

What this suggests, as Robert D. Anderson and S. Dev Khosla have helpfully pointed out, is that "rivalry may be achievable through means other than conventional antitrust policies".⁸⁵ This view is certainly more consistent with Porter's overall thesis that the multiple determinants of "national advantage" operate as a system with the result that specific cause and effect relationships tend to get blurred. Indeed, as noted by Professor Porter, competition, trade and other policies work hand in hand to affect the competitive environment and they need to be sensitive to each other.

A comparison of merger policies in terms of "strong" versus "weak" or "flexible" merger control policies is unlikely to be productive, therefore, especially as the case for the superiority of U.S. standards still has to be made. What appears more important is the coherence of competition, trade, investment and other policies within the context of a given national economy⁸⁶ and the minimization of conflict between jurisdictions.

6.2 Convergence or cooperation?

Convergence would be beneficial to the extent that it reduced substantive differences with respect to merger tests (e.g., agreement on a pure competition-based test which protects competition and not competitors and excludes export/investment objectives; agreement on a consumer welfare or total welfare approach) and to the extent that it eliminated discriminatory provisions in statutes. Even if the Canadian efficiency defence were accepted, however, it is quite possible that a merger would be blocked in cases where the efficiency gains are primarily in one jurisdiction and the wealth re-distribution effects largely in another. Convergence of relevant factors taken into account in merger control analysis would, to some extent, be beneficial (e.g., introduction of the failing firm consideration in the EC).

Convergence of certain procedures could also reduce uncertainty and compliance costs for businesses and duplication of effort and problems of information gathering among competition authorities.

Convergence would not resolve:

⁸⁵ Robert D. Anderson and S. Dev Khosla, op.cit., supra, note 39, p. 23.

⁸⁶ For example, in terms of investment, mergers accounted for 80% of the value of inward FDI in Canada in the late 1980s. The surveillance of mergers, therefore, has implications for Canada's status as a host economy attracting FDI. The domestic policy environment should be one of neutrality or non-discrimination between trade and investment implying that merger control should continue to be applied on a national treatment or non-discriminatory basis. See Dennis Seebach, "Globalization: The Impact on the Trade and Investment Dynamic", EAITC, Policy Planning Staff Paper No. 93/7, June 1993.