

stricter in its approach to "vertical restraints" that tend to divide markets.¹⁹² As a result, mergers or other activity that involve distribution or partitioning agreements are considered the most serious of all EU competition policy breaches.¹⁹³ In contrast, EU competition cases have rarely been brought against advanced-technology industries. Although the EU system functions mainly on directives from the Commission based in Brussels, litigation on various competition issues and decisions does occur in EU Member State courts and the European Court.

In rapidly changing advanced technology sectors, very litigious approaches to anti-trust are increasingly untenable. U.S. competition law tends to be enforced somewhat more by the courts than by administrative review, as is the case under European and Canadian competition policy in practice. As international and regional efforts proceed toward greater competition policy cooperation and convergence, Canada must be vigilant against certain features of the current U.S. approach (i.e., a greater proclivity to *per se* illegality, broader scope for citizens suits, treble damages and anti-trust actions by sub-national governments (to name a few)).

Recommendation 3. Administrative Approach vs Active Judicial Challenge

Canadian competition law should continue to give priority to efficiency enhancing inter-firm collaboration and stability in the application of the regulatory framework. We support the broadly administrative approach followed in Canada, particularly for the NAFTA area, to prevent restrictive business practices and enhance market integration. A better understanding of the European model would also be useful should NAFTA-EU talks on liberalized trade eventually come to fruition.

5.4.3 GATT and the OECD

Certain existing rules of the GATT/WTO, specifically intellectual property and services, are related to competition policy. However, the GATT Anti-Dumping Code and its WTO successor is the only agreement dealing directly with restrictive business

¹⁹² Treaty establishing the European Economic Community, March 25, 1957, 298 U.N.T.S. 3 (hereinafter Treaty of Rome) Articles 85-86. Competition issues are subject to two levels of litigation in the European courts: the Court of First Instance and the European Court. This is not the case for all EU laws, most of which are not considered in the Court of First Instance at all.

¹⁹³ See Sharma and Marsden, *National Competition Policy Philosophies*.