# Survey on Competition Law in Small Economies

## (CFC answers)

**The Notion of a "Small Economy"**

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

   Application of competition law could be restrained by the criteria to define small economies. In general, the application of competition law implies an effective institutional performance of the competition authority to oversee its enforcement activities. To guarantee an effective execution of the competition authority's work, it is necessary a sound legal framework and a minimum level of institutional development that support competition principles. Moreover, sufficient financial resources and qualified personnel for the competition authority are needed in order to provide it with the means to implement its decisions.

2. Are the abovementioned criteria adequate in your view?

   These standards of measure are valid to define the size of the economy, but it is worth considering that one definition might give different outcomes that the rest of criteria to determine "smallness". For competition purposes, another convenient definition of small economy is that set by Michal Gal, which focuses on high concentration levels and entry barriers.

3. How you define your economy (large or small)? By which standards? How do you define the size of your neighbouring economies or major trading partners?

   In the case of Mexico, we consider that the size of the economy is not small, because of its openness and degree of regional economic integration, as well as its GDP level. Moreover, Mexico is geographically linked to the largest economy in the world and its commerce with this country is very significant.

**Anticompetitive Agreements**

1. 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 competition laws?

When a small economy is analyzed with respect to anticompetitive agreements, considerate has to be considered that few players in a small arena may imply a higher probability to collusion. We have no evidence for more oligopolies in small economies, but we believe that in these cases the competition authorities should as a priority the fighting against cartels, and therefore adequate instruments and resources will be needed. If sanctions are sufficiently high to deter anticompetitive conducts then it will not be necessary a different focus on competition law.

2. 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?

   Small economies should utilize the logic of rule of reason for competition analysis on vertical restraints in order to determine its positive or negative net effect on welfare's consumer. This is the kind of analysis we consider appropriate even when the size of the economy is small.

**<u>Abuse of Dominance</u>**

Since small economies may not be able to accommodate too many competitors in each industry, more emphasis might be put on efficiency considerations.

1. 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?

   A specific regime may be not the answer. The essential point is to ensure that competition authority has the capacity to intervene opportunely in a market where there is an economic agent with substantial market power that is unduly restraining competition. The aim of this intervention should guarantee greater welfare to consumers.

**<u>Mergers</u>**

1. 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?

   In some degree, small economies try to adapt their merger control regime to its structural characteristics. Hence, it is more suitable for them to establish standards that properly meet their needs. If small economies have more exposure to international markets, it is less likely to faces geographical markets defined as national or local. With respect to remedies, we consider that structural remedies are more preferred than conduct remedies, because the latter results more costly in terms of surveillance and commitment of financial resources.

2. 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; effects on competition? Should there be a mandatory or a voluntary notification regime, with or without a prohibition to proceed without clearance?

   We believe that the most recommended criteria to make an inquiry into a merger project involve an assessment of the effects on competition. If a merger is found that will have substantial lessening of competition, then an investigation is justified to be launched.
   The notification regime should be of mandatory nature in order to get benefits of preventive action. This measure requires that the competition authority has the appropriate resources to deal with technical and administrative duties involved in the management of notifications and the analysis of the cases, but financial constraints are difficult to overcome when the size of the economy is small.