

firms perform 90% of their basic research at home, and this home is rarely Canada.⁶¹ In addition, only large countries can spread their R&D activities across most technological fields. Globalization and the increasing strength of transnationals surely will reinforce these trends.

In this light, we should approach with care any future efforts to expand the scope and rigidity of current intellectual property standards. For example, Canada should proceed very cautiously with respect to any initiative to extend the current periods of protection for the different IP rights. We should take a hard look at what a reasonable return on investment in R&D might be. When does this rate of return slip into anti-competitive and inefficient economic rent? It would be useful to undertake an analysis as to whether a term greater than 20 years (to take the case of patents) provides a "fair", an "excessive", or a "too limited" economic return in light of development and opportunity costs. The answer may vary by sector, the class or degree of innovation, or other variables, opening the door to some flexibility to reflect more accurately the specifics of each case. Any such suggested change would require building consensus internationally, as well as domestically. At the very least, analysis on this matter would better prepare us for future negotiations launched by technology-rich countries.

Finally, it will be important to retain clear guidelines to ensure that competition policy can continue to override intellectual property rights, if required to remedy anti-competitive practices as determined through an independent administrative or judicial process. The procedures must be transparent, disciplined and consistent with internationally established practice. Canada's Competition Act contains several provisions that can override intellectual property rights because of anti-competitive behaviour determined on a case-by-case basis with fairly high thresholds for action.⁶² The NAFTA fully preserves the right of each Party to "adopt or maintain...appropriate measures to prevent or control..." abuse of intellectual property rights having an adverse impact on competition as specified in domestic law.⁶³ This approach preserves the ability of each signatory to address effectively any attempt by transnational enterprises to use IPRs and general IP exemptions under antitrust laws in order to segment markets, to distort trade in goods and services, and to engage in anti-competitive price discrimination between markets. The judicious use of

⁶¹ Patel and Pavitt, "Large Firms" pp. 5, 10.

⁶² Anderson, et al., pp.21-4; Chambers of Commerce, "Competition (Antitrust) and Antidumping Laws". pp.64-76.

⁶³ See Articles 1704 and 1110(7).