher taxes, lower unemployment, lower production costs), the small economy might encounter political resistance to its policy, especially because foreign firms have an advantage in shaping public opinion in their home jurisdiction.

So what can be done? First, to join forces with other jurisdictions to create a credible threat to a merger that reduces welfare in all of them. If a sufficient number of jurisdictions join forces to prevent such a merger, then this might create strong enough economic incentives for firms to abandon attempts to merge. This is one of the main reasons why regional agreements- such as the CSM are of such importance.

Second, and more realistic, is to take changes in the market structures of their large importers as a given and to attempt to regulate the merged entities with the existing regulatory tools that relate to the actions of these foreign firms within their domestic markets, although such tools are, generally, more costly and less effective than prohibiting the merger from occurring. This implies that regulatory measures play a more significant role in the competition policy of small economies than large ones.

For example, when Unilever acquired control over Ben & Jerry's and the merger raised concerns regarding competition in the Israeli ice cream market, the Competition Authority required that the quality or quantity of the products be at least as high as those in the pre-merger situation, and that any new product would be made available to the distributor. These are limited remedies since they cannot totally erase the fact that both firms are controlled by the same entity that determines their strategic decisions. At the same time, the small economy often relies on the fact that the international firm will not change its strategic decisions (such as Ben & Jerry's introduction of a new product in world markets) only to reduce competition in the small economy.

Enter development

Up until now we focused mainly on size issues. Let us now turn and focus on development issues- How does the level of development affect a country's competition policy? There are many ways, but let me shed light on some.

Developing countries pose unique and interesting issues for competitiveness and competition law enforcement. Their low level of economic development, which is often accompanied by institutional design problems and complex government regulation and bureaucracy, creates challenges that have to be recognized before the successful implementation of an antitrust regime. The experience of many emerging competition authorities underlines the importance of identifying the specific challenges developing countries face in adopting and enforcing competition law as part of an overall public policy mix in pursuit of economic development.

The first obstacle is often limited funding and the difficulty of staffing the competition authority will skilled personnel. This is a well known problem, which characterizes many developing economies. This problem is often exacerbated by the fact that large firms- those prone to engage in harmful anti-competitive conduct-often have more funding than the authority to present their case in court.

There is no easy solution to this problem. However, there are several ways to mitigate it, some of which have been adopted already by the Barbadian competition authority:

- **Seek technical assistance** from larger and more mature competition authorities. Often, skilled international firms mask their anti-competitive conduct in a way that only skilled persons can detect as anti-competitive.
- **Apply the law in stages**: At least in the first, formative years, it is vital not to try too difficult cases, but go for the easiest ones to prove that would also indicate the benefits to the public from such enforcement. Focusing on the most blatantly harmful practices will increase public education and will avoid the need for overly elaborate institutional characteristics. The competition authority should first focus on the suppression of horizontal cartels (the most unambiguously harmful type of enterprise practice) and on basic competition advocacy activities relating to essential market reforms. After gaining adequate experience in these areas, it would then take on additional responsibilities for matters such as merger review and anticompetitive vertical restraints.

- **Utilize the onus of proof**-create prima facie indications of anti-competitive conduct that would require the firms to carry the onus of justifying their conduct.
- **Work with your allies**, and create as many of them as possible. An important role in educating the public is to create possible "private regulators" by educating the different stakeholders in the benefits of competition. When consumers, rivals, suppliers or distributors are aware of the competition rules and the ways such rules can benefit them, they will have strong incentives to act as "private regulators", by monitoring closely the conduct of firm operating in the market for any abuses. Such conduct reduces significantly the monitoring costs borne by the authority.
- **Reduce costs by sharing them**- as in the case of CSM with other authorities.
- It is important to **link consumer protection to competition enforcement**

Another major problem is the inability of most domestic firms to compete in foreign markets. This often means that complete openness to trade and emphasis on efficiency would mean the displacement of domestic firms by foreign, international ones. This concern should not be overlooked when shaping optimal competition policy. Again, there is no easy solution to this problem. However, there are several ways to mitigate at least some of its effects:

- **Do not disregard the distributional effects** of a decision. The Commission should analyze and balance the pro-consumer effects from lower prices against considerations of distributional nature. Where all the benefits accrue to foreign firms, this should be taken into account. '
- **Untilizing industrial policy**, to create strong domestic competitors which have comparative advantages over foreign ones.
- **Closer conduct regulation** of larger firms, and the use of concessions from such firms to ensure that domestic consumers are not harmed.
- **Strategy of selective opening** of the economy, by which sensitive sectors, sustaining employment or food security, for instance, could be protected from unfair competition from subsidized imports.

Conclusion

Despite substantial differences in optimal competition policy for small and large economies, many small economies give no systematic weight to considerations of the size of the economy in their competition policy.

Rather, many small jurisdictions adopt or rely upon the statutes and established case law of large jurisdictions.

This approach has many recognizable advantages, such as a ready basis for the law and a large body of comprehensive case law and commentary. In addition to these learning externalities, it also generates network externalities. As more decisions that apply the law to various factual settings begin to accumulate, legal certainty is increased. European Union and U.S. competition law, being the most widely used competition laws, are thus worth to other jurisdictions more than their face value as judged by the clarity and comprehensibility of their provisions and current case law. It reduces the resources necessary to create a competition law tailored to a jurisdiction's special characteristics.

Yet the adoption of the laws of a large jurisdiction have important pitfalls. I hope I have succeeded in convincing you of the inappropriateness of a one-size-fits-all approach and the necessity of adapting competition policy to the economic circumstances and institutional endowments of individual countries. The challenge is thus to adapt the doctrines established in a large market to a smaller market. It seems that the Barbadian competition authority is taking the right steps in this direction. I will conclude by wishing it that it will succeed in staying on the right track.

Globalization process

Before I conclude, let me also say a few words on the current attempts to harmonize competition laws, as size also matters here. There are two main venues in which harmonization suggestions are discussed. The first is the WTO- in which informal discussions took place. It now appears, however, that the issue of competition law was put on hold. The second venue, which is much more fruitful, is the ICN: International Competition Network. It is a voluntary network comprised of almost all the competition jurisdictions in the world, which creates suggestions for members to apply their laws in the fashion agreed. Due to financial constraints, it is mostly run by officials and lawyers in developed countries.

The question to be asked, of course, is whether small and developing economies are likely to benefit from such endeavors and to what extent.

Let me start with some positive observations: small economies will undoubtedly gain from an international competition policy. Harmonization of some or all competition rules will reduce the transaction costs of importers that might otherwise find it uneconomical to invest in learning and complying with the competition policies of such economies. Small economic size, which is often characterized by a small number of consumers, often implies that there are limited profits to be had. Accordingly, the lower costs of trade to a small economy- including the costs of learning and complying with domestic competition laws- the higher the incentive of foreign firm to import their products into it, and the higher the contestability of their markets.

In addition, similarity of law enforced in jurisdictions to which domestic firms import may also reduce their learning and compliance costs.

The setting of global antitrust standards may also assist competition policy advocates in small economies to advocate and advance the adoption of welfare-based competition rules. To give an example, the ICN's proposed merger guidelines, which were endorsed by the competition authorities of all member states, may serve as a reference point for the many jurisdictions which have not, as of yet, adopted a merger regime. It will be more difficult for interest groups to put forward a set of rules which significantly diverges from the ICN's recommendations than when such recommendations were absent.

Yet even the theoretical option of a multilateral dispute resolution system that would take into account the global effects of conduct might not solve all the problems of small economies. Although this option can reduce the occurrence of conduct with negative domestic welfare effects in the small economy, it would not prevent the approval of all such conduct. It may well be the case that the conduct has positive effects in most of the jurisdictions in which it operates, in which case it will most likely be approved. Similarly, a supranational body might still prevent a merger that has positive effects on their market but negative effects elsewhere. The possibility of such occurrence is increased if the supranational body will base its decision on welfare effects on a per dollar basis rather than on the proportional impact of the coduct on total welfare in each jurisdiction.

Small and developing economies do have, however, a winning card in their pocket: it is their pre-merger notification procedures that were copied from large economies. This card is worthy not because of how it is used to remedy the problems of each small economy by itself- as it rarely is used for such matters- but due to the sheer number of small and less developed economies which have adopted the procedure. As note before, these procedures impose high transaction costs of firms wishing to merge that operate in global markets. Most of these firms come from large economies.

Concerns regarding competition law

There is concern that competition law could have a negative impact on society, since there are losers, and this could result in unemployment. A research conducted by a group of experts on the Caribbeans, headed by Dr. Taimoon Stewart, found that competition would raise overall employment by raising efficiency, lowering prices, stimulating demand and thus increasing employment. The initial fall in sector employment would be offset because demand would be stimulated in other sectors and employment in the economy as a whole would rise. Yet in the transition period, considerable social problems will be created from loss of employment, and that it will be important for governments to introduce social measures such as re-tooling and other measures to assist mobility of the labour force.

Anti-competitive conducts are prevalent in these economies, despite their openness and miniscule size. There is therefore a need for competition law.