

There are, however, certain significant differences with regards to the practice, as we discuss below in sub-section 8.2.

- **The rule of reason vs. the *per se* standard**

The U.S. has developed a relatively strong rule of reason because it exalts the role of the individual. Europe and Japan place less value on developing such a rule, because they place less value on litigation and the judicial development of the law. In the development of an antitrust rule of reason, Europe and Japan share more similarities with each other than with the U.S.. As a result, the rule of reason approach that evolved in Europe and Japan is less well developed than that found in the U.S..

- **Public interest and integration**

- **Public interest.** In Japan, the Fair Trade Commission or the courts have to decide whether an unreasonable restraint of trade, such as a cartel, is contrary to the public interest.¹⁴³

EU: The *Treaty of Rome* reminds the European Commission to remain in-tune with the aims of economic and social cohesion in Europe, and other fundamental objectives of the *Treaty*. Accordingly, public interest considerations have led the European Commission to take a sympathetic view of certain state subsidies by Member State governments. The Commission acknowledges that state assistance may distort trade among member states by the misallocation of resources but argues that state subsidies may ease the social problems associated with structural change. However, in authorising state aid, the Commission often attaches conditions that have the aim of mitigating negative effects on competition. Exemptions for state subsidies are justified on the grounds that competition may not ensure that the most efficient firms will remain in the market or may entail unacceptably high social costs.

- **Integration.** The integration motive is not an element in U.S. or Japanese competition policy, but is central to competition policy in the EU. The use of

¹⁴³Mitsuo Matsushita, *International Trade and Competition Law in Japan*, New York: Oxford University Press, 1993, p. 90.