

situations, suppliers or retailers could increase their profit by colluding to impose vertical restraints with the producer.

The analysis of vertical arrangements among producers of multiple brands, their suppliers and retailers highlights that vertical restraints raise issues of market foreclosure. That is, in the presence of the dominant market position of parties, vertical restraints can lead to foreclosure. Often times, vertical restraints may raise anticompetitive concerns when combined with horizontal restraints. Consequently, the entire spectrum of business restraining practices needs investigation to gain a more comprehensive understanding of which business practices do and which arrangements do not inflict economic harm.

#### **4. Major Vertical Restraints and Their Legal Treatment Under Selected National Regimes**

In this section, we discuss five major classes of vertical practices. For each practice, we will present the debate on economic efficiency and describe the substantive law that is applied in Canada, the U.S. and Japan. Certain similarities and differences in the competition policy framework established by Canadian, U.S. and Japanese law, however, merit some introductory observations.

First, there is a distinction drawn in competition law between the legal test to be met in a case tried under the *per se* and rule of reason standards. While this terminology only applies in U.S. law, the conceptual equivalent is also to be found in the Canadian regime. Although competition law in Japan apparently maintains this distinction, closer examination reveals that the rule of reason approach is, in fact, the norm. In those jurisdictions in which the distinction is observed, once a court finds that a rule of *per se* liability applies, no further proof of anti-competitive effect is required. According to the rule of reason approach, however, the plaintiff/applicant must show that the impugned practice has had an adverse impact on competition. Such a legal finding of anti-competitive effect or a substantial lessening of competition rests upon an assessment of the market power of the accused/defendant. While "market power" is sometimes referred to as "the ability to raise prices above those that would prevail in a competitive market", this determination in turn rests upon an even more fundamental decision, the definition of the relevant geographic and product markets in question. The approach adopted by each jurisdiction to deal with these issues is the subject of closer examination later in this section.

Another element that affects competition law cases is whether legal enforcement is sought through criminal or civil litigation. Under Canadian law, it is the Competition Act itself that prescribes either criminal or civil process for each anti-competitive practice. In the