Anti-Competitive Practices In The Tourism Industry: The Case Of Small Economies

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ABSTRACT

Who benefits from the proliferation of ecolodges, beachfront resorts, safari parks, river cruises, forest forays and other similar and increasingly popular ventures popping up in developing economies across the world? Critics hold that multinational hotel chains, influential tour operators and foreign interests sometimes in association with powerful domestic groups often engage in anticompetitive practices at the expense of local communities, domestic workers and other stakeholders where the tourism activities take place.In this paper, we examine the possibility of market power abuses in the tourism industry in small economies or small national economies. Many of these small economies have recently inaugurated antitrust enforcement agencies charged with curtailing market power abuses and other anticompetitive practices. We also examine how effective these agencies are likely to be in challenging the powerful tourism industry. Succinctly, we conclude that monopsonistic practices may arise in the tourism sector of small economies. But we argue that domestic competition agencies are not suited to challenge monopsony for various reasons including a lack of political will. We also analyze the plausible cartelization role of regional marketing boards. Regional marketing boards are collaborative efforts by groups of countries. Because it is entrusted with cross jurisdictional enforcement of competition laws, a "regional" agency with jurisdiction in several countries across a region may be more likely to successfully confront monopsony problems. However, we conclude that a regional enforcement agency is equally unlikely to successfully challenged cross-border anticompetitive practices because it is not likely to challenge the impairment of consumer welfare of foreign nationals.

INTRODUCTION

Although fears concerning terrorism and the safety of air travel and health concerns have dampened tourism demand the industry is anticipating a return to its double digit historical growth rates. Travel and tourism activities accounted for a significant portion of the gross world product in 2000. In 2001, international tourist arrivals dipped; it has since recovered and is expected to reach an estimated 1.6 billion arrivals.

The growth in tourism is partly a result of the removal of trade barriers and the erosion of restrictions on the flow of capital combined with the perception that tourism represents an alternative avenue for development. In fact, various international lending agencies have embraced tourism and especially alternative tourism as a development strategy in poor nations. This encouragement and active financing of alternative-tourism is driven by many factors, including the inability of traditional revenue-generating activities to provide sufficient jobs for growing populations and the assumption that alternative-tourism conveys manifold benefits: jobs, conservation and sustainable development[1]

Critics have questioned who benefits from the proliferation of ecolodges, beachfront resorts, safari parks,

1 Middleton, Victor with Rebecca Hawkins. *Sustainable Tourism: A Marketing Perspective* (1998). Woburn Massachusetts: Butterworth-Heinemann.

river cruises, forest forays and other similar ventures[2]. In the Spring 2002 Barnett notes that tourism development worldwide has become "so mis-shapen and skewed that itcan result in the poor getting poorer, the marginalized more marginalized, and the environment depleted."[3] Barnett argues that multinational hotel chains, influential tour operators and foreign interests sometimes in association with powerful domestic groups often engage in anticompetitive practices at the expense of local communities and domestic workers, where the tourism activities take place.

The development of tourism has benefited from the new era of reduced international restrictions to the flow of capital. The increase in trade has benefited nations considerably and allowed them to participate in the global economy. Tourism remains a key source of revenue for developing countries and in some instances, such as in the case of the small island nations, tourism accounts for sizable portions of their Gross Domestic Product. However, precisely because of their modest size and influence, it is worthwhile examining whether small economy governments should be concerned with the potential for anticompetitive behavior on the part of the tourism industry. Specifically, we examine whether there exists a potential for monopsonistic practices and collusive behavior. In addition, we examine whether competition policy is capable of effectively negating anticompetitive behavior.

Succinctly, we conclude that the threat of monopsonistic practices is real. The likelihood of collusion, either limited to national markets or across broader multi-nation markets is also likely. The prosecution of these observed practices, however, is paradoxical. Specifically, national competition agencies are unlikely to effectively challenge any anticompetitive practices in tourism destinations, largely because the political power wielded by major revenue generators is likely to neutralize the actions of the agency. Regional collaboration between agencies or the formation of a regional agency with powers to enforce the law across regional jurisdictions could be more adept at thwarting pressure group's lobbying influence. Similarly, collaboration between operators within a region, ostensibly to marshal coordination of marketing campaigns could logically result in the possibility of price coordination across the regional tourist destinations. But this practice does not necessarily result in direct reductions of domestic consumer welfare and therefore it is unlikely to be a target of any of the individual domestic agencies.

E -Rise Of Liberalism And The Tourism Trade

Small economies benefited considerably from the liberalization programs that swept the world over the last decade. The adoption of liberalization policies entailed substantive political, social and regulatory and administrative changes across jurisdictions. In many nations, the scope of reforms and implementation of market-driven policies resulted in economies radically different and distinct from the social, political and economic policies of the exiting old order.

Reform "packages" focused on deregulating economic policies in at least three broad areas, import, export, and domestic regulations. In particular, policies reduced import duties and in some instances eliminated them altogether, simplified import procedures and facilitated exports. Importantly, changes resulted in lessened restrictions and enhanced guarantees on foreign investment. The less onerous restrictions and the implicit and explicit protections offered by international guarantor agencies and by multilateral organizations led to an infusion of foreign investments in any number of sectors including resorts and other tourism-related developments.

Seeking to capitalize on demand for "unspoiled" natural gems, funding of tourism destinations increased relative to historical levels of investment especially among the smaller economies.[4] In a number of instances the investment focused in heretofore isolated regions, detached economically and geographically removed from the centers of power in any given country. This expenditure proved beneficial to many. The former backward regions

2 Costas, Jorge and Gavin Eccles., "Hospitality and Tourism Impacts: An Industry Perspective," *International Journal of Contemporary Hospitality Management*, Volume 8, No. 7 (1996); Chandana Jayawardena., "Mastering Caribbean Tourism," *International Journal of Contemporary Hospitality Management*, Volume 14, No. 2 (2002).
3 Mastny, Lisa. "Ecotourist Trap," *Foreign Policy* (November/December 2002).
4 Dieke, Peter. "Tourism in Africa's Economic Development: Policy Implications", *Management Decision*, Volume 41, No. 3 (2003)

boomed with tourism and ancillary investments resulting in considerable revenues for the home country derived directly from tourism and from associated linkages. Table 1, below, conveys the increased dependence of the smaller economies on the tourism trade.

Table 1

Rank	Country	Description	Amount
1	San Marino	19185 per 1000 people	
2	Monaco	8,097.04 per 1000 people	
3	Palau	3,812.66 per 1000 people	
4	Antigua and Barbuda	3,439.69 per 1000 people	
5	Malta	2,794.98 per 1000 people	
6	Cyprus	2,721.18 per 1000 people	
7	Saint Kitts and Nevis	2,271.79 per 1000 people	
8	Liechtenstein	1,735.58 per 1000 people	
9	Luxembourg	1,718.8 per 1000 people	
10	Hungary	1,711.96 per 1000 people	
11	Barbados	1,706.39 per 1000 people	
12	Czech Republic	1,640.86 per 1000 people	
13	Seychelles	1,623.01 per 1000 people	
14	Saint Lucia	1,548.6 per 1000 people	
15	Singapore	1,466.74 per 1000 people	
16	Ireland	1,431.05 per 1000 people	
17	Grenada	1,244.24 per 1000 people	
18	Maldives	1,143.16 per 1000 people	
19	France	1,126.23 per 1000 people	
20	Spain	1,079.22 per 1000 people	
	Total	163.27 million	
	Weighted Avg	1,243.76 per 1000 people	

Source: United Nations World Statistics Pocketbook and Statistical Yearbook

Not surprisingly, given increased dependence on tourism commentators raised concern over prospective abuses of the concentrations of tourism related capital.[5] While there are many condemnable issues proffered our focus here is on those complaints about prospective abuses of market power.

5 Mastny, Lisa., "Traveling Light: New Paths for International Tourism," Worldwatch Paper No. 159 (December 2001).

In this paper, we analyze two likely avenues through which the marshalling of market power may impair competition. First, we address the plausible emergence of monopsony amidst the tourism destinations. Second, we also discuss the efforts between the various hotel and resort operators present in a region to secure cooperation in joint advertising programs; cooperation that may spill into limits on vigorous regional competition.

The Presence Of Monopsonistic Practices

It might seem perplexing to highlight the gains derived from increased international trade as we do above and then proceed to question whether anticompetitive practices have emerged *as a result of trade*. In fact, it has been argued repeatedly that the best remedy for anticompetitive practices is free and unfettered trade, a remedy even more applicable and salutary in small economies. However, there have been any number of researchers who have carefully examined small economies and concluded that there are exclusive attributes of small economies that render them immune to the benefits of increased trade.[6] For example, trade has little impact on non-tradables. Key participants in local markets are likely to have historically accumulated market power preserved by regulatory and tariff barriers placed by friendly governments. In principle, the undoing of regulatory barriers to entry of the new free-market regime will result in domestic challenges that will beget competition. In reality, the power and influence of entrenched power groups is unlikely to abate with regulatory changes.

Another key proposition of free-trade skeptics is that small economies can support fewer firms. Logically, only a few firms are capable of achieving the minimum efficient scale in a small economy given the modest levels of demand.[7] The conventional counterargument points out that eliminating tariffs and other barriers to trade naturally leads to broader geographic markets and the potential for growth at the same time as consumers gain from the resulting lower prices and increased choice. Therefore, the small-economy firms can enter the much larger geographic market that resulted from open borders and proceed to compete vigorously. But to achieve the larger optimal scale associated with the now broader geographic market requires time and capital. Because the small economy firm has its domestic constituency, it typically finds it less onerous to protect itself and lobby for non-tariff barriers or any similar protectionist measure rather than compete.

It is not inconceivable amidst the isolation characterizing the locations that the financial groups underwriting the economic development of the tourism destination are able to exert considerable market power in purchasing inputs from local suppliers. In this context, the likelihood of entrenched and powerful groups may support anticompetitive policies. That is, to the extent that an insulated, economically affluent group establishes a position of being the largest employer and purchaser in a regional and isolated economy with no significant competition, the possibility of monopsony power arises. A firm is said to be a monopsonist if it faces upward sloping supply curves for labor and for inputs and therefore have market power that enables them to set input prices. Therefore, with increased trade raising exposure to external risk, and domestic labor groups increasing their demands for government protection and assistance, the social consensus between labor, government and the private sector that brought about trade reforms may erode, reversing all trade and deregulatory efforts.[8] A likely outcome is that the net result of the lobbying aimed at thwarting competitive efforts are reduced and equated to politically spheres of influence.

The Likelihood Of Regional Cartelization

Competing in a world market for international tourism dollars often pits one region versus another. Thus, one finds Caribbean resort operators competing against those in the Mediteranean. There is a certain logic and procompetitive incentive to the formation of regional destination marketing organizations (DMOs) and other collaborative efforts such as the Caribbean Tourism Organization or the European Travel Commission. These entities

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6 Briguglio, Lino and John Kaminarides (Eds.). Islands and small States: Issues and Policies", In a special Issue of World Development, (1993). Lino New York: Pergamon Press; Michal S. Gal, "Size Does Matter: The Effects of Market Size on Optimal Competition Policy," *University of Southern California Law Review*, (2001).

7 Boza, Beatriz., "Small Economies and Competition Policy: A Background Paper," *OECD Global Forum on Competition*, CCNM/GF/COMP(2003)4 (February 2003).

8 Rodrik, Dani, "Trade, Social Insurance, and the Limits to Globalization," No 5905, NBER Working Papers.

often seek to increase visitation through a unified marketing campaign promoting the entire region. Simultaneously, individual firms, destinations within the region, provinces (or states) and national concerns fund advertisements intended to take market share from the regional competitors while at the same time serving to expand the market.

Is the DMO likely to translate into a collaboration that would allow erstwhile competitors to characterize the nature of competition? For example, it is theoretically possible that such collaboration could result in defining the nature of competition to eliminate aggressive campaigns that reduce the effective price for the service. Such a cartel would face intense competition from other regions and individual operators, and considerable pressure from large tour operators, airlines and other large market savvy buyers. However, if the DMO is successful, another possible outcome could be higher prices to prospective customers with an associated reduction in the number of arrivals.

Is a domestic competition authority likely to successfully challenge these practices? For the most part, the recently inaugurated competition agencies of the world incorporate the notion of domestic consumer welfare as their guiding paradigm. If DMOs capable of exerting some price discipline on intra-regional arrivals guard against affecting domestic travel by careful price discrimination, the reduction of consumer welfare will not impair domestic competition directly. To the contrary, the price discipline is likely to result in substantially higher revenues to the host countries, rendering authorities unlikely to marshal the political will necessary to challenge the anticompetitive practices, even if it were possible.

The Adoption Of Competition Policies

Over the last 15 years, the number of nations that have adopted or are contemplating adoption of a competition policy program has grown exponentially. In a paper published in 1998, Mark Palim observed that "as of the end of 1996, seventy countries had their own competition law."[9]

The adoption of competition policy has been for the most part a developed country conceit. It is unlikely that a small open economy would be susceptible to market power abuses. The disciplining effects of trade and unfettered competition suffice are likely to prevent most known abuses of market power. However, there are several commentators who point to particular characteristics of small economies that effectively separate them from the impact of broader trade disciplining effects.[10]

These commentators argue that trade policy alone cannot or does not remove all barriers to trade. For example, liberal trade policies cannot erode language differences, where language is an important part of the product (e.g., computer keyboards). Trade barriers also may result from geographic boundaries (e.g., maritime borders, high mountain chains, or secluded areas) that create high transportation costs. Transportation or adaptation costs affect trade levels, especially where low price, high shipment costs, or perishable products are involved. Trade is also limited where producers must be in close proximity to the ultimate consumers (e.g., service industries). Political conditions may also influence trade levels— accentuating geographic isolation both by closing certain passages to trade and by preventing trade between adjacent jurisdictions.

Tariffs, limited convertibility of currencies and transfer of credits, and a central authority's standardization of consumer choice also create trade barriers. Moreover, trade levels are affected by domestic laws and regulations, such as those regulating environmental liability and intellectual property rights. Trade intensity may also be affected by entry barriers that face domestic and foreign producers alike, such as brand name recognition. Accordingly, where significant natural or artificial barriers to trade exist, the size of the domestic population and its dispersion significantly influence the economic conditions of the market.

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9 Palim, Mark., "The Worldwide Growth of Competition Law: An Empirical Analysis," *The Antitrust Bulletin* (Spring 1998).
10 Gal, Michal S., "Size Does Matter: The Effects of Market Size on Optimal Competition Policy," University of Southern California Law Review, (2001).

The Limits Of Competition Policy

The Case Of Monopsony

By definition, late adopters of competition policy regimes lack many of the prerequisites underscoring successful competition program and at the same time are afflicted by many others that ensure the fundamental weakness of any prospective program.

The smaller economies lack the historical aversion to "bigness" found elsewhere. The smaller economies lack the jurisprudence and legal foundation within which to place the legal framework required to successfully operate a competition policy. Because they proceed for the most part from technocratic initiatives often perceived to be result of conditionality, the incipient competition agencies lack the political and social constituency necessary to avidly challenge the competitive practices of powerful interest groups.

Most small economies suffer a close coordination between their national firms and their governments, offering meager prospects that a government agency would serve as a vehicle to possibly impair the fortunes of their national champions. Dedicating resources to traditional competition law enforcement may simply encourage producer interest groups to lobby other government agencies and officials for protection from the enforcement agencies. A formal model of this structure of incentive can be found in Rodriguez & Williams (1994, 1995).[11]

The Case of Marketing Boards

Marketing boards are implemented to pro-competitively enhance the market. Because of the high cost of advertising internationally, there are many gains to collaborative efforts to the various competitors in a region. Thus, often in association with national trade ministries, the marketing boards offer a ready made, well financed and functional framework to extent the marketing collaboration into monitoring competitive practices. The resulting structure is effectively a cartel that transcends national borders and directs its impact at tourists arriving from abroad.

Given that the impact of reduced price competition falls on residents of foreign countries, a domestic agency, charged with securing the consumer welfare of its nationals is unlikely to find the political will to challenge the marketing board's practices.

International collaboration between competition agencies has been proposed throughout the years.[12] The debate appears to have heightened lately with numerous initiatives presently in motion. A regional agency or a multilateral action appears to be the ideal institution to proscribe an international cartel practice. In reality the prospects of such international collaboration between agencies appears to be but a gleam in several commentators eyes despite significant support and lobbying from various quarters.

If the domestic agencies are not up to the task will the more experienced agencies of the European Union and the United States adequately police the industry? In our opinion, this would only happen by coincidence. In recent actions against tourism and hospitality industry operators the U.S. Federal Trade Commission (FTC) and the European Commission failed to consider whether there would be any anticompetitive impact on the host nations. The FTC recently closed its investigation of two proposed acquisitions involving the three largest firms in the ocean cruise industry. The largest firm (Carnival Corp.) and the second largest firm (Royal Caribbean Cruises) had been battling to acquire the industry's third largest firm (P&O Princess Cruises). The FTC examined three possible anticompetitive

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11 Rodriguez, A.E. & Mark D. Williams., "The Effectiveness of Proposed Antitrust Programs for Developing Countries," *North Carolina Journal of International Law & Commercial Regulation*, Volume 19 (1994); A.E. Rodriguez & M.D. Williams., "Economic Liberalization and Antitrust in Mexico," *Revista de Analisis Economico*, Volumen 10, No.2 (Noviembre de 1995).

12 Waller, Spence Weber, "The Internationalization of Antitrust Enforcement," *Boston University Law Review*, Volume 77, Number 2 (April 1997); Spencer Weber Waller, "National Laws and International Markets: Strategies of Cooperation and Harmonization in the Enforcement of Competition Laws," *Cardozo Law Review*, Volume 18, Number 3 (December 1996).

theories in the matter: (1) unilateral effects whereby a single firm takes advantage of its large size or its product niche to extract a price increase by itself; (2) the likelihood of coordinated interactions among the reduced number of firms – post-merger- resulting in higher prices for a substantial percentage of customers; and (3) strategic behavior that might increase entry barriers and/or disadvantage rivals, reducing overall competition in the industry.[13]

In September 1999, the European Commission blocked the hostile acquisition of First Choice by Airtours because the transaction would have created a three-firm dominant position in the market for short-haul package holidays in the United Kingdom. In June 2002, the Court of First Instance annulled the Commission decision.[14] The anticompetitive theory of joint dominance is similar to the coordinated interaction theory considered by the by the FTC; an assessment of the likelihood of tacit-coordination by market participants after the merger. The Commission did not examine whether there would be any impact on the host nations.

Although it may be possible for anticompetitive behavior to affect host-nation citizens, neither the FTC nor the European Commission specifically considered this possibility as part of their respective investigations. Thus, it is unlikely that small nation states can look for relief from foreign competition enforcement agencies.

CONCLUSION

Critics hold that multinational hotel chains, influential tour operators and foreign interests sometimes in association with powerful domestic groups often engage in anticompetitive practices at the expense of local communities, domestic workers, where the tourism activities take place. In this paper, we reviewed the prospects of market power abuses in the tourism industry and assess the prospects of the novel regulatory regimes currently being implemented to address these concerns. We conclude that monopsonistic practices may arise within tourism destinations. But domestic competition agencies are not suited to challenge monopsony for various reasons. An important reason is that the agencies are typically small, under-funded and they lack a political and social base that would support the agency in any action against the politically powerful domestic economic groups usually associated with the hotel & tourism operators. Put differently, they lack the political will to go against any of the powerful groups.

We also note well financed pro-competitive regional marketing boards presently active in any number of regions may effectively act as a cartel coordinator of the various hotel and resort operators that constitute the cartel. The boards can ensure no anticompetitive pricing affects the domestic tourism trade by carefully devising and designing price discrimination schemes. Any domestic antitrust agency would find challenging the marketing board cartel contrary to its stated objective of safeguarding the consumer welfare of its domestic citizens.

A “regional” agency with jurisdiction in several countries across a region may be more likely to successfully confront the marketing board. However, the same vulnerability to lobby groups impairs the effectiveness and likely prospects of success.

NOTES

13 Grimes, Warren & John Kwoka., “A Study in Merger Enforcement Transparency: The FTC’s Ocean Cruise Decision and the Presumption Governing High Concentration Mergers,” *Antitrust Source*, May 2003, available at http://www.abanet.org/antitrust/source/may03/metstudy.pdf.
14 Airtours v. Commission, European Court of First Instance, Case T-342/99, [2002] ECR II-2585 (2002).