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THE TAILORING OF COMPETITION POLICY TO CARIBBEAN CIRCUMSTANCES – SOME SUGGESTIONS

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THE TAILORING OF COMPETITION POLICY TO CARIBBEAN CIRCUMSTANCES – SOME SUGGESTIONS

Rajan Dhanjee [1]

INTRODUCTION – THE PROBLEMATIQUE

Competition policy is concerned with preserving and promoting competition, both by enforcing competition law against restrictive business practices (RBPs) by firms,[2] and by influencing other governmental policies or measures affecting competition (the present article focuses mainly upon RBP control). From their origin in Canada and the United States during the last quarter of the nineteenth century, competition laws have now – to a large extent because of the universal trend towards market liberalization – spread to the majority of countries,[3] among which are three Caribbean countries, Barbados, Jamaica and St. Vincent and the Grenadines. A large number of bilateral and regional agreements touching upon this area have also been concluded[4] including, of course, Chapter VIII of the revised Treaty of Chaguaramas,[5] the Cotonou Agreement[6] – and, in the future, the Free Trade Agreement of the Americas. At the multilateral level, the General Assembly adopted in 1980 a Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices which, while not binding, has the political authority and legitimacy of a G. A. resolution.[7] The WTO Working Group on the Interaction between Trade and Competition Policy has been discussing on the possible adoption of a binding multilateral framework on competition for several years; the outcome of such discussions is now not clear, given the breakdown of the Cancun Ministerial meeting, but it is possible that the WTO will carry on working on this issue in some form or other.

It would be preferable if the adoption and application of competition policy in the Caribbean were not merely externally-driven, but were based upon conviction and knowledge about how it can significantly help individual countries and the region to better meet its problems. The impression an outsider forms in the Caribbean is that there is a deep-rooted skepticism about competition policy. Among some who are not familiar with this area, there is a questioning of the *relevance* of competition policy. Others may accept that the openness of Caribbean economies and their advanced process of economic liberalization would not suffice by themselves to ensure competitive markets, because of such reasons as non-

tradeability of some goods and (in particular) services, or RBPs by foreign exporters, transporters or distributors – but have doubts about how much *value* competition policy would have in the circumstances of Caribbean countries. This is linked to doubts about how the *design and application* of competition law and policy could be tailored to Caribbean circumstances so as to maximize its benefits, minimize costs and be administratively feasible. Such doubts are quite understandable – this is a complex area, many Caribbean countries have difficult problems and, while it has become a cliché that no one size fits all, there are few prescriptions about which sizes the cloth of competition policy should be cut in order to fit Caribbean countries.

Some issues that may arise in this connection are: In what respects, if any, should the application of competition policy in the Caribbean be different from that elsewhere? What objectives (or combination or relative weight of objectives) should competition policies have in Caribbean countries? How should competition policy be applied in the Caribbean, given the need: (a) to maintain incentives to invest (and to generate, import or disseminate technology) for both local and foreign firms and (b) to preserve efficiency arising from economies of scale and scope, while (c) avoiding excess capacity and waste in small economies with limited resources? How much can competition policy contribute to the urgent problem of maintaining Caribbean competitiveness in national and international markets – or conversely, might its application reduce competitiveness? What is the relevance of merger control in the Caribbean? The present article attempts to respond to these inter-related questions in an integrated manner, and make some personal suggestions as to how competition policy might be appropriately tailored to Caribbean circumstances. A balanced and nuanced approach is attempted – there is no intention here to provide facile answers which skate over the very real problems of applying competition policy in the Caribbean context. Nor is there any intention to over-state the benefits of competition; many of its benefits may be lost in the absence of supply capabilities to take advantage of new opportunities – but, as discussed below, competition can play a key role in promoting the creation of such supply capacities.

The article first gives an overview of the benefits and objectives of competition policy, and different approaches to it in different jurisdictions. The next section then lists possible characteristics of Caribbean countries – as gleaned by an outsider from oral and written Caribbean sources, particularly the reports prepared under this project – as well as problems

arising from small size or weakness of the competition culture that may be particularly acute for Caribbean competition authorities attempting to implement their competition laws and policies. The third section then makes suggestions as to how competition policy might be applied in the Caribbean, covering both some substantive and institutional aspects. The conclusions briefly highlight key messages from this article, and suggests how further research in this area might be structured.

COMPETITION LAW AND POLICY – BENEFITS, OBJECTIVES AND APPROACHES

The benefit – and the common aim everywhere – of competition policies is to promote economic efficiency and consumer welfare by encouraging entrepreneurial activity, market entry by new firms, and more enterprise efficiency and competitiveness.[8] The two main types of efficiency promoted by competition are static efficiency (optimum utilization of existing resources at least cost) and dynamic efficiency (optimal introduction of new products, more efficient production processes and superior organizational structures over time). Competition also ensures that cost savings are passed on to consumers, who would benefit as well from greater product quantity, quality and variety – for this purpose, consumers include business users of intermediate inputs, whose product quality and cost structure would be improved by competition among their suppliers, as well as Governments undertaking public procurement. Competition may result in individual losses as some producers lose market share and possibly exit from the market, while even consumers in a market may lose, at least temporarily, as resources are reallocated to more productive uses in other markets (hence the emphasis of competition policy on keeping market entry barriers low to allow new entry). But overall, the economy would gain.

Apart from the efficiency and consumer welfare goals indicated above, competition policies also aim in different jurisdictions at other objectives such as: promoting competitiveness of national firms; ensuring freedom of economic action or fairness, controlling concentration of economic power, or promoting market opportunities for small firms; safeguarding the public interest (which may include maximizing national production or exports, or employment concerns); or market integration (in regional integration groupings). There are important differences among national (or regional) competition policies in respect of the willingness to take non-efficiency-related criteria into account, related to differences in the priority attached to competition vis-à-vis other policy objectives.[9] Public interest objectives continue to be

embraced on a fairly widespread basis by developing and transition countries, particularly in merger control.[10]

Moreover, even in the application of competition-related criteria, differences of view still sometimes arise as to how competition law should be applied, given that perfect competition may sometimes lead to inefficiency because of such factors as economies of scale – thus, there may be differences in the enforcement policies of individual jurisdictions as to the relative importance to be ascribed to existing market structures and their potential future evolution, whether actual or potential market entry or technological change would prevail over entry barriers to the relevant market, whether any countervailing efficiency gains are likely to arise from restraints to competition, whether and which are the trade-offs between static and dynamic efficiency and between short- and long-tem consumer welfare, etc. Historically, there have been several schools of thought as to what framework of economic analysis should be applied to evaluate such questions, and this academic debate – which has practical implications for some areas of competition law, but is even more relevant to enforcement policy – is far from settled.[11] There are also important differences among jurisdictions in respect of: the legal approaches used (rule of reason or prohibition subject to exemptions); the nature or scope of exemptions; delimitation of relevant markets; remedies or sanctions; the organization and powers of competition authorities in theory and practice, including the information, tools, resources and expertise at their disposal; the possibility and prevalence of private actions; and the relative roles of administrative or judicial authorities.[12]

Such differences would, in the majority of cases, not lead to greatly diverging decisions; competition authorities follow an eclectic approach, and the practical effects of applying different criteria or analytical frameworks would, in any event, often be similar. Moreover, there is a long-standing trend towards convergence in the provisions or the application of competition laws. Competition policies in many jurisdictions are now placing relatively greater emphasis upon efficiency and consumer welfare goals as opposed to other goals, and there is substantial convergence in economic analyses and enforcement techniques. There is general consensus among competition authorities that: "naked" cartels without redeeming efficiency benefits should in principle be proscribed (subject to different exemptions in individual jurisdictions); dominance should not be sanctioned but only its abuse (although there are important differences in how dominance should be determined and what constitutes abuse);[13] and (despite differences in the substantive tests applied) vertical restraints and

mergers should be subjected to careful economic analysis to ascertain whether they are really anti-competitive and whether there may be countervailing efficiency benefits – competition authorities do not intervene in most such cases. But greater convergence does not necessarily remove the potential for diverging decisions, since the economic analysis and remedies applied in competition cases leave much room for discretion. There may thus sometimes be important differences in the treatment of similar cases – which have on occasions led to tensions between the major competition jurisdictions. So far as developing countries are concerned, there is obviously a large gap between them and more advanced countries in respect of effective enforcement. It is not clear to what extent this is because of a decision (explicit or implicit) by the Governments concerned as to the priority they attach to competition, and to what extent this is simply because to lack of capacity.

It follows that there is no set formula which can be applied in this area by Caribbean countries. While there is a general blueprint of the main features of competition law and policy available, there remain many questions relating to its design and application which would necessarily have to be determined by each Caribbean country (and by the region where applicable), in the light of local conditions and social preferences. This would of course be the case for any jurisdiction wishing to adopt and apply a competition law. Indeed, the UNCTAD Model Law[14] is based upon this premise; it provides a skeleton of the typical elements of a competition law, and then reviews different approaches followed by different countries or regions in respect of each element, leaving it up to jurisdictions starting afresh in this area to make their sovereign choices from this menu on an a-la-carte basis. Realistically, Caribbean countries may not be able to diverge too far from well-known competition policy approaches, because of: the difficulties of trying to work out radically new approaches; Caribbean commitments under the above-mentioned international agreements; the disincentive effect an unfamiliar competition regime may have for foreign investors; possible pressures from home Governments of foreign firms in the event of action against such firms which does not follow well-known approaches; and the willingness of these Governments to provide co-operation in cases with cross-border implications. But despite such constraints, there would still be a large margin for manoeuvre.

CARIBBEAN CONTEXT FOR COMPETITION POLICY

As brought out in the research papers prepared under this project, several economic, socio-cultural and institutional characteristics of many or all Caribbean countries may be identified

– some with more certainty and others with less, and with different degrees of relevance to competition policy in different Caribbean countries. There may be other relevant factors which are not mentioned below; on the other hand, several of these factors characterize other developing countries to a lesser or greater extent – and indeed, some developed countries as well. A particular combination of such factors, or of their degree of importance, may well characterize Caribbean countries – this is an empirical question which is not addressed here, although it should be noted that it has been recognized in the on-going FTAA negotiations that the small size of Caribbean countries, particularly those with micro-economies, is relevant to the implementation of competition law and policy; also relevant for most Caribbean countries would be the features of small island developing states highlighted in the Declaration of Barbados. The key point is that the objectives, design and implementation of competition law and policy in Caribbean countries would necessarily have to take local conditions into account, including:

- developing country conditions, with the technological, economic, infrastructural and institutional handicaps that this implies;
- relative smallness in terms of geography, population, GDP, purchasing power, and size and economic strength of firms, combined in most cases with insularity, giving rise to: limitations in both available investment capital and possibilities for profitable economic activity (unless aimed at export markets), as well as
- diseconomies of scale and scope (and possible transaction costs) with respect to production, transportation, distribution, or financing, and in the provision of public goods such as infrastructure or governmental services;
- in most cases, relatively low growth rates;
- highly vulnerable and dependent economies, with: exposure to natural disasters, narrow resource bases, volatile rate of growth of GDP, excessive dependence upon exportation of relatively few products to relatively few markets, limited ability to influence terms of trade and dependence upon external capital and technology - thus high uncertainty surrounding investment and development plans;
- relatively high interest rates on loans and a wide spread with interest on savings, poorly developed capital markets and limited budgetary possibilities for Governments to provide investment subsidies or even tax credits;
- high concentration of market power, company management and/or ownership of resources in relatively few hands (including both long-established domestic firms and

foreign investors), and a social environment where most key players in the private sector and in the Government are in the same network,

- but with market power mitigated by a high degree of openness to international trade
- albeit with the effects of openness sometimes reduced by inefficient transport and communications infrastructure, market power in distribution networks, loyalties to national firms and brands and a relatively low level of intra-regional trade,
- despite the existence of a complicated patchwork of regional and sub-regional agreements, e.g. the Organization of Eastern Caribbean States as a sub-set of CARICOM countries;
- concerns about international competitiveness in an environment where old trade preferences are being phased out while new regional, extra-regional or multilateral agreements are being negotiated or implemented, as well as concerns about domestic competitiveness (i.e. that local enterprises should not be completely ousted from the local market despite their being admittedly generally less efficient than foreign firms);
- a prevalence in most Caribbean countries of English common law traditions, which would naturally affect the choice of external legal and administrative models (e.g. the Jamaican competition law is mainly based upon the Australian and New Zealand models [15])
- yet concerns that there may be rule of law or governance problems in some countries (difficulty of enforcing the law against the informal sector, smuggling, corruption, criminal networks, etc.);
- and weakness of the "competition culture" (lack of understanding of benefits of competition and/or lack of voice of its beneficiaries, avoidance of aggressive competition by businesses, etc.).

The relevance of the above characteristics would need to be verified on an individual basis. Reliance upon such general characteristics cannot substitute for careful open-minded case-by-case collection and analysis of data, even though these characteristics may well be reflected in such data, and also affect their evaluation. This economic analysis would *inter alia* involve: (a) an identification of relevant product and geographical markets (in the light of reasonable possibilities and/or willingness of consumers to switch to substitute products or producers); (b) an examination of the structure of such markets, competition from imports, possibilities for inter-brand competition and the likelihood of new market entry; and (c) the factoring in of efficiency concerns. Thus, for example, the relevance of the smallness factor (which is a relative concept whose importance would vary from country to country) would be

qualified by one important proviso – while it is true that, measured in terms of their political boundaries, the concentration levels of Caribbean countries would be high, it does not necessarily follow that their boundaries would coincide with relevant markets for competition analysis purposes, since markets for tradeable goods are often international, while markets for non-tradeable goods or services may be smaller than borders of even small countries. [16] Subject to this proviso, some problems arising from small size may be particularly acute for newly established Caribbean competition authorities:

- market dominance may often be inevitable or more efficient, and fragmentation into smaller business units may lead to waste of resources and loss of international competitiveness;
- while this should not pose a problem in principle because the enforcement focus should be on the process of competition rather than the numbers of competitors and on abuse of dominance rather than its existence, it may not be easy in practice to decide where to draw the line between what is legitimate and what is abusive, given the difficulty of balancing,
- on the one hand, the public's sensitivity to prices perceived to be unfairly high and the disincentive effects of high input prices upon local and foreign investment and
- on the other hand, the need to be sensitive to business profitability concerns, given the heightened relative importance of profits both as a source of investment and as an incentive for investment in an environment with a shortage of other sources of investment capital[17] and a possibly unfavourable risk-return ratio, and given the need to encourage the introduction and application of new technology to overcome scale handicaps; [18]
- an extreme example of the risks of deterring investment through the application of RBP controls or sectoral regulation may be in connection with privatization or with the grant of concessions: since relatively few firms (usually foreign investors who would have the necessary expertise and capital) may be able and willing to invest in such small markets, the Governments concerned, while accepting the principle that public monopolies should not be transformed into private monopolies, may not have the bargaining power to resist demands made by investors in respect of the scope and duration of exclusive rights or of pricing or service conditions; [19]
- in larger economies, vertical restraints are often unlikely to raise competition problems unless they also amount to abuses of dominance, but it is possible that, in smaller

economies, vertical restraints (particularly in the distribution sector) both co-relate more often with dominance and are more likely to have beneficial efficiency effects;

- in oligopolistic markets, which may be relatively more prevalent in smaller economies, firms tend to be interdependent in their pricing and output decisions, taking rivals' actions into account and pursuing follow-my-leader pricing strategies without the kind of overt (or even implicit) agreement which could be tackled under anti-cartel provisions - attempts to tackle such "conscious parallelism" through the notion of joint dominance have proved difficult even for experienced competition authorities;
- actions affecting one market may have relatively major ripple effects upon other markets within small economies, without the insulating effect of size;
- a related point is that high concentration of company management and/or ownership may inhibit competition in a given market despite lack of market power, e.g. a conglomerate may be able to squeeze competitors or customers in a market which it does not dominate because they know that it can retaliate in another market (either vertically linked or totally unrelated)
- for such reasons, vertical and conglomerate mergers, which rarely pose problems in larger countries, may raise competition issues more often in smaller countries;
- it may be difficult to take action against interlocking directorates despite their possible anti-competitive consequences where there is a shortage of managerial or entrepreneurial resources and/or concentration of ownership;
- since all the main players in the economy would usually know each other, there is less likely to be written evidence of cartelization and, even where there is, it may also be difficult to maintain secrecy in advance of raids upon offices or residences to seek evidence;
- it may sometimes be difficult to draw the line between cartels which have no redeeming efficiency benefits and desirable co-operation aimed at achieving economies of scale, e.g. import cartels or bulk purchasing for importation and transportation purposes and/or to countervail the market power of foreign exporters, but which then feeds into cartelization in distribution channels without the savings necessarily being passed on to the consumer;
- while the openness and small size of Caribbean countries mean that competition authorities may be relatively more likely to be faced with cases having international implications, Caribbean competition authorities may have limited information, powers, resources or abilities to remedy conduct overseas affecting Caribbean markets, or even conduct by foreign investors;

- some market entry barriers against potential competitors may be difficult to lower (e.g. the financing difficulties referred to above) or may indeed be bound to remain high, e.g. there may be little land available to set up alternative distribution outlets, while infrastructural services and other essential local inputs may be subject more often to foreclosure;
- the social consequences of displacement of smaller by larger business units and the costs and duration of structural adjustment may be particularly difficult to handle for small societies or economies where the maintenance of social stability is extremely important, resources are limited and there are few profitable opportunities for their re-deployment;
- the small size of elites may reinforce the effectiveness of lobbying;
- there may be pressures to refrain from action against "national champions" because, since these would be fewer in a small country, they would be exceptionally important for its identity; and
- there would be a shortage of resources and skills available for the operations of competition authorities, aggravated by the institutional diseconomies of scale mentioned above.

Other problems new Caribbean competition authorities are likely to face may be linked to the weakness of the local "competition culture" (in this, of course, the Caribbean is far from unique[20]):

- under-estimation of the importance of the work of competition authorities would further reduce the resources allocated to them;
- there may be little attempt by the Government or by academics to collect data relevant for competition policy purposes (despite their small size, there appear to be substantial gaps in data relating to many Caribbean economies);
- compliance efforts by businesses may be half-hearted, and there may instead be complaints about reporting or investigatory requirements, "red tape", bureaucratic or political interference, favouritism or corruption – which may, indeed, be justified if appropriate mechanisms are not put into place to counter such risks;
- consumer groups or the public may not come forth to make complaints;
- while some practices openly undertaken by trade or professional associations which constitute or lead to cartelization should be easy to deal with provided political opposition can be neutralized, it may be difficult to detect or prove the existence of secret cartels in

an environment where there is no social consensus that cartels are really reprehensible – so that businessmen may collude without feeling guilty, informants or cartel members taking advantage of leniency programmes may considered to be betrayers, and "dawn raids" to discover evidence or the levying of substantial fines or criminal penalties against cartel members may raise too much opposition to be feasible; [21]

- promoting market entry may be difficult with regard to services which require licensing (such as the operation of taxis), since licence-holders would strongly resist the grant of more licences, and may have political backing for this purpose;
- lawyers' and judges' misunderstandings about competition law and policy (aggravated both because resource shortages may limit the availability of foreign material on competition law and because any available foreign material may be erroneously relied upon) could result in competition authorities' decisions being over-ridden in appeal or review proceedings and hamper the development of local case law;
- allowing private cases against perpetrators of RBPs may therefore be counter-productive, and may indeed be misused by firms seeking to hamper their competitors, e.g. through allegations of predatory pricing;
- and there may be limited response by Governments to advocacy efforts by competition authorities urging reduction of regulatory entry barriers to markets.

APPLYING COMPETITION POLICY IN THE CARIBBEAN – SOME SUGGESTIONS

As indicated above, three fundamental inter-related issues which Caribbean countries adopting or applying competition law and policy would need to work out would be how to deal with issues of *dynamic efficiency*, what importance to attach to *size in relation to efficiency and competitiveness*, and whether and how to incorporate *objectives not related to competition or efficiency*. However, to put this into perspective, it should be noted that:

(a) Such issues would not come into play in many cases, e.g. routine enforcement against a cartel or abuse of dominance resulting in higher prices of some basic consumer necessities. It has indeed been suggested, on the basis of some cases in developing and transition countries, that whatever the merits of the argument that an industrial policy instrument may be useful for small developing countries in sectors exposed to international competition (i.e. those for which scale, experience or network effects are important), these sectors would usually be different from those where the effect of RBPs would be most directly experienced by consumers.[22] Even in merger control,

many cases may be relatively banal, involving succession problems of retiring owners of family firms. It is indeed through appropriate and effective action in such easily understood cases during the early life of a competition authority that it can build up the credibility and support necessary to enable it to tackle the hard cases and difficult issues.

(b) It may often be possible to resolve these issues through the standard economic analysis used by competition authorities, as described above.

(c) The existence of a sizeable informal sector may amount to unfair competition against formal businesses paying taxes, etc., but would still tend to constrain cartelization or abuse of dominance by the formal sector (although sometimes the products sold by formal and informal sectors may not be fully substitutable).

That said, it may still sometimes be difficult to resolve such issues in some cases. It has been argued that, in small economies, the focus of competition authorities should be on dynamic rather than static efficiency.[23] Such an approach would undoubtedly be valid for Caribbean countries seeking to promote economic restructuring and make their economies more competitive in a difficult and rapidly changing external environment. It is not clear whether or how far this would involve any departure from the practice currently followed in developed countries or regions (allowing for the differences in such practice), but there may be relatively more instances where dynamic efficiency considerations come into play in the Caribbean. Competition policies aimed at encouraging dynamic efficiency would require more sophistication and concern for incentives to invest than do policies solely concerned with promoting static efficiency; the difficulty would be to accurately assess potential dynamic efficiency gains in individual cases, particularly as the relevant economic arguments and evidence are mixed. On the one hand, competition provides incentives to undertake research and development, to introduce new production and distribution methods and new goods and services, and to create or enter new markets, in order to stay ahead of competitors. Moreover, if there are many paths which technological advance can take, competition allows many of them to be tried and then selects the best, something a monopoly would find hard to replicate. On the other hand, in some circumstances, competition may discourage innovation – e.g. where profits are likely to be reinvested in innovation efforts, or where there are scale economies in R & D. On the whole, there is little empirical evidence that, in developed

countries, large firm size or higher concentration are generally associated with innovative activity – but it is not clear whether this would necessarily be the case in developing countries which, in any event, import a higher proportion of the technology they use than do the larger developed countries. In the case of the Caribbean, it has been suggested that small firms in the informal sector have in some respects shown more initiative in pioneering new trade opportunities than have larger established firms. The answers to such questions may perhaps depend upon the type of innovation in question in a given case, and whether what is at stake is its creation, introduction into the country, or diffusion. Thus, giving priority to dynamic efficiency requires both sufficient data and the institutional capacity to correctly evaluate such data. Otherwise, this might lead to the side-lining of the creation of a competition culture, with Caribbean consumers facing a certain loss in the present (higher prices to producers, etc.) without a reasonable certainty that this would lead to gains in the future (through better products, economic growth, etc.).

Regarding size of firms, despite what has been said above regarding the possibilities for competition authorities to take into account any efficiency benefits arising from it, there may sometimes still be real dilemmas as to where to strike the balance between firms large enough to benefit from scale economies and numerous enough to provide sufficient opportunity for effective rivalry. There is an old but still vigorous debate about what were the experiences of several Asian countries in respect of industrial policy limitations upon competition aimed at enhancing competitiveness, what were their effects, and what lessons may be drawn for other developing countries.[24] A common argument is that that the development process is best served, at least initially, by large monopolies or oligopolies, since they would be more efficient and competitive in international markets – despite possible welfare losses for the domestic consumer. Thus, during the preparation of the Jamaican competition law, provisions seeking to regulate monopolies, mergers an interlocking directorates were dropped primarily because it was felt that the Jamaican economy was still in its infancy and subjecting these aspects of its economy to scrutiny might impair economic development; there were concerns about economies of scale in particular.[25]

Arguments have been made to counter this. It has been stated, for instance, in a presentation made at an UNCTAD meeting, that empirical evidence does not support the hypothesis that size helps significantly in export promotion; doubling of output was found to result in only about 10 per cent reduction of average cost at most.[26] Size alone was not a good predicator

of productive efficiency, a key determinant of exports. Accordingly, that presentation disapproved of permissive merger policy on the grounds that any benefits of higher exports would not exceed the cost of greater domestic concentration which would hurt purchasers (who might also be exporters), and might lead to dumping (thus exposure to anti-dumping actions) and the creation of active political players like managers and unions which might seek protection from imports, etc. However, this presentation has been criticized on the grounds that. (a) it defines size on the basis of numbers of employees rather than assets, turnovers or market shares, which are taken into account in merger control; (b) it does not take into account crucial non-price factors for export performance such as marketing, quality, customer service, etc.; and (c) mergers of developing country firms, which were generally smaller than developed country ones, would enhance exportation because this requires large-scale promotional efforts involving substantial financial expenditure, and because developing countries have to rely more on economies of scale than of scope.[27] Early research relating to (mainly) developing countries did indeed find that price-cost margins, firm size, economies of scale, capital intensity and presence of foreign investors were positively correlated with industrial concentration – however, it is not clear whether this was due to lack of competition or to relative efficiency and economies of scale.[28] A recent article suggests that national aggregates of firms may (for a multitude of micro reasons or for systemic economy-wide reasons) achieve less than aggregate potential outputs for the inputs and technology used, suggesting that there is some size constraint upon efficiency;[29] how far this would be relevant for competition policy purposes, specifically in the Caribbean, would need to be worked out.

Despite the above-mentioned differences of view, what it is clear that the importance of economies of scale varies greatly among different markets and fluctuates in line with technological changes, and that large size of firms can sometimes lead to inefficiency, especially if it occurs through mergers rather than organic growth. Arguments about size beg questions such as: which size one is talking about in which market; how size is sought to be attained and how it should be measured; whether or not inter-firm co-operation (and what kind of co-operation) may be preferable to mergers in individual cases; and exactly how it is being suggested that size may be relevant to different forms of efficiency gains. Ultimately, therefore, it may be best to resolve questions about efficiency and/or size through an open-minded case-by-case economic analysis in the light of local conditions, also taking into account any available data about other countries deemed relevant to such conditions.

Countries new to this area and subject to different pressures and constraints often do not make clear *ex ante* legislative choices as to the balance among competing objectives. But one important way in which both efficiency and non-efficiency concerns are addressed is through the use of individual or block exemptions (although such exemptions do not necessarily denote a derogation from competition principles). A variety of different types of exemptions or exemption criteria which often overlap may be utilized, including: *de minimis* exemptions for transactions involving firms with turnover or market share below a certain threshold; functional exemptions for certain activities, usually of a horizontal nature (e.g. research and development); personal exemptions relating to all or some of the activities of small and medium-sized enterprises, trade unions, agricultural co-operatives, trade or professional associations, public enterprises, or persons granted exclusive rights by the Government; sectoral exemptions; or acts to implement other legislation or international agreements. However, while some exemptions may be specified in the competition law, Governments may often not be able to foretell in advance all the exemptions which they may wish to grant, so may provide some general powers in this respect to competition authorities or to the competent Minister on grounds such as efficiency enhancement, promotion of technical or economic progress, or the public interest. Even in the absence of legislative exemption powers, such issues may be left to be handled through the inherent "prosecutorial discretion" involved in individual case decisions.

Regarding non-efficiency objectives, it is often suggested that competition policy is a poor tool for pursuing them; they would best be catered for through other means. Taking this argument further, it has been argued that, in small economies, it would be vital for competition policies to give primacy to economic efficiency over other public interest goals since they cannot afford the deviations from efficiency that a large economy could absorb; in particular, they should avoid the pursuit of wealth dispersion and small size of firms at the expense of efficiency because of the risk of preserving inefficiency in firms and operation of the market.[30] A related argument is that competition authorities, which are expected to be technically rigorous and impartial, would be ill-equipped to take non-efficiency factors into account, since these would involve subjective assessments based on unclear criteria; it is therefore often recommended that they should focus upon competition concerns and leave other matters for political decision-makers.

While such arguments have much force, the choice of objectives is ultimately a matter of social preferences and sovereign political decisions. Even if there are economic costs to any

particular decision, it would be for the country concerned to decide whether it wants to pay such costs – taking into account both the adjustment costs mentioned above and the special importance of maintaining social stability in small countries. The issue in this context would not be whether it is "right" or "wrong" to take into account non-competition or non-efficiency criteria - these are real concerns which will likely be taken into account one way or another in economic policy-making if the political pressure to do so is strong enough. It may be questioned whether leaving such matters to the unfettered discretion of politicians would necessarily result in decisions which are in the best interests of the country or are, at least, perceived so to be by the public. A purist approach by a competition authority which fails to take into account the cultural context may only result in its being bypassed or over-ridden, while alienating it from the community upon whose support it depends. Nor may reducing the flexibility of the competition authority in interpreting and implementing the law – an approach that is sometimes advocated as a means of preventing decisions from being influenced by improper motives or external influence[31] – be desirable given the need mentioned above to make nuanced economic analyses. It may accordingly be appropriate to focus instead upon establishing legal and institutional mechanisms which, as far as possible:

- generate and publicize the maximum information about the costs and benefits of competition in general, individual market conditions, data relevant to dynamic efficiency, upstream and downstream effects upon other markets, competition policy approaches followed elsewhere, and alternative means available, if any, of catering for non-competition concerns in a manner compatible with competition principles;
- limit political involvement to *general* competition policy, legislation or enforcement approaches as opposed to *individual* case decisions;
- provide competition authorities with the resources, skills, independent authority and breathing space to process this information and make informed, impartial and credible decisions;
- review regularly the thrust of competition policy in the light of experience with its application and of evolving economic, market and institutional conditions;
- maintain flexibility both to make any general changes shown to be necessary by such reviews and in decision-making in individual cases, while also maintaining a reasonable degree of predictability so as to sustain business confidence;

- promote a general perception that the decision-making process and individual decisions are legitimate, equitable and appropriate, even when they sometimes result in losses for some actors; and
- also promote long-term cultural change to make the culture more "competition-friendly".

Accordingly, one possible approach may be to set up, separately from the competition enforcement agency responsible for the day-to-day application of the law, a competition council to deal with broader competition policy issues. This would include representatives of the main stakeholders in this area, so as to provide background information on the economy and to maintain social consensus while ensuring appropriate checks and balances – an advantage of smallness would be the relatively small number of people which would need to be included to cover the main stakeholders. It would be best to include the head of the competition enforcement agency on an *ex officio* basis so as to ensure synergies among the information thus generated, general competition policy and individual case decisions, and due account would also need to be taken of how to provide for adequate skilled input, avoid conflicts of interest and preserve confidential case information. The operation of such a council might help to avoid both unduly blinkered and technical decision-making, on the one hand, and regulatory or political capture, on the other – ensuring that considerations not related to competition are genuinely used to address development concerns rather than function as an escape hatch for vested interests. Such a council would necessarily have to operate on a voluntary basis, to minimize budgetary implications. One example of the pending establishment of such a council is the Competition Advisory Council provided for under the Competition Bill of Mauritius;[32] the objects of the Council are to be to: (a) advise the Minister on matters relating to RBPs with emphasis on consumer protection; (b) promote activities to raise the awareness of the business community and consumers on competition and related matters; (c) maintain effective communication with the business community and consumers' associations; and (d) promote research in emerging trends in the field of fair competition and best business practices. The establishment of such a council might well predate the adoption of a competition law, since it would not necessarily initially need a legislative mandate (which could be formalized later on); this would help to establish some advance understanding and commitment by the significant players in relation to the competition law, and allow them to provide input into its contents – such as in respect of institutional matters, abuse of dominance, or the choice between a prohibition or investigation

approach for controlling RBPs (as discussed below). Whether before or after the adoption of a competition law, issues that might be deliberated upon by such a council might include:

- how best to factor in efficiency considerations in the application of competition policy and, related to this, the general coherence between industrial and competition policies, and the achievement of structural changes required for economic development;
- what might be considered to be abuse of dominance, whether to accept and how to deal with trade-offs between abuse of dominance and efficiency, and what weight should be ascribed to cost savings and efficiency gains not necessarily passed on to the consumer; [33]
- identification of "strategic bottlenecks" to competition, and how access to essential business services might be facilitated;
- whether there are any dangers of market saturation and over-capacity in some sectors (which might best be tackled through information campaigns aimed at discouraging excessive market entry rather than through competition policy *per se*), or
- any risks of deterring investment (and associated transfer of expertise and technology) through the application of competition policy;
- enterprises with exclusive rights, State enterprises, privatisation, subsidies, where the line should be drawn between sectoral regulation (e.g. for utilities or financial services) and RBP controls, and how to enhance co-operation and co-ordination between the activities of competition authorities and any sectoral regulators;
- how to design and implement merger control;
- how to tackle the difficult problem of the informal sector, such as how to take it into account in competition analysis given data difficulties, and whether and how to tackle entry barriers (e.g. cost of capital, excessive regulation, RBPs practised by the formal sector) preventing growth in the formal sector so as to allow it to absorb informal operators;
- any particular problems being experienced with the enforcement of competition law against foreign firms and how they might be dealt with;
- appropriate exemptions and the conditions upon which they might be granted – while some flexibility and scope for discretion in this area would continue to be unavoidable, the need for legal security would argue for the use of block exemptions (at national or regional levels) as far and as soon as possible, which would still allow fine-tuning of the application of prohibitions in line with the economic evolution of different sectors;

- advocacy for the application of competition principles to other governmental policies or measures – this would involve not just recommending liberalization, but also how, when and in what stages it might be undertaken so as to minimize costs and maximize benefits;
- what research may be desirable to shed some light to guide the difficult decisions in this area *ex* ante and examine their effects *ex post facto*;
- how competition principles might be propagated and a "competition culture" strengthened – a task which should be facilitated by the representative membership of the council and the small size of Caribbean countries; and, in this connection
- how to heighten general awareness regarding adverse effects of cartels and indicators of the existence of secret cartels – which, as mentioned above, would be essential to enable efficient enforcement against them, and
- whether and on what conditions to allow private cases in this area.

So far as enforcement priorities are concerned, the choice of cases will often be influenced by two related sets of factors: (a) available resources, "obviousness" of anti-competitive effect and estimated chances of success; and (b) likely economic effects (e.g. cases raising issues of competitiveness or having pervasive effects across the economy such as financial services), symbolic effects (i.e. the extent to which a case can transmit messages to the public and build up credibility), and the need to be seen to be responsive to complaints received and public concerns expressed about problems affecting daily life (e.g. prices of basic food-stuffs, transport, utilities, pharmaceuticals, building materials, etc.). Subject to these factors, initial priority may have to be provided, almost by default, to abuses of dominance/vertical restraints, despite the above-mentioned difficulties of analyzing their economic effects – which would necessitate substantial training efforts. It is often argued that a new competition authority should initially focus upon enforcement action against hard-core cartels because of "obviousness" of anti-competitive effect – leaving for later action against other practices requiring complex economic analysis. However, it may be questioned whether, given the difficulties of cartel detection mentioned above, granting initial priority to action against secret cartels (as opposed to open cartel-like practices by trade associations, etc.) would necessarily be appropriate. It is in fact not clear that cartels are all that prevalent in the Caribbean, given the prevalence of single or joint dominance, as well as possible cultural aversion to co-operation – but it is impossible to be sure about this since cartels are usually secret. This is not to minimize the extent of damage that cartels may cause; it is rather to query whether there is evidence that they currently do cause substantial damage in the

Caribbean or, even if they do, how feasible it currently would be to catch and punish them. Even where international cartels have been subjected to enforcement action by foreign competition authorities, it may not be easy to prove that such cartels affect Caribbean markets, since confidential information about them would not be communicated by the competition authorities concerned. However, even if cartels may be relatively rare within the region for the time being, it may be reasonably anticipated that, in future, greater competitive pressure through lowering of entry barriers and enforcement efforts against other RBPs would enhance the incentive to cartelize. So early steps would need to be taken to prepare the apparatus for detecting and sanctioning cartels (including cross-border cartels), as well as appropriate public perceptions. Another key task would be in relation to mergers. As implied above, fears about introducing merger control in Caribbean countries are misplaced. But businesses and Governments would have to be convinced that this is so, which would require a full airing of the concerns and the arguments. Moreover, merger control is complex, and the maximum public input would be desirable in working out whether advance notification of mergers should be required, what might be appropriate thresholds for notification or intervention, which procedures should be followed, and whether or to what extent merger control is best left to be tackled at regional or sub-regional levels. This would suggest that, while a new competition law may well have general merger control provisions, the entry into force of such provisions and the detailed criteria and review process might be introduced later through implementing regulations or enforcement guidelines, taking the regional framework into account.

In general, it may be preferable to bring a new competition law enter into force on a phased basis, by giving the competent Minister the power to issue statutory instruments specifying substantive or procedural details relating to provisions contained in a Competition Act, or bringing into force different parts of the Act. This would make its administration and implementation manageable, enable difficult questions such as merger control or treatment of efficiency gains to be worked out, and allow time for both pedagogical activities and a learning process by competition authorities themselves. A harsh application of the law could be avoided until its provisions could be presumed to be understood by businesses. However, it would be best that those provisions of the law which had come into force be fully enforced, so as to not to lose credibility and run the risk of provisionally "legitimizing" some RBPs, making it more difficult to sanction them later on; there could instead be a focus on information campaigns and warnings, and flexibility or leniency about remedies and

sanctions. Remedies and sanctions would in any event have to be carefully worked out, as it would be counter-productive if they were to lead to market exit by the firms concerned.

No attempt will be made in this article to discuss: whether competition authorities in Caribbean countries should also deal with other areas such as consumer protection (or whether it would be best to mandate existing institutions such as Central Banks or utility regulators to deal with competition policy); what might be their set-up and procedures; or what could be an appropriate allocation of investigative, adjudicative and appellate/review powers within competition authorities and among different national authorities (taking into account the need for effectiveness, fairness, accountability, compatibility with existing norms, institutions and traditions, political support, access to investigation resources and cost-effectiveness). Problems have already been experienced in this respect in the Caribbean – because of "breach of natural justice" concerns highlighted upon appeal, Jamaica is having to amend its Fair Competition Act to clarify and distinguish between the roles of the Fair Commission staff and the Commissioners as, respectively, investigators and adjudicators. The design of the competent institutional machinery raises particularly difficult issues for small countries, which can be even more difficult than the substantive issues. Indeed, the two cannot be entirely separated: for example, the choice between a prohibition system (whereby some practices are prohibited in principle subject to exemptions, with the competition agency having the authority to determine whether an individual practice or type of practice falls within such exemptions) and a system based on administrative investigation of whether a practice is anti-competitive or not, has implications for the design, powers and independence of competition authorities, the role of courts and Ministers, etc. The omission in this article in dealing more in-depth with such questions is because, on the one hand, they are country-specific (solutions which are appropriate for the larger countries would not necessarily be so for the micro-economies of the Caribbean, although it is arguable that an investigation approach would be more appropriate for countries lacking experience in this area) and, on the other hand, they are best considered within the context of the broader regional and extra-regional picture.

While regional and extra-regional co-operation can help in working out and implementing competition laws and policies, particularly in respect of cases with regional or international implications, the precise allocation of competence among national and regional institutions would need to be worked out; this has already been done to some extent in the Caribbean, but

there may be need for further reflection on this, and the details would need to be fleshed out. Other key questions meriting further reflection in this connection include:

- the interface between national development objectives and competition law and policy, on the one hand, and sub-regional, regional, extra-regional or possible multilateral norms, on the other, including the degree of flexibility to be maintained in this area;
- mutual compatibility and inter-action among such external norms, both in their content and – which is likely to be more difficult - in their long-term implementation;
- how to use or strengthen the mechanisms provided for under external norms to further the application of national or regional competition policies and ensure that private restraints do not impede trade liberalization or regional integration, e.g. through exchange of experiences, joint research (including by examining price differentials for the same products within and outside the region and the question of parallel imports), sharing of skills or enforcement costs, joint tackling of cases with regional or international implications (e.g. in the shipping and tourism sectors), joint co-operation with external bodies, etc.;[34] and
- how to involve and obtain feedback from business, and from all societal interests, with regard to external negotiations in this area – which is admittedly a difficult area.

CONCLUSIONS

Much of this article sets out a listing of issues and problems, and many of the suggestions made are rather general in nature. But the aim has been to identify some appropriate starting-points and an institutional process for working out more detailed responses on a case-by-case basis – it would in any event be for each Caribbean country and for the region to work out what it wishes to do in this area. While some initial choices are inescapable – and have indeed already been made by those Caribbean countries with competition laws, as well as in regional and extra-regional agreements - the only way that such things can be fully worked out is through actual experience and a trial and error process, and no choice made, however valid, would necessarily remain so for all time. Difficult trade-offs may sometimes be necessary, resulting in losses for some actors. The general message that this article has sought to transmit is that competition policy has the potential to bring many benefits to the Caribbean, but this potential is unlikely to be fully realized unless competition policy is applied in a way which: (a) fully takes into account relevant Caribbean conditions and social preferences, as well as external experiences, as illuminated by thorough research; (b)

appropriately factors in efficiency and competitiveness considerations; and (c) both avoids straying too far from social consensus and promotes an evolution of this consensus, by engaging society in a project of economic transformation and development. All of these would require good data and institutional capacities – and since these cannot be obtained until sufficient public support and resources have been acquired, a phased approach towards bringing competition laws into full force would be desirable. It would therefore be desirable to retain a large measure of flexibility in this area – including both flexibility in respect of the objectives, content and application of national competition laws and policies, and of regional or international agreements – while maintaining reasonable predictability. Regional and extra-regional co-operation can help in working out and implementing competition laws and policies, particularly in respect of cases with international implications. Academic research should also provide information and analysis to facilitate this "discovery process" - an excellent first start in this respect is the SALISES/UWI research project in pursuance of which the present article has been written. But such research efforts should be pursued, ideally through the establishment and operation of a network of national, regional and extra-regional researchers and research institutes to build up the information base and skills necessary to tackle such questions.

Notes

[1] Mr. Rajan Dhanjee, a national of Seychelles (a small island country in the Indian Ocean), is a staff member of the Competition & Consumer Policies Branch of the Division on International Trade in the UNCTAD secretariat. He has been involved in a personal capacity as one of the international experts in the research project "An empirical study of competition issues in selected CARICOM countries: towards policy formulation" of the Sir Arthur Lewis Institute of Social and Economic Studies of the University of West Indies. This article is based to some extent on remarks made by the author at project workshops held in the Bahamas and in St. Vincent, as well as interventions by other participants in these workshops – for which the author expresses his appreciation to those concerned. Account has also been taken of the reports prepared under this project and of UNCTAD documentation, as well as other sources, including papers presented at the OECD Global Forum on Competition of 14-15 February 2002. The author wishes to express particular appreciation for the valuable comments received on a draft of this article from Dr. Martin Howe and Dr. Taimoon Stewart. However, the views expressed in this article are the author's personal views, and do not necessarily represent the view-point of the UNCTAD secretariat or of any other body or person.

[2] These may be sub-divided into different types of: horizontal restraints among competitors or potential competitors in the same market; vertical restraints up or down the chain of production and distribution; abuses of dominant positions of market power; and anti-competitive mergers, joint ventures or interlocking directorates. See UNCTAD, The basic objectives and main provisions of competition laws and policies (UNCTAD/ITD/15), at www.unctad.org/en/docs//poitd_15.en.pdf.

[3] See E. Awuku, International competition law and policy in developing countries, in Hatchard & Perry-Kessaris, Law and development: facing complexity in the 21st century, Cavendish, London, 2003, p. 99.

[4] See UNCTAD, Experiences gained so far on international cooperation on competition policy issues and mechanisms used (TD/B/COM.2/CLP/21/Rev. 2), at www.unctad.org/en/docs//c2clp21r2_en.pdf..

[5] However, not all CARICOM countries have adhered to the 2000 amendments to the 1973 CARICOM Treaty, including Protocol VIII.

[6] Partnership Agreement between the African, Caribbean and Pacific States and the European Community and its member States, adopted at Cotonou, Benin, on 23 June 2000. Under art. 45 of the Agreement: the Parties agree that the introduction and implementation of effective and sound competition policies and rules are of crucial importance in order to improve and secure an investment friendly climate, a sustainable industrialisation process and transparency in the access to markets; to ensure the elimination of distortions to sound competition and with due consideration to the different levels of development and economic needs of each ACP country, they undertake to implement national or regional rules and policies controlling RBPs, in wording following the general lines of the relevant articles of the Treaty of Rome (there is no reference to merger control); and agree to reinforce cooperation in this area with a view to formulating and supporting effective competition policies with the appropriate national competition agencies that progressively ensure the efficient enforcement of the competition rules by both private and state enterprises.

[7] Adopted by G.A.resolution 35/63 of 5 December 1980 (TD/RBP/CONF/10/Rev.2), at http://r0.unctad.org/en/subsites/cpolicy/docs/CPSet/cpset.htm. For a review of the nature and implementation of the Set, see R. Dhanjee, The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices – an instrument of international law?, Legal Issues of Economic Integration, vol. 28 (2001), p. 71.

[8] See UNCTAD, Empirical evidence of the benefits from applying competition law and policy principles to economic development in order to attain greater efficiency in international trade and development (TD/B/COM.2/EM/10/Rev.1), at www.unctad.org/en/docs/c2emd10.pdf.

[9] See E. M. Fox, "We protect competition, you protect competitors", World Competition 26(2), 149-165, 2003. American Bar Association, Comments and recommendations on the competition elements of the Doha declaration, before the United States Trade Representative; E. M. Fox, "We protect competition, you protect competitors", World Competition 26(2), 149-165, 2003; and D. Wood, Cooperation and convergence in international antitrust: Why the light is still yellow, address at the American Enterprise Institute, www.aei.org/news/newsID.17274,filter./news_detail.asp.

[10] See OECD, Global Forum on Competition - 14-15 February 2003, documents relating to the item on "The objectives of competition law and policy and optimal design of a competition agency", particularly Small economies and competition policy: A background paper – note by the Secretariat, at www.oecd.org/dataoecd/57/39/2486329.pdf

[11] See P. Cook, Competition and its Regulation: Key Issues, and Competition Policy, Market Power and Collusion in Developing Countries, Centre on Regulation and Competition, University of Manchester, at http://idpm.man.ac.uk/crc/wpdl149.

[12] See UNCTAD, UNCTAD/ITD/15 *op. cit.* and The scope, coverage and enforcement of competition laws and policies, and analysis of the provisions of the Uruguay Round Agreements relevant to competition policy, including their implications for developing and other countries (TD/B/COM.2/EM/2), at www.unctad.org/en/docs//c2em_d2.en.pdf.

[13] In particular, the equivalent notion of unlawful monopolization in the U.S. is significantly narrower than abuse of dominance in the EU and many other countries.

[14] UNCTAD, Model Law on Competition, Draft commentaries to possible elements for articles of a model law or laws (TD/RBP/CONF.5/7), at http://r0.unctad.org/en/subsites/cpolicy/docs/drftmdllw-07-10-02-en.pdf.

[15] See S. Stephenson, Why the need for competition legislation?, Caribbean Dialogue, vol. 5 (2000), nos. 1 & 2, p. 43.

[16] See M. Gal, Competition Policy for Small Market Economies, Harvard University press, 2003; OECD, Global Forum, *op. cit.*, documents relating to the item on "Competition policy in small economies", at www.oecd.org/document/1/0,2340,en_2649_34611_2395841_1_1_1_1,00.html, particularly Small economies and competition policy: A background paper – note by the Secretariat (CCNM/GF/COMP(2003)4) and Competition policy in small economies – New Zealand (CCNM/GF/COMP(2003)29); and S. Evenett, Competition policy in small developing economies: Reflections on current literature, at www.wti.org. Gal's prescriptions relating to small economies, which she defines as those which can only support a small number of competitors in most of their industries, and in which most relevant product and geographic markets are highly concentrated because of scale economies, with high entry barriers and sub-optimal levels of operation, has been criticized on the grounds *inter alia* that: it does not address the above-mentioned question of market definition and international markets; it does not cover economies which may be small in other senses such as population, GDP, or level of development (the examples she provides are of countries larger than Caribbean countries); it is questionable whether all of the economies meeting her definition have enough in common to benefit from recommendations derived from their concentration levels and entry barriers; and the policy recommendations she makes do not differ markedly from best practice in developed economies.

[17] See A. Singh, Multilateral Competition Policy and Economic Development - A Developing Country Perspective on the new European Community Proposals, UNCTAD consultant report (forthcoming).

[18] Significantly, the Jamaican competition law provides that behaviour will not be considered to be abusive if it is shown that it was exclusively directed to improving production or distribution or promoting technical or economic progress. No such defence is available under the equivalent provisions of art. 82 of the Treaty of Rome.

[19] While some compromises may be inevitable in such situations, the existence of a competition law and policy and the involvement of competition authorities should at least enhance the bargaining power of policy-makers. RBP controls might also be applied to any practices going beyond the ambit of any exclusive rights granted.

[20] See International Competition Network, Capacity building and technical assistance – Building credible competition authorities in developing and transition countries, June 2003, at www.internationalcompetitionnetwork.org/Final%20Report_16June2003.pdf; Consumers International, Consumers and Competition, at www.consumersinternational.org/document_store/Doc319.pdf; and CUTS, Pulling up our socks – a study of competition regimes of seven developing countries of Africa and Asia under the 7-Up Project, http://cuts.org/pulling.pdf.

[21] See Ki Jong Lee, Cultures and cartels, cross-cultural psychology for antitrust policies, Institute for Consumer Antitrust Studies, Loyola University Chicago, Working Papers, 2003, at www.luc.edu/law/academics/special/center/antitrust/cultures.pdf.

[22] See on this point International Competition Network, *op. cit.*

[23] See Singh *op. cit.*

[24] Compare WTO, Study on issues relating to a possible multilateral framework on competition policy, WT/WGTCP/W/228, 19 May 2003, and Singh *op. cit.* See also UNCTAD, Empirical evidence …

[25] See Stephenson, *op. cit.* and OECD, Global Forum on Competition, Competition policy in small economies – Jamaica (CCNM/GF/COMP(2003)14), http://www.oecd.org/dataoecd/58/24/2485997.pdf.

[26] See S. Evenett, Presentation on "Merger Control: Concentration and Export Performance", made at the fourth session of the UNCTAD Intergovernmental Group of Experts on Competition Law and Policy, Geneva, 3-5 July 2002, at www.wti.org/.

[27] See Communication from India "Interface between industrial policy and competition policy", submitted to the fifth session UNCTAD Intergovernmental Group of Experts on Competition Law and Policy, Geneva, 2-4 July 2003.

[28] See the references cited in UNCTAD, Empirical evidence of the benefits from applying competition law and policy principles to economic development in order to attain greater efficiency in international trade and development (TD/B/COM.2/EM/10/Rev.1).

[29] See C. Milner & T. Weyman-Jones, Relative national efficiency and country size: evidence for developing countries, Review of development economics, 7 (1), 1-14, 2003.

[30] See M. Gal, *op. cit.*

[31] See OECD, Small economies …, *op. cit.*

[32] The Bill has recently been adopted by the Parliament but had not, at the time of writing, received the Prime Minister's assent.

[33] It may be noted in this connection that, unlike under EU law, the Jamaican competition law provides that an enterprise shall not be considered to be abusing a dominant position if its behaviour was exclusively directed to improving the production or distribution of goods or to promoting technical or economic progress, and consumers were allowed a fair share of the resulting benefit; even where there is a finding of abuse, the Jamaican law appears to require that there be a further finding of substantial lessening of competition in a market before action can be taken against the abuse.

[34] See R. Dhanjee, International co-operation competition law and policy – objectives, forms and some implications for developing countries in regional groupings, Caribbean Dialogue, vol. 5 (2000), p. 93.