

closely a per se approach because it is easier to codify and is more compatible (even if not economically optimal) with the larger economies for which strategic alliances, including export and technology consortia, are not as immediately essential?

Some of the modern persuasion in the U.S. have proposed a "safe harbour" for cooperative agreements among competitors innovating and commercializing innovation with a market share of less than 25%, while applying rule of reason criteria for other cooperative agreements.<sup>47</sup> But such a hybrid system is not official U.S. policy. In any event, even this proposal continues to reflect the rigidity of percentages that makes rather less sense in a smaller market economy with a more limited range of players in any given sector.

In summary, we should continue to work toward greater international cooperation through positive comity for such issues as abuse of dominant position, especially in the case of predatory pricing. With regard to unfair pricing practices, differences between Canadian and U.S. law related to class actions, contingent fees and treble damages could be the subject of further discussion, although there is little support for adopting such U.S. legal practices in Canada.<sup>48</sup> Our view of the merits of the rule of reason approach to mergers/antitrust activity should be actively shared with others. We should undertake technical cooperation with Mexico to facilitate that country's implementation of a modern competition policy regime that would in turn favour work under the NAFTA aimed at replacing anti-dumping law with respect to trade among the North American economies.

But before encouraging the holus-bolus inclusion of competition policy harmonization in the next round of multilateral trade negotiations or regionally, we sorely need a clearer picture of the likely outcome. In many instances, the vigorous application of national treatment may well suffice. Only if we are reasonably convinced that the result of a more comprehensive process will emphasize a case-by-case approach that avoids narrow structural or numerical triggers would it likely be in Canada's interest to engage in promoting such negotiations.

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<sup>47</sup> Jorde and Teech, *Antitrust*, pp.11-12.

<sup>48</sup> Chambers of Commerce, "Competition (Antitrust) and Antidumping Laws", pp.178-182.