

Abuse of Dominance and Small Economies

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Overview

- The Assessment of Dominance
- Abuse
- Remedies



Dominance Assessment

- Basic Definition: *an undertaking is in a dominant position when it has the economic strength to behave to an appreciable extent independently of its competitors, customers and suppliers.*
- The basic analytical framework used to assess dominance is not altered by the economy's relative size
- However, an economy's size may constitute a relevant factor in the outcome of the dominance assessment
 - ICN Special Project on Small Economies (2009)
 - ICN Unilateral Conduct Working Group (2008)
 - Dominance based on *“a comprehensive consideration of factors affecting competitive conditions in the market”*
 - *“If an economy is small and/or isolated from external trade, this may result in higher barriers to entry which could facilitate a finding of dominance/substantial market power”*

Abuse: Potential Areas of Concern in Small Economies

- Essential facilities
- Excessive Pricing
- State Created Monopolies
- Vertical Integration & Foreclosure
 - Is the “as efficient competitor” standard appropriate?
- Raising Rival’s Costs
- Maintenance of artificial entry barriers



Remedies

- From ICN Small Economies Survey:
 - Smaller markets in small economies may result in greater prevalence of dominance, perhaps more state-created monopolies
 - Potentially less scope for self-corrective market mechanisms because of higher entry barriers
- Perhaps, greater justification for price regulation
 - However, no less complex in a small economy compared to a large economy

Remedies & Agency Structure

- Potential greater scope for price regulation could support combining regulatory & enforcement powers in a small economy:
 - New Zealand Commerce Commission: competition law enforcer and regulatory powers in telecommunications, dairy and electricity
 - Barbados Fair Trading Commission: competition law enforcer and regulatory powers in telecommunications, electricity and natural gas
 - JCRA: competition law enforcer and regulatory powers in telecommunications and postal services
 - Faroese Competition Authority: competition law enforcer and regulatory powers in telecommunications, postal services, electricity, and insurance
- Provides scope for regulatory cost efficiencies
- Reduces, *but does not eliminate*, scope for disagreement between competition law enforcement authority and sector-specific regulators!



Final Thoughts on Abuse of Dominance in a Small Economy

- Need to assess conduct in light of specific circumstances in the relevant market
 - Not all small economies have the same economic circumstances
 - Not all markets within a small economy have the same economic circumstances
- Need to assess Efficiencies