

#### 5.4 Safehavens

As a rule of thumb in Canada:

- if the post-merger market share of the merged entity would still be less than 35%, it will generally be decided by the BCP that the new firm would not be in a position to increase the exercise of unilateral market power; that is, market power just benefiting itself.<sup>67</sup>
- if the post-merger total market share of the four largest firms would be still less than 65% (or if the merged entity's share would be less than 10%), then it is judged unlikely that the merger would lead to increased implicit coordination between surviving firms, such that the overall price level in the market (i.e., prices charged by all firms, including those not involved in the merger) would increase significantly.

In the United States, jurisdictions are guided by the Hirschman-Herfindahl Index (the sum of the squared market shares of each firm in a relevant market) in deciding whether to challenge a merger or not. The guidelines provide that the Department of Justice is unlikely to challenge a merger producing either: (a) a post merger HHI below 1000; (b) a post merger HHI between 1000 and 1800 where the HHI increase is less than 100; or (c) a post merger HHI where the HHI increase is less than 50. Other mergers require more detailed analysis of factors such as ease of entry and potential efficiencies to determine whether they are likely substantially to lessen competition.

In the EC, there is a presumption that merger transactions producing a combined market share of less than 25% are compatible with the Common Market. The notification form requires data to be provided for all affected markets which are defined by reference to a 10% market share test.

In practice, the above differences mean that the Canadian safehavens are more generous than the U.S. and EC safehavens, consistent with Canada's more concentrated industrial structure. With free trade, however, the relevance of more generous safehavens could be questioned in cases where the relevant market is cross-border.

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<sup>67</sup> The relevant market can, of course, extend beyond Canada.