

country's complex merger control enforcement process, including private suits (injunctive and treble damages) and suits by State Attorneys General; extraterritorial application of domestic law; and discriminatory provisions regarding production joint ventures. Moreover, in past merger cases, U.S. statutes have, on occasion, been interpreted liberally enough to protect U.S. exporters and not just competition, an interpretation that shades into a protectionist policy of supporting national winners. Lower prenotification thresholds and less generous safehavens could also create additional compliance costs and uncertainty for Canadian firms.

- 3) Convergence of merger control law and enforcement practice would not solve all potential problems relating to the existence of multiple competition jurisdictions. The expected cost of jurisdictional conflict needs to be balanced against various options, notably: the status quo, pursuing models of shared sovereignty, establishing a dispute settlement mechanism, or seeking a common merger control institution for the free trade area. Further analysis is also required to relate Canada's merger control interests to Canada's interests in other areas of the trade and competition policy interface, e.g., treatment of cartels, anti-dumping replacement, differences in the treatment of dominant monopoly positions.
- 4) In general, Canada should preserve its merger control strengths and:
  - support the adoption of competition-based merger control tests;
  - oppose the introduction of discriminatory merger control provisions;
  - keep the administrative costs of competition law enforcement low; and
  - lower the costs and uncertainty associated with business compliance with domestic and foreign competition law(s).
- 5) Given the essential uncertainty associated with merger control enforcement, issues of perceived fairness are likely to take on greater importance in any convergence discussions. Canada could become subject to U.S. pressures regarding the "transparency" of our merger control process as well as access to the courts for private parties. Safehavens could become an issue as well although Canada is armed with strong arguments in this area.

In light of ongoing work at the OECD, the following limited Canadian objectives in the area of merger control in the future NAFTA work programme might be appropriate: