



**INTERNATIONAL COMPETITION NETWORK**

**Executive Summary  
- Special Project -**

**COMPETITION LAW IN SMALL ECONOMIES**

**Presented at the 8<sup>th</sup> Annual ICN Conference**  
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**The mission of the co-authors of the 2009 Special Project (Swiss Competition Commission and Israel Antitrust Authority) was to prepare a background paper for a discussion of Competition Law in Small Economies at the 2009 ICN Meeting in Zurich, Switzerland. The main issue raised by the Survey and the answers thereto was to explore ICN members' views regarding whether and how the size of an Economy (as defined in the Survey) may matter when crafting, implementing, or interpreting competition law. The Special Project breaks up into five main topics:**

### **Notion of a "Small Economy"**

Responses to this question vary from agreeing that the criteria put forth in the Survey are adequate, to believing the criteria to be incomplete, or even not useful. The manner in which each contributor addresses the size of its own economy also comes through in this section due to the generality of the question. To this end, a number of contributors mention the significant effects of being part of a supranational network or larger jurisdiction on the way the agency addresses competition matters. In addition to the characteristic of size, some contributors highlight their dependence on international trade as an essential feature that contributes to the overall openness of their economy.

### **Anti-Competitive Agreements**

There is no consensus among contributors on how the size of an economy affects the application of competition law regarding anti-competitive agreements. Some contributors do not believe that there are significant patterns or differences with respect to cartel activity in highly concentrated markets, while others emphasize that open borders are very important for maintaining competition on their economy. With respect to whether there is evidence of more oligopolies in small economies, about half of the contributors do not think it is the case, while the others believe there is room for such evidence. Furthermore, some contributors highlight the presence of business or trade associations, and their ambiguous role with respect to antitrust issues. Contributors also express mixed views concerning the need for harsher sanctions in small economies. Most contributors see no reason for small economies to employ a different framework of analysis to the assessment of any type of vertical restraints based merely on market size.

### **Abuse of a Dominant Position**

The majority of responding countries agree that the analytical framework underlying the assessment of abuse of a dominant position is not altered by the economy's relative size. At the same time, contributors acknowledge that the size of the economy may constitute a relevant factor in the application of competition law and policy to a certain conduct or practice. In addition, some countries point to areas of competitive concerns that are more typical to unilateral conduct within a small economy than within a large one, which require close attention by the competition agency with jurisdiction in the territory. With respect to joint dominance, members take different approaches; however, none of the contributors explicitly associate any specific approach with an economy's small size.

## **Mergers**

The majority of the contributors express the view that there is full justification for a merger review on a small economy, which should not deviate from the substantive rules of a merger control regime which apply in a large-sized economy. This is so because the substantive criteria underlying standard regimes applied by most antitrust agencies, whether a merger creates, enhances, or facilitates the exercise of market power, are applicable to all situations arising in small economies in which it is appropriate to block or condition a merger. At the same time, numerous contributors made it clear that the size of the economy may ultimately affect the economic realities surrounding the merger, and, in turn, the final outcome of the analysis. Numerous contributors point out that the size of the economy may also shape procedural elements of the merger to submit a pre-merger notification filing to be reviewed by the competition authority.

## **General Analytical Framework**

Concern is expressed by some contributors that the main question posed may imply a less stringent application of competition law if one accepts that "size does matter." However, the answers of other contributors which regard themselves as small economies alleviate such concern. A number of these contributors declare that they have many markets with high concentration and that open trade policies are of greater importance to small economies than to large ones, from a competition policy angle. Other respondents state that the size of the economy should be taken into account only to a certain extent.