

I . Analytical Framework

Does the size of the economy affect the application of competition law, and if so how?

1. An economy might be defined as large or small by its size, population, territory, level of concentration or development, and so on. It's hard to tell which criteria would perfectly meet the idea of a small economy. However, by whatever means it is defined, the size of the economy does not lessen the importance of competition law or change the framework of antitrust enforcement.
2. Some suggest that if an economy is relatively small, application of competition law should be different accordingly. However, application of competition law should be determined by the size of a relevant market, not by the size of the economy. In other words, competition law enforcement should apply a set of general principles in determining anti-competitive effects within the appropriately defined geographic or product market.
3. Others argue that a relatively small economy needs national champions in order to overcome the nation's small domestic market. In fact, this argument gained traction during the 1970s when Korea was in its developing stage and its economy was relatively small. There were many who believed that Korea needed national champions capable of competing in overseas market to overcome Korea's relatively small market. However, the argument eventually delayed the establishment of competition law, and the delay in adoption of competition law in part was the reason for high market concentration of Korea.
4. Besides, in many cases, competition agency of a small economy hardly starts as an independent body, but as a branch of government ministry, which is not so desirable case. The KFTC, Korean competition agency, first started out as a part of

the Economic Planning Board, in 1981 and became a vice ministerial-level independent agency in 1994. The KFTC finally became a ministerial body in 1996.

5. In an earlier stage of competition policy implementation, a country might opt for competition authority within an existing government agency to promote harmonization with trade or industrial policy. However, Korea learned that competition policy can be distorted by other policies such as trade or industrial policy when competition authority is not fully independent from other government bodies. Therefore, even in a small economy, competition authority should be independent enough to enforce law without interference from other sectors and to play its competition advocacy role effectively.

6. In conclusion, the size of the economy does not make any difference in the importance and necessity of establishment of competition policy and culture. Neither does it change the key principle of competition law enforcement that whether to impose remedies and their levels should be determined by weighing the competition-restraining and competition-promoting effect that a conduct might have.

II. The notion of a small economy

Are the abovementioned criteria adequate in your view?

How do you define your economy? By which standards? How do you define the size of your neighboring economies or major trading partners?

1. According to the OECD paper, the notion of an economy can be defined by various standards: level of concentration; population and GDP; development stage.

2. However, what criteria should be adopted to define a small economy alone does not seem to be a matter of importance. The criteria might be meaningful when they serve as the premise for discussion on whether or not a small economy, once defined as it is, requires a different competition law enforcement regime. But as we believe that a small economy does not justify a different enforcement regime, we consider the attempt to define a small economy unnecessary from the first place.
3. To recap, when it comes to antitrust enforcement, the size of the economy is less important than the notion of geographic or product market. Therefore, defining an economy as small one uniformly and then trying to apply a different legal regime to all industries of the economy does not make sense. Thus, the attempt to define the size of the economy can be said meaningless.

III. Anticompetitive Agreements

How, if at all, should such elements be taken into account? What is the importance of open borders in this context? Is there evidence for more oligopolies in small economies? If so, what type of competition policy is best suited to cope with the implications that oligopolies have on competition? Could the enhanced risk of collusion and anticompetitive conduct justify harsher sanctions or a different focus of the competition laws?

1. The fact that people and operators know more about each other in small economies may lead to more incentive of anticompetitive agreements. This characteristic of a small economy justifies the role of competition authority - to reduce incentive for businesses to make anticompetitive agreements which might restrain competition and threaten consumer welfare by intensively monitoring against potential cartel activities.

2. Meanwhile, if an economy is open to external markets, it can not ignore the pressure from foreign competition. So even if the economy is small, with its market opening to the outside, the relevant market often will not be confined within its borders. Thus, even for a small economy, exemption cases from application of competition policy, if any, will be decreased.
3. The high likelihood of oligopolies in small economies itself does not require a different type of competition policy regime or different levels of remedies. That is to say, what a remedy regime has to ensure is to discourage incentive for cartel activity by making the loss incurred by a given remedy bigger than the benefit made by cartel activity. Therefore, there is no need to adopt a different remedy regime according to the size of the economy.

Vertical Restraints are often linked to imports in small economies. Does this require or justify a different analysis of vertical restraints, especially of resale price maintenance and of parallel import bans, in small economies? Moreover, could the fact that the risk of foreclosure is higher justify a different analysis?

4. In a small economy, imports account for a large share of the economy. So there is a need to formulate and enforce competition policy that ensures a fair competitive market for imports. For example, resale price maintenance and parallel import bans have a high potential to undermine consumer welfare by activities such as raising consumer prices or limiting sales volume, so these practices warrant a close monitoring by competition authority. But when it comes to remedies, as they are determined by the level of anti-competitive effects on the properly defined geographic or product market, using general antitrust enforcement principles, there seems no need for a small economy to take a different approach.

IV. Abuse of Dominance

Does this mean that a specific regime should apply to the conduct of dominant undertakings in a small economy? Or does this make no difference? Is there a different approach towards collective dominance issues?

1. There is no need to apply different principles to the conduct of dominant undertakings in a small economy. This is because unique characteristics of a small economy can be fully considered during the general process of market definition and analysis of anti-competitive effects.

2. In a small economy, due to its limited demand, a market is hardly big enough to have many companies, unlike a market in a large economy. This leads to a relatively high level of market concentration in a small economy. With this, an argument could be made that for a small economy, a less strict regime should apply to the conduct of dominant undertakings or analysis of its anti-competitive effects. However, determining whether a certain undertaking has a dominant position or its conduct causes anti-competitive effects takes more than simply looking at a level of market concentration. This task requires thorough consideration of substantial market conditions, which is just the same as dealing with this matter in a large economy. Given that in a small economy, as securing a dominant position and using it to cause damage to transaction partners or consumers is easier, it becomes possible to argue that it is rather a small economy that needs much closer monitoring.

V. Mergers

Are there any differences with respect to the substance of the merger control regime? Are there different justifications for having a merger control regime in small

economies? Should there be different guidelines for geographic market definition? How might the size of the economy affect the application of legal presumptions? Which types of remedies are best suited for small economies?

1. As with the case of abuse of market dominance, a small economy does not require its own specific merger control regime, as the general principles for market definition and anti-competitive effect analysis that are necessary for merger review can be applied to a small economy as well.

2. In a small economy, though, competition in overseas markets should be factored in for merger review as an important element. This is because if a merger is reviewed simply from a domestic market perspective, and its potential anti-competitive effect is judged accordingly, overlooking competition in overseas markets, it would eventually lead to restricting mergers that could benefit the overall national economy via economies of scale expanding exports. Therefore, in a small economy, the merger review process should pay thorough attention to variables, such as the potential pressure from foreign competition, the possibility of diversion of exports to the domestic market, efficiency gain for the entire public through expansion of exports.

3. With respect to remedies also, there are no need to make distinct remedy types for a small economy. Regardless of the size of the economy, situations of the relevant market should be closely examined before any remedy is determined.

On the level of the procedural regime, what are the appropriate criteria triggering an intervention or an inquiry into a merger project: turnover thresholds; structural criteria, such as the degree of organizational integration (existence of branches or subsidiaries) of one or both of the merging companies; effect on competition? Should

there be a mandatory or a voluntary notification regime, with or without a prohibition to proceed without clearance?

Criteria for merger notification regime should be made in consideration of an economy's size. If it's a small economy, even a small-scale merger might constrain competition in the relevant market. Thus, unlike in a large economy, small-scale mergers also need to be notified. However, requiring all mergers, however small they might be, to be notified can put a heavy burden on businesses. Therefore, the level of a merger for notification should be set after considering the size of a national economy and the potential degree of burden that the merger might have on businesses.