

provisions of Chapter 20. However, these obligations do not apply to government procurement.¹⁸⁰

- Canada

The absence of a common North American dispute settlement mechanism with regard to competition law means that Canadian concerns about the impact of U.S. competition law on corporate activity in Canada must rely upon the "best endeavours" feature of the recent Canada-U.S. Agreement, as well as the consultative features of the NAFTA. While the NAFTA continues to allow for anti-dumping and countervailing duties, the ultimate goal of Canada is to develop better disciplines or a competition policy replacement for these instruments.

The Canadian Competition Act deals with intellectual property and technology licensing agreements that apply to tied selling, exclusive dealing and territorial market restrictions, if these practices can be shown to lessen competition substantially.¹⁸¹ However, it appears that competition remedies are not readily available from a practical point of view. Canadian authorities have initiated very few prosecutions under the Competition Act, as the Canadian system is much less confrontational than its U.S. counterpart. Moreover, the Canadian system has avoided the most adversarial features of the U.S. system, including its somewhat greater use of *per se* findings of illegality, the much broader right of private actions under anti-trust law with the prospect of punitive (treble) damages, and actions taken by State Attorneys-General in addition to those taken by federal authorities. All in all, the Canadian competition system is less likely to discourage innovative inter-firm collaboration.

- The United States

U.S. anti-trust procedures require extensive judicial review by the Federal Trade Commission (FTC) and by the Department of Justice (DOJ). While U.S. anti-trust law is enforced by two federal agencies as well as the anti-trust authorities in each of the states that may be affected by a collaborative arrangement, it is considered flexible in some areas such as in accommodating collaborative R&D through special treatment for technology consortia. The U.S. has also been criticized, however, for its attempts to impose U.S. anti-trust policy on foreign companies for conduct outside the U.S..

¹⁸⁰ NAFTA Article 1502 (4).

¹⁸¹ Howard Wetston, *The Interface between Competition Policy and Intellectual Property Rights in The Canadian Economy*, in *Global Rivalry and Intellectual Property*, Murray G. Smith, ed., pp. 137-44.