

# Competition Law in Small Market Economies-Special Application to New Zealand by *Michal S. Gal*

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Commentaries

by

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# Commentary I

## Some Key Points of *Michal Gal*

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- Small economies are different
- Competition Law should recognise particularities and give economic efficiency primacy
- New Zealand competition law
  - public benefits test
  - eschewing rigid rules of thumb
  - authorities' processes (case specificity)generally appropriate

# NZ Markets and Market Structure are Affected by Size & Isolation

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- Distance does seem to matter (*Australian Treasury Study*) distance explains 50% of the Aus. income gap with the US
- Size limits specialisation and scale: but limits relaxed with openness (exports+imports) 68% size of GDP
- Size (and resource endowments) limit the thickness of markets
- Size and isolation affect structure, variety and scale jointly
  - Goods production 22% gdp, services 68% gdp
  - There are some comparable markets (e.g. banking, supermarkets)
  - But likely to be scale/variety limitations in many industries despite structure (e.g. retail services)
- These consequences of size also suggest the approach of *Michal Gal*

# NZ Ownership Market & Regulation

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- Relatively large share of activity in state ownership or cooperative form:
  - limited competition in the ownership market
  - Implications for competition law
- Effect of size and isolation on form of ownership and the balance of regulation?
- If regulation is to substitute for competition there would seem to be no reason for the criterion for regulation imposition and programmes to differ from the public benefits criterion of competition law. But under present implementation it does.

# Matters Arising

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- Distributional concerns are not competition law concerns
  - Particularly in small economies
  - Competition law is a very very poor instrument for redistribution (influencing distributive justice)
- Are no *Per se* rules desirable?
  - rules for commercial activity under competition law are almost always not desirable: even price fixing may be (dynamically) economically efficient
  - for specific actions that are difficult to detect there may be a monitoring/transaction cost argument for a *per se* rule. If so the penalty might reflect a public benefits assessment of the act.

# Other Matters Arising

- “In large economies social values are achieved by competition law that prevents mergers, agreements or practices that significantly limit competition. Thus .. achieves the goals of efficiency and egalitarian income distribution.” **Comment to Michal: I thought that this seemed less consistent with your proposition that in large economies scale was largely exhausted (or so relatively unimportant) that not much is lost by the consumer standard in large economies**
- “In Southern Cross, for example, .....”
- “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....”

*Lewis Evans*

# Commentary II

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“Competition Law should be fitted to the market conditions of each country in which it is applied”

- Which institution should do the fitting - Parliament, Commerce Commission, Courts?

“The costs of improper design and application of competition laws in a small economy may be greater than in the case of a large economy.”

*Terence Arnold*

# Commentary II

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Introduction of substantial lessening of competition test into s.47 broadened the scope of the Commerce Act

- More intense regulatory scrutiny necessary in small economy

Industry specific regulation - the result of the limitations of competition law in small economy?

*Terence Arnold*