



Competition Bureau Fee and Service Standards Handbook

December 2003

Revised on December 4, 2003

TABLE OF CONTENTS

Introduction	4
Background	4
Principles	5
The Bureau’s Contact Information	6
Review/Feedback Mechanisms	7
Summary, Fees and Service Standards	8
Merger Review	9
Introduction	9
Merger notification filings and ARCs	9
Examination Process	10
Merger Notification Unit (MNU)	11
Complexity Definitions	11
Non-Complex Mergers	11
Complex Mergers	12
Very Complex Mergers	13
Information Requirements	13
Non-complex transactions	13
Complex and Very Complex Transactions	15
Service Standards	16
Fees	18
Refund Policy	19
Written Opinions	19
Introduction	19
Complexity Definitions	20
Non-complex written opinions	20
Complex written opinions	20

Information requirements	21
Civil Provisions: Sections 75, 77, 78, 79 and Criminal Provisions: Sections 45, 50, 61	21
Civil Provisions: sections 75, 77, 78, 79	22
Criminal Provisions: Sections 45, 50, 61	23
Misleading Representations and Deceptive Marketing Practices (Sections 52 to 55.1 and 74.01 to 74.06)	25
Merger Notification Provisions: Part IX and the <i>Notifiable Transactions Regulation</i>	32
Service Standards	34
Fees	36
Refund Policy	37
Photocopies	38
Fees	38
Appendix A	39

INTRODUCTION

The Competition Bureau is an independent law enforcement agency responsible for the administration and enforcement of the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act* and the *Precious Metals Marking Act*. Its role is to promote and maintain fair competition so that Canadians can benefit from lower prices, product choice and quality services. Headed by the Commissioner of Competition, the organization investigates anti-competitive practices and promotes compliance with the laws under its jurisdiction.

Since November 1997, fees and applicable service standards as stipulated in the Competition Bureau's *Fee and Service Standards Policy* (Policy)¹, have been in place for statutory merger notification filings, advance ruling certificate (ARC) requests, advisory opinions, and photocopies.

This Handbook is intended to be used as reference material for those individuals or companies requesting the above-mentioned services and/or those who are bound by merger statutory requirements. The Handbook is also used by Bureau officers undertaking these activities as reference material.

This Handbook is intended to provide guidance as to the type of information that should be included as part of a competition brief or additional submissions appended to a notification filing as well as in a request for a written opinion. These materials will assist the Bureau in its determination of the complexity of a proposed transaction or business conduct and will help expedite the review process.

BACKGROUND

The Bureau established fees in November 1997 pursuant to the *Department of Industry Act* (DIA) for a number of services and regulatory processes under the Act. These included statutory merger notification filings, ARC requests, advisory opinions, and photocopies. With fees came challenging, but attainable service standards. These standards were established to respond to timeliness and predictability concerns voiced by stakeholders and the requirement of federal government policy with respect to the imposition of any fee.

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 six years ago, the Bureau has adhered to this policy. With respect to merger filings and ARC requests, which generate 99% of fee revenues, the Bureau undertook a major benchmarking exercise in 2000 of its merger review² process.

¹The *Fee and Service Standards Policy* can be found on the Bureau's Web site at www.cb-bc.gc.ca under Business Services, Fees and Service Standards.

²The *Merger Review Benchmarking Report* can be found on the Bureau's Web site at www.cb-bc.gc.ca under Merger Info.

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 progress would have been impossible.

The increased fees better reflect the cost of merger review and of providing the new written opinions. Even at the new fee level, the Bureau continues to recover only partial costs. These changes will enable the Bureau to continue to deliver client service with enhanced efficiency and timeliness.

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 fora also give the Bureau an opportunity to report publicly on its performance.

The Bureau's Policy is consistent with the government's overall objective of fairness, which seeks to ensure that those who benefit most from a service should pay for it, rather than have all Canadians pay through general taxation. The Policy also recognizes the "public good" component related to the activities covered by the Policy. These fees have been developed within this framework and in consideration of other government and Bureau policy objectives.

THE BUREAU'S CONTACT INFORMATION

Table 1 lists the addresses where requests for the services and regulatory processes outlined in this Handbook may be sent. It also lists contact information for those requiring clarification or having questions regarding a particular matter.

Table 1: Contact Information

Service or Regulatory Process	Address	Contact Information
Merger notification filings, ARC requests, and written opinion requests with respect to Part IX	Competition Bureau 50 Victoria St. Gatineau, Québec K1A 0C9 Attn: Merger Notification Unit	Merger Notification Unit, Mergers Branch Phone: (819) 953-4297, (819) 953-7092, or toll free 1 800 348-5358 Facsimile: (819) 953-6169 e-mail: Compbureau@cb-bc.gc.ca
Written opinion requests with respect to sections 52 to 55.1 and 74.01 to 74.06	Competition Bureau 50 Victoria St. Gatineau, Québec K1A 0C9 Attn: Fair Business Practices Branch	Information Centre Phone: (819) 997-4282 or toll free: 1 800 348-5358 Facsimile: (819) 997-0324 e-mail: Compbureau@cb-bc.gc.ca
Written opinion requests with respect to sections 45 to 51 and 61	Competition Bureau 50 Victoria St. Gatineau, Québec K1A 0C9 Attn: Criminal Matters Branch	Information Centre Phone: (819) 997-4282 or toll free: 1 800 348-5358 Facsimile: (819) 997-0324 e-mail: Compbureau@cb-bc.gc.ca
Written opinion requests with respect to sections 75 to 90	Competition Bureau 50 Victoria St. Gatineau, Québec K1A 0C9 Attn: Civil Matters Branch	Information Centre Phone: (819) 997-4282 or toll free: 1 800 348-5358 Facsimile: (819) 997-0324 e-mail: Compbureau@cb-bc.gc.ca

Information Related to Wire Transfers	<p style="text-align: center;">Competition Bureau 50 Victoria St. Gatineau, Québec K1A 0C9</p> <p style="text-align: center;">Attn: Management Policy and Services, Compliance and Operations Branch</p>	<p style="text-align: center;">Information Centre</p> <p>Phone: (819) 997-4282 or toll free: 1 800 348-5358 Facsimile: (819) 997-0324 e-mail: Compbureau@cb-bc.gc.ca</p>
---------------------------------------	--	--

REVIEW/FEEDBACK MECHANISMS

Parties requesting the services outlined in this document or who are subject to merger notification requirements are invited to provide feedback to the Bureau by completing the brief evaluation cards enclosed with each response. These cards are mailed to the Bureau’s Compliance and Operations Branch who prepares monthly reports for the respective branches. Parties who wish to remain anonymous can omit providing their names when completing the cards. In order to maintain the respondent’s anonymity, the branches responsible for providing these services and statutory requirements do not have access to the completed feedback cards.

Additionally, the Bureau will continue to conduct fora every two years to review performance, service levels, and any concerns voiced by stakeholders.

Complaints regarding services and regulatory processes for which fees and service standards apply can be directed to the Deputy Commissioner of Competition, Compliance and Operations Branch. The Deputy Commissioner 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 document or in conducting merger review. As such, the Deputy Commissioner remains independent and objective when resolving any complaints.

Following is the contact information for the Deputy Commissioner of Competition, Compliance and Operations Branch:

Competition Bureau, Compliance and Operations Branch
50 Victoria St.
Gatineau, Québec K1A 0C9
Telephone: (819) 953-7942
Facsimile: (819) 953-3464

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

Following is the Commissioner of Competition’s contact information:

Competition Bureau
 50 Victoria St.
 Gatineau, Québec K1A 0C9
 Telephone: (819) 997-3301
 Facsimile: (819) 953-5013

All complaints will be handled in the strictest confidence.

SUMMARY, FEES AND SERVICE STANDARDS

Table 2: Service/Regulatory Process Fees and Service Standards

Service or Regulatory Process	Fee	Service Standard*
Merger Notification Filings and ARC requests		
non-complex	\$50,000	2 weeks
complex	\$50,000	10 weeks
very complex	\$50,000	5 months
Written Opinions		
Sections 45 to 51 and 79 ³		
non-complex	\$15,000	6 weeks
complex	\$15,000	10 weeks
Sections 52, 52.1, 53, 54, 55, 55.1, 74.01(1)(a), 74.01(1)(c), 74.01(2), 74.01(3), 74.02, 74.04, 74.05, 74.06 ⁴		
non-complex	\$1,000	2 weeks
complex	\$1,000	6 weeks
Part IX Written Opinions		

³These sections deal with conspiracy, foreign directives, “bid-rigging”, conspiracy relating to professional sport, agreements or arrangements of federal financial institutions, illegal trade practices, definition of “allowance”, and abuse of dominant position.

⁴These sections deal with false or misleading representations; deceptive telemarketing; deceptive notice of winning a prize; double ticketing; multi-level marketing and pyramid selling; misleading warranties and guarantees; misleading price representations; untrue, misleading or unauthorized use of tests and testimonials; non-availability of advertised specials; sale above advertised price; and promotional contests.

non-complex	\$5,000	2 weeks
complex	\$5,000	4 weeks
Written Opinions with respect to any other provision		
non-complex	\$5,000	4 weeks
complex	\$5,000	8 weeks
Photocopies	\$0.25	N/A

*A Service Standard represents the **maximum** time within which the Bureau will endeavour to provide a response.

MERGER REVIEW

INTRODUCTION

Since the Handbook was first published in 1997, a number of changes have affected Part IX (Notifiable Transactions) of the Act and the information required to be submitted. Specifically, in January 2000, amendments to Part IX and the *Notifiable Transactions Regulations*⁵ came into force. The regulations outline the information required to be submitted in a merger notification filing. The amount of information required was also made more comprehensive in order to facilitate the merger review process. In addition, the Bureau has published a *Procedures Guide for Notifiable Transactions and Advance Ruling Certificates* and a series of *Interpretation Guidelines*.⁶ Parties are encouraged to review these documents for additional guidance.

As the following information is necessarily general in nature, parties are encouraged to contact the Merger Notification Unit (MNU) at the telephone numbers provided in Table 1.

MERGER NOTIFICATION FILINGS AND ARCS

Pursuant to Part IX of the Act, merger notification filings are required in respect of specified proposed transactions. Generally, notification is required when the parties to a transaction, together with their affiliates, have combined assets in Canada or annual gross revenues from sales in, from or into Canada greater than \$400 million in aggregate value and the specific transaction involves:

- a. An acquisition of assets in Canada of an operating business, where the aggregate value of those assets or the annual revenue from sales in or from Canada generated from those assets is greater than \$50 million;
- b. An acquisition of voting shares of a corporation that has assets in Canada or annual gross revenues from sales in or from Canada greater than \$50 million, where, in the case of an acquisition of voting shares of a public corporation, the transaction would result in the acquiring party owning more than 20% or 50% of the voting shares or, in the case of an acquisition of voting shares of a private corporation, more than 35% or 50% of the voting shares;
- c. An amalgamation of corporations, where the aggregate value of the assets in Canada of the continuing corporation, or the annual gross revenues from sales generated from the assets of the continuing corporation in or from Canada, is greater than \$70 million;
- d. Establishing a combination, where the aggregate value of the assets in Canada that are the subject matter of the combination, or the annual gross revenues from sales in or from Canada

⁵The *Notifiable Transactions Regulations* can be found on the Bureau's Web site at: www.cb-bc.gc.ca under Merger Info.

⁶These documents can be found on the Bureau's Web site at www.cb-bc.gc.ca under Merger Info

from the assets that are the subject matter of the combination, is greater than \$50 million; or,

- e. An acquisition of an interest in an existing combination that has assets in Canada or annual gross revenues from sales in or from Canada greater than \$50 million, where the transaction would result in the acquiring party having an aggregate interest entitling that person to receive more than 35% or 50% of the profits or assets on dissolution.

When these thresholds are met, the persons proposing the transaction are required to notify the Commissioner of the proposed transaction and provide the information specified in the *Notifiable Transactions Regulations*. In addition, parties to a notifiable transaction are required to wait for the expiry of a specified waiting period before completing the transaction⁷.

The provisions of Part IX of the Act are complex. If in any doubt, parties to a transaction should seek legal advice on the applicability of the provisions in their particular case.

Under section 102 of the Act, where the Commissioner is satisfied by the parties to a proposed transaction that he would not have sufficient grounds to apply to the Competition Tribunal for a remedial order under section 92, the Commissioner may issue an ARC in respect of the proposed transaction. Issuance of an ARC by the Commissioner exempts the transaction from application of the notifiable transactions provisions when the transaction is completed within one year of the date of issuance.

Where the Commissioner exercises the discretion not to issue an ARC, parties may still be required to provide a merger notification filing to the Commissioner before proceeding with their transaction, if the applicable thresholds are exceeded. However, in these circumstances, the Commissioner or a person authorized by the Commissioner has the discretion under ss. 113(c) of the Act to waive merger notification when substantially the same information required in a merger notification filing was provided in the ARC request.

EXAMINATION PROCESS

Since the implementation of the merger provisions of the Act in 1986, the Bureau has adopted a flexible, compliance-oriented approach for the review of merger cases. Counsel to the parties typically will produce a competition brief, which will provide background information on the transaction and the industry, and present the views of the parties on the major issues that have to be analysed. In some cases supporting documentation is provided. These materials and initial discussions with the parties are often useful as an introduction to the matter and may help focus the subsequent examination on key issues. Initial materials and discussions are complementary to, but not a substitute for, the normal examination process.

In most non-complex cases, a minimal amount of information is required by the Bureau to prepare a

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

timely decision, and it is usually not necessary for Bureau staff to obtain a significant amount of information from third parties such as customers, competitors and suppliers in order to verify the submissions of the parties.

Depending on the nature of the matter, written or oral requests for information and documents will be made to the parties. In a few cases, such requests may be very extensive, may be requested under oath or may require the exercise of formal powers. In addition, an important part of the examination in many complex and very complex cases will be the collection of information from other market participants, including customers, competitors, suppliers, industry associations and government regulatory agencies. In a few cases, particularly in very complex cases, the Bureau will engage outside economic and industry consultants to assist in the examination process.

MERGER NOTIFICATION UNIT (MNU)

The MNU is responsible for receiving and initially processing Part IX filings and ARC requests. It also deals with issues of the application and interpretation of Part IX and conducts the assessment of many non-complex matters. Upon receipt of a statutory filing or ARC request, the MNU reviews the information and documentation to ensure it satisfies the requirements provided for in the Act, Bureau publications including the Interpretation Guidelines, as well as the information requirements included in this Handbook. If the information and documentation is not complete, a MNU representative will contact the party (through counsel) to clarify what is required in order to satisfy compliance with the Act and/or the *Fee and Service Standards Policy*. Once a complete filing or ARC request is received, a senior competition law officer of the Mergers Branch will classify the transaction's complexity, usually within five business days, and assign it to a Bureau officer to commence its investigation. An explanation of the applicable complexity level and service standard period is provided to the parties in writing at that time.

The MNU will provide non-binding assistance by telephone on the application of the Part IX provisions but such advice is limited to simple issues. Parties with concerns raising complicated fact scenarios or legal issues are encouraged to seek private legal counsel and, if desired, request a written opinion under section 124.1 of the Act (see page 32).

The MNU reviews trade publications and media to ensure the Bureau has been notified of all relevant transactions. In appropriate cases, parties to transactions that appear to be notifiable, and for which no filing has been made, will be contacted by the MNU to seek compliance with Part IX if necessary. Where parties, or their counsel, discover a failure to notify, they are encouraged to contact the MNU as soon as possible. Failure to notify is a criminal offence pursuant to the Act.

COMPLEXITY DEFINITIONS

Non-Complex Mergers

Non-complex transactions are readily identifiable by the absence of competition issues and the minimal

amount of work required to complete assessments. There is no or minimal competitive overlap between the parties. Mergers where the parties' combined post merger market share is less than 10% generally fall within this category.

Examples of non-complex transactions include many mergers in unconcentrated industries such as upstream oil and gas exploration and extraction, (this would exclude pipelines, processing/refining and distribution), mining (where the parties are not significant players in Canada), and real estate. Other examples include management-led buy-outs, sale and lease-back agreements, increases in share holdings that result in changes from *de facto* (in fact) to *de jure* (in law) control (i.e. 40% to 55% control), and international mergers where only one of the parties has a significant presence in Canada.

Most non-complex transactions are brought to the Bureau's attention by way of Advance Ruling Certificate requests or short form merger notification filings.

Approximately 80% of merger transactions fall within the non-complex category.

Complex Mergers

Complex mergers involve transactions between direct or potential competitors or between customers and suppliers where there are indications that the transaction may create or enhance market power, as described in the enforcement policies set out in the *Merger Enforcement Guidelines*⁸. Generally, they occur in concentrated industries where there are barriers to entry. Complex merger transactions often generate unsolicited, credible complaints regarding the creation or enhancement of market power.

As well, mergers that have multiple product and geographic market overlap where there are market power indicators, will usually fall into the complex category. Other examples of complex mergers include those within new or emerging industries, mergers in industries going through a process of deregulation, transnational mergers resulting in multi-jurisdictional competition reviews where there is a need for cooperation and coordination among the reviewing agencies, and mergers that give rise to uncertain market definitions that require third party confirmation or input.

The assessment of complex merger transactions usually presents one or more analytical challenges, such as defining the correct relevant market, evaluating the effectiveness of remaining competition, assessing potential sources of new competition, or determining the impact of change and innovation in a market.

In addition to reviewing issues with the merging parties and their counsel and reviewing precedent cases, complex merger examinations require third party contacts to obtain information and test the merging parties' submissions and additional information requests. The examination usually involves two or more officers from the Mergers Branch working as a team and may require economic and legal support.

⁸The *Merger Enforcement Guidelines* can be found on the Bureau's Web site at: www.cb-bc.gc.ca under Merger Info.

Approximately 15% of merger transactions fall within the complex category.

Very Complex Mergers

A very complex case is typically characterised by indications early in the preliminary examination that the transaction is likely to create or enhance market power according to the enforcement policies set out in the *Merger Enforcement Guidelines*. Generally, mergers between the leading participants in concentrated industries, where it is reasonable to conclude the market share and concentration thresholds set out in the *Merger Enforcement Guidelines* are surpassed, and where high barriers to entry are evident, fall within this category. These transactions often involve considerations of complex areas of inquiry such as the failing firm factor or efficiencies defence, as well as other considerations such as the availability of a practical remedy or a unique theory of anti-competitive harm. The latter consideration is particularly important in merger cases where a prevention of competition or vertical issues are evident. Differing interests of third parties, (eg. customers and suppliers) well substantiated complaints, or competing public policy objectives, (eg. trade protection and competition) are often evident in the analysis of very complex merger transactions.

Very complex merger transactions necessitate substantial assessments and a greater volume of work than that which is required in complex transactions. Usually, very complex cases quickly progress to the formal inquiry stage and involve the use of formal powers to obtain information. The work requires the use of case teams consisting of three or more officers, economists from the Economic Policy and Enforcement Division of the Competition Bureau, legal counsel, as well as outside experts.

Approximately 5% of merger transactions fall within the very complex category.

INFORMATION REQUIREMENTS

The experience of the Mergers Branch has been that the more substantive and complete the competition brief and accompanying documents are at the initial stages of a matter, the more focussed and expeditious the review process becomes. This generally translates into specific and shorter subsequent requests for information and fewer, more focussed third party contacts. As a result, stakeholders benefit from a more timely resolution and at the same time, the Bureau has the opportunity to conduct a thorough examination of all the relevant issues.

Non-complex transactions

No or Minimal Competitive Overlap

In cases where the parties request the Commissioner to provide an ARC regarding a transaction where there is no or minimal competitive overlap, the following information should be provided with the request:

- a. A description of the parties to the transaction, any relevant time lines and the estimated market value of the transaction;
- b. A description of whether the transaction is an acquisition of assets or shares, an amalgamation, joint venture/strategic alliance, or other form of transaction;
- c. Statements describing the industry and the competitive environment of the subject transaction, including a description of the reasons why there is no or minimal competitive overlap between the merging parties;
- d. Statements outlining the reasons why there are no competition issues that arise as a result of the transaction; and,
- e. The value of the transaction as determined in the prescribed manner pursuant to the *Notifiable Transactions Regulations* and an indication whether this value is based upon the aggregate value of the assets or gross revenues from sales.

Moderate Competitive Overlap

In cases where there is a moderate degree of competitive overlap and industry concentration, the Bureau typically will require more information than referred to immediately above. Examples would include mergers in markets where the combined market shares of the parties are greater than 10%, but less than 35% where there do not appear to be concerns about creating or enhancing market power.

In addition to the information required in section 16 of the *Notifiable Transactions Regulations* parties should also submit:

- a. The current customers of the parties (that account for more than 2% of the total annual volume or dollar value of purchases and sales respectively), together with their addresses, contact names, telephone numbers, and dollar or volume amount sold to each customer;
- b. A description of the geographic regions of sales for the parties to the proposed transaction;
- c. The estimated market value of the transaction;
- d. A summary description of any product overlap or geographic overlap among the products that make up the subject businesses of the parties;
- e. An estimate of the pre-merger and post-merger market shares of each of the overlapping products in the product and geographic markets using third party data if available or estimated by the parties;
- f. An existing competitive impact analysis, competition brief or other documents that address

the basis for the parties' market definition and market share/concentration submissions, as well as the other relevant factors under section 93 of the Act such as conditions of entry and effectiveness of remaining competition; and,

- g. The value of the transaction as determined in the prescribed manner pursuant to the *Notifiable Transactions Regulations* and an indication whether this value is based upon the aggregate value of the assets or gross revenues from sales.

Complex and Very Complex Transactions

The key points that need to be addressed in any merger review are the definition of product and geographic markets, conditions of entry, market shares/concentration, and the degree of effective competition remaining after the proposed transaction. The Bureau almost always requires a long form filing in very complex cases. Where gains in efficiencies or the failing firm factor are relevant, these also need to be assessed. The competition brief should provide the parties' views on these issues and provide supporting documentation. In preparing these materials, it will be useful to review the *Merger Enforcement Guidelines* that set out in detail the approach taken by the Bureau for each of the factors to be considered in a merger review.

The Bureau is receptive to meeting with parties at the pre-filing stage in order to discuss filing procedures and requirements. In addition to discussing the anticipated complexity level, the Bureau will discuss which of the prescribed forms should be submitted and what other information would be required. Additionally, where the transaction is a transnational merger involving a multi-jurisdictional competition review, it is the Bureau's experience that early discussion on international inter-agency cooperation is very useful.

The Bureau has found that relevant pre-existing business documents used in the normal course of operations are very useful in assessing the factors to be considered. Parties are strongly advised to include the documents required under section 17 of the *Notifiable Transactions Regulations* and:

- a. Any presentations, studies, reports or other documents prepared for the board of Directors or senior management that discuss the rationale for the proposed transaction and that provide information on aspects of the transaction likely to be relevant (e.g. impact on pricing, output, efficiencies, competitors, market share, sales growth);
- b. Pro-forma business plans/strategic plans for the merged entity (if they exist);
- c. Any relevant business plans/strategic plans of each party for the past three years;
- d. Marketing plans for each party for the past three years for those products that they both produce and which compete;
- e. A copy of relevant sales or promotional materials that depict or describe the products made

- by both parties and which compete;
- f. Sales and production capacity (dollar and unit volume) for each of the parties for the past three years for the products they produce which compete and the location of relevant production facilities. It may be more convenient to summarise this information rather than produce underlying documents;
 - g. Documents which describe the market share of the parties over the past three years (third party sources are often useful and should be provided if available);
 - h. Internal studies, consultants' reports, industry studies, financial analysts' reports or industry publications that are relevant. Such materials, for example, may contain information on competitors, such as plant location, sales and capacity, or provide useful descriptions of the economics of the industry;
 - i. Studies or reports prepared by or for the company discussing the strengths or weaknesses of actual or potential competitors in each of the products made by both parties;
 - j. Documents describing any non-compete agreements or other types of agreements, arrangements or licences the parties may have with third parties which would impede the ability of actual or potential competitors to compete with the parties now or in the future;
 - k. Documents that describe existing co-production agreements, joint ventures or strategic alliances with any competitor in relation to the overlapping products; and,
 - l. The value of the transaction as determined in the prescribed manner pursuant to the *Notifiable Transactions Regulations* and an indication whether this value is based upon the aggregate value of the assets or gross revenues from sales.

In considering what documentation to include, the parties should exercise judgement about relevancy, duplication and usefulness. In addition, where such documents may leave a false impression or provide an incomplete picture, the parties should provide a commentary that addresses these deficiencies. Failure to do so may undermine the value of the advice the parties receive from the Bureau or may result in extending the period of time required by the Bureau to conduct its review.

The parties and their counsel are encouraged to discuss any questions or concerns they may have about the type of information or documents that may be useful in any particular circumstances with the staff of the MNU as listed in Table 1.

SERVICE STANDARDS

The Bureau aims to provide a response to requests for merger notification and ARC requests within the service standard time frames indicated in Table 3. The service standards assume cooperation in the

course of an examination. In the event that the Bureau is unable to meet these service standards, parties will be provided in advance of the service standard end date, the reasons for it not being met, and the date parties should expect a response.

Table 3: Service Standards

Merger Notification Filings and ARC Requests	Service Standard*
non-complex	2 weeks
complex	10 weeks
very complex	5 months

*A Service Standard represents the **maximum** time within which the Bureau will endeavour to provide a response.

Within five days of receipt of a complete request, parties will be informed of the complexity level and applicable service standard. The service standard commences the next business day after a complete request is received. A request is considered complete once all of the information requirements, as set out in this Handbook, have been fulfilled.

In the vast majority of cases, the information requirements set out in this Handbook will be sufficient for the Bureau to complete its assessment. However, in exceptional circumstances, additional information may be required. If, during its review, the Bureau requires more information to complete its assessment, a supplementary information request will be made to the party(ies) in writing.

Table 4 sets out the maximum number of days or weeks within which a supplementary information request should be responded to in order for the Bureau to meet the applicable service standard. If the supplementary information is not received within the time frames identified in Table 4, the Bureau will suspend the service standard ‘clock’ the day after the deadline and notice to this effect will be sent in writing to the parties. Once the supplementary information is received, the service standard ‘clock’ will resume. Parties will be notified in writing that the service standard period has resumed and informed of the new date they should expect a response.

Table 4: Time frames for supplementary information requests

Merger Notification Filings and ARC Requests	Time frame
non-complex	3 days
complex	2 weeks
very complex	3 weeks

The service standard ends when the parties are advised that 1) the Bureau has no issues or 2) the Bureau believes the transaction raises serious competition concerns which, if left unresolved, may cause the Commissioner to file an application with the Competition Tribunal. Therefore, the time devoted to discussions or negotiations aimed at resolving issues, preparations required for proceedings before the Competition Tribunal, or the time required to conduct actual Competition Tribunal proceedings, are not

included within service standard time frames.

As noted above, market participants are often an important source of information in the examination process. Accordingly, the Bureau must be in a position to discuss the proposed transaction with such participants. It is suggested that the proposed transaction be made public at or before the time of notification or application for an ARC. Where the parties would prefer to delay the public announcement of the proposed transaction, the Bureau will defer making market contacts, **provided** there will be sufficient time before closing to contact such market participants as the Bureau considers necessary. In such instances, however, the time periods for review noted above will not begin to run until such time as the Bureau is in a position to make third party contacts.

FEES

Payments may be made by VISA, MasterCard, wire transfers⁹, or by cheque payable to the Receiver General for Canada. ARC requests are subject to the GST; Québec residents add provincial sales tax and Newfoundland, New Brunswick and Nova Scotia residents add the HST.

Table 5: Fees and Applicable Taxes¹⁰ for Merger Review

Service or Regulatory Process	Fees for Québec Residents	Fees for Residents of Newfoundland, Nova Scotia and New Brunswick	Fees for residents of all other provinces and territories
Merger notification filings ¹¹	Total = \$50,000	Total = \$50,000	Total = \$50,000
ARC requests	\$50,000 + GST (\$3,500.00) + QST (\$4,012.50) Total = \$57,512.50	\$50,000 + HST (\$7,500.00) Total = \$57,500.00	\$50,000 + GST (\$3,500.00) Total = \$53,500.00

Fees for merger notification filings and ARC requests should be submitted at the same time the request or filing is made¹². In the case of an ARC request, the person making the request is responsible for

⁹For further information regarding wire transfers, parties should contact the Bureau - see Table 1. Parties should also consider any administrative fees from financial institutions.

¹⁰Only Canadian residents pay Canadian taxes.

¹¹When both a merger notification filing and ARC request are filed with respect to the same transaction, only the fee for an ARC applies.

¹²On occasion, there have been difficulties collecting payment from clients. Following up with clients to receive payment can be time consuming and costly.

payment. In the case of a merger notification filing, the filing fee should be paid by the notifying parties. The parties are free to make their own arrangements as to payment, however, the Bureau considers all notifying parties as jointly and severally liable.

REFUND POLICY

Upon written request, refunds will be provided in the following circumstances:

- a. In the case of a merger notification filing, where the parties withdraw the transaction within two days of filing;
- b. In the case of an ARC request, if the request is withdrawn within two days of application and the certificate has not been issued;
- c. Where both an ARC request and merger notification filing are submitted (perhaps on separate days) for one transaction, the two-day refund period applies to the first filing or request received; and,
- d. In the case of an over-payment.

WRITTEN OPINIONS

INTRODUCTION

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 education¹³ and the use of specific instruments such as written opinions.

Since 1997, stakeholders have requested that advisory opinions, provided within the *Fee and Service Standards Policy*, be legally binding. With the enactment of Bill C-23, now chapter 16 of the Statutes of Canada 2002, section 124.1¹⁴ of the Act provides that the Commissioner may issue legally binding written opinions. If in doubt about a proposed course of action, any person may apply to the

¹³Additional information on the Bureau's Program of Compliance is available on the Bureau's Web site at: www.cb-bc.gc.ca under Compliance and Enforcement.

¹⁴Section 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.

Commissioner, with supporting information, for an opinion as to the applicability of the Act and regulations to the proposed conduct or practice. Pursuant to section 124.1 of the Act, written opinions are binding on the Commissioner if all the material facts have been submitted and these facts are accurate. Written opinions remain binding for so long as the material facts remain substantially unchanged and the conduct or practice is carried out substantially as proposed.

The quality of the opinion is directly related to the amount and quality of relevant information provided to the Bureau by the applicant. Written opinions are based on current law and jurisprudence and are predicated on the assumption that the facts, as set out in a request, are accurate, that no material facts have been omitted or misrepresented in the submission, and that the Bureau's understanding of the facts is accurate.

The Bureau will not undertake third party contacts in the preparation of written opinions. However, there is an exception with respect to requests for written opinions under section 74.01(1)(b) of the Act concerning representations relating to performance, efficacy or length of life of a product where the Bureau may seek independent review of any such claim and/or tests accompanying an applicant's product. Where the information requirements set out below are not met in a request, the Commissioner may exercise the discretion to not provide an opinion.

Appendix A is a sample letter indicating the form most written opinions will take.

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 Bureau staff. The response will be based on the oral request by the applicant, the stated policies of the Commissioner, 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.

To promote compliance with, and foster transparency in the administration and enforcement of the Act, the Bureau may publish written opinions, or summaries thereof, that add to the understanding of how the law is administered or where a new issue or sector of the economy is being examined. Should the Bureau wish to publish an opinion in its entirety, a Bureau representative will contact the party within 30 days to seek consent. If the party objects, the Bureau will edit the opinion to remove company names and/or produce a summary of the opinion that protects identities and commercially sensitive information.

COMPLEXITY DEFINITIONS

Non-complex written opinions

Non-complex opinions are those that deal with a proposed business conduct or practice where all related and pertinent information is provided by the applicant. An opinion will be classified as non-complex when there is a sufficient amount of jurisprudential information and established Bureau policy and procedures for the Bureau to formulate an opinion and obtain concurrence from the Department of Justice.

Complex written opinions

Complex opinions are those that deal with a proposed business conduct or practice where all related information is provided by the applicant. An opinion will be classified as complex when the proposed conduct or practice deals with a novel issue, and/or where there is little or no jurisprudential information, and/or no previous interpretation on the particular subject by the Bureau. Also, economic guidance and/or a legal opinion may be required.

INFORMATION REQUIREMENTS

Business plans will vary in complexity and impact. It is not the Bureau's intention to burden the business community unnecessarily with onerous information requirements. The categories of information mentioned below are general. Parties are therefore invited to contact the Bureau in advance to allow for the submissions to focus on the key aspects of the specific proposal (refer to Table 1 for contact information).

In addition to these general requirements, specific information may be required for the sections of the Act relevant to the request. The requirements for sections for which requests are most often received are outlined below. If you wish to request a written opinion with respect to a section of the Act not identified in this Handbook, please contact the Bureau prior to making your request. A Bureau officer will be able to tell you what information should be included.

Information that is helpful to the Bureau in responding to a request for a written opinion will, in most cases, relate to the assessment of how the proposed business plan will affect the level of competition in a specific market. Following an initial determination and depending on the complexity of the issue, or the details of a proposed plan, other specific information may be needed to analyse the manufacturing, distribution, sales, pricing, promotional or other situation contemplated by those requesting the opinion.

In order to determine whether or not a company's proposed activities would adversely affect competition or an individual's business, the Bureau must be able to define, with great specificity, the nature, use, and attributes of the product and of its substitutes, if any. It is then necessary to determine within which geographic market the product is produced and sold.

The following is a non-exhaustive list of elements the Bureau generally uses to make these determinations:

Civil Provisions: Sections 75, 77, 78, 79 and Criminal Provisions: Sections 45, 50, 61

Product Market

- a. A description of the product; its intended uses; any regulations related to its production, distribution or sale; products which are complementary to its use; and any and all

- substitutes for the product;
- b. The availability of the product and the level of choice with respect to quality, size, and selection of the product;
 - c. The means by which the product is normally distributed;
 - d. Patents, trademarks or other property rights associated with the product; and,
 - e. The effect of a rise in price on purchasers' willingness to move to substitute products.

Geographic Market

- a. The markets in which the product is produced and sold. The names of competitors of the company requesting the opinion;
- b. The transportation costs associated with distributing the product; the willingness of customers to accept the transportation costs as part of the price and over what distance;
- c. Tariff and non-tariff trade barriers; regulatory restrictions on transporting, exporting or importing the product; and,
- d. The effect of a rise in price on purchasers' willingness to source product from distant markets.

Following are descriptions of the more specific information required with respect to a particular section of the Act.

Civil Provisions: sections 75, 77, 78, 79

Section 75: Refusal to Deal

Written opinion requests relating to refusal to deal should include the following additional information:

- a. If available to the supplier, information regarding the identity of its customers, and a list of the products they purchase from the company and the type of business they operate;
- b. A list of names of companies selling the same products and competing in the same market as the supplier;
- c. A description of the usual trade terms that must be met by existing and potential customers. Are the trade terms non-discriminatory, clearly defined, and made known to

customers? Information regarding existing customers who have failed to meet usual trade terms in the past;

- d. Inventory records which would demonstrate whether or not the product is in ample supply;
- e. Any information regarding changes in distribution, resulting from the inability to furnish products through all channels of distribution or due to changes in the supply structure; and,
- f. An assessment of how competition is adversely affected, which would include market share information, as well as a description of the barriers to entry and exit, excess capacity of production, time and costs required to enter the market, the degree of sunk costs faced by potential entrants and the disappearance of one or more firms from the market.

Sections 77, 78, 79: Exclusive Dealing, Tied Selling, Market Restriction, and Abuse of Dominant Position

Written opinion requests relating to exclusive dealing, tied selling, market restriction, and abuse of dominant position should include the following additional information:

- a. A complete description of the proposed plan, including any known possible effects of the plan on current or potential customers and competitors as well as the purpose for the plan (ie. superior competitive performance);
- b. An assessment of market power, which would include market share information, as well as a description of the barriers to entry and exit, excess capacity, time and costs required to enter the market, and the degree of sunk costs faced by potential entrants;
- c. A discussion of the factors affecting competition in the particular industry, including price sensitivity, transportation costs and technological innovations;
- d. Information regarding whether or not the plan in question would constitute a practice, that is a series of acts or a single act repeated a number of times; and,
- e. A discussion of the defences, limitations and exceptions provided in sections 77(4), 77(5), 77(6), 70(3), 79(4), 79(5), 79(6) or 79(7) and whether or not they apply to the proposed plan. If the parties are affiliated companies, detailed records of the relationship between the companies and documents that substantiate the relationship; any government regulation to which the activities of the industry are subject.

Criminal Provisions: Sections 45, 50, 61

Section 45: Conspiracy

Written opinion requests relating to conspiracy should include the following additional information:

- a. A complete description of the proposed plan, including the identity of the participants, and any known possible effects of the plan on current or potential customers, suppliers and competitors;
- b. An assessment of market power, which would include market share data over a three year period for each of the participants and their competitors in the relevant market, as well as a description of the difficulties associated with entering and exiting the business, including, but not limited to, the scale, time and costs required to enter;
- c. A discussions of the factors affecting competition in the particular industry, including price sensitivity, advertising, transport costs, technological innovations, etc;
- d. A description of the countervailing power of those affected by the plan, if any; details of market response to the proposed plan, such as customer reactions, if they are known; and,
- e. A discussion of the defences and exceptions provided in sections 45(3), 45(5), and 45(6), if they apply to the proposed plan, as well as the applicability of any other provincial or federal laws or regulations, if any, to the activities and industry involved. In claiming a defence under 45(3) firms may wish to provide an assessment of the impact of the plan on prices, quantity or quality of production, markets or customers, or channels or methods of distribution; as well as whether the plan will restrict anyone from entering into or expanding a business.

Section 50(1)(a): Price Discrimination

Written opinion requests relating to price discrimination should include the following additional information:

- a. A description of the proposed pricing plan and its duration, including any proposed fee schedule, discounts, rebates, allowances, price concessions or other advantages available to potential customers;
- b. A description of the quantity and quality of articles involved in the proposed plan;
- c. A description of the competing purchasers of the articles, as well as any affiliations between the seller and purchasers, or among the purchasers; an assessment as to whether or not buying groups, franchises or international affiliates are involved; and,

- d. A description of the terms and conditions upon which the proposal will be available to purchasers, for what duration and to whom it will be available. Further, an explanation of whether the terms and conditions are to be made known to purchasers, as well as whether or not the terms and conditions are achievable by all potential competing purchasers.

Section 50(1)(c): Predatory Pricing

Written opinion requests relating to predatory pricing should include the following additional information:

- a. A description of the pricing plan, its intended duration, the rationale behind the plan, and the desired effect on competitors in the short and long term, a description of the terms and conditions upon which these prices will be offered;
- b. An assessment of market power, which would include market share data over a three year period, as well as a description of the difficulties associated with entering and exiting the business, including the time and costs required to enter; and,
- c. The marginal or average variable cost and average fixed and total costs of producing/selling the product; a discussion of any losses expected as a result of the plan and for what duration; a discussion of the expectation, if any, of recoupment of the losses at a later date or through another profit centre.

Section 61: Price Maintenance

Written opinion requests relating to price maintenance should include the following additional information:

- a. A description of the methods and channels of supply proposed in the plan, including the firm's marketing objectives, a list of customers, and a description of the type of customer and the customers' marketing strategy or niche; a description of the industry norms related to the chain and levels of supply; and, a copy of any contract or agreement setting out the terms of relevant franchise or principal/agent arrangements;
- b. A description of the criteria used by the firm to determine which distributors, agents or resellers or other customers will obtain supply; details of the terms and conditions of supply, such as those governing payment and credit, transportation, cooperative advertising, leases, consignment arrangements, and restrictions, such as exclusivity or granting of geographical territories;
- c. Details of any affiliations between the firm and any of its customers; and,

- d. Details of any difficulties experienced with existing or previous customers, including pressure to deal with a certain group or class of customer, and on specific pricing terms.

Misleading Representations and Deceptive Marketing Practices (Sections 52 to 55.1 and 74.01 to 74.06)

Written opinions may be requested by parties on proposed representations, advertisements, promotional material, and business plans to determine the applicability of the misleading representations and deceptive marketing practices provisions of the Act. Written opinions may be requested with regard to provisions that deal with criminal offences or reviewable practices.

Examples of the materials that may be submitted for a written opinion are: any proposed advertisement, solicitation, or notice including any telemarketing script; representations that include claims relating to performance, efficacy or length of life of a product; representations that relate to ordinary selling price; multi-level marketing plans; and promotional contests. The information required by the Bureau to prepare a written opinion is described below.

General Information Required for All Requests

A clear description of the proposed representation and/or business plan accompanied by all relevant supporting information as set out in the following paragraphs will ensure that the representation and/or business plan is assessed in relation to the most appropriate provisions of the Act.

- a. Indicate which information should form the basis of the opinion if a promotion involves both French and English material. Note that if a review of material in both languages is desired, two requests will be required.¹⁵
- b. Include the proposed representation and/or business plan, draft of the advertisement, solicitation, notice or telemarketing script and the context in which the representation will be made so that an informed assessment can be made of the general impression created by the representation. In addition, there should be a statement of the facts which are relevant to the representation. The statement of facts should include any information relevant to the representations and the general impression likely to be created by those representations, including, but not limited to:
 - i. an indication of the intended target audience of the representations, and the characteristics of that target audience that may be relevant to the determination of the general impression created by the representation;
 - ii. an explanation of the general impression that the advertiser expects will be created in

¹⁵Two requests are required because different languages could create nuances that may produce different general impressions.

the minds of the target audience and why; and,

iii. an explanation as to how the promotional media selected are expected to successfully reach the target audience.

- c. Describe the medium in which the proposed representation will appear (i.e. newspaper, television, packaging, Internet, etc.) and provide geographic area where it will run; and,
- d. Include the name, address and phone number of the applicant, advertiser, or proposed business.

In addition to the above general information requirements, following are descriptions of the more specific information required with respect to a particular section of the Act.

Section 52.1: Deceptive telemarketing

Written opinion requests relating to telemarketing should include the following additional information:

- a. The identity of the person on behalf of whom the communication is being made;
- b. The nature of the product or business interest being promoted;
- c. The purposes of the communication;
- d. The price of the product being promoted; and,
- e. Any restrictions, terms, or conditions applicable to the delivery of the product.

In addition to the above, the following information should be included with a request relating to a contest, lottery, game of chance or skill, or mixed chance and skill:

- f. The number of prizes available;
- g. The cost and approximate retail value of the prizes;
- h. The area or areas to which the prizes relate; and,
- i. Any fact which affects the chances of winning the prizes.

Section 53: Deceptive notice of winning a prize

Written opinion requests relating to notices of winning a prize should include the following additional information:

- a. A description of anything the recipient must do to qualify for the prize or benefit;
- b. The cost associated with the act described in point (a) above;
- c. Any other cost associated with winning or qualifying to win the prize or benefit;
- d. The number of prizes or benefits available;
- e. The cost and approximate retail value of the prizes;
- f. The area or areas to which the prizes or benefits relate;
- g. Any fact which affects the chances of winning the prizes or benefits;
- h. The time required to deliver the prizes or benefits; and,
- i. The method by which participants are selected, or prizes or benefits are distributed.

Sections 55 and 55.1: Multi-level Marketing and Pyramid Selling¹⁶

Written opinion requests relating to multi-level marketing plans should include the following additional information:

- a. Adequate disclosure of all material facts relating to the proposed plan, such as the disclosure of typical earnings in cases where the plan contains representations relating to compensation; the plan's buy-back or refund policy; and a description of any purchases that may be required to join the proposed plan;
- b. A description of the compensation plan;
- c. Copies of all promotional brochures, pamphlets, videos, audiotapes, Web sites, contractual agreements, and any other material which provides information relating to the marketing plan;

¹⁶The Commissioner may exercise the discretion to not issue an opinion with respect to certain multi-level marketing plans which promote products where there is difficulty in establishing their value such as gold or silver coins, discount or debit cards, or products of the travel industry. When the value of a product cannot be accurately established, it is difficult to determine whether its purchase price includes consideration which is being paid for the right to receive bonuses for the recruitment of participants to the plan.

Additionally, an opinion will not be provided where the operator of the plan is situated outside of Canada and there is no entity incorporated in Canada, or where there is no individual located in Canada who accepts liability for the actions of the operator in Canada.

- d. A description of when and how any promotional material will be used; and,
- e. Confirmation that the proposed plan raises no issues that are being considered by any other law enforcement agency in Canada or abroad.

Section 74.01(1)(b): Representations not based on adequate and proper test

The applicant is responsible for ensuring that representations related to the performance, efficacy and length of life of the product are based on adequate and proper tests. The Commissioner may exercise the discretion not to provide a written opinion if additional tests are necessary to determine if the proposed representations are based on adequate and proper tests.

Written opinion requests relating to such claims should include the following additional information:

- a. A copy of all tests known to the advertiser which relate to each performance, efficacy or length of life claim, including the test methodology, all test data and results, and any other relevant information;
- b. A description of who performed the tests, where and when they were conducted;
- c. The product itself. The Bureau may seek independent review of any performance, efficacy or length of life claim and/or tests accompanying an applicant's product;
- d. A description of all standards and standards setting and monitoring organizations that relate to the production or use of the advertised product and that are relevant to the proposed performance, efficacy or length of life claims; and,
- e. A list of all countries where the product is or has been marketed including complete disclosure of any past or pending legal or regulatory challenge pertaining to the performance, efficacy or length of life of the product.

Subsection 74.01(2): Misleading price representations - Suppliers Generally

Written opinion requests relating to comparative price representations, where reference prices are based on market prices, should include the following additional information, as applicable:

- a. The date or dates of the planned representation;
- b. The sale price as well as the reference price of the product;
- c. An indication as to whether the representation relates to the price at which the product or like products have been, are or will be ordinarily supplied by suppliers generally in the relevant market;

- d. A description of the product and an indication of any products available in the relevant market which should be considered to be like products for the purpose of analysis, complete with an explanation as to why the product should be considered a like product;
- e. A description of the nature of the product, with particular emphasis on the characteristics which might influence analysis under the provision when evaluating the representations (for example, whether the product is seasonal in nature);
- f. An identification of the relevant geographic market and an explanation as to why this is the geographic market for the purposes of analysis;
- g. The geographic scope of the proposed advertising;
- h. The names and addresses of all of the suppliers in the relevant geographic market who sell the product or like products;
- i. The approximate total volume of the product sold or to be sold by each of the suppliers generally in the relevant geographic market in the twelve months preceding the proposed representation or in the twelve months after the proposed representation, as appropriate;
- j. The approximate total volume of the product sold or planned to be sold at the reference price by each of the suppliers generally in the relevant geographic market in the twelve months preceding the proposed representation or in the twelve months after the proposed representation, as appropriate;
- k. The number of days the product will be offered at or above the reference price by other suppliers in the relevant geographic market in the six months preceding the proposed representation, or in the six months after the proposed representation, as appropriate; and,
- l. A full discussion demonstrating whether for the relevant period, to the best of the applicant's knowledge:
 - i. the product is openly available in appropriate volumes by suppliers generally in the relevant geographic market;
 - ii. the reference price offered by suppliers generally in the relevant geographic market is based on sound pricing principles and/or was reasonable in light of competition;
 - iii. the reference price was a price that suppliers in the relevant geographical market fully expected the market to validate, whether or not the market did validate this price; and/or,

- iv. the reference price was a price at which genuine sales had occurred, or it was a price comparable to that offered by competitors.

Subsection 74.01(3): Misleading price representation - Suppliers Own

Written opinion requests relating to comparative price representations, where reference prices are based on the supplier's own prices, should include the following additional information, as applicable:

- a. The date or dates of the planned representation;
- b. The sale price as well as the reference price of the product;
- c. An indication as to whether the representation relates to the price at which the product or like products are or will be ordinarily supplied by the supplier making the representation in the relevant market;
- d. A physical description of the product and an indication of any products offered by the supplier in the relevant market which should be considered to be like products for the purpose of analysis, complete with an explanation as to why the product should be considered a like product;
- e. A description of the nature of the product, with particular emphasis on the characteristics which might influence analysis under the provision when evaluating the representations (for example, whether the product is seasonal in nature);
- f. An identification of the relevant geographic market and an explanation as to why this is the geographic market for the purposes of analysis;
- g. The geographic scope of the proposed advertising;
- h. The approximate total volume of the product sold or to be sold by the supplier in the relevant geographic market in the twelve months preceding the proposed representation or in the twelve months after the proposed representation, as appropriate;
- i. The total volume of the product sold or planned to be sold at the reference price by the supplier in the twelve months preceding the proposed representation or in the twelve months after the proposed representation, as appropriate;
- j. The number of days that the product was or will be offered at or above the reference price by the supplier in the six months preceding the proposed representation, or in the six months after the proposed representation, as appropriate; and,
- k. A full discussion demonstrating whether, for the period in question:

- i. the product will be openly available by the supplier in appropriate volumes;
- ii. the reference price is based on sound pricing principles and/or was reasonable in light of competition in the relevant market;
- iii. the reference price is a price that the supplier fully expects the market to validate, whether or not the market did validate this price; and/or,
- iv. the reference price is a price at which genuine sales has occurred, or it is a price comparable to that offered by competitors.

Section 74.06: Promotional Contests

Written opinion requests relating to promotional contests should include the following additional information:

- a. A copy of the Rules and Regulations for the contest;
- b. A description of the medium in which the proposed promotion will appear (i.e. newspapers, television, packaging, Internet, etc.) and the approximate time frames and the geographic area where it will run;
- c. The contest starting and closing dates;
- d. A description of how the participants will be selected;
- e. The number and value of prizes being awarded;
- f. A description of how prizes will be distributed;
- g. A description of any regional allocation of prizes;
- h. The chances of winning each class of prize or a description of why it is not possible to know the probability;
- i. Skill-testing question requirement, if applicable;
- j. Any fact within the knowledge of the contest-runner, that would affect materially one's chances of winning;
- k. Purchase requirements, if applicable; and,

1. Copies of all advertising or other material which will be used to promote the contest and a description of when and how this material will be used.

If submitting artwork for an opinion, ensure that all visuals and copy are readable. If the contest is to be advertised in different media or in different versions, ensure that all material relating to each version and media type is submitted as an opinion only applies to the content of the particular request and is not applicable to any other representations made in the course of the promotion.

Merger Notification Provisions: Part IX and the *Notifiable Transactions Regulations*¹⁷

General

Parties seeking a written opinion respecting a question of interpretation or application of Part IX of the Act or the *Notifiable Transactions Regulations*, should submit all relevant information necessary to understand the question, its context, and all material facts necessary for a meaningful application of the requested interpretation or application of the law. This includes:

- a. A description of the parties; and,
- b. A description of the transaction.

Parties considering requesting a written opinion pursuant to Part IX of the Act or the *Notifiable Transactions Regulations* are encouraged to contact the MNU (refer to Table 1 for contact information) beforehand in order to discuss what information may be relevant.

Parties seeking an opinion respecting a proposed transaction should request an ARC pursuant to s.102 of the Act.

Part IX Written Opinion Complexity Definitions

Non-complex Written Opinions

Non-complex opinions are those that deal with questions of interpretation or application of Part IX of the Act or the *Notifiable Transactions Regulations* where all related and pertinent information is provided by the applicant. An opinion will be classified as non-complex when there is a sufficient amount of jurisprudential information and established Bureau policy and procedures for the Bureau to formulate an opinion.

Complex Written Opinions

Complex opinions are those that deal with questions of interpretation or application of Part IX of the Act or the *Notifiable Transactions Regulations* where all related information is provided by the applicant. An opinion will be classified as complex when the question deals with a novel issue, and/or where there is little or no jurisprudential information, and/or no previous interpretation on the subject by the Bureau. Also, economic and/or legal guidance may be required.

¹⁷A written opinion cannot take the place of an ARC request or short/long form filing regarding the notification requirements set out in Part IX or the substantive review of the competitive effects of a (specific) merger.

SERVICE STANDARDS

The Bureau aims to provide a response to requests for written opinions within the service standard time frames indicated in Table 6. The service standards assume cooperation in the course of an examination. In the event that the Bureau is unable to meet these service standards, parties will be provided in advance of the service standard end date, in writing, the reasons for it not being met, and the date parties should expect a response.

Table 6: Service Standards for Written Opinions

Written Opinion	Service Standard*
Sections 45 to 51 and 79 ¹⁸	
non-complex	6 weeks
complex	10 weeks
Sections 52, 52.1, 53, 54, 55, 55.1, 74.01(1)(a), 74.01(1)(c), 74.01(2), 74.01(3), 74.02, 74.04, 74.05, 74.06 ¹⁹	
non-complex	2 weeks
complex	6 weeks
Part IX Written Opinions	
non-complex	2 weeks
complex	4 weeks
Written Opinions with respect to any other provision	
non-complex	4 weeks
complex	8 weeks

*A Service Standard represents the **maximum** time within which the Bureau will endeavour to provide a response.

Within five days of receipt of a complete request, parties will be informed of the complexity level and applicable service standard. The service standard commences the next business day after a complete request is received. A request is considered complete once all of the information requirements, as set out in this Handbook, have been fulfilled.

¹⁸These sections deal with conspiracy, foreign directives, “bid-rigging”, conspiracy relating to professional sport, agreements or arrangements of federal financial institutions, illegal trade practices, definition of “allowance”, and abuse of dominant position.

¹⁹These sections deal with false or misleading representations; deceptive telemarketing; deceptive notice of winning a prize; double ticketing; multi-level marketing and pyramid selling; misleading warranties and guarantees; misleading price representations; untrue, misleading or unauthorized use of tests and testimonials; non-availability of advertised specials; sale above advertised price; and promotional contests.

In the vast majority of cases, the information requirements set out in this Handbook will be sufficient for the Bureau to complete its assessment. However, in exceptional circumstances, additional information may be required. If, during its review, the Bureau requires more information to complete its assessment, a supplementary information request will be made to the party(ies) in writing.

Table 7 sets out the maximum number of days within which a supplementary information request should be responded to in order for the Bureau to meet the applicable service standard. If the supplementary information is not received within the time frames identified in Table 7, the Bureau will suspend the service standard ‘clock’ the day after the deadline and a notice to this effect will be sent in writing to the parties. Once the supplementary information is received, the service standard ‘clock’ will resume. Parties will be notified in writing that the service standard period has resumed and will be informed of the new date they should expect a response.

Table 7: Time frames for supplementary information requests

Written Opinions	Time frame
Requests relating to Part IX	
non-complex	3 days
complex	5 days
All other requests	
non-complex	5 days
complex	5 days

The service standard ends when the opinion has been mailed to the applicant and/or the party receives verbal confirmation followed by the written response.

FEES

Payments may be made by VISA, MasterCard, wire transfers²⁰ or by cheque payable to the Receiver General for Canada. Written opinions are subject to the GST; Québec residents add provincial sales tax and Newfoundland, New Brunswick and Nova Scotia residents add the HST.

Table 8: Fees and Applicable Taxes²¹ for Written Opinions

Written Opinions	Fees for Québec Residents	Fees for Residents of Newfoundland, Nova Scotia and New Brunswick	Fees for residents of all other provinces and territories
Sections 45 to 51 and 79	\$15,000 + GST (\$1,050.00) + QST (\$1,203.75) Total = \$17,253.75	\$15,000 + HST (\$2,250.00) Total = \$17,250.00	\$15,000 + GST (\$1,050.00) Total = \$16,050.00
Sections 52, 52.1, 53, 54, 55, 55.1, 74.01(1)(a), 74.01(1)(c), 74.01(2), 74.01(3), 74.02, 74.04, 74.05, 74.06	\$1,000 + GST (\$70.00) + QST (\$80.25) Total = \$1,150.25	\$1,000 + HST (\$150.00) Total = \$1,150.00	\$1,000 + GST (\$70.00) Total = \$1,070.00
Other Provisions	\$5,000 + GST (\$350.00) + QST (\$401.25) Total = \$5,751.25	\$5,000 + HST (\$750.00) Total = \$5,750.00	\$5,000 + GST (\$350.00) Total = \$5,350.00

Fees for written opinions should be submitted at the same time the application is made.²² The person making the request is responsible for payment.

Only one fee applies for a written opinion that might involve the review of multiple sections of the Act.

²⁰For further information regarding wire transfers, parties should contact the Bureau - see Table 1. Parties should also consider any administrative fees from financial institutions.

²¹Only Canadian residents pay Canadian taxes.

²²On occasion, there have been difficulties collecting payment from clients. Following up with clients to receive payment can be time consuming and costly.

The Bureau will continue to charge \$50 to charitable organizations ²³.

REFUND POLICY

Refunds will be provided in the following circumstances:

- a. If the request is withdrawn in writing within two days of filing;
- b. Where the Commissioner exercises the discretion to not provide an opinion within fourteen days of receiving the request;
- c. In the case of an over-payment.

Due to the short service standards for non-complex written opinions concerning sections 52, 52.1, 53, 54, 55, 55.1, 74.01(1)(a), 74.01(1)(c), 74.01(2), 74.01(3), 74.02, 74.04, 74.05, 74.06 of the Act, refunds will not be provided.

²³The *Income Tax Act*'s definition of a charitable organization will be used to determine the applicability of this stipulation.

PHOTOCOPIES

Fees for photocopies apply to requests for copying services made to the Bureau, including requests for copies of documents seized under warrants issued pursuant to section 15 of the Act that have not been returned to the parties from whom they were seized. Bureau policy does provide that parties subject to a search may make copies of essential working documents prior to their being removed from the premises.

FEES

Payments may be made by VISA, MasterCard, or by cheque payable to the Receiver General for Canada and wire transfers²⁴. Photocopies will be subject to a fee of \$0.25 per page and are subject to GST; Quebec residents add provincial sales tax; Newfoundland, Nova Scotia and New Brunswick residents add the HST. The fee is payable once the work has been completed.

Table 9: Fees and Applicable Taxes²⁵ for Photocopies

Service or Regulatory Process	Fees for Québec Residents	Fees for Residents of Newfoundland, Nova Scotia and New Brunswick	Fees for residents of all other provinces and territories
Photocopies	\$0.25 + GST (\$0.02) + QST (\$0.02) Total = \$0.29/page	\$0.25 + HST (\$0.04) Total = \$0.29/page	\$0.25 + GST (\$0.02) Total = \$0.27/page

²⁴For further information regarding wire transfers, parties should contact the Bureau at the coordinates listed in Table 1. Parties should also consider any administrative fees from financial institutions.

²⁵Only Canadian residents pay Canadian taxes.

APPENDIX A

Sample Letter of a Written Opinion

Place du Portage I
50, rue Victoria
Gatineau (Québec)
K1A 0C9
burconcurrency@bc-cb.gc.ca

Place du Portage I
50 Victoria Street
Gatineau, Québec
K1A 0C9
compbureau@cb-bc.gc.ca

Télécopieur-Facsimile
(819) 953-5013
Téléphone-Telephone
(819) 997-3301

Date:

Name
1 Street name
City, Province
Postal Code

Dear Mr. _____:

Re: Written Opinion

I am writing in response to your letter of *date*, in which you request a written opinion under section 124.1 for guidance on the application of the *Competition Act* (the “Act”) to your proposed business conduct.

Section 124.1 of the Act states that: “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.”

This opinion seeks to facilitate business conduct by indicating whether a proposed conduct or practice would provide the Commissioner of Competition (“Commissioner”) with sufficient grounds to commence an inquiry on his/her own initiative pursuant to paragraph 10(1)(b) of the Act. You should understand that the Commissioner has no authority to decide the law. In addition, you should be aware that the Commissioner, under certain circumstances, is obliged to commence an inquiry under paragraphs 10(1)(a)²⁶ and 10(1)(c)²⁷ of the Act.

This opinion has been prepared based on the information provided and taking into account current jurisprudence and opinions, Bureau knowledge and the stated policies of the Bureau.

Based on our understanding of the facts, and the information that you have provided, it is our

²⁶ Paragraph 10(1)(a) provides that six Canadian residents, under certain circumstances, can require that the Commissioner commence an inquiry.

²⁷ Paragraph 10(1)(c) provides that the Minister may direct the Commissioner to commence an inquiry

opinion that your proposed business conduct *would or would not* provide the Commissioner sufficient grounds to commence an inquiry.

Our understanding of the facts, based on the information that you have provided, is as follows.

The Proposed Plan or Business Conduct

Because the Bureau will make a decision based on the information provided by the parties involved, the information that the Bureau has relied on will be included in this portion of the opinion.

The Parties (if required)

The Bureau will provide a brief description of the parties involved.

Competition Analysis (if required)

This matter was reviewed under section **XX** (or sections, X, Y and Z) of the Act and the following issues were examined:

The Bureau will proceed to describe its analysis of the transaction using all the information provided by the applicant, jurisprudence, etc.

Conclusion

This opinion is based on current law and jurisprudence and is predicated on the assumption that the facts, as set out in your request, are accurate, that no material facts have been omitted or misrepresented in your submission, and that our understanding of the facts is accurate. This opinion is binding so long as the facts provided are accurate, the material facts remain unchanged, the conduct or practice is carried out substantially as proposed, and the law and jurisprudence remain unchanged. Should any of these factors change, you should apply for a new opinion.

If applicable: To promote compliance with, and foster transparency in the administration and enforcement of the Act, the Bureau may publish written opinions, or summaries thereof, that add to the understanding of how the law is administered or where a new issue or sector of the economy is being examined. Name of Bureau Officer, will contact you within 30 days to seek consent to publish this opinion in its entirety. If you object, the Bureau will edit the opinion to remove company names and/or produce a summary of the opinion that protects identities and commercially sensitive information.

If you have any further questions or require clarification of this letter, please do not hesitate to contact ***Mr. X/Ms. Y at telephone number or e-mail or fax.***

Yours sincerely,
Designated Authority (Name & Title)