NOTIFIABLE TRANSACTIONS
AND
ADVANCE RULING CERTIFICATES
UNDER THE *COMPETITION ACT*:
PROCEDURES GUIDE

TABLE OF CONTENTS

PART I: INTRODUCTION . . . . . -1-
Introduction . . . . . -1-
Merger Review under the *Competition Act* . . . . . -1-
Notifiable Transactions . . . . . -2-
Purposes of Prenotification of Proposed Transactions . . . . . -2-

PART II: NOTIFIABLE TRANSACTIONS . . . . . -2-
Determining Whether a Proposed Transaction is Notifiable . . . . . -2-
Step 1: Transaction Types . . . . . -3-
Step 2: Party-Size Threshold . . . . . -3-
Step 3: Transaction-Size Threshold . . . . . -3-
Subsection 110(2) Asset Acquisition ; Subsection 110(3) Voting Share Acquisition; Subsection 110(4) Amalgamation; Subsection 110(5) Combination; Subsection 110(6) Acquisition of an Interest in a Combination
Step 4: Exemptions . . . . . -5-
Information to be Supplied with Notices . . . . . -5-
Forms . . . . . -5-
Waiting Periods . . . . . -6-
Transaction to which subsection 114(3) of the Act applies . . . . . -7-
When Would the Commissioner Request a Long Form? . . . . . -7-
Who Must Notify? . . . . . -8-
When Should the Parties Notify? . . . . . -9-

PART III: ADVANCE RULING CERTIFICATES . . . . . -9-
Advance Ruling Certificate . . . . . -9-
What Factors are Relevant to the Consideration of an ARC Application? . . . . . -10-
What Type of Information Should an Applicant Submit with an ARC Application? . . .-10-
When Should a Party to a Proposed Merger Transaction Request an ARC? . . . . . -11-

PART IV: PROCEDURAL MATTERS . . . . . -11-
MergerNotificationUnit-PurposeandProcess.....-11-
Receipt, Review and Acknowledgment of Notices . . . . . -11-
Receipt and Acknowledgment of ARC Requests . . . . . -12-
Answering Questions and Promoting Compliance . . . . . -12-
Procedural Matters . . . . . -12-
Fees . . . . . -12-
Multiple Step/Continuous Transactions . . . . . -13-
Below Threshold Merger Assessments . . . . . -13-
Further Acquisition of Voting Shares or Interest in a Combination . . . . . -14-

Method of Notification . . . . . -14-
Irrelevant Information . . . . . -15-
Previously Supplied Information . . . . . -15-
Where Information does not Apply . . . . . -15-
When does the Waiting Period End? . . . . . -15-
Confidentiality . . . . . -16-

APPENDIX: COVER LETTER CHECKLIST . . . . . -17-

PART I: INTRODUCTION

Introduction

The Procedures Guide is issued by the Commissioner of Competition, who is responsible for the administration and enforcement of the *Competition Act* (the "Act"). The Guide is designed to provide an overview of the relevant provisions of Part IX of the Act and the *Notifiable Transactions Regulations* (the "Regulations") and to assist in determining how the Act may apply to proposed transactions. The Guide also addresses matters under sections 102 and 103 of the Act regarding the issuance of Advance Ruling Certificates ("ARCs").

The Procedures Guide sets out the general approach taken by the Competition Bureau (the "Bureau") with respect to prenotification and ARC procedures, and supersedes all previous Bureau statements on these matters. The Guide is not intended to be a binding statement of how discretion will be exercised in a particular situation and should not be taken as such, nor is it intended to substitute for the advice of private counsel to the parties, or to restate the law.

Merger Review under the *Competition Act*

The Commissioner is empowered under the Act to inquire into mergers and apply to the Competition Tribunal ("Tribunal") for remedial orders. The Tribunal is a quasi-judicial body established under the *Competition Tribunal Act* to adjudicate the non-criminal provisions of the Act.

All merger transactions, whether or not they are notifiable, are subject to examination by the Commissioner to determine whether they have, or are likely to have, the effect of preventing or lessening substantially competition in a definable market. The assessment of the competitive effects of a merger is made with reference to the factors identified under section 93 of the Act. The Bureau has issued the Merger Enforcement Guidelines (the "MEGs") which describe the merger enforcement policy of the Commissioner.

Part IX of the Act provides the statutory framework for prenotification, which requires the parties to certain proposed transactions to notify the Commissioner prior to completing their proposed transaction. The Regulations set out the procedure for calculating the aggregate value of assets and gross revenues from sales for purposes of the party-size and transaction-size thresholds in sections 109 and 110 of the Act, respectively.

Sections 100 and 104 of the Act empower the Commissioner to apply to the Tribunal for interim orders to prevent the completion or implementation of a proposed merger.

Where no application has been made under section 92 of the Act, section 100 orders may be made by the Tribunal. Under subsection 100(1) of the Act, the Tribunal may issue an interim

order forbidding the completion or implementation of a proposed merger (a) where the Tribunal finds that in absence of an interim order an action is likely to be taken that will substantially impair the ability of the Tribunal to remedy the effect of the proposed merger on competition; or (b) where the Tribunal finds that section 114 of the Act has been contravened. Where an application has been made under section 92, the Tribunal may, pursuant to section 104 of the Act, issue any interim order which it considers appropriate.

Notifiable Transactions

Part IX of the Act and the Regulations came into force on July 15, 1987. Subsequently, Part IX was amended by S.C., 1999, c. 2, and the Regulations were amended by SOR/2000-8. Part IX requires parties to certain proposed transactions which exceed certain monetary thresholds to:

(a) notify the Commissioner prior to the completion of the proposed transaction;

(b) provide specified information; and

(c) wait a specified period of time before completing the transaction.

Purposes of Prenotification of Proposed Transactions

The purposes of prenotification are:

(a) to provide the Commissioner with advance notice of large proposed transactions;

(b) to provide the Commissioner with a period of time to undertake an analysis of the impact of the proposed transaction;

(c) to facilitate that analysis by ensuring that certain required information is submitted to the Commissioner with the notice; and

(d) to help avoid the problems associated with "undoing" a merger and restoring firms and competition to their pre-merger state.

PART II: NOTIFIABLE TRANSACTIONS

Determining Whether a Proposed Transaction is Notifiable

The process for determining whether a proposed transaction is notifiable generally involves four steps. In certain cases, each step may involve additional issues which may need to be addressed.

Step 1: Determine whether the proposed transaction is of a type caught by section 110 of the

Act.

Step 2: Determine whether the party-size threshold under section 109 of the Act is exceeded.

Step 3: Determine whether the transaction-size threshold under subsections 110(2) to 110(6) of the Act is exceeded.

Step 4: Determine whether any exemptions under sections 111 to 113 of the Act apply to the proposed transaction.

For a transaction to be notifiable, the first three steps must be satisfied and there must not be any applicable exemption. Section 114 of the Act requires that all parties to a proposed transaction which exceeds the thresholds set out in sections 109 and 110 of the Act must notify the Commissioner prior to the completion of the transaction and supply the Commissioner with certain statutory information. Section 123 of the Act sets out the time frames within which a proposed transaction may not proceed.

Step 1: Transaction Types

To be notifiable, a proposed transaction must be one of the five types found in section 110 of the Act:

Subsection 110(2) - acquisition of assets,
Subsection 110(3) - acquisition of voting shares,
Subsection 110(4) - amalgamation,
Subsection 110(5) - creation of a combination, or
Subsection 110(6) - acquisition of an interest in a combination.

If the proposed transaction is one of these types, it should be determined whether the thresholds have been exceeded.

Step 2: Party-Size Threshold

Section 109 of the Act provides that the parties to the transaction, together with their affiliates, must have assets in Canada or annual gross revenues from sales in, from or into Canada that exceed $400 million.

Step 3: Transaction-Size Threshold

For each transaction type, there is a corresponding transaction-size threshold.

SUBSECTION 110(2) ASSET ACQUISITION

A proposed acquisition of assets of an operating business is notifiable if the aggregate value of the assets in Canada or the annual gross revenues from sales in or from Canada generated from

those assets would exceed $35 million.

SUBSECTION 110(3) VOTING SHARE ACQUISITION

For a proposed acquisition of voting shares of a corporation carrying on an operating business to be notifiable, two conditions must be satisfied. First, the aggregate value of the assets in Canada of the acquired corporation, or the annual gross revenues from sales in or from Canada generated from those assets, must exceed $35 million. Second, the voting-share interest of the acquiring party in the corporation must be taken into consideration. In an acquisition of voting shares which are publicly traded, the proposed acquisition must result in the acquiring party holding in excess of 20 per cent of the target corporation's voting interests unless the acquiring party already owns a 20 per cent voting interest, in which case the proposed acquisition must result in the acquiring party holding in excess of 50 per cent of the target corporation's voting interests. In an acquisition of voting shares which are not publicly traded, the proposed acquisition must result in the acquiring party holding in excess of 35 per cent of the target corporation's voting interests unless the acquiring party already owns a 35 per cent voting interest, in which case the proposed acquisition must result in the acquiring party holding in excess of 50 per cent of the target corporation’s voting interests.

SUBSECTION 110(4) AMALGAMATION

A proposed corporate amalgamation is notifiable if one or more of the corporations carries on an operating business and if the aggregate value of the assets in Canada of the continuing corporation or the annual gross revenues from sales in or from Canada generated from those assets would exceed $70 million.

SUBSECTION 110(5) COMBINATION

A proposed combination of two or more persons to carry on business, otherwise than through a corporation, is notifiable if the assets being contributed to the combination form all or part of an operating business, and if the aggregate value of assets in Canada or the annual gross revenues from sales in or from Canada generated from those assets would exceed $35 million.

SUBSECTION 110(6) ACQUISITION OF AN INTEREST IN A COMBINATION

For a proposed acquisition of an interest in a combination carrying on an operating business otherwise than through a corporation to be notifiable, two conditions must be satisfied. First, the aggregate value of the assets in Canada of the combination, or the annual gross revenues from sales in or from Canada generated from those assets, must exceed $35 million. Second, the interest acquired in the combination must be taken into consideration. Where the acquiring party would be acquiring an interest that would entitle it to receive more than 35 per cent of the profits or of the assets on dissolution, the proposed acquisition would be notifiable. Where the acquiring

party's interest on dissolution or entitlement to profits already exceeds 35 per cent, the transaction would be notifiable if the acquiring party's interest on dissolution or entitlement to profits would exceed 50 per cent.

Step 4: Exemptions

Where Steps 1-3 have been satisfied, the proposed transaction is notifiable unless there is an applicable exemption in either the Act or Regulations. Sections 111, 112 and 113 of the Act set out the statutory exemptions. They include general exemptions from the requirement to prenotify where all parties to a transaction are affiliates of each other ("affiliates" is defined in section 2 of the Act), or where the Commissioner has issued an ARC pursuant to section 102 of the Act. Section 15 of the Regulations contains the exemption for asset securitization transactions as defined in section 2 of the Regulations.

Information to be Supplied with Notices

Section 114 of the Act provides that parties to a proposed transaction are required to supply a notice and prescribed information.

Parties may file either short-form information, set out in section 16 of the Regulations, or long-form information, found in section 17 of the Regulations. Where a short form is filed, the Commissioner may, prior to expiry of the waiting period, request that a long form be filed.

Forms

Although the Act does not provide for the actual forms for filing prescribed information, the Bureau has developed forms for this purpose. The forms list the information requirements in sections 16 and 17 of the Regulations and are intended to assist both the parties, in the compilation of the required information and the assembly of a complete notice, and the Merger Notification Unit, in its timely verification of whether the notice is complete. The forms clearly set out the information required and allow most material to be attached as identified appendices. Parties who are required to file notices are strongly encouraged to use the Bureau's forms.

The final part of the forms allows the parties to provide additional information which may be relevant to the Commissioner's assessment of the proposed transaction. Parties filing notices regarding proposed transactions are encouraged to volunteer such additional information. Additional information relevant to the competition assessment could assist the Commissioner in making a timely decision on whether a transaction should be subject to further proceedings under the Act. The Bureau's Fee and Service Standards Handbook contains a list of suggested information.

The Bureau's suggested short forms (section 16 information) and long forms (section 17 information) are available from the Bureau's website http://competition.ic.gc.ca and the Bureau's Information Centre at 1-800-348-5358 or (819) 997-4282.

Waiting Periods

Under subsection 114(2) of the Act, parties to a proposed transaction have the option to file the short-form information requirements or the long-form information requirements. Paragraph 123(1)(*a*) of the Act provides that parties filing a short form shall not complete the proposed transaction before the expiration of a 14-day waiting period after receipt by the Commissioner of the prescribed information. For parties filing the long form, paragraph 123(1)(*b*) of the Act provides for a waiting period of 42 days after receipt of the prescribed information. Further, subsection 114(2) provides that where a short-form filing has been submitted, the Commissioner may, within 14 days after receipt, require that a long form be submitted. In that case, the waiting period will not begin until the long-form information has been received.

Where the proposed transaction is an acquisition of voting shares to be effected through the facilities of a stock exchange and where the long form is used, paragraph 123(1)(*c*) of the Act provides for a waiting period of 21 trading days, or such longer period not exceeding 42 days, as may be allowed by the rules of the exchange before the shares must be taken up.

After expiration of the waiting period, the parties are free to complete the proposed transaction unless, on application by the Commissioner, the Tribunal has issued an interim order preventing the completion of the transaction.

Three different events will allow the parties to complete a proposed transaction without having to wait the full applicable period found in subsection 123(1) of the Act. Pursuant to subsection 123(1), the Commissioner or a person authorized by the Commissioner may notify the parties prior to expiration of the applicable waiting period that the Commissioner does not intend, at that time, to make an application under section 92 of the Act in respect of the proposed transaction. Such a notification to the parties will be in the form of a no-action letter. The second event occurs when an ARC has been requested and issued under subsection 102(1) of the Act. Pursuant to paragraph 113(*b*) of the Act, the issuance of an ARC exempts the transaction from the notifiable transactions provisions. Where a notice has been filed under subsection 114(1) of the Act along with an ARC request, the issuance of the ARC prior to expiration of the applicable waiting period automatically terminates that period. Finally, where information has been supplied in an ARC request, and where that information is substantially similar to the information required under subsection 114(1), the Commissioner or a person authorized by the Commissioner may, under paragraph 113(*c*) of the Act, waive the subsection 114(1) notification requirement and, consequently, the applicable waiting period.

Transaction to which Subsection 114(3) of the Act Applies

Subsection 114(3) of the Act was added to the prenotification provisons in 1999 to ensure that information required from the target of a hostile takeover bid is submitted sufficiently in advance of the expiration of the waiting period. Such timely filing of the information from all the parties to a proposed acquisition assists the Mergers Branch in carrying out its assessment of the transaction as expeditiously as possible.

In a hostile takeover situation, where the Commissioner receives information from an acquiror before receiving information from the corporation whose shares are being acquired (the "target"), paragraph 114(3)(*a*) of the Act requires the Commissioner to notify the target that the prescribed short-form or long-form information has been received. Paragraph 114(3)(*b*) of the Act requires the target to supply short-form information within 10 days after being notified by the Commissioner that short-form information has been received from the acquiror or to supply long-form information within 20 days after being notified by the Commissioner that long-form information has been received from the acquiror.

In cases where subsection 114(3) of the Act applies, subsection 123(2) of the Act provides that the waiting period is determined without reference to the day on which the information is received from the target. In other words, the waiting period begins after the Commissioner has received the information from the acquiror.

Where a target supplies short-form information, the Commissioner may, under paragraph 114(3)(*c*) of the Act, require the target to supply long-form information within 20 days after being required. It is anticipated that paragraph 114(3)(*c*) will be invoked after the Commissioner has made a decision under subsection 114(2) of the Act to require long-form information from the acquiror.

When Would the Commissioner Request a Long Form?

Historically, most notices under section 114 of the Act were accompanied by short-form information, with the Commissioner rarely requesting that long-form information be supplied. However, when a proposed transaction appeared to raise serious issues or to be problematic, Bureau officers would request that the parties provide additional information.

The new long form has been revised to include some of the more common information previously found in the voluntary submissions. In the future, it is expected that instead of requesting a detailed list of information on a voluntary basis, the Bureau may ask the parties to provide the long-form information.

The revised long form is not intended to eliminate the voluntary approach. Where the Bureau needs to clarify only a few issues or supplement some aspects of the proposed transaction, an

informal request will still be the appropriate route. Also, if parties to a proposed transaction file a short form and supplement it with sufficient additional information, the long form might not be necessary.

The decision to request a long-form submission will be made on a case-by-case basis, according to a variety of factors. The levels of complexity defined in the Fee and Service Standards Handbook provide some guidance as to the circumstances in which a long-form submission is more likely to be requested. Where a proposed transaction is non-complex, that is, where there is no or minimal competitive overlap between the parties to the proposed transaction (less than 35 per cent post-merger market share), a long-form submission will not be required. This determination, of course, assumes that parties have provided the relevant information on market shares at the outset and that this information is not controversial. At the other end of the spectrum, parties to "very complex" transactions should expect that a long-form submission will be requested if it is not submitted along with the section 114 notice.

For proposed transactions in the “complex” category, the circumstances in which a long-form submission will be required are more difficult to outline due to the wide range of transactions included in this category. Generally, as the level of complexity increases and a detailed review is believed necessary, it is more likely that a long-form submission will be required. Whether a long-form submission will be requested for a "complex" proposed transaction will depend on the supplemental information provided by the parties along with the short-form submission, the quality of information obtained from other sources and the preliminary assessment of section 93 factors.

Who Must Notify?

Subsection 114(1) of the Act provides that the parties to a proposed transaction are, before the transaction is completed, required to notify the Commissioner of the proposed transaction and supply the Commissioner with the appropriate information. Each party is required to certify on oath or solemn affirmation that the information supplied is correct and complete. Under subsection 114(4) of the Act, one party may assemble the information of all parties and submit it, along with a notice, jointly and on behalf of all parties. Alternatively, each party can submit a notice and the portion of the information relating to itself. In this case, the filing will be deemed complete only when the portions from all parties are received, except in the case of a hostile acquisition of voting shares to which subsection 114(3) of the Act applies. Where it is required under subsection 114(3) for the target of a hostile takeover bid to file prescribed information, subsection 123(2) of the Act provides that the statutory waiting period commences when the other parties to the proposed transaction have filed complete information forms, without reference to when the target has completed its filing.

Where each party assembles and submits its own information, the parties should ensure that at least one party provides the basic data applicable to the proposed transaction (e.g. the transaction

description) and that their separate portions of the notice are received by the Bureau at approximately the same time, with a cover letter explaining who will be providing the other portions, including the fee, and when they can be expected.

When Should the Parties Notify?

Subsection 114(1) of the Act provides that notice must be given to the Commissioner prior to completion of the proposed transaction. Subsection 123(1) of the Act provides that the parties must wait the applicable waiting period prior to completing the proposed transaction. Generally, parties should file their notice as soon as they have an agreement or, in the case of a hostile takeover, definite plans.

When determining filing dates for proposed transactions, the parties may wish to consider the following factors. First, where a party files a short form and the Commissioner requests a long form, the statutory waiting period will be extended from 14 to 42 days. In addition, the waiting period will not commence until the parties have supplied to the Commissioner all the necessary long-form information. Second, while subsection 123(1) of the Act sets out a minimum time period between filing and completion, the Act does not provide a maximum time period. Therefore, parties should be aware that the statutory waiting periods under subsection 123(1) may not match the maximum time periods set out in the Bureau's service standards for assessing proposed merger transactions. Third, where a party files its materials to coincide with the minimum statutory waiting period and the Commissioner determines that the proposed transaction raises competition issues, the Commissioner may seek from the Tribunal an order temporarily preventing completion of the transaction. Accordingly, parties may wish to consider planning their transactions to close so that the scheduled completion dates approximate the maximum time set out in the service standards for providing the appropriate merger analysis, namely, 14 days for "non-complex" transactions, 10 weeks for "complex" transactions and five months for "very complex" transactions.

Prior to filing a notice and the prescribed information, the parties should be reasonably certain of their intentions regarding completion of the proposed transaction. Parties who submit information to the Commissioner and subsequently abandon the proposed transaction place an unnecessary burden on the Bureau and may not be entitled to a refund of the fee. For more information about the refund policy, please consult the Fee and Service Standards Handbook.

PART III: ADVANCE RULING CERTIFICATES

Advance Ruling Certificate

An Advance Ruling Certificate ("ARC") may be issued by the Commissioner to a party or parties to a proposed merger transaction who want to be assured that the transaction will not give rise to proceedings under section 92 of the Act. Section 102 of the Act provides that an ARC may be

issued when the Commissioner is satisfied that there would not be sufficient grounds on which to apply to the Competition Tribunal for an order against a proposed merger. The issuance of an ARC is discretionary. An ARC cannot be issued for a transaction which has been completed, nor does an ARC ensure approval of the transaction by any agency other than the Bureau.

Under paragraph 113(*b*) of the Act, an ARC exempts the named transaction from the prenotification provisions under Part IX.

Under section 103 of the Act, where the Commissioner issues an ARC under section 102 of the Act, and where the proposed transaction to which the certificate relates is substantially completed within one year after the certificate is issued, the Commissioner cannot apply to the Tribunal solely on the basis of information that is the same or substantially the same as the information on which issuance of the certificate was based. However, where the Commissioner receives additional information which effectively alters the basis on which the ARC was issued, proceedings under section 92 of the Act cannot be ruled out. Thus, it is critical that the parties provide full disclosure at the time an ARC is requested.

A request for, or issuance of, an ARC will not prevent any inquiry under section 10 of the Act which the Commissioner may cause to be made in respect of any other provision of the Act. Where an ARC is denied, a no-action letter may be issued by the Commissioner or a person authorized by the Commissioner.

What Factors are Relevant to the Consideration of an ARC Application?

The matters to be considered in assessing an ARC request include, but are not limited to, the factors in sections 93 to 96 of the Act. The Bureau has issued the MEGs that describe the merger enforcement policy of the Commissioner and elaborate on the interpretation and application of these factors.

What Type of Information Should an Applicant Submit with an ARC Application?

Unlike the prenotification provisions in Part IX of the Act, the Act does not indicate the information required to be supplied to the Commissioner in support of an ARC request. Given that the decision to issue an ARC will be based largely on information received from the applicants for the certificate, applicants should be willing to supply the Commissioner with information relevant to the proposed merger and its effect on competition.

Generally, for non-complex transactions, the information provided should be similar to the short-form information requirements under section 16 of the Regulations. The applicant should focus on the matters listed in section 93 of the Act. The submission of relevant market share information and any related industry studies may also assist in attempting to satisfy the Commissioner that there is no competition issue and that an ARC should be issued. Parties

requesting an ARC should suggest the wording for a "Re:" line which would adequately identify the transaction and which could appear on the ARC.

Where the information supplied with an ARC request is substantially similar to the information which would be required under section 114 of the Act, the Commissioner may, pursuant to paragraph 113(*c*) of the Act, waive the requirement to file a notice and supply information under section 114. Thus, where the possibility exists that an ARC request made in relation to a notifiable transaction could be rejected, the ARC request should contain the prescribed information in order to potentially bypass the prenotification process and its waiting periods. The Commissioner is likely to waive prenotification where the examination of the proposed transaction has been completed and additional information is not required.

When Should a Party to a Proposed Merger Transaction Request an ARC?

Given that an ARC is available only for proposed transactions, an ARC request should be made as soon as reasonably practicable. Prompt filing will enable the parties to respond to any concerns the Commissioner may have so that a certificate may be issued before the transaction is scheduled to be completed. The Commissioner is obliged under subsection 102(2) of the Act to consider the matter expeditiously. With the full assistance of the parties, the Commissioner will be able to issue the ARC in a timely fashion.

PART IV: PROCEDURAL MATTERS

Merger Notification Unit - Purpose and Process

The Mergers Branch of the Bureau is responsible for prenotification under Part IX of the Act and for the competition assessments of mergers. The Merger Notification Unit (“MNU”) of the Mergers Branch is responsible for all prenotification matters and is the starting point for ARC requests under section 102 of the Act.

RECEIPT, REVIEW AND ACKNOWLEDGMENT OF NOTICES

The MNU processes all section 114 notices received by the Bureau. The MNU reviews all section 114 notices for completeness, opens a project on the Branch's computer database, assigns a project number and issues the corresponding receipts and letters of acknowledgment indicating the start and end dates of the statutory waiting periods. The MNU also sends to the notifier an official receipt for the fee payment. If the assessment has not been completed by the end of the waiting period, the MNU will send the notifier a letter on the last day of the waiting period indicating that the waiting period is ending on that date and that the assessment is incomplete.

If a notice or other documentation received is considered incomplete or deficient in some manner, the MNU will immediately attempt to contact the filer to determine how to remedy the situation.

Following its review of section 114 notices, the MNU transfers the file to one of the two Divisions responsible for merger assessments, based on areas of expertise and the workload of each Division.

The MNU does not determine the complexity level of transactions for service standards purposes. Complexity levels are determined by those responsible for the assessment of the proposed transaction.

Receipt and Acknowledgment of ARC Requests

The MNU processes all section 102 ARC requests received by the Bureau. On receipt of an ARC request, the MNU opens a project on the Branch's computer database, assigns a project number, sends an official receipt for the fee payment with a letter of acknowledgment. The ARC request is then transferred to either of the Divisions in the Mergers Branch, based on areas of expertise and workload.

Answering Questions and Promoting Compliance

The MNU is contacted daily by persons wishing to obtain information on a variety of matters including filing procedures, interpretation of the Act and Regulations, and their application to a set of facts. These questions frequently involve a determination of whether a proposed transaction is notifiable or whether an exemption is applicable.

Where a question relating to Part IX of the Act is detailed and complex in nature, the caller may be asked to submit the question in writing, take advantage of the Bureau's Compliance Program and obtain a written advisory opinion. Since the introduction of fees in November 1997, a fee has been charged for written advisory opinions on the application of Part IX.

Procedural Matters

The MNU is frequently asked questions regarding procedural and compliance matters. The following is meant to assist in answering such questions. A suggested cover letter checklist has been included as an Appendix.

Fees

Information about the Bureau's fees is contained in the Bureau's Fee and Service Standards Handbook which is available on the Bureau's website and from the Information Centre.

MULTIPLE STEP/CONTINUOUS TRANSACTIONS

A separate notice or ARC request and the corresponding fee is required for each proposed transaction. Most transactions are fairly straightforward in their structure and raise no particular prenotification concerns. However, some proposed transactions are structured in a complex manner and may involve numerous parties, assets and steps.

Depending on the facts of any particular case, a series of proposed transactions may be regarded as one continuous, or multiple step, transaction with several steps for which only one notice and fee is required, or it may be considered several independent transactions for which several notices and fees may be required. Generally, every proposed transaction under section 110 of the Act constitutes a separate proposed transaction for the purposes of notice under section 114 of the Act. Similarly, every proposed transaction made subject of an ARC request is considered a separate proposed transaction for purposes of section 102 of the Act. However, two or more proposed transactions under section 110 or 102 typically will be considered one continuous transaction if all steps in the series of proposed transactions constitute a sufficiently connected sequence of events. For further information on this matter, please see Interpretation Guideline No.2, available on the Bureau's website.

To assist the MNU, parties submitting notices of proposed transactions with complex structures should: (i) ensure that the transaction description in the notice is as complete and detailed as possible; (ii) address the issue in the cover letter and explain why the proposed transaction should require only one notice; and (iii) in the case of a short-form information filing, consider including the relevant legal documentation.

BELOW THRESHOLD MERGER ASSESSMENTS

Where a proposed transaction does not exceed either the party- or the transaction-size threshold and the parties wish to receive written confirmation that the Commissioner will take no further action in the matter, they should submit an ARC request along with the appropriate filing fee. Where an ARC is denied, a no-action letter may be issued by the Commissioner or a person authorized by the Commissioner. Instead of a no-action letter, the parties may request an advisory opinion. The Mergers Branch does not receive many advisory opinion requests because these opinions are based solely on the information supplied with the request, not on all the information necessary for a complete merger assessment.

Parties are always welcome to bring to the Bureau's attention any transaction which may not exceed the prescribed thresholds. If parties to such a transaction do not request an ARC, no-action letter or advisory opinion, they will be advised orally as to the Commissioner's determination on the matter.

FURTHER ACQUISITION OF VOTING SHARES OR INTEREST IN A COMBINATION

Where a person has already exceeded the 20 per cent or 35 per cent threshold for an acquisition of voting shares or the 35 per cent threshold for an acquisition of an interest in a combination, another notice under section 114 of the Act will generally be required if the same person will exceed the 50 per cent threshold after making a further acquisition of either voting shares or an interest in a combination. However, where a person intends at the time of the initial acquisition to make such a future acquisition, subsection 115(2) of the Act provides that a notice of the intended future acquisition may be given along with the initial filing. Where such a notice is given, the parties will not be required to give notice and supply information under section 114 for the future acquisition if two conditions are met: (1) the future acquisition is carried out in accordance with the notice given under subsection 115(2), and (2) an additional notice is given in writing to the Commissioner within 21, and at least seven, days before the future acquisition. It should be noted that pursuant to subsection 115(4) of the Act, the exemption under subsection 115(3) will not apply to a future acquisition which is not completed within one year after the date of notice given under subsection 115(2).

METHOD OF NOTIFICATION

The hours of the MNU are from 9:00 a.m. to 5:00 p.m. Eastern Time on business days. Questions concerning notifiable transactions should be directed to the MNU, tel: (819) 953-7092.

In the interests of confidentiality and timeliness, it is recommended that prenotification filings and ARC requests be delivered by courier directly to the Competition Bureau's main reception area, 21st floor, 50 Victoria Street, Place du Portage, Phase I, Hull, Québec, K1A 0C9. Please ensure that the cover letter and envelope, especially the courier packaging, clearly state "Attention: Merger Notification Unit".

Notices and ARC requests may be faxed to the MNU at (819) 953-6169. For faxed notices, the original affidavits should be received the next business day. For both faxed notices and ARC requests, the fee should be received as soon as possible thereafter. Please send voluminous documents by courier and avoid using fax transmission. If the document must be faxed due to timing factors, please inform the MNU in advance.

Parties submitting documents should assess whether there is any benefit in faxing material, which is often incomplete. If the original complete package will be sent by overnight courier, there may not be any significant benefit in sending an incomplete fax the previous day. If the faxed documentation is complete, the only advantage of faxing ahead of courier delivery would be that the waiting period may start a business day earlier.

One copy of a short-form filing or ARC request is all that is necessary. However, for long-form filings, two copies of the filing should be submitted along with an affidavit certifying that all the

information contained in both copies is identical. Given that long-form filings are usually requested in complex or very complex cases, the additional copy will assist Mergers Branch staff in expediting its review of the proposed transaction.

Notices and ARC requests should be complete when they are submitted. Submitting notices in portions introduces the risk that something might be misplaced if not properly identified. Also, it becomes difficult to determine when the file is complete and when the waiting period begins.

Please ensure that someone knowledgeable about the filing is available to answer questions at the time of the filing should some issues need to be clarified or if some documents are missing.

IRRELEVANT INFORMATION

Subsection 116(2) of the Act provides that parties submitting a section 114 notice may withhold information on the grounds that the information is not relevant to a competition assessment. Parties making use of subsection 116(2) should identify which information is not being supplied and explain why the information is not considered relevant. Section 116 affidavits which state: "The information not supplied has not been supplied because it is not relevant" are unsatisfactory.

When informing the Commissioner under subsection 116(2) of the Act, the parties are requested to provide sufficient information about themselves and their affiliates, including names of affiliates and the nature of their businesses, to allow a determination that the omitted information is not relevant. Parties who withhold too much information about themselves and their affiliates assume the risk that the notice may be considered inadequate and that commencement of the waiting period will be delayed until additional information is received.

PREVIOUSLY SUPPLIED INFORMATION

Pursuant to subsection 116(2.1) of the Act, where information required under section 114 of the Act has been previously supplied to the Commissioner, the person supplying the information may, instead of supplying information again, inform the Commissioner under oath or solemn affirmation of the matters in respect of which information has previously been supplied and when it was supplied. Parties making use of subsection 116(2.1) should supply the project numbers relating to the previous filings.

WHERE INFORMATION DOES NOT APPLY

Where information is requested on an information form, but is not supplied because it does not apply, the party should indicate why the information does not apply. Writing "n/a" on the form may confuse information that does not apply with information that is not available and does not explain why either is the case.

WHEN DOES THE WAITING PERIOD END?

Section 123 of the Act provides that a proposed transaction should not be completed before the expiration of 14 days after the day on which a short-form information filing was received and, in the case of a long-form information filing, 42 days. Thus, if a short-form filing is received on February 1, the letter of acknowledgment will indicate that the waiting period expires on February 15. The parties are free to close their transaction at 12:01 a.m. on February 16. Parties who complete a transaction prior to expiry of the waiting period may have committed an offence under subsection 65(2) of the Act, unless they have received by then a no-action letter or an ARC informing them that the Commissioner does not intend to challenge the proposed transaction.

CONFIDENTIALITY

Pursuant to subsection 29(1) of the Act, information obtained pursuant to sections 114 and 102 of the Act is confidential. However, subsection 29(1) does permit the communication of such information to Canadian law enforcement agencies or for the purposes of the administration or enforcement of the Act. Subsection 29(2) of the Act provides that the confidentiality provisions do not apply in respect of any information that has been made public. Although information provided voluntarily to the Commissioner does not fall within the scope of subsection 29(1), it is the policy of the Commissioner to treat such information as if it were covered under subsection 29(1).

APPENDIX
COVER LETTER CHECKLIST

Cover letters submitted with section 114 notices and section 102 ARC requests assist in processing documents in a timely manner. While most cover letters are complete, occasionally the addition of another item of information would be of assistance. The following checklist may be used to ensure that a cover letter is as complete as possible.

Attention: Merger Notification Unit

Please ensure that your correspondence and envelope or package covering clearly indicate that it is to be directed to the attention of the Merger Notification Unit.

The "Re:" Line and Project Numbers

This line is often used to determine how to identify and capture the file for correspondence and databank purposes. It is helpful if all the parties to a proposed transaction use the same Re: Line, which should clearly indicate who is acquiring whom. For example, “Xcorp acquisition of Ycorp” or “Zcorp sale of receivables to ABC Trust” is helpful, while “Xcorp acquisition of Assets” or simply “Xcorp” is not. In subsequent correspondence, please identify the case by referring to the project number provided by the MNU in the letter of acknowledgment for each filing.

What is being Submitted or Requested

Please state clearly by the end of the first page of the cover letter what is being submitted, what is being requested or both.

Who Acts for Whom; Who Will be Submitting What

Where a notice or ARC request is going to be submitted in parts at different times or from different sources, each cover letter should indicate who will be submitting what on behalf of which party and when any additional information may be expected and from whom. Please provide names and phone numbers of contact persons.

Fees, GST and Official Receipts

Please indicate in the cover letter whether a cheque is enclosed for the fee and in what amount. If it is not enclosed, please indicate when the MNU can expect to receive it. Please include the name to whom the official receipt should be issued. Any claim that the GST is not payable on the grounds of non-residence should be clearly stated in the letter.

Closing Date

Please indicate the date on which the parties expect to close the proposed transaction.

Confidentiality

Please indicate whether the proposed transaction has been made public or when the parties expect to announce it.

Multiple-Step Transactions

If the notice or ARC request relates to a proposed transaction with a complex, multiple-step structure, please indicate why the transaction should require only one notice and, hence, one fee.

Competition Assessment

Voluntary information regarding the impact of the proposed transaction in the relevant market is helpful for both notices and ARC requests. Where such information is substantial, it may be included in the information forms for section 114 filings or as separate documents for ARC requests.