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**COMPETITION BUREAU DISCUSSION PAPER
ON THE PROPOSAL TO INCREASE FEES AND
REVISE ITS FEE AND SERVICE STANDARDS POLICY**

COMPETITION BUREAU

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INTRODUCTION

The Competition Bureau is an independent law enforcement agency that ensures all Canadians enjoy the benefits of a competitive economy, low prices, product choices, and quality service. It oversees the application of the *Competition Act* (Act), the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act*, and the *Precious Metals Marking Act*.

In pursuing its mandate, the Bureau strives to balance a number of objectives. These include examining cases that deal with important economic issues, investigating illegal activity, and promoting competition and conformity with the Act through an information and education program.

Since November 1997, the Bureau has charged fees for services such as advance ruling certificates and advisory opinions, in addition to charging for regulatory processes such as pre-merger notification. Fees are essential for ensuring that the Bureau is able to cover the cost of providing clients with the highest degree of thorough and professional service possible. However, as a result of new pressures such as increased costs, a higher proposed size of transaction threshold for merger review and new legislation that makes advisory opinions legally binding, the Bureau has identified a need to increase current fees. This increase will ensure the Bureau is in a position to continue providing its clients with effective and efficient service.

To begin the amendment process the Bureau first wants to hear from its stakeholders. They are invited to comment on the proposed fee increase, current service standards, complexity levels and definitions, and feedback mechanisms. All of these are outlined in this consultation paper. A revised proposal and Fee and Service Standards Handbook (Handbook) will be published on the Bureau's Web site and provided to stakeholders who indicate their interest in attending forums planned for November 2002. During the forums, stakeholders will be given the opportunity to speak with Bureau representatives and voice their opinions on the subjects covered in the revised proposal and Handbook.

BACKGROUND

The Bureau established fees in November 1997 pursuant to the *Department of Industry Act* (DIA) for a number of services and regulatory processes. These include pre-merger notification (PMN), Advance Ruling Certificates (ARC), advisory opinions, and photocopies. With fees, came strict but attainable service standards¹, established to address timeliness and predictability

¹Details of current service standards are included in The Fee and Service Standards Handbook.

concerns voiced by stakeholders and the federal government.

Current Treasury Board policy requires that revenue generated from fees be used to improve the processes for which they were earned. Since adopting a fee structure five years ago, the Bureau has adhered strictly to this policy. With respect to merger review, which generates 99% of fee revenues, the Bureau undertook a major benchmarking exercise in 2000 of its merger review² process. Improvements resulting from this in-depth study have helped the Bureau achieve increased efficiency, better client service and turnaround times, and improved training and career development. Without fees to fund the benchmarking project and subsequent ongoing process improvements, this amount of progress would have been impossible.

PRINCIPLES

The Bureau views the 1997 introduction of fees and related service standards as having promoted a more disciplined approach for identifying and measuring its performance. The Bureau is committed to ensuring that those who seek services, or are bound by regulatory requirements, have timely and systematic opportunities to provide input regarding service levels and standards. To ensure that stakeholders have an opportunity to voice comments about the policy, the Bureau has held a forum every two years. These forums also give the Bureau an opportunity to report publicly on its performance to-date.

The current Bureau fee increase proposal is consistent with federal government policy which stipulates that those who benefit most from a service should pay for it, rather than having all Canadians pay through general taxation. However, given that the general public also benefits from effective enforcement and administration of the *Competition Act*, the Bureau continues to seek only partial recovery of the costs involved. In keeping with the federal government's principle of fairness, the cost of providing service in this area continues to be partially appropriated through general taxation. The Bureau however, continues to charge clients the full cost for photocopies.

²The Merger Review Benchmarking Report can be obtained on the Bureau's Web site at www.competition.ic.gc.ca

CURRENT FEES AND SERVICE STANDARDS

Table 1:

Service or Regulatory Process	Fee	Service Standard
Merger (PMN filings and ARC Requests)		
non-complex	\$25,000	14 days
complex	\$25,000	10 weeks
very complex	\$25,000	5 months
Advisory Opinions		
Sections 52 to 55 and 74		
non-complex	\$500	8 days
complex	\$500	30 days
Other Provisions		
non-complex	\$4,000	4 weeks
complex	\$4,000	8 weeks
Photocopies	\$0.25/page	N/A

IMPROVEMENTS TO DATE

As part of the federal government's Results for Canadians: A Management Framework for the Government of Canada³, departments and agencies are committed to achieving a quantifiable improvement in client satisfaction with their services. Underpinning this framework is the Service Improvement Initiative, which aims to ensure the continuous and measurable improvement of client service.

As a result of revenue from fees, the Bureau has been able to undertake several initiatives designed to improve merger review and increase client satisfaction. As mentioned above, in 2000 the Bureau undertook a fundamental benchmarking study of the merger review process. The study included a process-mapping exercise of the merger review process, interviews with Mergers Branch staff and other internal stakeholders such as the Department of Justice, and in-

³This publication can be obtained on the Treasury Board Web site at www.tbs-sct.gc.ca

depth interviews with Canadian lawyers who deal with the Branch on a regular basis. The exercise also included interviews with other competition agencies (in the United States, the United Kingdom, and Australia) and lawyers in these countries to obtain insights on their country's system and what they consider to be the best practices for merger review.

Several significant improvements have been made as a result of the benchmarking study and in response to stakeholder requests for more timeliness, transparency, and predictability. These include:

- Ten new Interpretation Guidelines published in consultation with stakeholders and now available on the Bureau's Web site;
- The publication in May 2000 of the Procedures Guide: Notifiable Transactions and Advance Ruling Certificates under the *Competition Act*.

These publications contribute to making the merger review function as transparent and predictable as possible. As well, the Merger Notification Unit (MNU), created in November 2000 and considered a best practice among antitrust agencies, streamlines the notification process and improves timeliness by:

- verifying compliance with notification provisions;
- classifying all incoming files by complexity;
- ensuring consistency in classification;
- administering all service standard periods;
- reviewing most non-complex transactions; and
- administering Part IX of the Act and related communication activities.

Employees of the MNU also held cross-Canada consultation meetings in January/February 2001 in order to fine-tune new processes and obtain stakeholder input. As a result, the unit now makes greater use of technology to support the work of the Mergers Branch, integrating electronic tools and processes into the overall review process. This will help streamline operations and improve internal and external information sharing.

More recently, the Bureau launched the Learning Continuum, a new and integrated approach to staff development which addresses important and pressing issues related to training, retention, and succession planning. The continuum responds primarily to the need for renewing the Bureau's workforce in view of its aging population but also addresses concerns raised during the benchmarking study, specifically with respect to merger review training.

Another stakeholder concern identified through the benchmarking study was that on complex cases, the Bureau was not consulting early enough with experts, legal counsel, and internal economists. The Bureau has responded to this concern by formalizing the time and manner in which these team members become involved in the review process.

These and other initiatives have helped improve the transparency and predictability of the merger review process and have enabled the Mergers Branch to improve its performance against service standards.

Annex A provides a year to year comparison of the Bureau's performance with respect to service standards for merger review; Annex B provides a year to year comparison of performance against service standards with respect to advisory opinions related to sections 52 to 55 and 74 of the Act. Charts were not produced for advisory opinions related to the other sections of the Act because there are too few. See Table 4 and Table 5 for the percentage of transactions that met the service standards.

PROPOSED FEE LEVELS

The Bureau proposes the following fee levels:

1. Under section 114 of the Act, parties to defined proposed transactions which meet specific thresholds, must, before completing the transaction, notify the Commissioner of Competition (Commissioner) of the proposed transaction and supply information as specified in the Act. The transaction cannot be completed before the expiration of a specified waiting period⁴ unless the Commissioner provides prior notice to the parties that he does not intend to make an application to the Competition Tribunal. Pursuant to section 20 of the DIA, the Bureau proposes to increase the present fee of \$25,000 to \$50,000 for the pre-merger notification regulatory process.
2. Under section 102, where the Commissioner is satisfied by a party or parties to a proposed transaction that he would not have sufficient grounds to apply to the Competition Tribunal for an order under section 92, he may issue an advance ruling certificate (ARC) in respect of the proposed transaction. Pursuant to section 18 of the DIA, the Bureau proposes to increase the present fee of \$25,000 to \$50,000 for this service.

As is the case now, parties who file both a PMN and request an ARC with respect to the same transaction, will only be required to pay one fee.

3. Pursuant to its Program of Compliance, the Bureau will continue to promote and ensure compliance with the provisions of the Act through a variety of mechanisms including a program of communications and education and the use of specific

⁴14 and 42 days pursuant to paragraphs 123(1) (a) and 123(1) (b) of the Act respectively, depending on the type of notification filed.

instruments such as binding advisory opinions⁵.

Since 1997, stakeholders have requested that written advisory opinions, provided within the scope of the Fee and Service Standards Handbook, be legally binding. With the enactment of Bill C-23, now chapter 16 of the Statutes of Canada 2002, section 124.1⁶ of the Act provides that the Commissioner may issue legally binding advisory opinions. Pursuant to section 18 of the DIA, the Bureau proposes a fee of \$15,000 for binding advisory opinions related to sections 45 to 51 and 79⁷ of the Act; a fee of \$1,000 for those relating to section 74.06 (promotional contests) of the Act; and a fee of \$10,000 for those related to all other sections of the Act. Binding advisory opinions will not be issued with respect to proposed mergers and acquisitions. In those cases, the requester should apply for an ARC. The Bureau will continue to waive fees for nonprofit and community-based organizations.

4. The Bureau proposes to continue to charge the present fee of \$0.25 per copy for documents seized pursuant to section 15 of the Act in addition to any shipping or delivery charges incurred by the Bureau to provide this service. As is the case now, there will be not charge for copies of essential working documents.
5. The Bureau proposes to continue to charge the present fee of \$0.25 per copy where large, specific, or complex requests are made to the Bureau and where the service is not deemed to be essential or in the normal course of Bureau operations.

COSTS

The Bureau is proposing an increase in the size of transaction threshold for pre-merger notification from \$35 million to \$50 million. It is estimated that raising this threshold will reduce

⁵Additional information is available in the Competition Bureau's Program of Compliance publication.

⁶Section 124.1 of the Competition Act as enacted by clause 15 of Chapter 16, S.C.2002, states that:

(1) Any person may apply to the Commissioner, with supporting information, for an opinion on the applicability of any provision of this Act or the regulations to conduct or a practice that the applicant proposes to engage in, and the Commissioner may provide a written opinion for the applicant's guidance.

(2) If all the material facts have been submitted by or on behalf of an applicant for an opinion and they are accurate, a written opinion provided under this section is binding on the Commissioner. It remains binding for so long as the material facts on which the opinion was based remain substantially unchanged and the conduct or practice is carried out substantially as proposed.

⁷Sections 45 to 51 and 79 deal with conspiracy, foreign directives, "bid-rigging", conspiracy related to professional sport, agreements or arrangements of federal financial institutions, illegal trade practices, definition of "allowance", and abuse of dominant position.

by approximately 10% the number of notifiable transactions. However, it is anticipated that most of the transactions that will be exempted from notification by this action will fall into the non-complex classification. Since about 90% of the costs of reviewing mergers are related to complex and very complex cases, the Bureau does not expect a corresponding 10% reduction in costs. Additionally, savings related to the higher threshold are expected to be minimal and will be used to address workload requirements for complex cases.

Treasury Board's Cost Recovery and Charging Policy⁸ aims to promote an efficient allocation of resources and an equitable approach to financing government programs, mandatory or otherwise.

Although 2000-2001 has been used as the base year for calculations, the Bureau has completed full costing exercises for 1997-1998, 1998-1999, and 1999-2000. The Bureau is also currently evaluating 2001-2002 levels in order to determine whether there are any trends or unusual fluctuations that should be considered in this costing exercise. Although there have been fluctuations every year, these have not been significant enough to warrant caution or hesitation in using these figures.

For purposes of simplicity and fairness, the costs of reviewing mergers and providing advisory opinions have been calculated in the same manner. For example, for each of the service lines proposed for fee increases, full costs have been determined by calculating direct costs, Bureau and Industry Canada overhead and shared services, depreciation of capital, and the Bureau's share of other government departments' services. Full Time Equivalents (FTEs)⁹, Bureau hours, and/or numbers of transactions have been used as the cost drivers¹⁰ for these calculations.

Once the total cost of an activity was determined, various calculations and comparisons were made to determine the most cost-effective and fair method for determining fee levels. Table 2 sets out the activities and total costs for which an increase in fees is being considered:

⁸This publication can be obtained on the Treasury Board's Web site at: www.tbs-sct.gc.ca

⁹FTEs are the number of indeterminate full-time equivalent positions.

¹⁰A cost driver is defined by Treasury Board as the factor that determines how the cost will vary and the rate at which that cost will vary. Refer to the Guide to the Costing of Outputs.

Table 2:

Service or Regulatory Process	1995-1996 Total Costs	2000-2001 Total Costs
Pre-merger notification and advance ruling certificates	\$4,288,546	\$14,179,334 ¹¹
Advisory opinions (sections 52 to 55 and 74)	\$196,756	\$58,032
Advisory opinions (other sections)	\$337,283	\$83,702

The cost of merger review has increased significantly since 1996. Direct costs have increased by 74% in the past four years, mainly due to increased staffing in the Mergers Branch and the use of outside experts. In 1996 there were 38 FTEs compared to the present 55. Stakeholders have commented that this increase was and continues to be necessary to provide the quality and timely service to which they have become accustomed. Accommodation (including computer equipment, office space, and furniture) costs have also increased as a result.

The Mergers Branch has experienced an increasingly complex caseload since the implementation of fees. As a result, the level of expertise required has risen as well. Furthermore, despite service standards that have forced the Mergers Branch to streamline processes and increase the number of full time employees, the workload experienced by employees continues to be high and demanding.

Total costs for advisory opinions have gone down principally due to a lower demand for this service. Prior to fees, many companies requested opinions on fairly simplistic proposed business actions or behaviours, such as certain contests and advertising campaigns. As a result of a high volume for such requests, advisory opinions were very resource-intensive for the Bureau. However, once fees were introduced, these same companies began relying on their internal marketing departments or marketing firms for advice. Although the Bureau continues to provide this service to small and medium-sized businesses, resources have been reallocated to deal with inspections and investigations of deceptive, unfair, and fraudulent behaviour in the marketplace.

Another reason for the decrease in demand for advisory opinions is the increasing number of information items that have been published since the implementation of fees. Bureau clients are better informed and confident in the way the Commissioner will interpret certain business practices as a result of several key publications. *Multi-level Marketing and the Competition Act*, a multimedia tool available on the Bureau's Web site designed to inform Canadian businesses and

¹¹Mega-mergers are funded by Treasury Board and were not included in the costing exercise for this proposal. Mega-mergers are those transactions which have a very high economic impact, high cost of error, and are resource intensive. Mega-mergers must also have one or more of the following features: be in an infrastructure or network industry, concern major policy issues, or have a high profile.

consumers about multi-level marketing and pyramid selling is a good example of the steps the Bureau is taking to provide as much information as possible to consumers and businesses. The telemarketing provisions of the Act are also clear and provide transparency and direction to the business community.

There have been discussions with internal and external stakeholders during the years since fees were first implemented regarding the most appropriate fee structure possible. As a result of these discussions, the Bureau has considered three potential forms that the fees charged for PMN filings, ARC requests, and advisory opinions could take:

- # fees that vary with the time used to examine a particular merger or request;
- # flat fees;
- # or, in the case of PMN filings and ARC requests, fees that vary with the size of the assets in the merger transaction.

Only the flat fee was, and continues, to be both appropriate and feasible. For merger transactions, a size of assets fee is not justifiable under the principle of cost recovery, since the size of a proposed transaction has little or no relationship to the cost of processing a PMN or ARC application or to the degree to which competition is affected by the merger.

A time-based fee structure is also viewed as inappropriate for merger notification or ARC requests. The first PMN filing or ARC request in an industry that has not been subjected to recent examination by the Bureau, may require extensive research to assess its competitive impact.¹² Assessment of subsequent proposals in that industry will rely on initial research and acquired learning and will likely be completed in significantly less time. Thus, the “intellectual capital” acquired by working on the initial merger proposal is applied to subsequent proposals. The result is a substantial subsidy from the parties of the initial proposal to parties of subsequent merger proposals.

With the enactment of Bill C-23¹³, these written advisory opinions will become legally binding on the Commissioner. The Bureau recently engaged in discussions with the competition law officers who will be providing this service, the Department of Justice, and internal economists on how this will change the nature and amount of work required. These discussions concluded that while in most cases the nature of the opinion requests will remain substantially similar, the Bureau will require more thorough levels of review and may require more formal advice from the Department of Justice and internal economists prior to providing a written advisory opinion that

¹²The first ever proposed bank mega-merger in 1999 is a good example. Total costs to the Bureau were \$2.9 million, funded by Treasury Board as part of supplementary estimates.

¹³Section 124.1 of the *Competition Act*, is the only section of Bill C-23 which did not come into force on June 21, 2002. This provision will come into force at a later date, when the new Bureau's fees and service standards structure, as it relates to legally binding advisory opinions is in place.

will legally bind the Commissioner.

However, the Bureau believes it is inappropriate to propose the same fee for all sections of the Act. The distinctions that can be drawn are the ones between requests involving sections 45 to 51 and 79; section 74.06; and other sections of the Act. The Bureau will charge a lower fee for requests related to promotional contests (s. 74.06) because the work involved is not as complex or time-consuming as in other sections of the Act due to the existence of substantial case law and experience in providing these types of opinions. On the other hand, the work involved in providing binding advisory opinions related to conspiracy, foreign directives, “bid-rigging”, conspiracy related to professional sport, agreements or arrangements of federal financial institutions, illegal trade practices, definition of “allowance”, and abuse of dominant position (s. 45 to 51 and 79) requests will be extremely time-consuming due to the greater complexity of these requests. With globalization and industries in transition, it is expected that any binding advisory opinions provided will be more carefully examined by the competition law officers, economists and the Department of Justice. Consequentially, the Bureau will charge a higher fee for these services. Furthermore, as is now the case, the Bureau will not undertake third party contacts.

Beyond this, the issue of future requests benefiting from work done on the first request involving a particular industry or issue also applies. A per transaction fee for PMNs, ARCs, and advisory opinions based on section of the Act is still considered to be the most appropriate balance between the public and private components of cost. Fee levels will also reflect the cost of administering revenue processes, improving services, and measuring service provided against service standards.

As a result of these discussions, the expected costs for providing binding advisory opinions are:

Table 3:

Service	Expected Cost
Binding advisory opinions (section 74.06)	\$8,795
Binding advisory opinions (sections 45 to 51 and 79)	\$113,925
Binding advisory opinions (other sections)	\$316,400

The Bureau will continue to provide informal oral advice in instances where the issues are not complex and the request takes little or no research on the part of the competition law officer. The response will be based on the oral request by the applicant, the stated policies of the Commissioner, and previous experience and knowledge. This type of oral advice typically comprises a 10 to 15 minute telephone call and will not be binding on the Commissioner.

The Bureau will also continue to provide other preliminary views that do not fall within the scope of binding advisory opinions or oral advice. These may take the form of a request for the review of existing or proposed business conduct where the requester wishes that the Bureau seek third party advice. The Bureau will not charge a fee for this service, nor will it apply any service standards. As this type of activity is more within the realm of an investigation, the request will be measured against other priorities within the Bureau and resources will be assigned accordingly.

SERVICE STANDARDS

The Bureau has always been committed to providing stakeholders who are required to pay for services or regulatory processes with an opportunity to comment on how those services are provided. In 1997, the Bureau developed service standards¹⁴ based on past performance, legislated requirements, financial and administrative time requirements, and consultations with stakeholders.

Improved information management capabilities introduced since then allow the Bureau to better track its performance against service standards and identify the reasons why these standards are not met in certain instances. The Bureau has reported on its ability to meet service standards on a number of occasions.¹⁵ The following two tables summarize the Bureau's performance against service standards for the past four years.

Table 4: Meeting the Service Standards - Merger Review

	1998-1999			1999-2000			2000-2001			2001-2002		
	Total	Met	(%)	Total	Met	(%)	Total	Met	(%)	Total	Met	(%)
Non-complex	212	187	88%	232	218	94%	282	270	96%	271	258	95%
Complex	56	54	96%	49	43	88%	53	49	93%	41	36	88%
Very Complex	6	6	100%	8	7	88%	14	14	100%	2	2	100%

¹⁴Refer to Table 1 for Service Standards.

¹⁵These reports include the Commissioner's Annual Report, the Merger Review Performance Report, June 2001, and the Fees and Service Standards Performance Report 1998.

Table 5: Meeting the Service Standards - Advisory Opinions

	1998-1999			1999-2000			2000-2001			2001-2002		
	Total	Met	(%)	Total	Met	(%)	Total	Met	(%)	Total	Met	(%)
Civil Matters												
Non-Complex	-	-	-	-	-	-	3	3	100%	4	4	100%
Complex	-	-	-	-	-	-	-	-	-	-	-	-
Criminal Matters												
Non-Complex	5	4 ¹⁶	80%	5	4 ¹⁷	80%	1	0 ¹⁸	0%	-	-	-
Complex	3	3	100%	3	3	100%	1	1	100%	1	0 ¹⁹	0%
Fair Business Practices Branch												
Non-Complex	35	21	60%	32	21	66%	27	18	67%	15	5	33%
Complex	8	2	25%	5	2	40%	6	1	17%	4	0	0%
Mergers Branch												
Non-Complex	2	2	100%	3	3	100%	2	2	100%	2	2	100%
Complex	1	1	100%	1	1	100%	-	-	-	-	-	-

From 1997 to 2001, the Fair Business Practices Branch²⁰ underwent numerous changes in structure and responsibilities including the integration of regional employees and the 1999 amendments to the Act. This has had a significant impact on the Branch’s workload and performance and, as a result, the Branch has struggled with meeting service standards. The

¹⁶The advisory opinion that did not meet the Service Standard was provided three days late.

¹⁷The advisory opinion that did not meet the Service Standard was provided four days late.

¹⁸The advisory opinion that did not meet the Service Standard was provided nine days late.

¹⁹The advisory opinion that did not meet the Service Standard was provided seven days late.

²⁰The Bureau’s Fair Business Practices Branch handles advisory opinions with respect to sections 52 to 55 and 74 of the Act.

Branch is, however, committed to reviewing and improving related processes. It does not wish to keep providing stakeholders with an unrealistic service standard expectation.

The Bureau will be revising the Fee and Service Standards Handbook (Handbook) over the next few months, incorporating comments and suggestions made by Bureau staff and stakeholders who respond to this consultation paper. The Handbook describes the type of information required when requesting an ARC or advisory opinion and, in the case of filing a PMN, sets out the information required to conduct a competitive analysis. It also describes when and how the applicable service standards apply to each transaction. The Bureau invites stakeholders to comment on the type of information requested, the complexity categories, and applicable time frames. A revised copy of the Handbook will appear on the Bureau's Web site; hard copies will be provided to stakeholders who express interest in attending the forums planned for November 2002. See page 20 for contact details.

The Bureau will also be revising the 'Frequently Asked Questions' page on its Web site that deals with fees and services standards. Stakeholders are invited to provide suggestions for the type of information that should be included in the FAQs.

APPROACH TO FEES IN OTHER JURISDICTIONS

In developing its fees for PMN, the Bureau has taken note of the fees charged by its counterparts in other jurisdictions and their experience in setting fees for service and tracking performance against established targets.

The United States, pursuant to the *Hart-Scott-Rodino Act*, uses a tiered system based on annual net sales. The tiers and corresponding fees are as follows:

- Tier 1. If net sales are less than US\$100 million (Cdn.\$154 million), a fee of US\$45,000 (Cdn.\$69,000) is required;
- Tier 2. If net sales are more than or equal to US\$100 million (Cdn.\$154 million) but less than US\$500 million (Cdn.\$770 million), a fee of US\$125,000 (Cdn.\$192,000) is required;
- Tier 3. If net sales are more than or equal to US\$500 million (Cdn.\$770 million) a fee of US\$280,000 (Cdn.\$429,000) is required.

The US Federal Trade Commission is completely funded, including non-merger related activity, through revenue generated by merger notification.

The United Kingdom, pursuant to the *Fair Trading Act*, uses a tiered system based on whether the gross assets acquired are more than £30 million (Cdn.\$69 million). The tiers and

corresponding fees are as follows:

Tier 1. If the value of gross assets acquired is £30 million (Cdn.\$69 million) or less, but the market share test is met, a fee of £5,000 (Cdn.\$11,000) is required.

Tier 2. If the value of gross assets acquired is more than £30 million (Cdn.\$69 million) but less than or equal to £100 million (Cdn.\$230 million), a fee of £10,000 (Cdn.\$23,000) is required.

Tier 3. If the value of gross assets acquired more than £100 million (Cdn.\$230 million) require a fee of £15,000 (Cdn.\$34,000).

The Australian Consumer and Competition Commission requires a fee of A\$15,000 (Cdn.\$13,000) for authorization applications.

Germany's Federal Cartel Office also uses a tiered system based on the economic importance and the subject matter of the transaction notified.

Tier 1. In cases of minor importance or with insignificant effect on the German market, the filing fees normally range between Dm15,000 (Cdn.\$11,000) and Dm25,000 (Cdn.\$19,000).

Tier 2. In cases of average importance, the filing fee is Dm50,000 (Cdn.\$37,000).

Tier 3. In cases of importance, the filing fee is Dm100,000 (Cdn.\$72,000).

Tier 4. In exceptional cases, a fee of up to Dm200,000 (Cdn.\$150,000) is possible.

COMPLIANCE MECHANISM

The Bureau requires fee payment at the time that requests are made. For binding advisory opinions, the applicable service standards time frame and review will not begin until the client provides all related information and pays the requisite fee.

In keeping with Departmental policy, overdue accounts will be followed up after 30 days by a letter requesting full payment. Interest will begin accumulating 30 days after the initial request or submission for a regulatory process and will continue accumulating until the client pays the fee and any accrued interest.

FEEDBACK MECHANISM

In developing the fee and service standards policy in 1997, the Bureau also implemented

feedback mechanisms. These ensure that those who seek services or are bound by regulatory processes for which a fee applied have timely and systematic opportunities to provide ongoing input regarding service levels and quality. Key tools for gathering this input include feedback cards, a complaint mechanism²¹ and periodic stakeholder forums.

Feedback cards (with self-addressed stamped envelopes) accompany the response to a service request or regulatory process (advance ruling certificate, pre-notification response, advisory opinion). These cards enable the Bureau to gauge client satisfaction and ensure that it is providing the best service possible in the most efficient and professional manner. Analyzing feedback cards is one of several methods the Bureau uses to assess stakeholder satisfaction.

Questions posed on the feedback cards are:

- # Indicate the service received (choice of PMN, ARC, advisory opinion);
- # Was the service rendered within the specified time frame? If not, please specify length of time taken;
- # How would you rate the quality of the work received from the Bureau, including the quality of service and the level of analysis? (choice of Poor, Fair, Good, Excellent);
- # Comments.

Parties may, but are not obligated to, provide their name and contact information on the cards.

The following three tables summarize information obtained through the feedback cards the Bureau received between November 1997 and March 31, 2002. Since the implementation of fees, the Bureau received 1,489 PMN filings, ARC, and advisory opinion requests. Stakeholders returned 407 feedback cards, which represent comments on 27% of the services requested.

In some cases, one card represents more than one service. For example, one request can involve an ARC and a PMN filing.

The information gathered does not include complexity levels.

Tables 6 to 8 indicate the type of service requested, whether the client received the service within the specified time (service standards) and the quality of service for all the feedback cards received from November 1997 to March 2002.

²¹Competition Bureau. *Fee and Service Standards Handbook pursuant to the Competition Act*. Release 2. May 1, 1998. Page 7.

Table 6: Feedback Cards returned between November 1997 and March 31, 2000:

Service	Total	Service Rendered Within Specified Time		Quality of Service			
		Yes	No	Excellent	Good	Fair	Poor
Advance ruling certificate	120	108	11	86	28	4	1
Pre-merger notification filing	48	43	5	28	16	2	2
Pre-merger notification filing and advance ruling certificate	35	34	1	29	3	0	1
Advisory opinion	23	20	0	10	10	0	0
Total	226²²	205	17	153	57	6	4
Percentage	100%	91%	8%	68%	25%	3%	2%

(Note: one card had no indication of the service standard and two had no indication of the quality of work received.)

From November 1997 to March 2000, stakeholders returned 226 (30 %) cards of the 760 requests the Bureau received. According to the cards returned, service standards were met in 91% of the cases. The quality of service was considered to be “excellent” in 68% of the cases and “good” in a further 25%.

²²Since April 1, 2000, the Bureau has been numbering and date-stamping these cards upon receipt in order to more accurately conduct statistical analysis. The Bureau considered pre-numbering the cards but rejected this, feeling that stakeholders might be less inclined to complete and return the cards if they thought that the Bureau could trace them to a specific file. Many cards do not include the name of the respondent.

Table 7: Feedback Cards returned between April 1, 2000 and March 31,2001:

Service	Total	Service Rendered Within Specified Time		Quality of Service			
		Yes	No	Excellent	Good	Fair	Poor
Advance ruling certificate	30	30	0	23	5	0	0
Pre-merger notification filing	14	12	2	6	8	0	0
Pre-merger notification filing and advance ruling certificate	14	11	3	8	6	0	0
Advisory opinion	7	6	1	2	4	1	0
Total	65	59	6	39	23	1	0
Percentage	100%	91%	9%	60%	35%	2%	N/A

(Note: one card had no indication of the quality of the work, while one card indicated both Excellent and Good. Furthermore, one card indicated both an advisory opinion and a PMN but did not indicate whether or not the service standard was met.)

During fiscal year 2000-2001, stakeholders returned 65 (17%) cards of the 389 requests the Bureau received. According to the cards returned, service standards were again met in 91% of the cases. The quality of service was considered to be “excellent” in 60% of cases and “good” in a further 35%.

Table 8: Feedback Cards returned between April 1, 2001 and March 31, 2002:

Service	Total	Service Rendered Within Specified Time		Quality of Service			
		Yes	No	Excellent	Good	Fair	Poor
Advance ruling certificate	66	65	1	55	8	1	0
Pre-merger notification filing	24	23	1	13	11	0	0
Pre-merger notification filing and advance ruling certificate	18	15	3	13	4	0	1
Advisory opinion	8	7	1	6	2	0	0
Total	116	110	6	87	25	1	1
Percentage	100%	95%	5%	75%	22%	1%	1%

(Note: two cards had no indication of the quality of service received.)

From April 1, 2001 to March 31, 2002, stakeholders returned 116 (34 %) cards of the 340 requests the Bureau received. According to the cards returned, service standards were met in 95% of the cases. The quality of service was considered to be “excellent” in 75% of the cases, a significant improvement over previous years, and “good” in a further 22%.

The Bureau would like to hear stakeholder views concerning the questions posed on the feedback cards. A complete review of this feedback mechanism will be undertaken as part of this proposal.

COMPLAINT MECHANISMS

The Deputy Commissioner of Competition, Compliance and Operations Branch, will continue to oversee any complaints regarding services and regulatory processes where fees and service standards are involved. It is the Deputy Commissioner’s responsibility to determine who will examine the matter and provide the subsequent feedback to the complainant. The Compliance and Operations Branch is not involved in providing the services outlined in this proposal. As such, the Deputy Commissioner remains independent and objective if he is required to resolve

any complaints.

On application, any resolution deemed by the complainant to be unsatisfactory will be further investigated by the Senior Deputy Commissioner of Competition. Complainants will receive feedback as well as information regarding any subsequent resolutions or decisions relating to the original complaint.

To date, the Deputy Commissioner of Competition, Compliance and Operations Branch has not received any complaints.

CONSULTATIONS WITH STAKEHOLDERS

In developing this proposal, the Bureau has benefited significantly from client input received during the Fees and Service Standards Forum in 1999, the June 2001 Mergers Branch Forum, the Merger Review Benchmarking initiative, the Merger Notification Unit consultations in January 2001, and the numerous other consultations and meetings between the Bureau and its stakeholders. Through a combination of stakeholder forums and wide distribution of this consultation paper, the Bureau intends to gather the necessary client input for revising the existing Fee and Service Standards Policy.

Forums planned for November 2002 will benefit from written comments received as a result of this consultation. These forums will allow those most directly affected to comment on, and actively participate in, the development of revisions to the current policy.

The final proposal will reflect the feedback provided by interested parties. Unless there are substantial issues that would necessitate a further round of consultations, the revised proposal will be submitted to the Minister of Industry for approval. It will subsequently be published in Part I of the *Canada Gazette* and be made available through media such as the Bureau's Web site and its Information Centre.²³

The target for implementation of these proposed changes is January 2003.

²³The Bureau's Information Centre can be reached between 7:30 a.m. and 8:00 p.m. eastern standard time toll free at 1-800-348-5358.

QUESTIONS FOR CONSULTATION

In summary, the Bureau would like to receive your comments regarding this proposal and particularly the following items:

- # Proposed fee levels (refer to page 5);
- # Service Standards (refer to page 11);
- # Complexity Level definitions and information required for the review to begin²⁴; and,
- # Feedback Cards - how to improve the type of information captured (refer to page 14).

Comments and questions should be submitted to:

John K. Barker
Assistant Deputy Commissioner of Competition
Compliance and Operations Branch, Competition Bureau
50 Victoria St. 22nd Floor
Hull, Québec
K1A 0C9

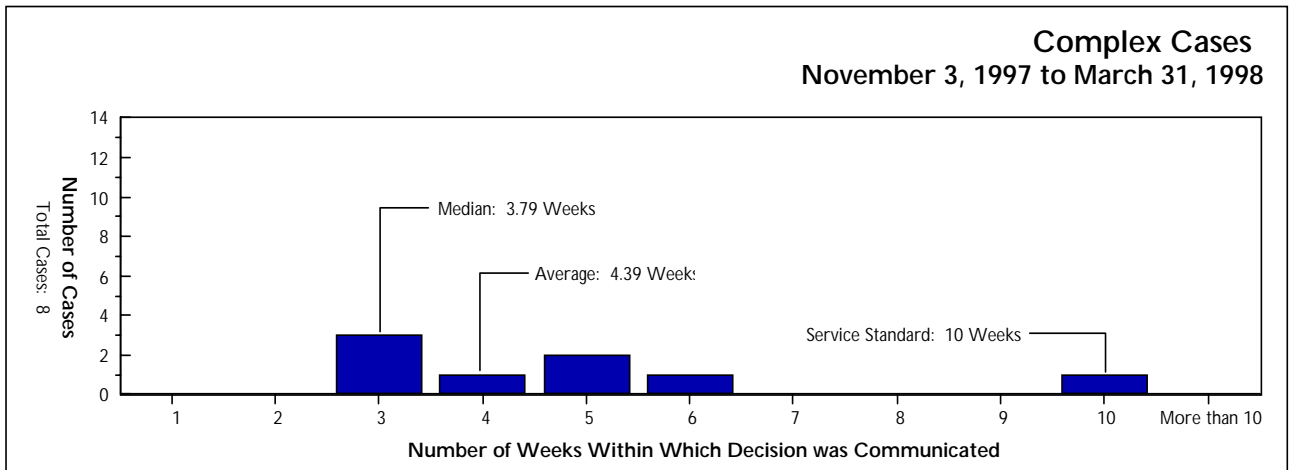
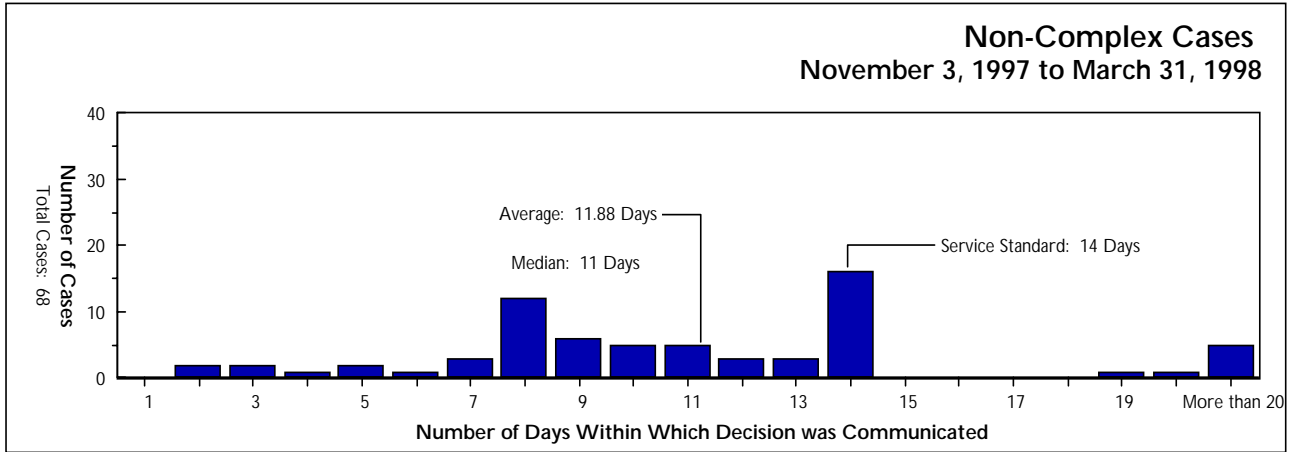
or

Lise Davey
Manager, Client Services
Compliance and Operations Branch, Competition Bureau
50 Victoria St. 22nd Floor
Hull, Québec
K1A 0C9

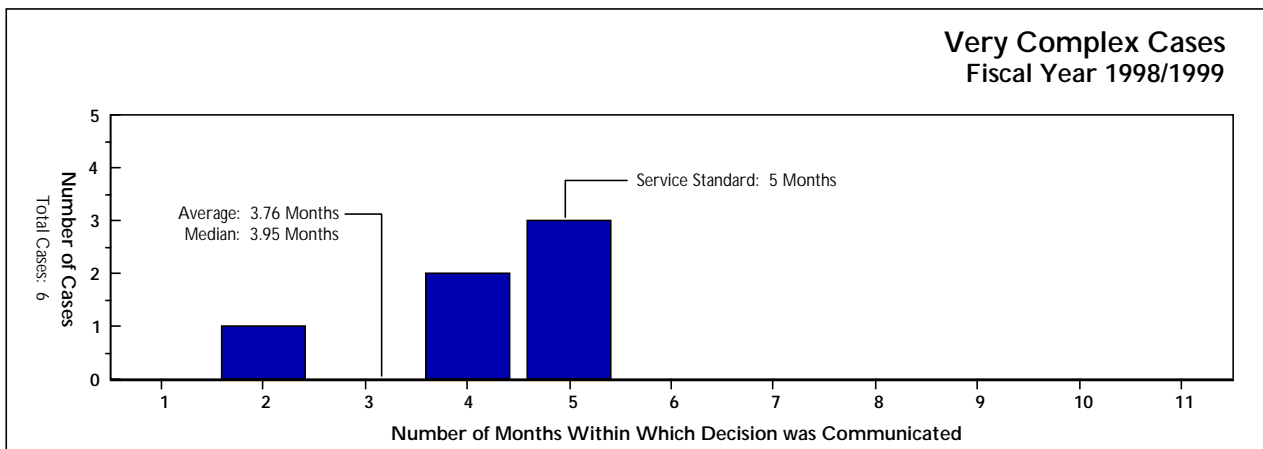
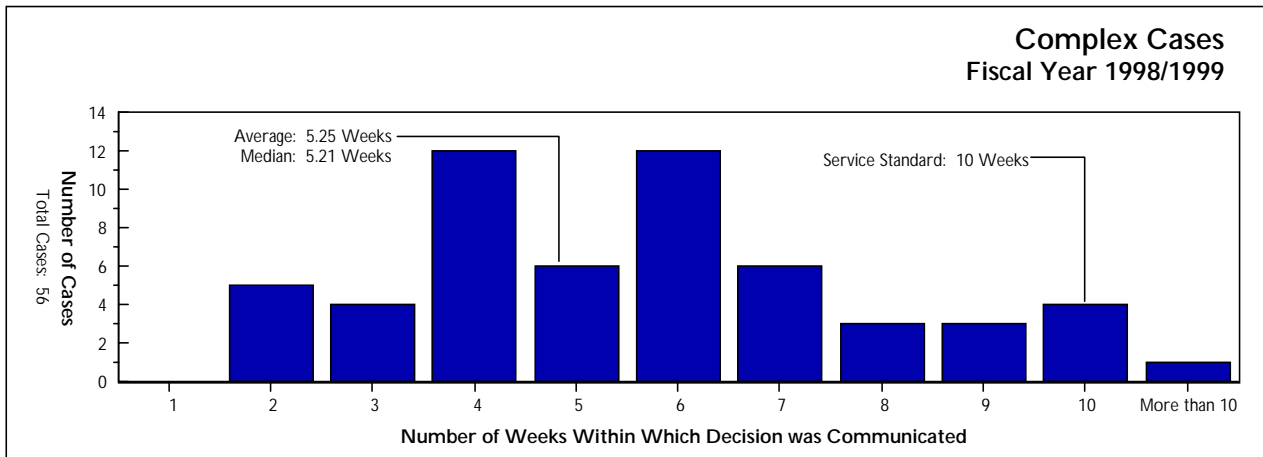
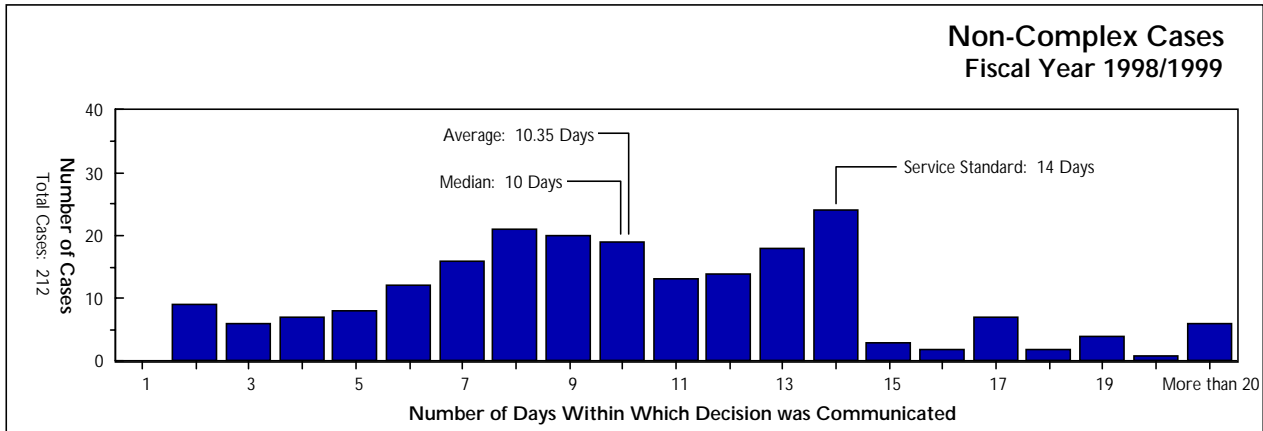
²⁴Refer to the Fee and Service Standards Handbook available on the Bureau's Web site.

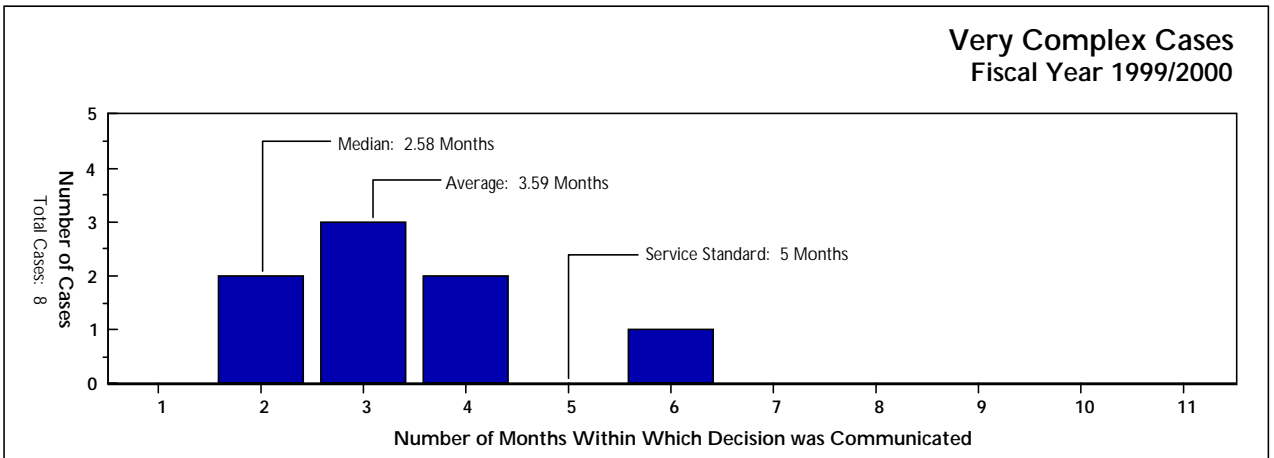
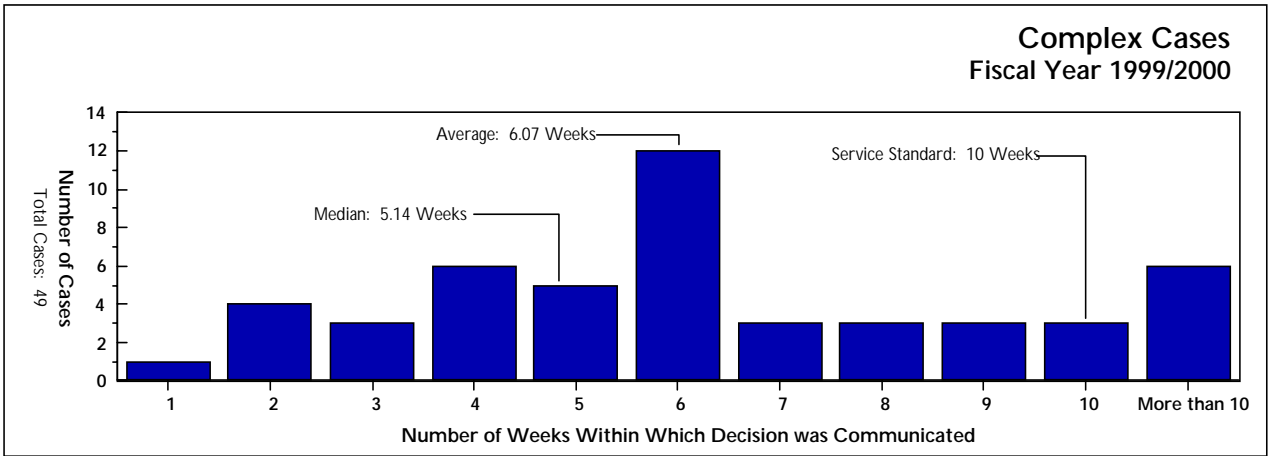
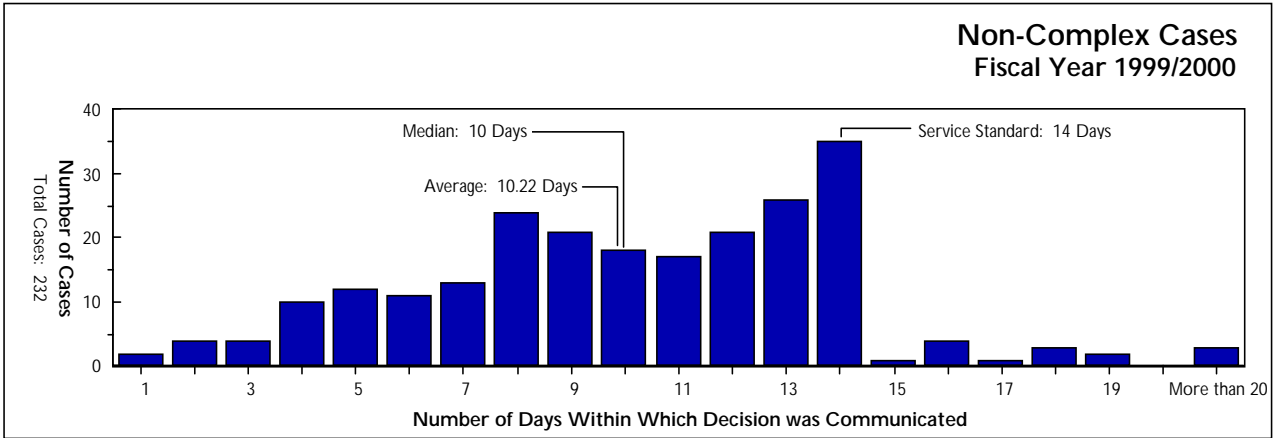
Annex A: Mergers Branch

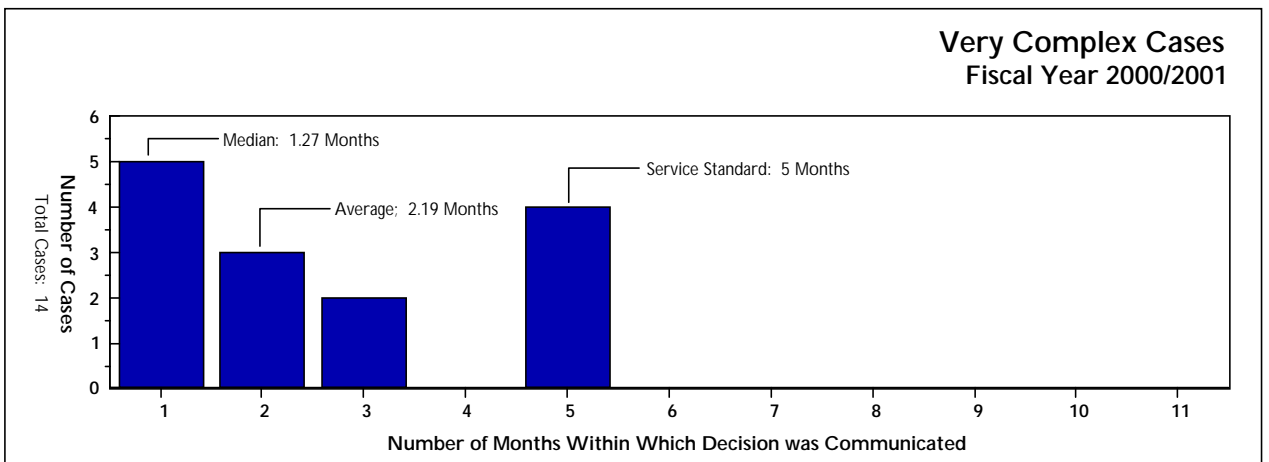
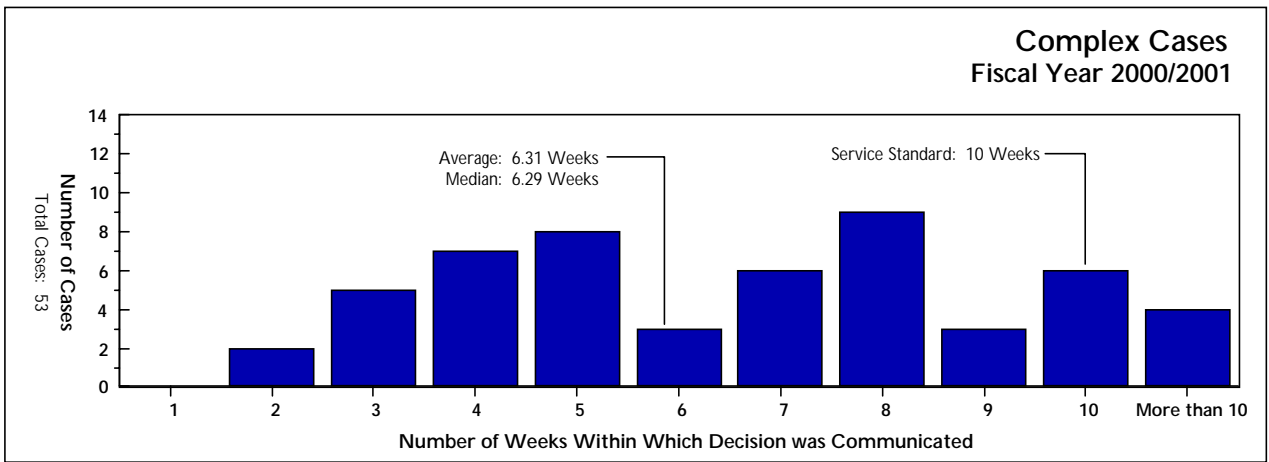
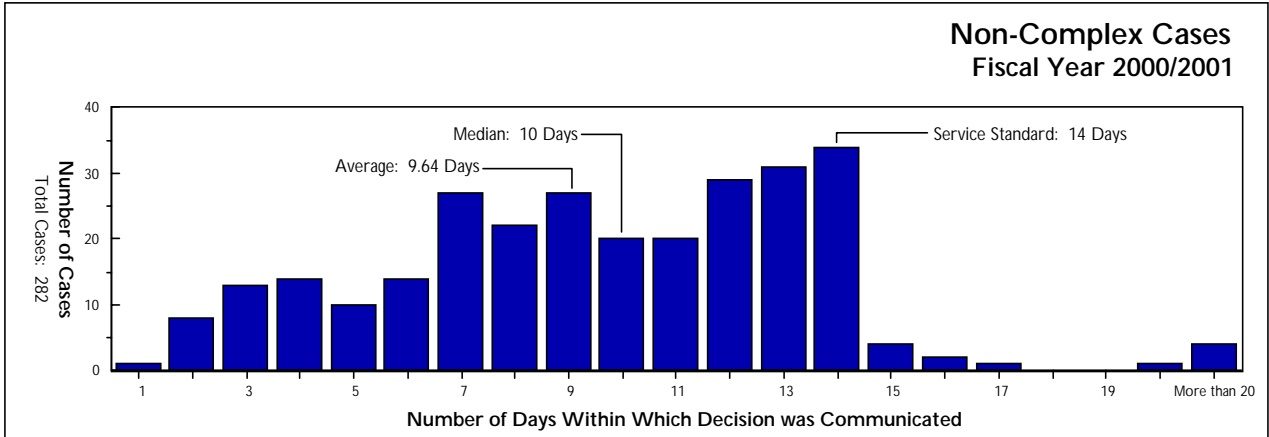
Meeting the Service Standard target: 1997-1998²⁵ to 2001-2002

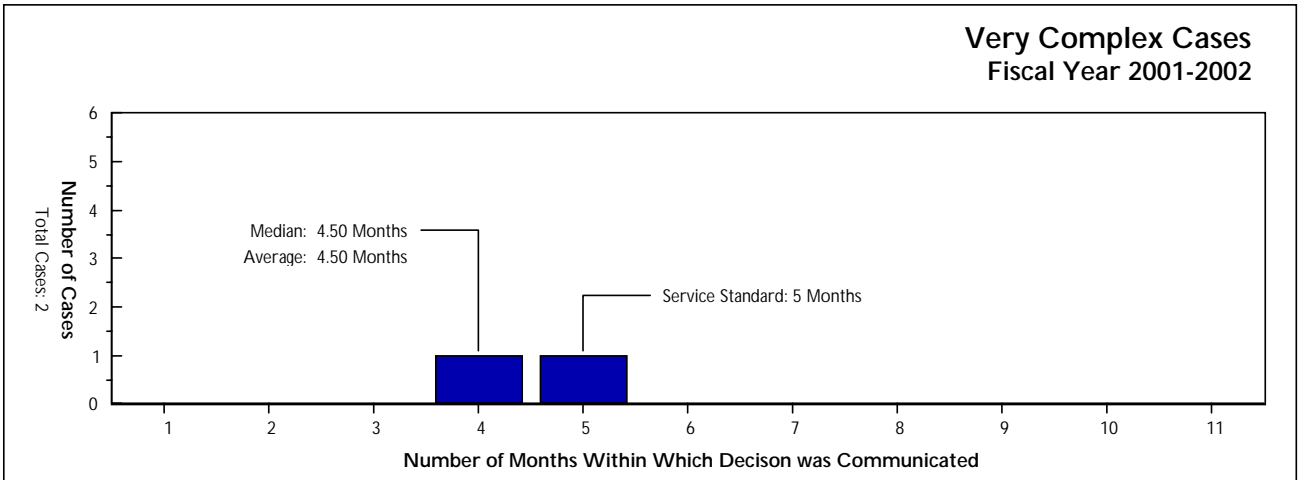
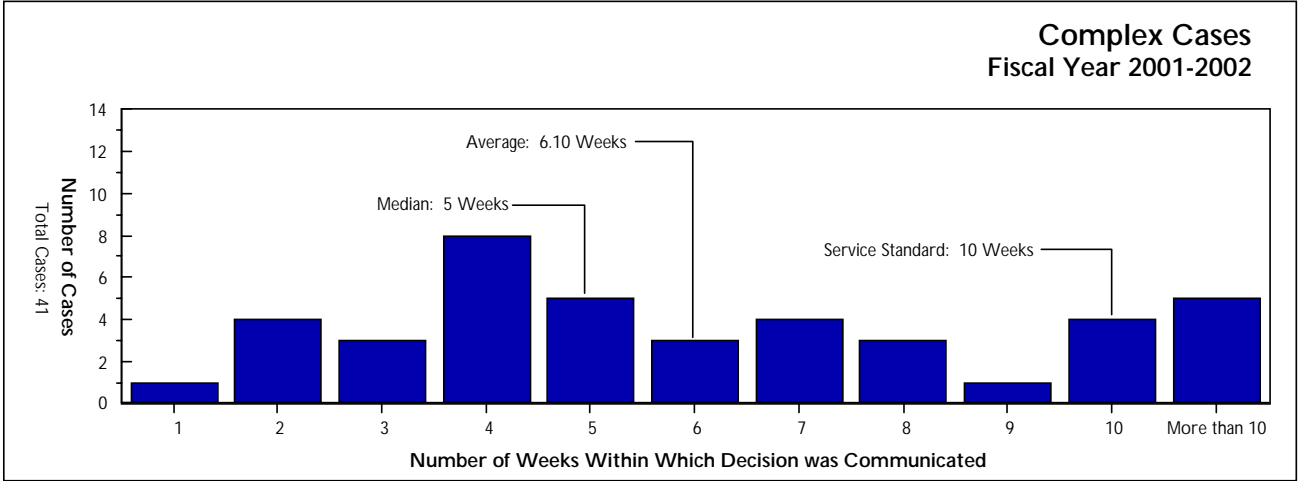
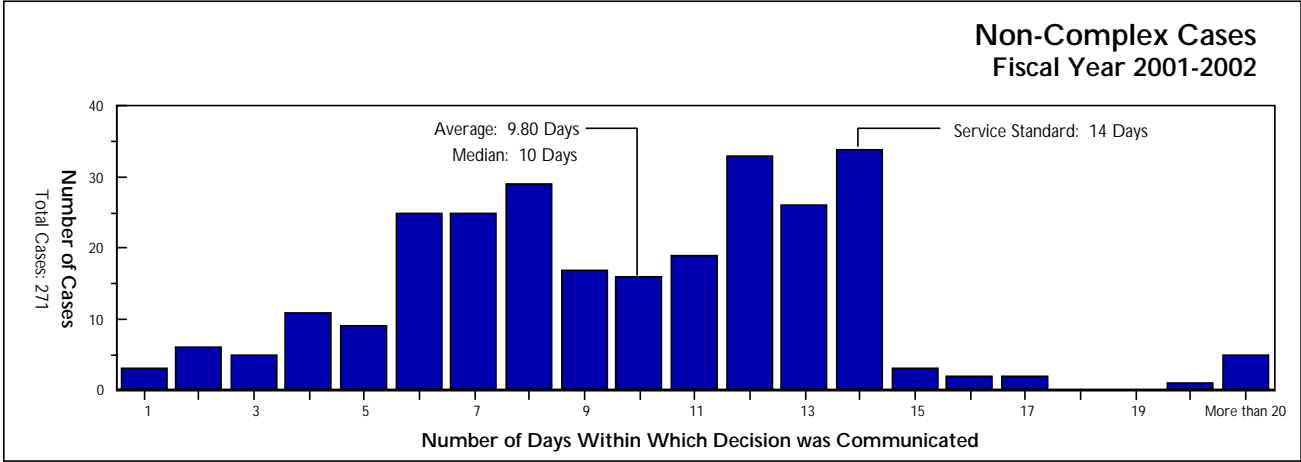


²⁵There were no very complex cases completed during this period. All securitizations have been excluded.



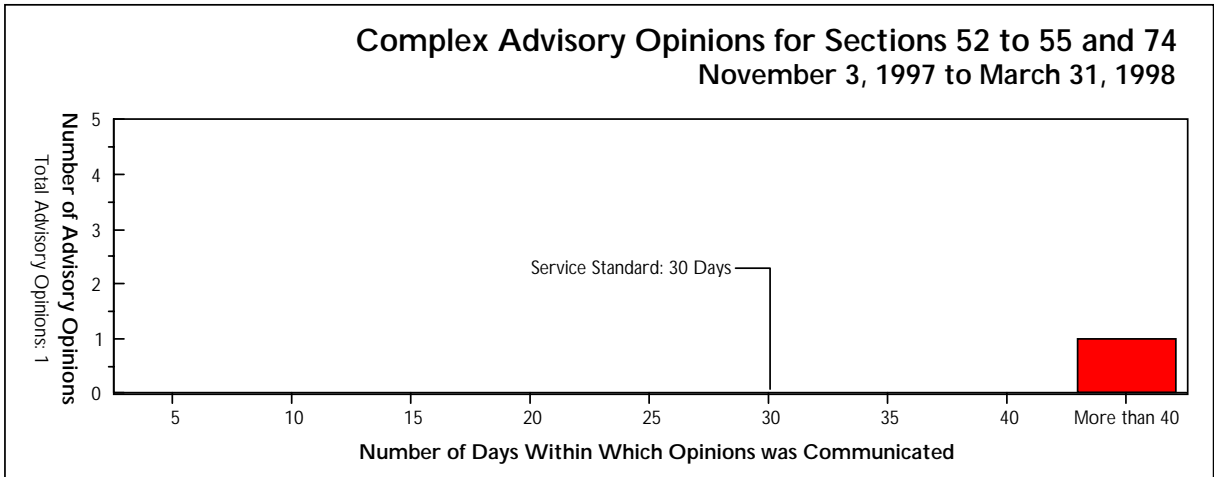
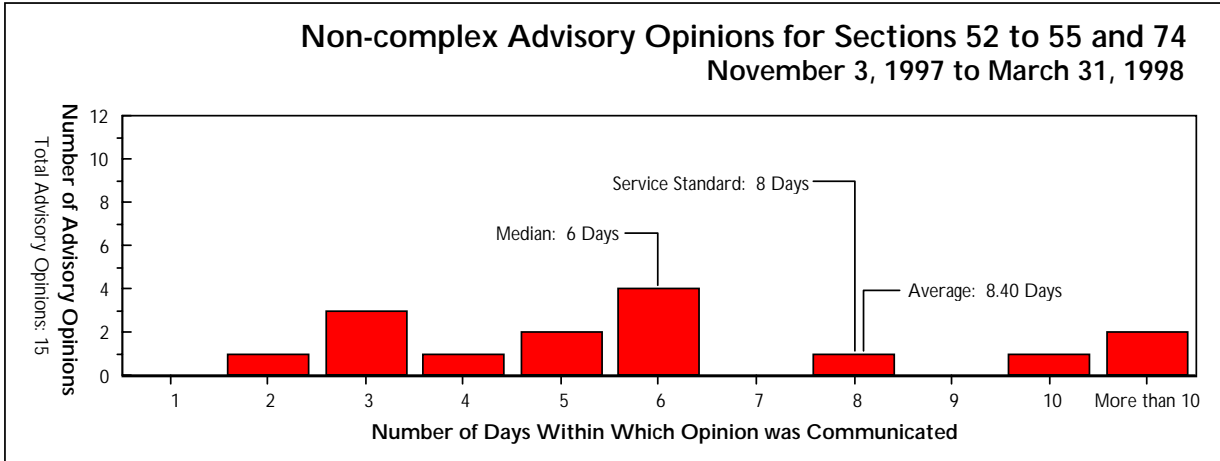




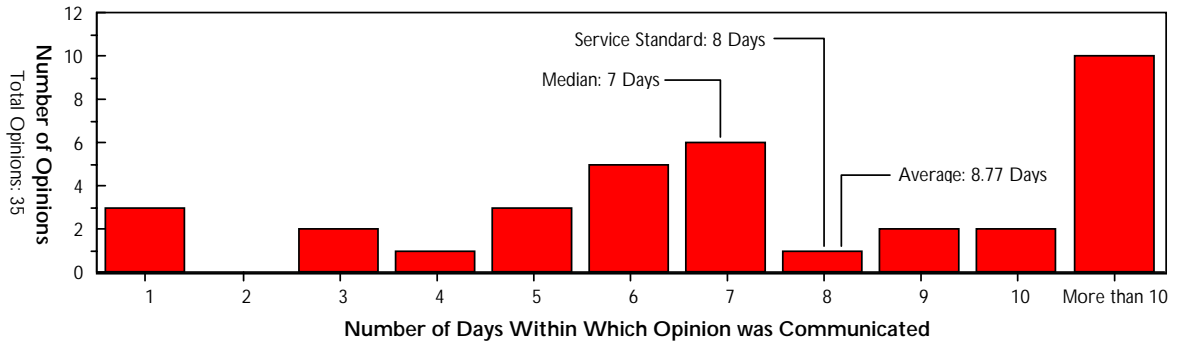


Annex B: Advisory Opinions Provided under Sections 52 to 55 and 74

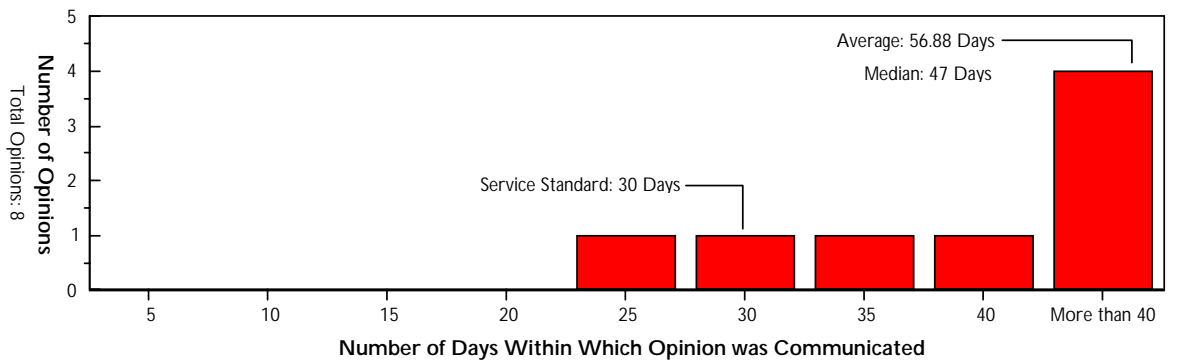
Meeting the Service Standard target: 1997-1998 to 2001-2002:



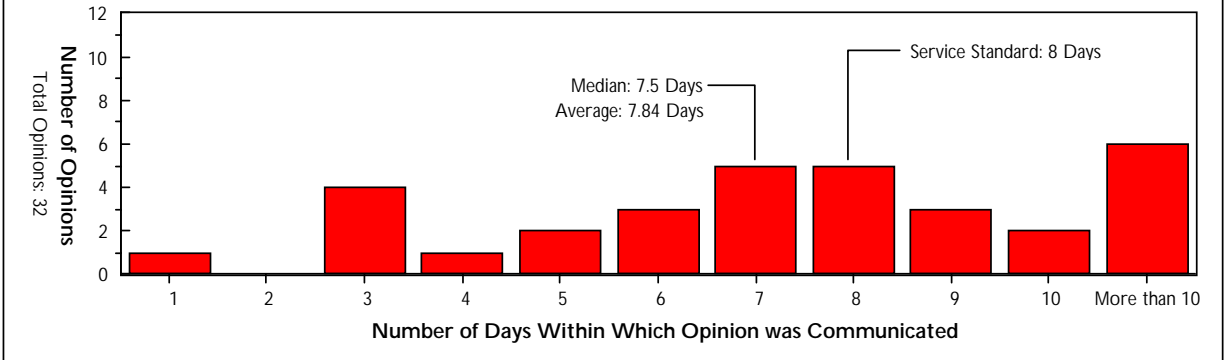
**Non-complex Advisory Opinions for Sections 52 to 55 and 74
Fiscal Year 1998-1999**



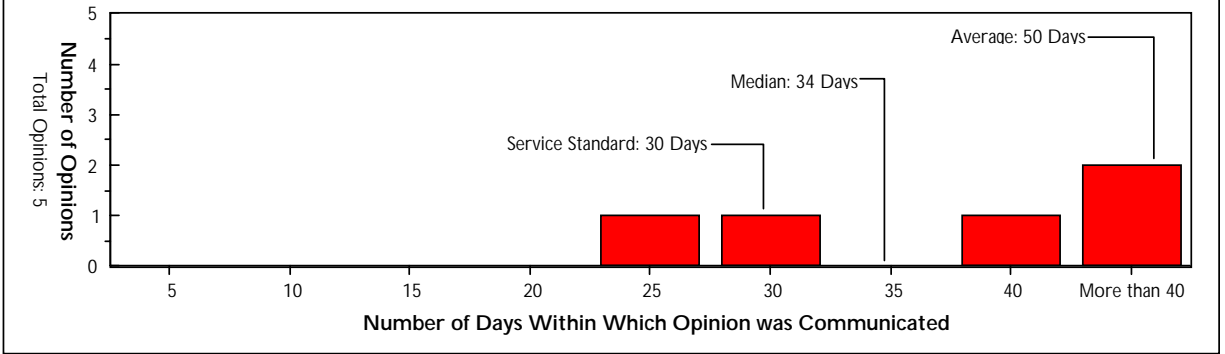
**Complex Advisory Opinions for Sections 52 to 55 and 74
Fiscal Year 1998-1999**



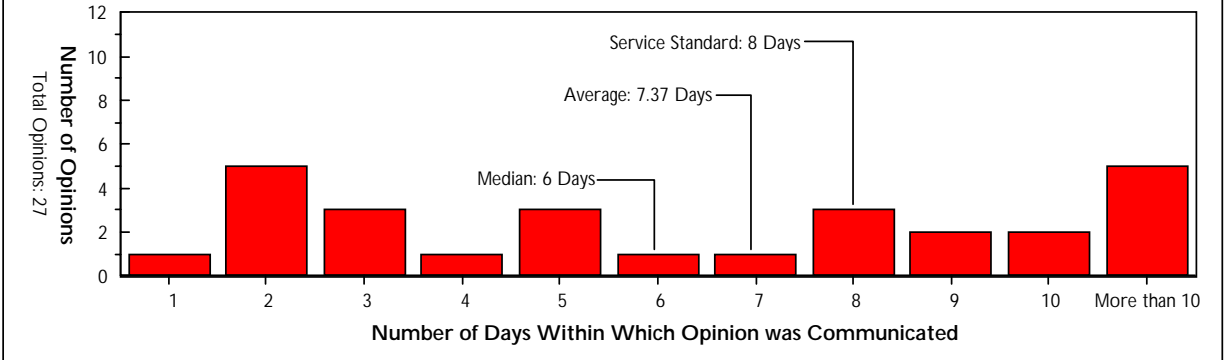
Non-complex Advisory Opinions for Sections 52 to 55 and 74 Fiscal Year 1999-2000



Complex Advisory Opinions for Sections 52 to 55 and 74 Fiscal Year 1999-2000



Non-complex Advisory Opinions for Sections 52 to 55 and 74 Fiscal Year 2000-2001



Complex Advisory Opinions for Sections 52 to 55 and 74 Fiscal Year 2000-2001

