

Despite these positive trends, which maintain and enhance competition in Canada, trade remedy legislation, occasionally stringent rules of origin, restrictive government procurement practices, and currency fluctuations will continue to work against the single market.³⁶ Competition concerns will also remain in federally and provincially regulated sectors - agriculture, transportation, telecommunications, energy, and financial and other services - where competition goals often conflict with other policy goals and where the Free Trade Agreement made limited inroads (although with further gains in the NAFTA).

4.1 Impact on merger control

Ross' analysis on the link between the tariff and mergers shows that "mergers reducing the number of domestic firms will not result in price increases as large as they would have been", so that tariff policy can be a substitute, at least partially, for structural competition policy.³⁷ This is because Canadian firms operating in a North American market are unlikely to possess significant market power.

Indeed, this is what the merger review process has found. Of the total number of merger transactions coming to the attention of the Mergers Branch of Consumer and Corporate Affairs Canada over the past six years, slightly more than 20% required significant examination (more than two days of review by an officer).³⁸ For almost 92% of mergers examined (or 98.3% of all publicly reported mergers in Canada), the Bureau concluded that they posed no issue under the Competition Act.

Of the 77 cases where competition concerns were raised and for which the Bureau has completed its examination, by far the most common action (64% of these cases) has been to monitor the merger over the next three years. In the remaining cases (0.5% of all reported mergers), 11 were concluded with undertakings of restructuring, 11 were abandoned in whole or in part as a result of the Director's position, 3 were completed through consent orders, and 3 through contested hearings before the Competition Tribunal.

While certainly indicative of a more activist approach than that observed under prior legislation, merger control under free trade has not led to a large number of

³⁶ Trade remedy legislation can facilitate cross-border combines and price fixing, act as a "chill" on exports, and distort investment decisions; stringent rules of origin limit the applicability of tariff reductions; government procurement encourages market segmentation; and currency fluctuations can create swings in competitiveness unrelated to firm productivity.

³⁷ Cited by Tim Hazledine, *op cit*, in Khemani and Stanbury, *supra*, note 4, p. 50.

³⁸ See Annex 2, tables 1&2.