

**Competition Bureau
Fees and Service Standards
Report on Forum held
February 2, 1999**

May 1999

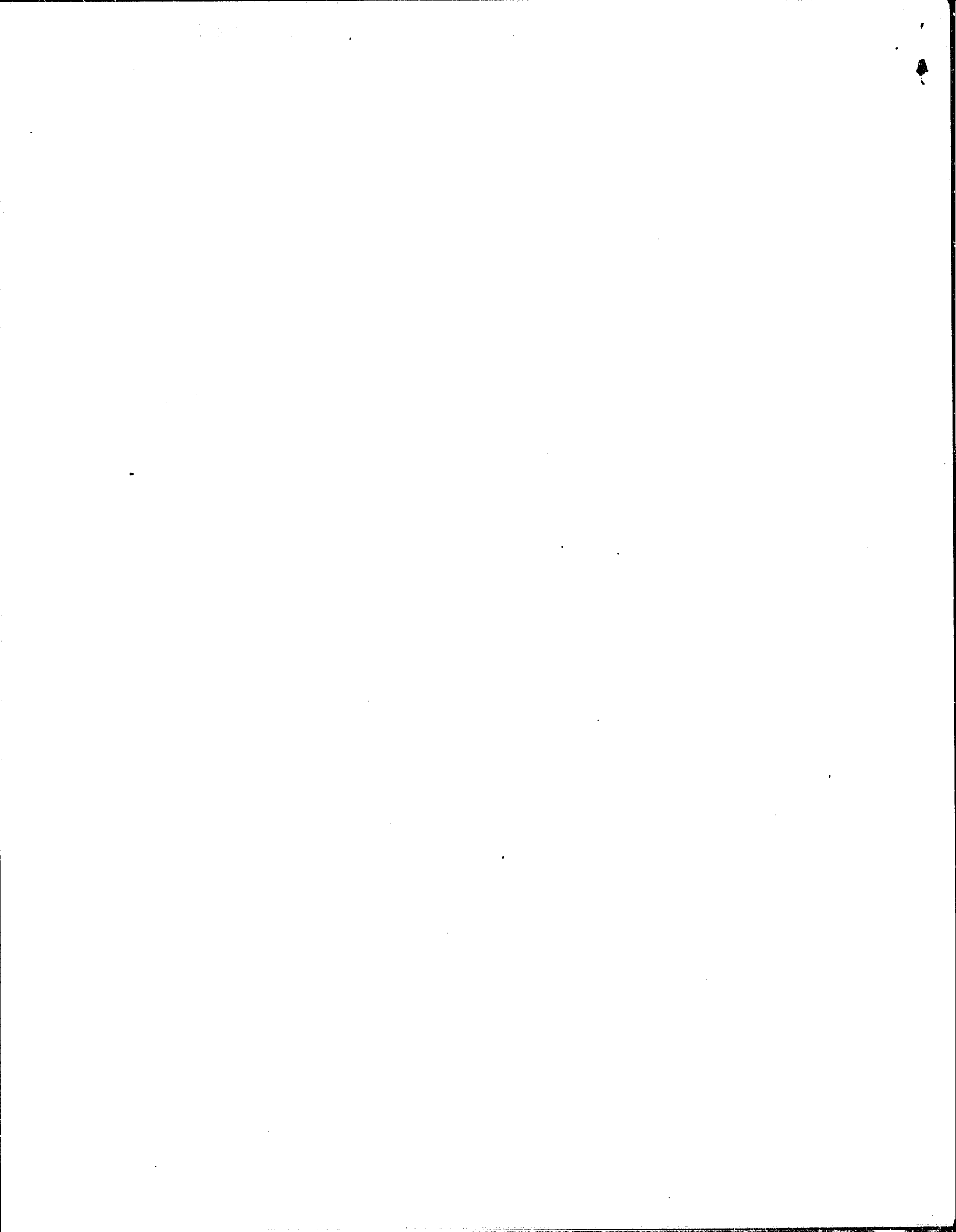


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Executive Summary

In November 1997, the Competition Bureau introduced fees linked to service standards for:

- pre-merger notification filings, and
- advance ruling certificate requests

under the *Competition Act*. Fees were also introduced for advisory opinion requests and photocopies.

The Bureau met service standards in over 90% of cases and there has been strong support from stakeholders.

Approximately one year after implementing fees and service standards, the Bureau issued its first performance report (the Report)¹ related to its Fee and Service Standards Policy. This report was reviewed with stakeholders in a forum in Toronto on February 2, 1999. Bureau officials as well as about 40 individuals representing the business and legal communities attended.

There were two principal objectives for the forum:

- ▶ to review the service standards and related processes after one year with the Fee and Service Standards Policy and to obtain feedback;
- ▶ to obtain views on thresholds and exemptions for pre-notification.

Detailed preparation beforehand, including the distribution of the Report and a questionnaire designed to direct the discussions, contributed to the success of this forum.

The Report noted that, with additional resources from service fees, the Bureau was able to deal effectively with its caseload and to take a systematic approach to reviewing and improving internal processes.

With a 23% increase in merger review requests, the Mergers Branch met its service standards in 92% of cases. There was a significant reduction in the recorded number of advisory opinion requests across the Bureau and this was due, in large part, to a change in statistical reporting. As well, the business and advertising communities achieved an increased comfort level in areas relating mainly to contests and advertising campaigns.

¹Fee and Service Standards Performance Report - January 1999 (available on the Bureau's web site at <http://competition.ic.gc.ca>).

2. General Comments

Summary

- A. Participants provided frank comments and many suggestions to assist the Bureau in improving performance.
- B. Participants were generally pleased with the Bureau's performance over the last year². They recognized staff for their professionalism and commitment to their work and applauded the Bureau for its transparency in its consultative approach.

Key Comments

C. Comment:

A significant concern was that the Bureau had become more process oriented since the inception of fees. There was a sense that officers were not willing to provide advice by telephone and that, in some instances, there was more emphasis on the process of meeting service standards rather than focussing on the substantive issues.

Bureau Response:

There were instances during the implementation phase that led to further fine-tuning of processes and practices. The Bureau continues to focus on the substantive issues while working within a service standards framework. Officers also continue to give telephone advice provided that the issues are straightforward and easily dealt with.

D. Comment:

There were concerns regarding the approach to the initial classification of merger cases in various categories (non-complex, complex, very complex). Overall, participants were pleased with the Bureau's performance but encouraged Merger Branch to review its 5-day classification process to ensure that there is no risk of under classifying a category only to later "bump it up" into the next level (i.e. complex bumped up to very complex). Some suggested an additional category of complexity.

Bureau Response:

Ray Pierce informed participants that this had indeed occurred on one or two occasions in the early period of service standard implementation where justification for doing so was

²The year in review is the period November 3 1997 to November 3 1998 (first year with fees & service standards.)

borderline. He assured them that it is not a Bureau practice to arbitrarily reclassify to a higher service level simply to meet service standards. Inevitably there will, on occasion, be circumstances where, in response to unanticipated issues, it may be necessary to reclassify to a longer service level.

This and other issues that were raised with respect to the merger process have been incorporated into the Benchmarking and Process Mapping exercises in the Mergers Branch. Critical issues will be reviewed and compared against best practices in order to improve efficiency without compromising quality and integrity. Some of the issues include:

- * Officer training and interchange
- * Guidelines related to service standards
- * Additional formality and paper-burden as a result of fees and service standards
- * Concern that 5 days to classify a complex or very complex transaction may not be sufficient.

The Bureau will not consider adding an additional category of complexity (non-complex, complex, very complex) but will focus on improving the current system.

E. Comment:

A number of participants called for the Bureau to publicize more case-related information.

Bureau Response:

The Bureau will review the use of the Website, particularly as a means of publishing more case-related information such as advisory opinions, case decisions, etc.

F. Comment:

Participants suggested a specific change to the thresholds under the pre-notification provisions of the Act. Several forum participants advocated a reduction in the number of transactions subject to pre-notification. It was suggested that this could be done by increasing the monetary thresholds above which parties to proposed transactions must notify the Bureau.

Bureau Response

During the forum, the Bureau raised a number of concerns related to this issue. Thresholds are already at a high level in respect of the size of the Canadian economy. Moreover, raising the thresholds could further increase the risk of mission potentially problematic transactions.

Over the last couple of years, the Bureau has experienced an unprecedented increase in merger review activities. Given that this "merger wave" is expected to continue in the

medium term, the Bureau will, after the end of the current fiscal year, conduct a statistical analysis of merger caseloads and other relevant research in order to come to final conclusions on this matter.

G. Comment:

Participants suggested additional exemptions under the pre-notification provisions of the Act.

Bureau Response:

A new exemption for asset securitization transactions is contained in the proposed *Regulations amending the Notifiable Transactions Regulations* which is expected to be approved through regulation in the Fall of 1999. This type of transaction accounts for approximately 15% to 20% of the pre-notification filings.

In the view of the Bureau, there are no other obvious exemptions that would remove such a significant number of non-problematic transactions from the obligation to notify.

The Bureau is not in favour of pursuing industry-specific exemptions, given that levels of concentration or other economic factors in a given industry may change over time. This could result in potentially problematic transactions not being captured by the pre-notification provisions.

The Bureau will continue to actively consider this issue and will more closely focus attention to this area once the current round of amendments related to C-20 is completed.

H. Comment:

There was a suggestion that advisory opinions should be binding.

Bureau Response:

The Bureau agrees with the suggestion and will seek to include this in the next round of amendments. Binding opinions would of course be subject to full disclosure and to the requirement that there be no subsequent material change in the facts on which the opinion was based. The opinion would only apply to the party to whom it was provided.

I. Comment:

There was a suggestion that another class of advisory opinion should be developed to include third party contacts and possibly a higher fee.

Bureau Response:

This may be considered at a future date once the Bureau has more experience with the current policy.

J. Comment:

Other comments related to advisory opinions called for faster turnaround times for opinions related to contests and advertising campaigns.

Bureau Response:

The Bureau is considering ways in which to address this timeliness issue.

3. Next Steps

The Bureau recognizes and appreciates the interest and commitment of stakeholders to these processes. Clients and stakeholders have been extremely supportive during the growing pains of implementing new processes.

The Bureau recognizes that continual feedback is crucial and that a service standards system must provide systematic opportunities to improve processes and services.

An annual Performance Report will be published specifically on service standards and related issues. It is expected that this report will be published in the summer following each fiscal period ending March 31.

It is also the intent of the Bureau to hold a second forum with stakeholders in about two years to report on progress and to continue to build on the dialogue that exists and benefits business, consumers and ultimately competition in the Canadian marketplace.

Additional information on this report may be obtained by contacting John Barker, Assistant Deputy Commissioner of Competition, Competition Bureau, at (819) 997-3763.