STREAMLINING COMPETITION LAW & POLICY:

Should one body administer both competition and antidumping legislation?

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EXECUTIVE SUMMARY

i. The objective of this paper is to inform the ongoing debate on the likely effects of merging Jamaica's competition and antidumping authorities by exploring whether and to what extent their objectives are compatible.

ii. Competition results in lower prices, greater quantities, greater varieties and faster rates of innovation relative to a market in which competition is stifled.

iii. Competition is the process by which productive resources are directed to their optimal uses whereas competition policy represents the state's response to instances in which that process fails.

iv. The objective of the Fair Trading Commission (FTC) is to provide for the maintenance and encouragement of competition in the conduct of trade, business and in the supply of services in Jamaica. The activities of the FTC can be categorised in three broad areas: (i) competition law enforcement, (ii) competition advocacy, and (iii) public education.

v. The objective of the Antidumping and Subsidies Commission (ADSC) is to foster equity in international trade by enforcing laws which accord with the rules of the World Trade Organization (WTO); as well as to promote public awareness of Jamaica's trade remedies. The ADSC administers trade remedies in accordance with the rules of the WTO. Trade remedies refer to the rules governing the application of antidumping duties, countervailing duties and safeguards duties.

<u>Differences in scope of operations</u>

vi. A key distinction between the two authorities is that the actions of the antidumping authority shield domestic producers from import competition whereas the actions of the competition authority encourage competition from any source, and thereby protect the welfare of Jamaican consumers. By protecting the competitive process, the FTC encourages healthy business practices. Whenever there is competition, the society benefits from the surplus generated. This is not to gainsay the fact that some domestic and foreign manufacturers (the least efficient ones) may be unable to profitably remain in a competitively organised market.

vii. The fundamental differences in the functions of the competition and antidumping authorities imply that there will be differences in, among other things, the technical expertise required to carry out their functions.

viii. Further, it is quite possible that many of the cases which warrant antidumping sanctions may nonetheless be consistent with the competitive process. When the entities remain separate, any disagreement between the institutions as to the merits of prosecuting a given conduct would be brought to the attention of the relevant policymaker, through the competition agency's competition advocacy effort. The policymaker would then determine which position is more aligned to the public's interest.

ix. A merger of the entities could compromise the integrity of the competition agency's competition advocacy effort as any conflicting prescription between the antidumping and the competition authorities would most likely be resolved internally and as such may not be brought to the attention of the policymaker or wider public.

Merits and Demerits of Merging the Two Authorities

x. The benefits of a merger are likely to be limited to savings on administrative expenses.

xi. When the authorities are merged, the pool of technical staff will comprise individuals with incompatible interpretations of identical economic facts. Accordingly, informal collegial discussions are likely to compromise the quality of work product of the individual authorities and lead to, among other things, inconsistent treatment by each authority of similar economic conduct.

xii. A merger of the competition and antidumping authorities will likely impose additional challenges regarding the law enforcement; competition advocacy; and adjudicative capabilities of the competition authority.

Conclusion

xiii. We conclude that the benefits to be realised from merging the competition and antidumping authorities are likely to be dwarfed by the potential losses from doing so.

I. INTRODUCTION

1. Economists believe that competition is at the heart of many successful market economies in the western hemisphere as it has been demonstrated that the competitive process ensures that the free market allocates resources to their highest valued uses and thereby maximises consumers' welfare. Competition results in lower prices, greater quantities, greater varieties and faster rates of innovation relative to a market in which competition is stifled.

2. In nations such as Canada, France and the United States, competition policy was established following liberalisation of their respective economies. Under economic liberalisation, the state has little incentive to intervene in the market except when there is market failure; that is, a situation in which the market fails to allocate resources efficiently. Competition policy, through various legislation, determines how the state responds to mitigate, if not avert, the effects of market failure.

3. Competition is the process by which productive resources are directed to their optimal uses whereas competition policy represents the state's response to instances in which that process fails (Joekes and Evans, 2008, 3).

4. The Fair Trading Commission (FTC), Jamaica's competition agency, was established in 1993 to administer Jamaica's competition law, the Fair Competition Act (FCA). In general, the FTC monitors the conduct of enterprises doing business in Jamaica and the FCA prohibits activities which adversely affect the competitive process and consumer welfare. The FTC administers competition rules to facilitate competition among enterprises within local markets.

5. The Antidumping and Subsidies Commission (ADSC) is the antidumping agency in Jamaica. It was established in 1999 to administer Jamaica's antidumping law, the Customs Duties (Dumping and Subsidies) Act. The ADSC represents one area of Jamaica's competition policy dealing with cross-border trade. It administers trade remedies that focus on offering some protection to domestic manufacturing industries against the practices of other governments or enterprises that harm domestic industries. Its focus, in this sense, is primarily safeguarding domestic manufacturers.

6. From a broad policy perspective, competition law and antidumping law appear to pursue a common objective: ensuring that there is free and fair participation by various enterprises engaged in commercial activities. The premise of merging the two authorities is presumably predicated on the perceived complementarities in their role and functions.

7. The objective of this paper is to inform the ongoing debate on the likely effects of merging Jamaica's competition and antidumping authorities by exploring whether and to what extent their objectives are compatible in a way that facilitate the seamless harmonization of their functions into one body.

II. ROLE OF THE FTC

8. The stated objective of the FTC is to provide for the maintenance and encouragement of competition in the conduct of trade, business and in the supply of services in Jamaica. Substantive duties of the FTC are underpinned by economic theories and principles. Specifically, assessment of the effect of conduct on the competitive process is grounded in the economics field of Industrial Organization - which is the study of the strategic behaviour of firms, the structure of markets, and their interactions. Accordingly, the competition authority requires technicians with a working knowledge of Industrial Organisation. The activities of the FTC can be categorised in three broad areas: (i) competition law enforcement, (ii) competition advocacy, and (iii) public education.

9. *Competition law enforcement* refers to activities of the FTC aimed at prosecuting enterprises which contravene the FCA. The FTC's mandate covers restrictive business practices such as abuse of dominance, collusion, price fixing, resale price maintenance and tied selling. These prohibitions are aimed at safeguarding a competitive environment within domestic markets. The sole focus, therefore, is whether a particular conduct by an enterprise is likely to have anticompetitive effects in the domestic market.

10. *Competition advocacy* describes non-enforcement activities through which the FTC informs the Government and other public agencies, of how their conduct may be impeding the competitive process. Competition advocacy is crucial to the effectiveness of the agency in achieving its mandate as it has been shown that Government's actions may have inadvertent but

substantial effects on the competitive process. A major aspect of this advocacy thrust is commenting on legislation. Since 2005, the FTC has submitted written comments on the following legislation/policies: The Dairy Development Board Act, 2005; Cabinet Submission Relating to License-Exempt Spectrum, 2005; Electronic Government Procurement Roadmap and Implementation Strategy, 2007; Timeshare Legislation, 2009; and The Jamaica Telecommunications Policy, 2009.

11. *Public education* refers to activities carried out by the FTC aimed at informing the wider public of the benefits of the competitive process and the obligations of businesses under the FCA. Public education is important because a more informed public increases the likelihood that anticompetitive conduct would be detected and successfully prosecuted and therefore reduces the incentives for private enterprise to engage in such conduct. Another benefit to having a more informed public is that there will be an increased incidence of self-policing; which in and of itself reduces the level of public resources utilised in enforcing competition law. The flagship event of the FTC's public education programme is the Shirley Playfair Lecture series which is held annually.

III. ROLE OF THE ADSC

12. The objective of the ADSC is to foster equity in international trade by enforcing laws which accord with the rules of the World Trade Organization (WTO); as well as promote public awareness of Jamaica's trade remedies.

13. The ADSC therefore administers trade remedies in accordance with the rules of the WTO. Trade remedies refer to the rules governing the application of antidumping duties, countervailing duties and safeguards duties. An antidumping duty is directed at foreign firm practices, and a countervailing duty is directed at both firm and government practices that harm a domestic industry, while a safeguard duty is directed at trade practices considered fair but have caused serious injury to a domestic industry.

14. These remedies are generally aimed at protecting domestic manufacturers from international competition, although some of the remedies (for example, countervailing duties,

and antidumping duty based on a finding of below cost sales in a domestic market) are consistent with ensuring a level playing field in international trade and economic relations.

15. The analysis employed by the ADSC for determinations is based on the provisions of international agreements and the law of the WTO that has developed with respect to the interpretation of the provisions of these international agreements. The analysis is centred on the quantum of the price differential for goods in a domestic market and an export market (in the case of antidumping duties); the price differential in a domestic market and an export market where subsidies are administered (in the case of countervailing duties); and whether there is an increase in imports causing serious injury to a domestic industry.

IV. THE DIFFERENCES IN *MODI OPERANDI* OF THE AUTHORITIES

16. In this section, we identify the main differences in the methods of operation of the two authorities. Competition authorities scrutinize commercial transactions consummated within domestic borders whereas the antidumping authorities govern cross-border transactions.

17. There is a distinct difference in the scope of the operations at both authorities. Specifically ADSC scrutiny is essentially an examination of price discrimination on the part of the foreign manufacturer whereas the scope of the FTC scrutiny is considerably broader. The ADSC acts to protect domestic producers from harm caused by (i) dumped or subsidized ('unfairly low priced') imports; and (ii) surges in the volume of goods imported into Jamaica. The FTC acts to protect consumers and the competitive process within the local market. This is achieved by preventing commercial conduct which has had, is having or is likely to have the effect of substantially lessening competition in an appropriately defined market. Anticompetitive conduct includes (i) exclusionary conduct, such as predatory pricing, by a dominant enterprise; and (ii) anticompetitive agreements such as collusion among rival enterprises;[1] as well as conduct that directly affect consumers. Such conduct includes misleading advertising, double-ticketing and bait-and-switch.

[1] Coordination among firms includes mergers and acquisition. Most competition legislation includes provisions that regulate such agreements. The Fair Competition Act, however, does not contain such provisions.

18. Another distinction between the two authorities is that the actions of the antidumping authority shield domestic producers from import competition whereas the actions of the competition authority encourage competition from any source, and thereby protect the welfare of Jamaican consumers. By protecting the competitive process, the FTC encourages healthy business practices. Whenever there is competition, the society benefits from the surplus generated. This is not to gainsay the fact that some domestic and foreign manufacturers (the least efficient ones) may be unable to profitably remain in a competitively organised market.

V. THE MERITS AND DEMERITS OF MERGING THE AUTHORITIES

19. In this section, we show that the benefits of merging the competition and antidumping authorities are likely to be less than the attendant costs of such a merger. We show that the benefits are likely to be limited to savings on administrative expenses while the costs include compromising the agency's effectiveness as the premier advocate of the competition process.

20. We assess the potential outcome of merging the two authorities using the framework adopted by antitrust agencies when reviewing merger proposals of commercial institutions. The United States competition authorities states that:

> "[M]ergers have the potential to generate significant efficiencies by permitting a better utilization of existing assets, enabling the combined firm to achieve lower costs in producing a given quantity and quality than either firm could have achieved without the proposed transaction. Indeed, the primary benefit of mergers to the economy is their potential to generate such efficiencies…[the competition authorities]… will consider only those efficiencies likely to be accomplished with the proposed merger and unlikely to be accomplished in the absence of either the proposed merger or another means having comparable anticompetitive effects…" (US Department of Justice and Federal Trade Commission, 1997, 30)

21. An important aspect of merger review, therefore, is to identify the efficiencies which could not have been achieved without the merger.

Likely Benefits

22. The benefits of merging the competition and antidumping authorities appear to be limited to administrative savings to be generated from the consolidation of costs associated with non-human resources (such as office rental costs, utilities and stationery expenses, etc.) and non-

technical personnel (such as salaries of office attendants, accountants, secretaries, telephone operators, drivers, board of directors, etc.). While we have made no attempt to quantify these likely savings, we are certain that the potential savings will be smaller than the potential costs of merging the institutions.

23. The merger is unlikely to augment the law enforcement capabilities of the FTC, since the technical analyses undertaken by the authorities would not be enhanced as a result of the merger given the distinct skills utilised by the authorities. That is, the merger will not increase the cadre of technicians (economists and lawyers) available to undertake antitrust analysis. Such an increase would necessitate substantial additional training of the economists and lawyers at the antidumping authority.

24. The fundamental differences in the functions of the competition and antidumping authorities imply that there will be differences in the technical expertise required to carry out their functions. Technicians at the competition authority rely on specialised knowledge of the competitive process to undertake analyses while technicians at the antidumping authority need no such knowledge.

25. Since one of the objectives of the competition authority is to protect the competitive process, the action taken by the competition authority is largely effects-based and therefore requires individuals with technical knowledge of the competitive process. Accordingly, the competition authority requires economists with a working knowledge of Industrial Organisation (IO).

26. Further, lawyers employed to competition authorities must also have more than a fleeting acquaintance with the specialty area of competition law, but must also have a strong background in economics or at least significant exposure to the discipline.

27. IO is not offered by any academic institutions located within the region. This means that unless individuals are recruited from oversees, new recruits will have to be given substantial

training by the FTC. This training is done at a considerable expense with respect to both (i) money expended on in-house and international training courses; and (ii) time spent. [2]

28. Antidumping law focuses on protecting domestic enterprises from foreign enterprises engaged in price discrimination. Since the antidumping legislation is directed at trade remedy, the expertise required for an assessment of an allegation of dumping is essentially an international trade specialist supported by a finance specialist. In particular, the task at hand requires specialisation in trade defence instruments as contained in Agreement on Implementation of Article VI of GATT.

29. The difference in skill sets is more apparent when one considers the different standards of proof required by the competition and antidumping authorities in demonstrating contravention of their respective legislation. As previously mentioned, the primary practice of the antidumping analysis is to determine whether the relevant imports are dumped, and the extent of the injury to a competing industry, caused by the conduct. The basic idea in this analysis is the determination of *net normal value* (that is, the net consumption price of the dumped good in the exporting country) and *net export price* (the net import price at which the importer has purchased the dumped good). The difference between the two prices gives the margin of dumping as a percentage of export prices. It is worth noting that these calculations are guided by various provisions in the statutes that are administered by the ADSC; and are also guided by the Agreement on Implementation of Article VI of GATT (of WTO). The analysis by the antidumping authority seeks to determine whether and the extent to which (i) imports are being dumped; and (ii) dumped imports are causing harm.

30. Based on the above, the standard used by the antidumping authority does not contemplate whether the conduct is having anticompetitive effects.[3] Indeed, IO economists have shown that price discrimination is not necessarily harmful to competition or consumers as it may have even procompetitive effects. For example, price discrimination in the say, airlines market, allows

[2] In recognition of this deficiency in the regional curriculum, the FTC played a significant role in assisting the Faculty of Law at the Cave Hill Campus of the University of the West Indies (UWI) to offer an undergraduate course in competition law. The FTC is making similar efforts with other campuses of the UWI and with other Universities.

[3] Accordingly, the enforcement actions of the antidumping agency will not necessarily improve the competitive process domestically. See Wooton and Zanardi (2002, 4) who indicate that the US expressed similar sentiments in a communication to the World Trade Organisation (WTO).

individuals with less disposable income (economy class passengers) to nonetheless consume the product on higher prices charged to consumers with more disposable income (first class passengers).

31. Indeed, there is no compelling economic argument which would dictate that the price of a product in one market must be identical to the price of the product in another market; especially if the structure of the two markets differs substantially. The market clearing price is determined by the interaction of demand and supply and this interaction varies across markets.

32. This means that technicians engaged in enforcing antidumping legislation need not have specialised knowledge of the competitive process to discharge their duties. This point is summed up by Tavares de Araujo, who states that

> "the enforcement procedures of competition and antidumping policies…differ significantly. Antidumping procedures are defined under the assumption that a domestic competitive industry is facing a foreign monopolist or an international cartel, but this assumption is not supposed to be tested during the investigation. Thus, in each case, the data to be collected are limited to import figures, price comparisons and performance indicators of the domestic industry. There is no room for any query about industry configurations, entry barriers, market power and other conditions of competition at home or abroad. In contrast, the starting point of every antitrust inquiry is the identification of the relevant market and its conditions of competition." (Tavares de Araujo, 2001)

Likely Challenges

33. Competition law is enacted to safeguard competition whereas competition policy operates under the presumption that competition is infeasible. Since antidumping legislation is one aspect of competition policy, there is considerable potential danger in merging two authorities whose functions are inherently antagonistic. A merger of the competition and antidumping authorities will likely impose additional challenges regarding the antidumping and competition law enforcement; competition advocacy; and adjudicative capabilities of the competition authority.

34. Regarding law enforcement challenges, a merger of the entities would increase the likelihood of an enforcement error. Among other things, the work product of a technician is influenced by the opportunity, or lack thereof, to engage his colleagues in discussions of a highly technical nature. The quality of the work product inexorably will be linked to the quality of the

ideas generated through the discussions. Such discussions will vary in their degree of formality. At one extreme, there are informal impromptu one-to-one fleeting exchanges in the passageway, and at the other extreme, there are formal planned all-day meetings of the entire technical staff. The majority of the discussions on key issues are held in less formal settings.

35. In more formal settings, these discussions assist in clarifying key issues and therefore make for a more effective authority as the discussions allow for the relevant arguments from individuals to be advanced, developed, verified and transmitted to other individuals who may lack ability to do the same on their own.

36. In less formal settings, there is the potential for the discussions to obscure the issues and make the authorities less effective as there would be opportunity for the information to be only advanced and transmitted (without being developed and verified). The potential for these discussions to obscure the issues is greater when the authorities are merged relative to when the authorities remain separate. Specifically, when the authorities are merged, the pool of technical staff will comprise individuals with incompatible interpretations of identical economic facts. Accordingly, such collegial discussions are likely to compromise the quality of work product of the individual authorities and lead to, among other things, inconsistent treatment by each authority of similar economic conduct. Contrastingly, when agencies remain separate, the ideas generated from the collegial discussions are less likely to obscure the issues since the entire technical staff would be framing their arguments using compatible notions of economic principles and practices.

37. Regarding competition advocacy challenges, a merger of the entities could compromise the integrity of the competition agency's competition advocacy effort. Specifically, it is quite possible that many of the cases which warrant antidumping sanctions may nonetheless be consistent with the competitive process. When the entities remain separate, any disagreement between the institutions as to the merits of prosecuting a given conduct would be brought to the attention of the relevant policymaker, through the competition agency's competition advocacy effort. The policymaker would then determine which position is more aligned to the public's interest. When the entities are merged, however, any conflicting prescription between the

antidumping and the competition agencies would most likely be resolved internally and as such may not be brought to the attention of the policymaker or wider public.

38. The resolution of this conflict would have direct implications for the level of social benefits generated by the domestic economy. Recent developments in the cement industry foreshadow the magnitude of the public harm that could result from prosecuting legitimately competitive conduct. In 2004, the ADSC recommended that cement imported from Argentina, China, Egypt and Russian attract tariffs of 25.83 percent in addition to the 15 percent common external tariff which was already imposed. This resulted in a 40 percent tariff on cement imported from the specified countries and effectively stifled competition from imported cement. The FTC disagreed with the hike in tariffs. By March 2006, the Government suspended the 40 percent tariff; citing the inability of local cement manufacturer to adequately supply the demand for cement. The FTC recently completed a study which, among other things, estimated that Jamaican consumers saved at least $694 million on cement during the period March 2006 through June 2008 as a direct result of the suspension of the tariffs (FTC, 2009).

39. The important lesson to be learnt is that a tariff does not make it more difficult only for foreign enterprises to gain access to domestic markets; it makes it more difficult also for consumers to have access to lower priced goods.

40. Errors in over-deterrence will most likely have more far-reaching effect such as deterring or ‘chilling’ legitimate competitive conduct as foreign enterprises would be inclined to limit their exposure to antidumping liability by maintaining relatively high prices in the export market. This in turn would result in consumers facing prices which are higher than they otherwise would have been.

41. Regarding the composition of the decision making body, if an independent Tribunal is contemplated as under the proposed amendment to the FCA, the composition of the Tribunal would include personnel with expertise in trade remedies and competition law.

42. There are additional challenges for the merging of both authorities which are discussed below, not least of which being the difficulty of obtaining the required personnel, both for staff and with respect to members of the proposed independent Tribunal to conduct hearings.

43. First, there is the challenge of finding required personnel with the expertise in both disciplines. This is based on the assumption that the merging of both entities requires that each individual in the department possess the skills required of the two disciplines. The local market of lawyers, economists, and forensic financial accountants is not amenable for meeting this challenge in the short run. Additionally, the existing personnel at both the FTC and the ADSC do not possess the expertise of both disciplines.

44. Second, if an independent Tribunal were to be established for the conduct of hearings, the members of the Tribunal would similarly be required to be conversant with both disciplines. This would represent an even more fundamental challenge, particularly if, as envisioned, the members of the Tribunal would be employed part time, or may be engaged if and when disputes arise for determination.

45. In the administration of competition law and policy, this approach would entail significant costs as decisions are likely to be subject to appeal or judicial review than otherwise because the members of the Tribunal may not have sufficient time to be immersed in, and be focused on, the intricacies of the discipline of competition law to ensure that their decisions are legally defensible. The counter argument may be mounted that members of the Tribunal would be guided by a competent staff in the discipline of competition law as exists currently with the expertise of the staff of the FTC.

46. However, the decision of the *Stock Exchange v. FTC,* on which the recommendation of an independent Tribunal is based, requires a separation of functions of the staff and the FTC if the FTC is reconstituted as a Tribunal to conduct hearings. That is, the staff would be responsible for the conduct of investigations and the Tribunal would be responsible for the conduct of hearings.

47. The implication of this decision means that a separate staff would have to be in place for the Tribunal as distinct from the FTC if, for example, the FTC is confined to conducting investigations as contemplated and the FTC remains as a separate body independent of the proposed Tribunal. Therefore, the expertise of the staff of the FTC could not properly be relied upon by the Tribunal in the decisions it may be called upon to render.

48. Regarding the administration of trade remedies law, this too may involve significant costs to the Government given that a breach of a procedural or substantive rule in an investigation suffices for a complaint to be lodged at the WTO that its rules are infringed, and raising thereby the prospect of compensation to be paid.[4] For some trade remedies, breach of a procedural or substantive rule may require compensation to be paid sooner than what the general rules require.

49. For example, in the case of the application safeguard duties, Article 8 of the Agreement on Safeguards requires that a WTO Member proposing to apply or extend a safeguard measure must provide an equivalent level of concessions to those WTO Members to be affected by the decision. There is the further obligation that there be consultations between the WTO Member applying the safeguard measure and those WTO Members that will be affected by the decision to agree on the adequate compensation to be provided, but that if no agreement is reached WTO Members that will be affected by the decision can suspend concessions unilaterally, but not before the expiry of three years from the application of the safeguard measure. This reflects the general rule on compensation.

50. In contrast, Article 8.3 of the WTO Agreement on Safeguards states the following that has implications for costs to be incurred:

> "The right of suspension referred to in paragraph 2 shall not be exercised for the first three years that a safeguard measure is in effect, provided that the safeguard measure has been taken as a result of an absolute increase in imports *and that such a measure conforms to the provisions of this agreement.***"** (emphasis added)

51. The right of suspension of concessions or, alternatively, the compensation to be paid for the application of a safeguard measure may be required to be paid at the point of the application

[4] On the implications of breach of a purely procedural rule see, for example, *Guatemala-Definitive Antidumping Measure on Portland Cement from Mexico*, (*Guatemala-Cement II*) WT/DS/ 156/R, adopted November, 17, 2000. Here, the panel stated that: 'The concept of 'harmless error' as presented by Guatemala has not attained the status of a general principle of public international law. In any event the first task in this dispute is to determine whether Guatemala has acted consistently with its obligations under the relevant provisions of the ADA…Thus, while arguments regarding the existence and extent of the possible harm suffered by Mexico may be relevant to the issue of nullification and impairment, an argument of harmless error does not present a defence in itself to an alleged infringement of a provision of the WTO Agreement'. Para. 8.22. The procedural violation involved Guatemala's failure to notify Mexico of the initiation of its antidumping investigation before proceeding to initiate the investigation in breach of Article 5.5 of the WTO Antidumping Agreement.

of the measure because the measure is imposed in violation of the provisions of the agreement, whether the violation is with respect to a procedural or substantive rule.

52. It is important to ensure, therefore, that members of the Tribunal charged with making determinations on these legal questions are sufficiently conversant with the applicable rules and with the required support staff to assist in the discharge of those duties.

VI. CONCLUSION

53. The arguments used in this paper are framed for assessing the merits of merging the antidumping and competition authorities. The arguments are valid, however, for assessing the merits of merging the competition authority with any other agency whose objectives conflict with those of the competition authority.

54. For reasons cited above, we recommend that it is more desirable and appropriate that each discipline be administered by a separate body to reduce the likelihood of costs associated with breaches of substantive and procedural rules in the administration of the rules governing these disciplines.

55. Second, we are of the view that the required personnel to make for an effective merger of the entities does not exist in the short run given the dearth of professionals combining both skills for the proper administration of both disciplines.

56. Third, the likely cost to be associated with the establishment of an independent Tribunal to conduct a hearing (whether staffed by part time or full time members) is likely to be exacerbated if members of the Tribunal or the support staff are not sufficiently trained in both disciplines. This is because of the greater probability of appeals from the decisions of the Tribunal.

57. We conclude that the benefits to be realised from merging the competition and antidumping authorities are likely to be dwarfed by the potential losses arising from a likely compromised role as competition advocates.

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