Commission (which is, after all, a political body) leave greater room for decisions to be based on other policy considerations. Indeed, EC cases which have raised the most difficult competition concerns have been decided by a vote of the full Commission (with at least nine votes out of thirteen required to adopt a decision). It was apparently rumoured that the conditional acceptance of the acquisition by Du Pont of ICI's nylon business in September 1992 was influenced by the progress of the Maastricht debate.[71] Within the EC, France and Italy have been the biggest proponents of taking into account industrial policy considerations, while Germany and the UK have favoured a pure competition-based test.[72]

Canada's treatment of efficiencies and "export gains" from mergers is consistent with a competition-based test, although observers might question the statutory language employed. In the United States, some court cases appear to have been decided with reference to export and investment objectives, although in other cases, such arguments have been rejected. Moreover, the wording of the Sherman Act has left room for some merger cases to be decided on the basis of protection the of competitors, not competition.

In general, however, there appears to be a de facto trend towards convergence, not only between Canadian and U.S. Merger Enforcement Guidelines,[73] but between Canadian and U.S. jurisprudence. Indeed, in the *Hillsdown* case, the Competition Tribunal referred to U.S. court decisions both in its analysis and its conclusion.

Canada's merger control strengths are:

i) a rapid and relatively efficient process managed by a single jurisdiction which avoids unnecessary litigation; and

ii) recognition by law of the dynamic nature of competition and of the impact of trade liberalization on competition.

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[71] John Davies and Chantal Lavoie, op cit, p. 29.

[72] ibid.

[73] Canadian and U.S. Merger Enforcement Guidelines provide for similar analytical treatment of market definition, foreign competition, the failing firm, and barriers to entry. Too little is known about EC economic analysis to determine whether it differs in any material respect from that of Canada and the United States, although the failing firm factor does not appear to be formally taken into account.

An example of the problems that can occur if the possibility of the failing firm is not taken into account was the proposed takeover of deHavilland by ATR which was allowed by Canada but blocked by the EC Commission, which did not recognize deHavilland as a failing firm. In the end, the company was purchased by Bombardier with the assistance of government subsidies.