

Section I: Key Findings and Recommendations

On June 17, 1999, at the Canada-EU Summit meeting in Bonn, a Competition Agreement was signed. At that time, with the encouragement of both the EU Commission and the Canadian Government, the Canada-Europe Round Table for Business (CERT) was formed as a network of Canadian and European private business organizations. CERT offices were established in Brussels and Ottawa. ON 28 November 2001, CERT hosted its first annual CEO Round Table gathering, and the following day held its first annual Symposium on *“International Competition Law: The Business Case for Convergence”*. Both events were held in Brussels.

These events provided substantive contributions from Canadian and European business leaders to the process of consultation on bi-lateral Trade and Investment issues, under the 1976 Framework Agreement for commercial and Economic Cooperation between the EU and Canada. This was the first such agreement between the then E.C. and an industrialized or G-7 nation. Since this time, several developments have followed, including the EU-Canada Joint Action Plan in 1996, and the EU-Canada Trade Initiative (ECTI), concluded at the EU-Canada Summit in December 1998. CERT is a direct business and commercial response to these bi-lateral governmental initiatives, and also falls within the broader context of the World Trade Organisation (WTO).

During the past year, through a process of Trans-Atlantic discussion at the senior executive level between many Canadian and EU business leaders and legal experts, we have developed a series of key findings and recommendations, supporting the business case for international convergence of merger review rules and procedures. These include the following:

1. Procedural and substantive divergence imposes a significant burden on the time, talents and resources of all participants: business, consumers, government and society in general.
2. It is necessary to have clear and transparent rules, standards and practices for merger reviews, to reduce the time and costs of pre-merger notification investigations associated with a growing multiplicity of national laws.
3. While issues of substantive nature do differ between competition authorities, the focus should be on procedures, which account for a large part of the costs of non-convergence. Firms involved in cross border Mergers & Acquisitions should document the costs, private and social, associated with recent experiences, and offer their assistance to evaluate and improve a new set of procedures.
4. Legal security and equal treatment must be guaranteed.
5. Reconciliation of bi-lateral, regional and multi-lateral convergence initiatives, laws and procedures will benefit the flows of investments, creating jobs and wealth, while strengthening both EU and Canadian competitiveness in global markets.
6. Increased convergence in common time limits and timetables for filings, notifications and clearance norms is highly desirable.
7. Trans-Atlantic business flourishes when confidential information is protected in an environment free of duplication and inconsistencies in both anti-trust laws and enforcement regimes. Cooperation between enforcement authorities must take place within a legal framework that provides effective safeguards and protection for confidential information.
8. Effective and timely access to an independent court or tribunal, to appeal merger-blocking decisions, overly burdensome information requests and adverse decisions regarding substantial compliance is essential. These promote the ideal of due process in international competition law procedures.
9. Maintenance of an open and strongly competitive environment on both national and regional markets helps to ensure consumer choice and leads to the long-term international viability of organizations that supply those markets. Involvement of consumers must be maintained in any merger or acquisition review process.
10. The provision of suitable disclosures by all concerned parties to each transaction highlighting public benefits and positive effects upon competitive dynamics are encouraged.

11. The continued involvement of the EU, as a central player, for example under Article 9 Merger Regulations, is essential in the event of referrals back to member states. The EU should avoid directives or regulations leading to the inefficiency and loss of legal certainty found in USA style merger tests.
12. For the EU proposals to be implemented and effective, national control authorities and courts must be provided with operational and financial resources and with adequate legal instruments.
13. The proliferation of merger review regimes is imposing substantial costs on business, thus leading to higher prices for goods and services. Therefore simplified and predictable reviews benefit all concerned. The International Competition Network (ICN) was formed in 2001 to address this issue, with EU-Canada participation in developing best practices, peer reviews and, perhaps, a Common Form/Process Filing Treaty being worthwhile goals. EU-Canada participation in the ICN Capri meeting in June 2002 is requested.
14. Increased cooperation in cartel-enforcement along the lines developed in ICN working groups and project teams is desirable.
15. The work of the WTO on competition issues and those of the ICN should be complimentary, with an objective of facilitating the global development of convergence and the corresponding capacity building required so that all countries in the global trading system can effectively investigate and enforce competition rules and procedures.

All these measures call for transparency, certainty, non-discrimination, objectivity and predictability in the examination process for international mergers or acquisitions, as the convergence goal. These findings and recommendations form the basis for CERT communications delivered at the CERT CEO Round Table and the CERT Symposium of 28 & 29 November 2001. CERT submits that these 15 key findings and recommendations, which have been distilled from our Interest Group contributions, must form the basis for a multilateral merger review framework.