

Paradoxically, therefore, while the FTA eases substantive competition concerns in Canada it may raise future competition law enforcement concerns resulting from several merger review jurisdictions in a single market (albeit an inherently more competitive market than either individual market was before the Agreement).

#### 4.2 Merger control frictions

With trade liberalization, friction in the area of merger control could emerge from a number of sources:

- 1) substantive differences in merger tests leading to conflicting decisions;
- 2) situations in which a merger poses no competition concerns in one jurisdiction on the basis of one relevant product market, but negatively affects consumers who are in another product market located in another jurisdiction;<sup>40</sup>
- 3) jurisdictional conflicts related to competing orders for restructuring and the extraterritorial application of domestic competition law;
- 4) situations where Canadian authorities might have a limited ability to apply remedies, e.g., when merging firms have no assets in Canada.
- 5) perceived fairness of merger control related to issues such as:
  - i) the transparency and impartiality of the enforcement process and institutions;
  - ii) the use of time (delays) by a jurisdiction to block unwanted mergers; and
  - iii) the discriminatory treatment of mergers (i.e., denial of national treatment to foreign-controlled or foreign-based firms or production facilities).

One also needs to consider:

- i) Uncertainty and compliance costs related to providing information to several jurisdictions. Executives have described the costs of merger review not only in terms of lawyers' fees, but also in terms of executive

---

<sup>40</sup> Merging firms can produce several products, each of which may have its distinct relevant market characterized by different elasticities of demand.