"must be able to compete on a world stage" and competition policy must facilitate a "realignment and restructuring of industry".[60]

5.2 Relevant factors and treatment of efficiencies

Unlike the United States, both the EC and Canadian laws explicitly outline the factors to be considered by the merger enforcement authorities and the courts.[61]

In terms of competition-based tests, the most well-known difference between the Canadian, U.S., and EC statutes relates to the treatment of efficiencies. Canadian competition law is unique among developed countries in clearly recognizing that mergers that intrinsically limit competition may nevertheless enhance overall economic efficiency, if they yield cost reductions through economies of scale, synergies, or through dynamic efficiency (i.e., innovation and adaptation of new technology). The Canadian Competition Tribunal shall make no order where a merger brings about or is likely to bring about gains in efficiency, where such gains in efficiency will be greater than and will offset the effects of any prevention or lessening of competition. The Director also takes this trade-off into account before he seeks an order from the Tribunal. Until recently, it was believed, on the basis of Canada's Merger Enforcement Guidelines, that this meant that Canada had adopted the Williamson trade-off or the total welfare approach to merger control as opposed to the consumer welfare approach practised traditionally in the United States.

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[60] John Davies and Chantal Lavoie, op cit, p.28.

[61] Relevant factors in Canada include:

(a) the extent to which foreign products or foreign competitors provide or are likely to provide effective competition;
(b) whether the business, or a part of the business, of a party to the merger has failed or is about to fail;
(c) the extent to which acceptable substitutes for products supplied by the parties are or are likely to be available;
(d) any barriers to entry into a market, including the tariff and NTBs, interprovincial barriers to trade, and regulatory control over entry;
(e) the extent to which effective competition remains after the merger;
(f) any likelihood that the merger will result in the removal of a vigorous and effective competitor;
(g) the nature and extent of change and innovation in a relevant market; and
(h) any other factor that is relevant to competition in a market.

Findings cannot be based solely on evidence of concentration or market share.

Relevant factors in the EC include:

(a) market position of the firms concerned and their economic power;
(b) alternatives available to suppliers and users;
(c) access to suppliers or markets;
(d) any legal or other barriers to entry;
(e) supply and demand trends for the relevant goods and services;
(f) interests of intermediate and ultimate consumers; and
(g) development of technical and economic progress, provided that it is to the advantage of consumers and does not form an obstacle to competition.

The relevant weight given to the various factors is not spelled out, but the EC disclosure forms place considerable emphasis on market share. The possibility of the failing firm has been omitted (cf. item b) under Canadian factors).