- The scope of both positive and negative comity will have to be expanded and national laws pertaining to extraterritoriality will have to be reconciled.[95]

- The range of exemptions, whether specific or general, to the application of competition law.

The crucial question that remains is how to devise the common set of competition guidelines that the international community could agree on and use in implementing the rule of reason approach. No matter how arduous and long the prospect for such international competition policy negotiations, it is worth pursuing. The search for some fundamental and central factors that should be taken into consideration in all jurisdictions in applying the rule of reason approach can begin by considering some of the important factors that emerge from the discussion in sections 3 and 4. To begin with, the following factors are suggested:[96]

- the definition of a relevant international market,
- market concentration,
- the market's information structure,
- risk characteristics in the relevant market (e.g., size of sunk investments as an ease of entry proxy), and
- the degree to which parties become locked-in to one another (e.g., the amount of capital each party brings to a joint project).

International rules formulated to apply the rule of reason approach may have the benefit of not being easily captured and modified by special interest groups. Yet this

[95] The concept of comity means that a nation refrains from extending its own legal or administrative activities into jurisdictions of another nation state. Under positive comity, a national government which holds a grievance against another nation that could be reached via competition policy (e.g., private practices that create barriers to imports or direct investments) would request the authorities of that nation to investigate and, if appropriate, to take action to address the grievance under the competition laws of that nation. In responding to the complaint under the terms of the comity agreement, these authorities would be obliged to consider carefully the interests of the complaining nation. For example, it would be useful to explore whether a Quadrilateral (Canada, the U.S., the EU and Japan) positive comity agreement might be negotiable, in part to encourage greater transparency in Japanese enforcement practices. Such an approach would echo similar agreements between Canada and the U.S., and the EU and the U.S. See Keith H. Christie, "Globalization and Public Policy in Canada: In Search of a Paradigm", *Policy Staff Paper* No. 93/1, Department of Foreign Affairs and International Trade Canada, Ottawa, January 1993.

[96] For a parallel study that explores the guidelines issue further, see Keith H. Christie, "Damned If We Don't: Some Reflections on Antidumping and Competition Policy", *Policy Staff Paper No. 94/15*, Foreign Affairs and International Trade, Ottawa, July 1994.