

This paper assesses the impact of trade liberalization, particularly the Canada-United States Free Trade Agreement and the future NAFTA, on a sub-set of Canadian competition policy, merger control, and assesses the coherence of merger control and trade policies in light of the FTA's objective, stated in Article 102 b), of facilitating conditions of fair competition within the free trade area.

The paper identifies potential merger control frictions by comparing Canadian, U.S. and EC merger control law and enforcement practices and explores Canadian interests in the international merger control agenda. The paper begins by situating merger control within the larger framework of Canadian competition policy.

2. Competition and Competition Policy

Competition is essential to the operation of a market economy. It encourages firms to minimize costs and helps ensure that these savings are passed on to consumers. It also facilitates the efficient allocation of resources by ensuring the exit of inefficient firms from an industry.

There has always been some concern about *maintaining competition*, however, and fretting over how best to do this. Adam Smith observed that "people of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in conspiracy against the publick, or in some contrivance to raise prices...*But though the law cannot hinder people of the same trade from sometimes assembling together, it ought to do nothing to facilitate such assemblies.*"² Fear that capitalism might be characterized by abusive business practices, therefore, has respectable origins among classical economists.

In 1889, Canada became the first country to pass legislation "relating to conspiracies and combinations formed in restraint of trade,"³ one year before the more famous Sherman Act in the United States. Despite early concern with maintaining competition, however, Canadian law has traditionally been less interventionist than that of the United States, reflecting what one observer has called "Canadians' ambivalence about the virtues of competition as the primary means of allocating the

² Adam Smith, An Inquiry into the Nature and Causes of the Wealth of Nations, Oxford, Clarendon Press, 1976, Volume I, p. 145.

³ *An Act for the Prevention and Suppression of Combinations formed in Restraint of Trade* (52 Victoria, c.41).