

- i) situations in which a merger poses no competition concerns in one jurisdiction but affects consumers in another product market located in another jurisdiction;
- ii) jurisdictional conflicts related to competing orders for restructuring and/or competing contested reviews before the courts ; and
- iii) situations where Canadian authorities might have a limited ability to apply remedies, e.g., when merging firms have no assets in Canada.

To do so would require agreement on a supranational competition agency, or the adoption of some other model for the elimination of jurisdictional conflict (requires some abandonment of sovereignty⁸⁷), or a dispute settlement mechanism.

Given the essential uncertainty associated with merger control enforcement, moreover, 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 the merger control process as well as access to the courts for private parties. Similar concerns could be raised by Canada about the U.S. process.

7. Conclusions/Recommendations

- 1) Canada is pursuing a coherent mix of trade and merger control policies. Trade liberalization under the FTA and the future NAFTA are alleviating substantive concentration/competition problems in the Canadian economy, although trade remedy legislation, occasionally stringent rules of origin, restrictive government procurement practices, and currency fluctuations will continue to work against the single market. Competition concerns will also remain in regulated sectors. Once the current trade agreements are fully implemented, and barring future improvements, further trends towards monopolisation will not be constrained by added import competition except from outside the free trade area. Paradoxically, trade liberalization may complicate merger control in North America because more mergers will be transboundary in their effects and subject to review by several jurisdictions.
- 2) For Canada, the greatest potential for conflict will arise, in the first instance, with the United States because of the implementation of the FTA and that

⁸⁷ Possible merger control models include the lead review jurisdiction, the coordinating agency, and the lead jurisdiction with dispositive power models. These models have been proposed by Neil Campbell and Michael Trebilcock, "International Merger Review: Problems of Multi-jurisdictional Conflict", Project on Competition Policy in a Global Economy, November 20, 1991.