



**Government  
of Canada**

**Gouvernement  
du Canada**

## **Competition Bureau Fee and Service Standards Policy**

**COMPETITION BUREAU**

**March, 2003**

**Canada**



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## INTRODUCTION

The Competition Bureau (the 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 administration and enforcement 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.

The Bureau's Fee and Service Standards Policy (the 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.

This Policy amends and replaces the Bureau's Fee Charging Policy approved by the Minister of Industry on November 1, 1997.

For further information related to this Policy, consult the Bureau's *Fee and Service Standards Handbook* (Handbook) available at: [www.cb-bc.gc.ca](http://www.cb-bc.gc.ca).

## THE SERVICES AND REGULATORY PROCESSES FOR WHICH FEES APPLY

### Merger Notification

Pursuant to Part IX of the Act, parties proposing a merger transaction that meets specific thresholds, must, before completing the transaction, notify the Commissioner of Competition (the Commissioner) and supply the Commissioner with information as specified in the Act and the *Notifiable Transactions Regulations*. The transaction cannot be completed before the expiration of a certain period<sup>1</sup> unless the Commissioner provides prior notification to the person or persons that he does not intend to make an application to the Competition Tribunal.

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<sup>1</sup>14 and 42 days pursuant to paragraphs 123(1) (a) and 123(1) (b) of the Act respectively, depending on the type of notification filed.

## **Advance Ruling Certificates**

Under section 102 of the Act, 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, the Commissioner may issue an Advance Ruling Certificate (ARC) in respect of a proposed transaction.

## **Written Opinions**

Pursuant to its Program of Compliance, the Bureau continues to promote and ensure compliance with the provisions of the Act through a variety of mechanisms including a program of communications and education<sup>2</sup> and the use of specific instruments such as written opinions.

Since 1997, stakeholders have requested that written opinions, provided within the framework of the former Fee Charging Policy, be legally binding. With the enactment of Bill C-23, now chapter 16 of the Statutes of Canada 2002, section 124.1<sup>3</sup> 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 Commissioner, with supporting information, for an opinion on whether a proposed conduct or practice would raise an issue under the Act. 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 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 requester. Opinions will be prepared based on the information provided and taking into account relevant previous jurisprudence and opinions, Bureau knowledge and the stated policies of the Commissioner. The Bureau will not undertake third party contacts in the preparation of written opinions. The Commissioner may exercise his discretion to not provide an opinion.

The Bureau will continue to provide informal oral advice in instances where the issues are not

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<sup>2</sup>Additional information is available in the Competition Bureau's Program of Compliance publication.

<sup>3</sup>Section 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.

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 will 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. With the consent of the requesting parties, opinions will be published in their entirety. Where consent is not obtained, 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.

### **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 removal from the premises.

### CONSULTATIONS

In developing this proposal, consideration has been given to the comments received during the June 2001 Merger Forum as well as during meetings organized by the Bureau's Merger Notification Unit. From August to October 2002, stakeholders were invited to comment on the consultation paper published in Part I of the Canada Gazette and were later invited to participate in consultation fora in December 2002. The comments received through these consultations were also considered and are reflected in this Policy. Those consulted included members of the legal and business communities as well as representatives of a number of organizations including consumer associations.

Based on the comments received, the Bureau has maintained the current service standards for merger review<sup>4</sup>. With respect to written opinions, the Bureau has reviewed its experience under the Fee Charging Policy and the impact of the binding nature of opinions issued under section 124.1. A number of service standards are similar to those under the previous policy while some have been extended to reflect the expected impact to workload of making written opinions binding on the Commissioner.

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<sup>4</sup>Service Standards will continue to be reviewed in view of the worldwide trend of convergence related to certain antitrust and merger review activities. For further information related to convergence, refer to the International Competition Network (ICN) Web site at [www.internationalcompetitionnetwork.org](http://www.internationalcompetitionnetwork.org).

Having considered the comments received, the bureau has revised its fee schedule for written opinions and maintained the original fee proposal for merger review.

#### FEES AND SERVICE STANDARDS

The Minister of Industry, pursuant to sections 18, 19, and 20 of the *Department of Industry Act*, hereby fixes the following fees, to become effective on April 1, 2003.

**Table 1: 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 <sup>5</sup>		
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 <sup>6</sup>		
non-complex	\$1,000	2 weeks
complex	\$1,000	6 weeks
Part IX Written Opinions		
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

\*Service Standards represent the maximum amount of time within which the Bureau will provide a response.

Fees for merger notification filings and ARC requests are to be submitted at the same time the

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<sup>5</sup>Sections 45 to 51 and 79 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.

<sup>6</sup>These sections deal with false or misleading representations; deceptive telemarketing; deceptive notice of winning a prize; double ticketing; multi-level marketing and pyramid selling; false or misleading representations; 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.

request or filing is made. In the case of a request for an ARC, the person making the request is responsible for payment. In the case of a merger notification filing, the filing fee should be paid by the notifying parties. When both an ARC and merger notification are filed, only the fee for the ARC applies. The parties are free to make their own arrangements as to payment, however the Bureau considers all notifying parties as jointly and severally liable.

Fees for written opinions are to be submitted at the same time the request is made. 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. The Bureau will continue to charge \$50 to charitable organizations; other government organizations must pay the full fee. When uncertain about making a request, parties are encouraged to consult the Handbook and/or contact the Bureau's Information Centre at 1-800-348-5358 and/or visit the Bureau's Web site at: [www.cb-bc.gc.ca](http://www.cb-bc.gc.ca).

## REFUND POLICY

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

- In the case of a merger notification filing, where the parties withdraw the transaction within two days of filing;
- In the case of a request for an ARC, if the request is withdrawn within two days of application and the certificate has not been issued;
- 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 submitted.
- In the case of written opinions, if the request is withdrawn within two days of filing;
- Where the Commissioner exercises his discretion to not provide a written opinion within 14 days of receiving the request;
- 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.

## METHOD OF PAYMENT

Payments may be made by VISA, MasterCard, wire transfers<sup>7</sup> or by cheque payable to the Receiver General for Canada. Advance ruling certificate requests, written opinion requests, and photocopying services are subject to the GST; Québec residents add provincial sales tax and Newfoundland, New Brunswick and Nova Scotia residents add the HST.

## REVIEW 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. Complainants will receive feedback as well as information regarding any subsequent resolutions or decisions relating to the original complaint.

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<sup>7</sup>For further information regarding wire transfers, parties should contact the Bureau's Information Centre at 1-800-348-5358. Parties should also be aware of any administrative fees from financial institutions.

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.

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Minister of Industry