The U.S. merger control process is also complicated by the possibility of enforcement at the state level. "Many U.S. states have statutes which are patterned after section 7 of the Clayton Act. The attorneys general are in no way pre-empted from seeking divestiture by the fact that the transaction was cleared by the DOJ or the FTC."[54] They can seek to enjoin a merger in state court, according to state law, or in federal court in *parens patriae* actions.

Some states have been active in trying to block national mergers that are highly publicized and have a perceived local impact - the likelihood of "politicization" of a particular merger may be heightened at the local level. This tendency is reinforced by the State Attorneys' General conscious effort to develop an alternative to the enforcement standards applied by the FTC and the DOJ. This effort extends to the development of separate enforcement guidelines (which have different approaches to, for example, market definition).

Thus, it has not been uncommon for a merger which the FTC or the DOJ has decided not to challenge, to be challenged in a private suit by a private plaintiff or a State Attorney General. Robert Campeau, for example, had his U.S. acquisitions approved by the DOJ only to be forced to divest because of the actions of the State Attorneys General of New York and Massachusetts.[55] In 1989 (*Maine vs. Connors Bros.*), the State obtained a consent decree requiring partial divestiture in connection with a Canadian firm's acquisition of a U.S. firm.

This multi-faceted enforcement system may work against allowing anti-competitive mergers, but at the expense of greater uncertainty and compliance costs and the greater chance that pro-competitive mergers will not proceed.[56]

EC

The EC Commission is responsible for administration of the Community's competition laws. Final decision-making authority is vested in the Commissioners and

[54] ABA Section of Antitrust Law, op cit, p.259.

[55] See Thomas J. Courchene, ed., Quebec Inc.: Foreign Takeovers, Competition/Merger Policy and Universal Benking, School of Policy Studies Queen's University, 1990, 53 pp.

[56] Since 1992, the merging parties can reduce some of the compliance costs and uncertainty by waiving confidentiality restrictions, thus facilitating the coordination of Federal and state merger control enforcement. States that are parties to the National Association of Attorney's General "Voluntary Pre-Merger Disclosure Compact" have agreed not to serve demands for information during the merger consummation waiting period provided for by the Hart-Scott-Rodino Antitrust Improvements Act and prior to instituting a judicial proceeding to enjoin a merger if the parties to the proposed transaction provide specified information to the "liaison state" defined by the Compact. The Compact does not preclude the possibility of state merger control enforcement if a transaction is approved by the DOJ or the FTC.