

Competition Tribunal



Tribunal de la concurrence

Reference: *Bank of Montreal et al v The Commissioner of Competition*, 2017 Comp Trib 15  
File No.: CT-2017-014  
Registry Document No.: 004

**IN THE MATTER OF** a consent order granted by the Competition Tribunal dated June 20, 1996, varied on March 25, 1998 and on September 8, 2000, and further varied and restated as a consent agreement on January 10, 2003, and further varied on June 16, 2005 and September 11, 2013;

**AND IN THE MATTER OF** an application, on consent, pursuant to section 106(1)(b) of the *Competition Act*, RSC 1985, c C-34 to further vary and restate the consent agreement.

BETWEEN:

**Bank of Montreal, The Bank of Nova Scotia  
The Canada Trust Company, (formerly Canada  
Trustco Mortgage Company), Canadian Imperial  
Bank of Commerce, Fédération des Caisses  
Desjardins du Québec (formerly La Confédération  
des caisses populaires et d'économie Desjardins du  
Québec), 189286 Canada Inc. (formerly Credit Union  
Central of Canada), National Bank of Canada,  
Royal Bank of Canada, The Toronto-Dominion  
Bank, and Interac Inc.**  
(applicants)

and

**The Commissioner of Competition**  
(respondent)



Decided on the basis of the written record

Members: D. Gascon J. (Chairperson), Dr. W. Askanas, Mr. L. P. Schwartz

Date of Order: October 20, 2017

Order signed by: Mr. Justice D. Gascon

**ORDER VARYING AND RESTATING THE AMENDED CONSENT AGREEMENT**

[1] **WHEREAS** the Tribunal issued a Consent Order dated June 20, 1996 under sections 79 and 105 of the *Competition Act*, RSC 1985, c C-34 (“**Act**”), which was varied on consent under sections 105 and 106(1)(b) of the Act on March 25, 1998 and September 9, 2000;

[2] **AND WHEREAS** the Consent Order was thereafter varied and restated as an Amended Consent Agreement on January 10, 2003, and was further varied on June 16, 2005 and varied and restated on September 11, 2013;

[3] **AND WHEREAS** the parties have filed an application, on consent, to further vary and restate the Amended Consent Agreement pursuant to paragraph 106(1)(b) of the Act (“**Application**”);

[4] **AND WHEREAS** the parties have agreed to the terms of the Further Revised and Restated Amended Consent Agreement, as set out in Schedule A;

[5] **UPON** considering the Application, the information and reasons set out therein for the variation and restatement of the Amended Consent Agreement, and the terms of the proposed Further Revised and Restated Amended Consent Agreement;

[6] **AND UPON** being satisfied with the reasons and information provided by the parties;

[7] **AND UPON** noting that the variation and restatement of the Amended Consent Agreement is on consent but is nevertheless a discretionary matter for the Tribunal;

**THE TRIBUNAL ORDERS THAT:**

[8] The Amended Consent Agreement shall be further varied and restated in the form of the Further Revised and Restated Amended Consent Agreement attached hereto as Schedule A.

[9] There shall be no costs on this Application.

DATED at Ottawa, this 20<sup>th</sup> day of October 2017.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Denis Gascon

**COUNSEL:**

For the Applicant:

The Commissioner of Competition

Derek Leschinsky

For the Respondent:

Bank of Montreal

Dany H. Assaf

Zirjan Derwa

**THE COMPETITION TRIBUNAL**

**IN THE MATTER OF** an application by the Commissioner of Competition under sections 79 and 105 of the Competition Act, R.S.C. 1985, c. C-34, as amended;

**IN THE MATTER OF** an abuse of dominant position in the supply of shared electronic network services for consumer-initiated shared electronic financial services;

**IN THE MATTER OF** a Consent Order granted by the Competition Tribunal dated June 20, 1996, varied on March 25, 1998, further varied on September 8, 2000 and varied and restated as a consent agreement on January 10, 2003, varied on June 16, 2005 and further varied and restated on September 11, 2013;

**AND IN THE MATTER OF** an application by **Bank of Montreal, et al.**, under sections 105 and 106(1)(b) of the Competition Act, R.S.C. 1985, c. C-34, as amended, to vary on consent the Amended Consent Agreement made by the Competition Tribunal on January 10, 2003, varied on June 16, 2005 and further varied and restated on September 11, 2013.

**B E T W E E N:**

**Bank of Montreal  
The Bank of Nova Scotia  
The Canada Trust Company  
(formerly Canada Trustco Mortgage Company)  
Canadian Imperial Bank of Commerce  
Fédération des Caisses Desjardins du Québec  
(formerly La Confédération des caisses populaires et  
d'économie Desjardins du Québec)  
189286 Canada Inc.  
(formerly Credit Union Central of Canada)  
National Bank of Canada  
Royal Bank of Canada  
The Toronto-Dominion Bank  
Interac Inc.**

Respondents

– and –

**The Commissioner of Competition**

Applicant

**FURTHER REVISED AND RESTATED AMENDED CONSENT AGREEMENT**

**WHEREAS** the Competition Tribunal (the “Tribunal”) issued a Consent Order dated June 20, 1996 under sections 79 and 105 of the *Competition Act* (the “Act”), as varied on consent under sections 105 and 106(1)(b) of the Act on March 25, 1998 and September 9, 2000 (the “Consent Order”) and as restated as an Amended Consent Agreement on January 10, 2003, and then further varied on June 16, 2005 and on September 11, 2013;

**AND WHEREAS** the parties have agreed to the terms of this Further Revised and Restated Amended Consent Agreement;

**NOW THEREFORE**, the parties **AGREE** as follows:

### **Definitions**

1. For the purposes of this Further Revised and Restated Amended Consent Agreement the following terms shall have the indicated meaning, except where the context otherwise requires:

“**ABM**” means an automated banking machine that functions as a Terminal in Interac Cash;

“**Account**” means an account held by a Financial Institution from which funds are payable on instruction by a Cardholder;

“**Acquirer**” means a Member that obtains a request Message from a Cardholder for delivery to an Issuer;

“**Acxsys**” means Acxsys Corporation;

“**Advisory Committee**” means the committee of ten (10) Participants other than the FI Respondents, as described in paragraph 10;

“**Affiliate**” means (a) in the case of a Financial Institution other than the Fédération or CUCC, an entity that is controlled by the Financial Institution or an entity that is controlled by the same Person that controls the Financial Institution within the meaning of subsection 3(1) of the *Bank Act*, S.C. 1991, c. 46; (b) in the case of the Fédération, an entity that is controlled by the Fédération within the meaning of section 472 of *An Act respecting financial services cooperatives (Québec)*, R.S.Q., c. C-67.3; (c) in the case of CUCC, an entity that is controlled by it; and (d) in the case of a non-Financial Institution, an affiliated body corporate within the meaning of subsections 2(2) and (3) of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44;

“**Annual Fee**” means an annual fee described in paragraph 11(d);

“**Association**” means the Interac Association;

“**Association Board**” means the board of directors of the Association;

“**By-laws**” means the by-laws of the Association;

“**Card**” means any magnetically or otherwise encoded plastic financial service card;

“**Cardholder**” means a customer to whom a Card has been issued by a Financial Institution;

“**Combineco**” means the corporation comprised of Acxsys, Interac Inc. and the Association that, following the Restructuring, directly offers the Shared Services; “**Commissioner**” means the Commissioner of Competition appointed pursuant to section 7 of the Act;

“**Connection Service Provider**” means a Direct Connector that provides connection to the Inter-Member Network to Indirect Connectors;

“**Cost Recovery**” means recovery of the actual costs incurred in connection with the operation and administration of the Shared Services, as well as the recovery of the R&D and borrowing components that are included as part of the Switch Fee;

“**CUCC**” means 189286 Canada Inc.;

“**DCFI**” means a Member that is a Financial Institution and that is directly connected to the Inter-Member Network for a Shared Service;

“**DCNFI**” means a Member that is not a Financial Institution and that is directly connected to the Inter-Member Network for a Shared Service;

“**Direct Connector**” means a DCFI or a DCNFI;

“**Fédération**” means the Fédération des caisses Desjardins du Québec;

“**Financial Institution**” means a Person that is:

- (a) carrying on, under the regulatory supervision of federal or provincial law, the business of providing financial services in Canada, including the receipt of deposits from the public that are transferable by items that are admissible for clearing by members of Payments Canada; or
- (b) a central cooperative credit society as defined in the *Canadian Payments Act*, R.S.C. 1985, c. C-21 or CUCC; or
- (c) a financial services cooperative as defined in the *Act respecting financial services cooperatives* (Québec), R.S.Q., c. C-67.3;

“**FI Respondents**” mean the Respondents other than Interac Inc.;

“**Fundamental Change**” means decisions of the Association Board relating to security, minimum performance standards, use of the trademarks, Association structure and membership criteria, Association Board composition and voting rules, and fees (other than interchange fees as defined in the By-laws) that require the affirmative vote of two-thirds of the Association Board’s directors for enactment;

“**Incremental Costs**” means the increase in the ongoing costs of the Association (or, following the Restructuring, of Interac Corp.) that would result from providing the basic bundle of services required by an additional Member in a Shared Service, irrespective of the volume of transactions processed by the Member;

“**Independent**” means having no direct or indirect Material Relationship with a Related Entity; “**Independent Director**” means a director of Interac Corp. who is Independent;

**“Independent Committee”** means the Independent Committee overseeing the management of the Shared Services as described in paragraph 8(d);

**“Indirect Connector”** means any commercial entity or Financial Institution which must communicate with other Members in a Shared Service through a Direct Connector;

**“INTERAC Cash”** means the shared cash dispensing service offered by the Association or, following the Restructuring, Interac Corp.;

**“Interac Corp.”** means whichever of Combineco or Parentco, that is selected as part of the Restructuring;

**“Interac Corp. Board”** means the board of directors of Interac Corp.;

**“INTERAC Debit”** means the shared direct payment service offered by the Association or, following the Restructuring, Interac Corp.;

**“Inter-Member Network”** means network software used to directly connect to the Shared Services;

**“Issuer”** means any Financial Institution that issues Cards that facilitate access to its Accounts;

**“Material Change”** for the purposes of paragraph 11(c), means any change that requires certification, inter-member testing or other non-trivial administrative activity by the Association (or, following the Restructuring, by Interac Corp.) or other Direct Connectors;

**“Material Relationship”** means any relationship that could be reasonably expected to interfere with the exercise of an Independent Director’s independent judgement and includes the following relationships:

- (a) an individual who is, or has been within the last three years, an employee or executive officer of a Related Entity;
- (b) an individual whose immediate family member is, or has been within the last three years, an executive officer of a Related Entity;
- (c) an individual who, or whose immediate family member, is, or has been within the last three years, an executive officer of an entity if any of the Related Entity’s current executive officers serves or served at that same time on the entity’s compensation committee;
- (d) an individual who received, or whose immediate family member who is employed as an executive officer of a Related Entity received, more than \$75,000 in direct compensation from a Related Entity during any 12 month period within the last three years. Direct compensation does not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the Related Entity if the compensation is not contingent in any way on continued service; and
- (e) an individual who accepts, directly or indirectly, any consulting, advisory or other compensatory fee from a Related Entity. Compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including

deferred compensation) for prior service with the Related Entity if the compensation is not contingent in any way on continued service;

**“Member”** means a member of the Association or, following the Restructuring, a Participant in a Shared Service offered by Interac Corp. or its Affiliates;

**“Message”** means the electronic messages exchanged between Members of a Shared Service, which are of two types:

- (a) the request message transmitted by an Acquirer; and
- (b) the response message transmitted by an Issuer;

**“Operating Regulations”** means the operating regulations of the Association;

**“Order”** means this Further Revised and Restated Amended Consent Agreement;

**“Parentco”** means the corporation comprised of Acxsys, Interac Inc. and the Association that, following the Restructuring, offers the Shared Services indirectly through an affiliate;

**“Participant”** means a Person that participates in a Service that is offered by Interac Corp. and, for greater certainty, includes the FI Respondents;

**“Payments Canada”** means the association established pursuant to subsection 3(1) of the *Canadian Payments Act*, R.S.C. 1985, c. C-21;

**“Person”** means any individual, sole proprietorship, partnership, firm, entity, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, and where the context requires, when they are acting as trustee, executor, administrator or other legal representative;

**“R&D”** means research and development relating to new Services or innovations to existing Services offered by Interac Corp. or a subsidiary of Interac Corp.;

**“Rebate”** means an amount paid to a Cardholder by an Acquirer in connection with the provision of a Shared Service;

**“Related Entity”** means Interac Corp., a Participant, an Affiliate of a Participant, a Person that offers any service in Canada that is substantially similar to a Service, or an Affiliate of such Person;

**“Restructuring”** means the transaction or series of transactions that combines Acxsys, Interac Inc. and the Association to form Interac Corp., with the result that the Association is terminated and the Services are offered either directly by Interac Corp. or indirectly by one or more subsidiaries of Interac Corp.;

**“Service”** includes a Shared Service and any service offered by Acxsys, as well as any service offered by Interac Corp. or a subsidiary of Interac Corp.;

**“Shared Service”** means the INTERAC Cash service and the INTERAC Debit service;



“**Surcharge**” means a fee imposed by an Acquirer on a Cardholder for provision of a Shared Service;

“**Switch Fee**” means an Inter-Member Network user fee payable on a per Message basis and calculated to recover the sum of:

- (a) the actual costs incurred to deliver the Shared Services;
- (b) a component to be used by Interac Corp. or a subsidiary of Interac Corp. for R&D, not to exceed \$0.005 per Message; and
- (c) a component to be used to service corporate debt of Interac Corp., not to exceed \$0.002 per Message; provided that, for clarity, the Switch Fee components described in paragraphs (b) and (c) above only apply in Interac Corp. following the Restructuring;

“**Terminal**” means an ABM, INTERAC Debit terminal, or other device that, in conjunction with a Card, provides a Cardholder with access to a Shared Service; and

“**Trademarks**” means the Interac trademarks.

## **Application**

- 2. Subject to paragraph 6 of this Order, the provisions of this Order shall apply to each of the Respondents and to:
  - (a) each division in Canada, subsidiary in Canada, or other Person in Canada controlled by any of them, and each officer, director, employee, agent or other Person acting for or on behalf of any of them; and
  - (b) each of their successors and assigns.

## **Operation of the Shared Services**

- 3. The operation of the Shared Services shall be carried out in compliance with the following provisions:
  - (a) participation in the Shared Services must be open to all commercial entities except for (i) Visa Inc. and its Affiliates; (ii) MasterCard Incorporated and its Affiliates; and (iii) any other similarly situated commercial entity that the Commissioner has agreed, in writing, should be excluded from such participation;
  - (b) notwithstanding paragraph 3(a):
    - (i) an Issuer in a Shared Service may be required to be a Financial Institution;
    - (ii) reasonable criteria may be established by the Association Board or the Independent Committee, as the case may be, relating to financial eligibility, regulations and operating standards commensurate with the demonstrable risk associated with any Member’s participation in a Shared Service; and

- (iii) reasonable criteria and regulations may be established by the Association Board or the Independent Committee, as the case may be, governing the set-up, establishment, testing and certification for a Member to directly connect to a Shared Service;
- (c) any Member may become a Direct Connector;
- (d) subject to paragraph 3(b)(i), any Member may participate as either an Acquirer or an Issuer, and need not participate as both an Issuer and an Acquirer;
- (e) no Acquirer may impose a Surcharge for the use of the Shared Services that discriminates among Cardholders based on the identity of the Issuer, except where:
  - (i) the Acquirer is also the Issuer; or
  - (ii) the Acquirer's ABM is branded with the Issuer's trademarks, and no other Issuer's trademarks, such that the ABM appears to be an ABM of that Issuer;
- (f) no Issuer may impose fees for use of the Shared Services that discriminate based on the identity of the Acquirer, except where:
  - (i) the Acquirer is also the Issuer; or
  - (ii) the Acquirer's ABM is branded with the Issuer's trademarks, and no other Issuer's trademarks, such that the ABM appears to be an ABM of that Issuer;
- (g) Applicants that demonstrate that they are qualified for Direct Connector status shall be provided with all necessary technical specifications and related information, upon execution of a commercially reasonable confidentiality agreement;
- (h) the Association Board or Interac Corp., as the case may be, shall not impose any restriction or condition on access to the Shared Service based on a Member's Financial Institution's arrangements with its customers regarding the operation of Accounts;
- (i) Interac Inc. or Interac Corp., as the case may be, shall deliver on request received by the Association or Interac Corp. respectively, the information reasonably necessary to allow potential Direct Connectors to determine whether they are ready, willing and able to apply to become a Direct Connector Member;
- (j) Interac Inc. or Interac Corp., as the case may be, shall:
  - (i) grant a commercially reasonable software licence, without any licence fee or royalty charge, authorizing Members to be Direct Connectors and to allow Direct Connectors to connect Indirect Connectors through them for the provision of a Shared Service;
  - (ii) ensure that the Inter-Member Network is fully capable of accommodating Surcharges or Rebates; and

- (iii) provide a commercially reasonable trademark license without charge upon request to any Member.

### **Governance of the Association**

- 4. Until the Restructuring closes, the Association shall be governed as follows:
  - (a) there shall be the following three classes of Members in the Association: DCFIs, DCNFIs and Indirect Connectors;
  - (b) the Association shall be governed by the Association Board, which will be solely responsible for making all decisions relating to the administration and operation of the Shared Services;
  - (c) the Association Board shall be comprised of no fewer than 14 Members, of whom no more than 9 shall be appointed by DCFIs. At least 2 Association Board members shall be appointed by DCNFIs and 3 shall be appointed by Indirect Connectors;
  - (d) each class shall appoint its board representatives to the Association Board. The entitlement of a Member of that class to appoint such a representative shall be based on such Member's annual volume of Messages;
  - (e) no more than one Association Board position may be filled by a representative of any one Member or Affiliate of that Member. For the purposes of appointing directors to the Association Board, DCFIs and DCNFIs shall be treated as a single class, except for the appointment of nominees to the two board seats reserved for DCNFIs; and
  - (f) the Association Board shall decide all issues on the basis of one director — one vote. Decisions of the Association Board regarding enhancements to the Shared Services and interchange fees shall be subject to a simple majority vote. The Association Board may delegate all decisions relating to interchange to the CEO of the Association who shall retain advisors that are Independent. All other matters, except for matters involving Fundamental Change, shall be decided as the Association Board determines. No decision of the Association Board shall require more than a two-thirds majority.

### **Restructuring**

- 5. Notwithstanding any other provision in this Order, the Association may, pursuant to its Memorandum of Association, restructure from an unincorporated association to a corporate form as a component of the Restructuring and may enter into agreement with Acxsys and Interac Inc. to give effect to the Restructuring and create Interac Corp.
- 6. Upon the closing of the Restructuring as described in paragraph 5, the following variations of this Order will occur:
  - (a) the governance requirements set out in paragraph 4 shall cease to apply;
  - (b) Interac Inc. shall cease to be a Respondent and shall no longer be subject to the provisions of this Order; and

- (c) the FI Respondents and Interac Corp. shall become the sole Respondents to this Order.
7. On or before the closing of the Restructuring, Interac Corp. shall provide the Commissioner with a copy of the key agreements relating to the Restructuring and an information package describing the reorganization and the share allocation methodology. Interac Corp. shall also provide the Commissioner with written notice of when the Restructuring has closed.

### **Structure and Governance of Interac Corp.**

8. The governance structure of Interac Corp. shall be as follows:
- (a) all current Members at the time of the Restructuring must be given a reasonable opportunity to become shareholders of Interac Corp.;
  - (b) Interac Corp. shall be governed by the Interac Corp. Board, which shall be comprised as follows:
    - (i) up to eight (8) members of the board may be appointed by the FI Respondents;
    - (ii) four (4) members of the board shall be Independent; and
    - (iii) the CEO;
  - (c) The initial four (4) board members described in paragraph 8(b)(ii) shall be selected from a slate of eight (8) persons prepared by an independent expert. Such expert shall be appointed by Interac Corp.'s management with the concurrence of the Commissioner or his authorized representative. Interac Corp. shall be responsible for all reasonable fees and expenses properly charged or incurred by the independent expert in the course of carrying out the independent expert's duties under this Agreement. The independent expert shall have no duties of good faith, of a fiduciary nature, or otherwise, to any Respondent. The independent expert shall create a transparent process to identify, interview and select a slate of Independent Directors including but not limited to the creation of a position description after obtaining written input from relevant stakeholders, and ensuring broad dissemination of the call for directors. No shareholder, nor management of Interac Corp., shall have any right to nominate any person for inclusion in the slate. However, shareholders or management may provide written suggestions to the independent expert on director skills and qualifications for the position description and person or persons for the slate. The independent expert will not be obligated to accept any suggestion provided by a shareholder or management. The shareholders of Interac Corp. shall select the four (4) Independent Directors from the slate prepared by the independent expert who shall be appointed for the term of this Agreement. Once the process is complete, the independent expert shall provide a written report to the Commissioner. The shareholders shall not have the right to remove an Independent Director from office during the director's term of office, except (i) with the concurrence of the Commissioner or his representative, for misconduct or (ii) because the director is no longer Independent. In replacing removed directors, Independent Directors shall be appointed by the Independent Committee on the advice of an independent expert;

- (d) The board members described in paragraphs 8(b)(ii) and 8(b)(iii) shall comprise an Independent Committee of the Interac Corp. Board. All matters before the Interac Corp. Board relating to the Shared Services shall be delegated to the Independent Committee, which shall have sole authority to make decisions respecting such matters;
  - (e) Quorum for meetings of the Interac Corp. Board shall be a majority of all the directors and three (3) Independent Directors. Quorum for meetings of the Independent Committee shall be three (3) Independent Directors;
  - (f) All decisions of the Independent Committee shall be approved by a minimum of three (3) Independent Directors; and
  - (g) Interac Corp. shall provide the Commissioner, on request and on a timely basis, with the names of the directors of Interac Corp. as well as such information as he may reasonably require to demonstrate that each Independent Committee member is Independent and to determine whether such director of Interac Corp. has acted in accordance with the duties specified in paragraph 9 of this Agreement.
9. In carrying out their duties, and as they exercise their authority relating to a Shared Service, the directors of the Independent Committee shall consider the effect of their decisions on competition between Participants or groups of Participants, and shall not make a decision that confers a competitive advantage on any Participant or group of Participants.
10. Within 60 days of the Restructuring, an Advisory Committee of ten (10) Persons representing the diversity of Participants other than the FI Respondents shall be struck. The Advisory Committee shall meet at least two (2) times each year and views expressed by Advisory Committee members shall be reported to the Interac Corp. Board. The Advisory Committee shall be chaired by the chair of the Independent Committee.

## **Fees**

11. Any fees imposed in connection with the Shared Services shall comply with the following provisions:
- (a) prior to the closing of the Restructuring, Interac Inc. shall be operated on a not-for-profit basis. Following the closing of the Restructuring, the Shared Services shall be operated on a Cost Recovery basis. As a result, fees or charges imposed by Interac Corp. in connection with the Shared Services shall be set by the Independent Committee at a level that represents Cost Recovery only;
  - (b) subject to any other provision of this Order, the revenue derived from the Shared Services shall be derived entirely from Switch Fees except where non-Switch Fee revenue would have no material negative effect in any market. Interac Inc. or Interac Corp., as the case may be, shall provide the Commissioner with at least 30 days advance notice of any new non-Switch Fee revenue;
  - (c) the Association or Interac Corp., as the case may be, as well as Direct Connectors may recover any direct and identifiable administrative or certification costs incurred during the course of admitting a new Member into the Shared Services or when accommodating an existing Member in the Shared Services following a Material Change in the Member's system;

- (d) notwithstanding paragraph 11(b), the Association Board or the Independent Committee, as the case may be, may require a Member to pay a reasonable Annual Fee that only recovers the Incremental Costs associated with the class to which the Member belongs. For the purposes of this paragraph and notwithstanding paragraph 4(a), all Direct Connectors may be treated as a single class and all Indirect Connectors constitute a single class. Any Switch Fees paid by a Member in the year covered by the Annual Fee must be applied against the Annual Fee. A Connection Service Provider shall be permitted to credit Switch Fees from every Indirect Connector that connects behind it towards the Annual Fee, but only for Switch Fees that exceed the value of the Annual Fee for the Indirect Connector. Any change in the Annual Fee is a Fundamental Change. In addition, prior to the closing of the Restructuring, any change in the Annual Fee that exceeds the cumulative change in the Consumer Price Index (measured from the last change in the Annual Fee) must be approved by a majority of the Association Board representatives that are not appointed by the FI Respondents. Written notice shall be provided by Interac Inc. or Interac Corp., as the case may be, to the Commissioner of any increase to the Annual Fee within 30 days of its approval. Interac Inc. or Interac Corp., as the case may be, shall provide to the Commissioner on request on a timely basis the current amount of the Annual Fee, a description of the underlying costs that factor into the Annual Fee, and supporting documentation explaining the estimation of those costs;
- (e) notwithstanding any other term of this paragraph 11, the Association Board or the Independent Committee, as the case may be, may permit the development of policies that impose monetary penalties on Members for non-compliance with the rules governing the Shared Services, provided that such policies:
  - (i) do not discriminate among Members; and
  - (ii) are rationally related to a legitimate business objective of the Association or Interac Corp., as the case may be;
- (f) where Interac Corp. experiences an operating surplus from the Shared Services at the end of its financial year, it may retain the surplus to create a commercially reasonable reserve against contingencies. In addition, the Interac Corp. Board may retain unspent R&D funds to be used for R&D projects for upcoming fiscal years;
- (g) the Association Board and the Independent Committee, as the case may be, must permit Acquirer Members to charge a Surcharge. Surcharging shall require express prior notification to the Cardholder at the Terminal. The Association Board or the Independent Committee, as the case may be, may determine what sort of express prior notification (e.g. signage, etc.) will be deemed acceptable; and
- (h) Interac Corp. shall provide written notice to the Commissioner of the amount of the R&D component and the corporate debt servicing component of the Switch Fee before either component is implemented in a Shared Service, and Interac Corp. shall provide the Commissioner, on request and on a timely basis, such records and information as he may reasonably require to assess the manner in which Interac Corp. has used or intended to use the R&D and debt servicing components collected as part of the Switch Fee.

## **General**

12. The Respondents, individually or acting in concert, shall not engage in any activity which has the purpose or effect of circumventing any provision of this Order either directly or indirectly.
13. No later than upon his or her appointment, Interac Corp. shall provide each director with a copy of this Agreement and confirm that the director has read and understands the obligations set out herein.
14. Interac Inc. or Interac Corp., as the case may be, shall provide the Commissioner on request on a timely basis with copies of material changes or amendments to the By-laws, Operating Regulations and material agreements of the Association and Interac Inc., as well as similar documents relating to the Shared Services in Interac Corp. or any of its Affiliates.
15. In the event of a dispute with respect to the interpretation and application of this Order, any party shall be at liberty to apply to the Competition Tribunal for an order interpreting any of the provisions of this Order.
16. When notice is required to be given pursuant to any of the terms of this Order, it shall be considered given if dispatched by registered letter to the Persons listed in Appendix A appended to this Order.
17. This Order shall terminate 915 days following the date upon which Interac Corp. provides the Commissioner with written notice of closing of the Restructuring under paragraph 7.
18. Nothing in, or done under the authority of, this Agreement affects the operation of the Act or any other law; and for greater certainty, nothing done in, or under the authority of, this Agreement derogates from the obligation of each Respondent to comply with the Act or any other law.

## **Appendix A**

Commissioner of Competition

### **Competition Bureau**

21st Floor  
Place du Portage, Phase I  
50 Victoria Street  
Hull, Québec  
K1A 0C9

Attention: Derek Leschinsky

### **Bank of Montreal**

55 Bloor Street West  
15th Floor  
Toronto, Ontario  
M4W 3N5

Attention: Head, North American Retail Payments

### **The Bank of Nova Scotia**

100 Yonge Street  
8th Floor  
Toronto, Ontario  
M5C 2W1

Attention: Mike Henry SVP & Head, Retail Payments, Deposits and Lending

### **The Bank of Nova Scotia**

44 King Street West,  
Scotia Plaza, 8th Floor  
Toronto, Ontario  
M5H 1H1

Attention: Michael Davenport, Associate General Counsel

### **Canadian Imperial Bank of Commerce**

199 Bay Street  
Commerce Court West, 4th Floor  
Toronto, Ontario  
M5L 1A2

Attention: Geoff Weiss, Senior Vice President, Consumer Deposits

### **Fédération des caisses Desjardins du Québec**

425 avenue Viger Ouest  
10e étage  
Montréal, Québec  
H2Z 1W5

Attention: Vice-président, Monétique et Partenariat d'affaires



**189286 Canada Inc.**

151 Yonge St.  
Suite 1000  
Toronto, Ontario  
MSC 2W7

Attention: President and Chief Executive Officer  
c.c.: General Counsel

**National Bank of Canada**

700 de la Gauchetière West  
7th floor  
Montréal, Québec  
H3B 3B5

Attention: Vice President E-channels and Payments

**Royal Bank of Canada**

Royal Bank Plaza  
200 Bay Street, 23rd Floor  
Toronto, Ontario  
M5J 2J5

Attention: Senior Vice President, Card Services

**The Canada Trust Company**

77 King Street West  
12th Floor  
TD North Tower Toronto Dominion Centre  
Toronto, Ontario  
M5K 1A2

Attention: Senior Vice President, Everyday Banking, Payments, Personal and Indirect Lending

**The Toronto-Dominion Bank**

77 King Street West, 12th Floor  
TD North Tower  
Toronto Dominion Centre  
Toronto, Ontario  
M5K 1A2

Attention: Senior Vice President, Everyday Banking, Payments, Personal and Indirect Lending

**Interac Inc.**

Royal Bank Plaza, North Tower  
200 Bay Street, Suite 2400  
Toronto, Ontario  
M5J 2J1

Attention: President

**COUNSEL:**

For the applicants:

Bank of Montreal  
The Bank of Nova Scotia  
The Canada Trust Company  
(formerly Canada Trustco Mortgage Company)  
Canadian Imperial Bank of Commerce  
Fédération des Caisses Desjardins du Québec  
(formerly La Confédération des caisses populaires et  
d'économie Desjardins du Québec)  
189286 Canada Inc.  
(formerly Credit Union Central of Canada)  
National Bank of Canada  
Royal Bank of Canada  
The Toronto-Dominion Bank  
Interac Inc.

Mark Nicholson

For the respondent:

The Commissioner of Competition

Derek Leschinsky