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CT-2010-010

**THE COMPETITION TRIBUNAL**

**IN THE MATTER OF** the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

**AND IN THE MATTER OF** an application by the Commissioner of Competition pursuant to section 76 of the *Competition Act*;

**AND IN THE MATTER OF** certain agreements or arrangements implemented or enforced by Visa Canada Corporation and MasterCard International Incorporated.

**BETWEEN:**

**THE COMMISSIONER OF COMPETITION**

Applicant

- and -

**VISA CANADA CORPORATION and  
MASTERCARD INTERNATIONAL INCORPORATED**

Respondents

- and -

**CANADIAN BANKERS ASSOCIATION and  
THE TORONTO-DOMINION BANK**

Intervenors

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**EXPERT REPORT OF MIKE MCCORMACK**  
*March 14, 2012*

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## **I. Introduction**

### **A. Assignment**

1. In this report I have been asked by counsel for the Commissioner of Competition (the "Commissioner") to describe:

- (a) the credit card industry in Canada;
- (b) significant developments and trends in Canadian credit card products and services;
- (c) the interactions between credit card companies, the financial institutions that issue credit cards ("Issuers"), the financial institutions and other entities that acquire credit card transactions from merchants ("Acquirers"), merchants and cardholders; and
- (d) the operating rules of Visa Canada Corporation ("Visa") and MasterCard International Incorporated ("MasterCard") that are challenged by the Commissioner in this proceeding, and the anticipated effects of their removal or modification.

### **B. Summary of Qualifications**

2. I am the Managing Director of Palma Advisors, a consulting group based in Fort Lauderdale, Florida. My *curriculum vitae* is attached at Schedule A to this report.

3. I have worked in the transaction and payment processing industry for 23 years, including at Wells Fargo Bank, Concentric Network, Noblett & Associates (a transaction services consultancy group) and, since October 2008, at Palma Advisors. As described below, I have extensive experience with and knowledge of the payment card industry, including with respect to the structure, operation and business practices of the credit card systems owned and operated by Visa Inc.<sup>1</sup> and MasterCard. My experience is principally with respect to the United States, but also includes Canada and other jurisdictions.

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<sup>1</sup> Note: Visa Canada Corporation (previously defined as "Visa") is a wholly-owned subsidiary of Visa Inc. See Examination for Discovery of Michael Bradley on behalf of Visa Canada Corporation ("Bradley Examination"), December 5, 2011, p. 43, Qs. 154-55.

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4. I hold a Master of Arts (M.A.) degree in International Policy Studies from Stanford University (June 1991), and a Bachelor of Arts, *cum laude*, in Political Science from California Polytechnic State University (June 1988).

5. From 1989 to 1996, I was employed by Wells Fargo Bank in various capacities in the Item Processing and Merchant Card Services units. In Item Processing, I worked from 1989 to early 1992 as an Operations Manager and Project Manager to implement a new IBM cheque processing systems platform at the bank and to replace a number of sub-systems that had been in use since the 1960s.

6. In February 1992, I became the Senior Project Manager in the Merchant Card Services group at Wells Fargo, which was the bank's Acquiring group. Initially, I managed the implementation of Visa's Payment Systems 2000 program for Wells Fargo, and its portfolio of 50,000 merchants. Following the completion of that project, Wells Fargo formed a joint venture equity partnership with Card Establishment Services, Inc. (which was subsequently purchased by First Data Merchant Services in 1994). I managed various business operations and systems projects relating to the integration of the merchant portfolios of Wells Fargo Bank and Card Establishment Services (First Data).

7. In 1994, after the successful launch of the First Data/Wells Fargo joint venture project, I became the Service Quality & Association Affairs Manager at Wells Fargo. In that role, I had primary responsibility for liaising with various participants in credit card networks (First Data (an Acquirer), Visa, MasterCard, Discover, American Express) and debit networks (Interlink, Maestro, and Star System) on behalf of Wells Fargo's Acquiring group. I also served as Wells Fargo's representative on the Interlink and Maestro Operations Committees. Additionally, I had responsibility for managing large scale projects within Wells Fargo. By way of illustration, I led a project to automate in-branch cash advances for Visa and MasterCard cardholders in Wells Fargo's 710 bank branch locations.

8. Starting in 1995, and until it was transitioned to First Data's Operations Group in 1996, I managed Wells Fargo's Debit Acquiring and Network Settlement Operations. I also led the implementation of the Maestro brand for Wells Fargo in 1995, enabling Maestro for Wells Fargo's entire PIN debit merchant portfolio.

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9. In March 1996, I left Wells Fargo and became the Senior Sales Engineer at Concentric Network Corporation, an Internet Service Provider. My primary responsibility at Concentric was the implementation and management of data network and hosting services for the company's strategic accounts. I was also involved in the design and expansion of Concentric Network Corporation's credit and debit card billing processes.

10. In May 1999, I joined Noblett & Associates, a consulting firm that specializes in advising and assisting clients in matters related to the payment transaction business.

11. In 2006 and 2007, while at Noblett & Associates, I managed the development of a Chip/PIN ("Smart") card authorization and clearing service, and oversaw and directed the process of obtaining technical certification from Visa and MasterCard on behalf of a third party acquirer processor client and two banks.

12. In October 2008, Noblett & Associates closed, and I subsequently founded Palma Advisors. As Managing Director of Palma, I have continued providing advisory and consulting services in the payment transaction business. My consulting client portfolio includes Acquirers, merchants, point of sale and transaction processing system vendors, data networking companies, law firms, and government entities.

13. As set out in Schedule B to this report, I have acted and been qualified as a payment card industry expert in numerous proceedings in the United States and New Zealand, including the following:

- (a) on behalf of plaintiffs *In RE Payment Card Interchange Fee and Merchant-Discount Antitrust Litigation*, MDL Docket Number 1720 (E.D.N.Y.) in current litigation before the United States District Court for the Eastern District of New York challenging, among other things, the no-surcharge and honor-all-cards rules of the named Visa and MasterCard entities, and the processes by which these entities and certain financial institution defendants establish default credit and debit card interchange fees, and the levels of credit card interchange fees;
- (b) on behalf of the New Zealand Commerce Commission in *New Zealand Commerce Commission, and DSE (NZ) Limited (and others) v Cards NZ Limited*

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*and others (CIV-2006-485-2353) (2005) in proceedings before the High Court of New Zealand challenging, among other things, the no-surcharge and honor-all-cards rules of the named Visa and MasterCard entities, the processes by which they establish default credit card interchange fees, the levels of credit card interchange fees, and Acquirer practices in structuring and disclosing Merchant Service Fees;*<sup>2</sup>

- (c) on behalf of plaintiffs in *Adam A. Schwartz v. Visa International Corp., Visa International Service Association, Inc., Visa U.S.A., Inc., and MasterCard International Incorporated ("Schwartz") (2000)*, in proceedings before the Superior Court of California, involving a challenge to, among other things, the practices of the named Visa entities and MasterCard of adding fee amounts to U.S. credit cardholders' transactions conducted outside the U.S., and disclosure issues related to those practices;
- (d) on behalf of plaintiffs in *Ross v. Visa USA et al. MDL Docket Number 1409 (S.D.N.Y.)* and *Ross v. American Express Co., et al. No. CV-05723 (S.D.N.Y.)*, (2002 and 2004, respectively) in proceedings before the United States District Court for the Southern District of New York concerning, among other things, fee practices similar to those in issue in *Schwartz*, as well as the practice by certain U.S. credit card Issuers of imposing additional fees on credit card transactions conducted outside the United States;
- (e) on behalf of the New Zealand Commerce Commission in *New Zealand Commerce Commission v. ANZ National Bank Limited, Westpac Banking Corporation, and American Express International (NZ) Incorporated, Disclosure of Currency Conversion Fees, Fair Trading Act 1986, CRI 2004-004-022528 and CRI 2005-499-006805 (2005)* in proceedings against New Zealand credit card

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<sup>2</sup> This proceeding was settled in 2009. I have continued to work with the New Zealand Commerce Commission in respect of post-settlement monitoring and payment card industry survey projects.



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Issuers challenging, among other things, practices similar to those raised in *Schwartz*; and

- (f) on behalf of plaintiff Discover Financial Services (a general purpose credit card network and Issuer) in *Discover Financial Services, DFS Services LLC, and Discover Bank v. Visa U.S.A., Inc., Visa International Services Association, MasterCard Incorporated, and MasterCard International Incorporated*, Civ Action No. 04-CV-7844 (BSJ) (2004) in litigation before the United States District Court for the Southern District of New York concerning, among other things, damages to Discover alleged to have been suffered as a result of exclusionary policies and rules of the named Visa and MasterCard entities.

14. I have read and executed the "Acknowledgement of Expert Witness" prescribed by the Competition Tribunal. A copy of the Acknowledgment, executed by me, appears at Schedule C to this report.

15. I have had access to the documents, pleadings and transcripts from the examinations for discovery (including responses to undertakings) in this proceeding. The sources I rely upon in this report are found in the footnotes in this report, and are also listed in Schedule D to this report.

## **II. Summary of Conclusions**

16. My conclusions may be summarized as follows:

- (a). General purpose credit cards provide a combination of services from both a merchant and consumer perspective that are functionally distinct from other payment methods, such as debit, cash and cheques. As the Canadian Task Force for the Payments System Review concluded in September 2010, from a consumer's perspective, "a credit card allows its holder to pay for goods and services from an approved credit line [from the financial institution that issued that card (*i.e.*, the Issuer)], based on the cardholder's commitment to pay the

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[I]ssuer for these purchases, together with interest on funds borrowed/revolved beyond the grace period."<sup>3</sup> In contrast, debit cards require that funds be available in the cardholder's bank account at the time of the transaction. In addition to providing cardholders with the option to pay for purchases over a period of time, credit cards also provide protection against fraudulent transactions and the ability to make purchases remotely. From a merchant's perspective, a general purpose credit card allows customers to purchase goods and services using a non-cash instrument, and potentially pay amounts that exceed customers' available funds on hand;

- (b). Canada has a very high level of credit card use as a method of payment, both in absolute terms and in comparison to the rest of the world. Per-inhabitant use of credit cards for payment in Canada is second highest in the world – 79.3 credit card transactions per inhabitant, per year. According to statistics maintained by the Canadian Bankers Association ("CBA"), there were 74.5 million Visa and MasterCard credit cards in circulation in Canada as of October 31, 2011, with an average of two credit cards per Canadian household;<sup>4</sup>
- (c). As of 2009, Canada was the fourth largest credit card market in the world when measured by numbers of credit card transactions among the countries surveyed by the Bank of International Settlements ("BIS");<sup>5</sup>
- (d). The principal providers of general purpose credit card services in Canada are Visa, MasterCard and Amex Canada Inc. /Bank of Amex ("American Express").<sup>6</sup>

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<sup>3</sup> Task Force for the Payments System Review, "Canadian Payments Landscape", Prepared for the Task Force for the Payments System Review, September, 2010, p. 48, accessed online December 2, 2011 at <http://www.paymentsystemreview.ca/wp-content/uploads/Payments-Landscape-Full-Report-e3.pdf> on October 25, 2011.

<sup>4</sup> See *ibid* and Canadian Bankers Association "Credit Card Statistics - VISA and MasterCard", February 23, 2012, accessed online on February 27, 2012 under "Credit Card Statistics" at <http://www.cba.ca/en/component/content/publication/69-statistics>.

<sup>5</sup> See BIS, Committee on Payment and Settlement Systems, Statistics on payment and settlement systems in the CPSS countries, Figures for 2009, March 2011, Table 7 "Use of payment instruments by non-banks: number of transactions per payment instrument", pp. 419-20.

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In 2010, Visa and MasterCard had a combined share of 91.7% of Canadian credit card purchases, by purchase volume, and 94.2% of Canadian credit card purchases by number of transactions. In contrast, American Express' credit card purchase volume share was 8.3%, and its share by number of transactions was 5.7%;<sup>7</sup>

- (e). There have been no significant new entrants into Canada's general purpose credit card industry since American Express commenced operating a credit card program in Canada more than twenty years ago;
- (f). Visa and MasterCard (together, the "Respondents") each operate networks and supply services to their Acquirers which enable the Acquirers to authorize, clear and settle transactions (collectively, "Credit Card Network Services") for merchants' customers that pay using the Respondents' respective brands of cards.
- (g). Visa and MasterCard do not supply Credit Card Network Services directly to merchants. Rather, they only do so through Acquirers that act as resellers of Credit Card Network Services. This may be contrasted with American Express, which usually sells Credit Card Network Services directly to Canadian merchants, and not through third party Acquirers;
- (h). Visa and MasterCard Credit Card Network Services (authorization, transaction data clearing, and funds settlement in respect of Visa and MasterCard's respective brands of credit cards) are the key merchant services provided by Acquirers. Without those services, other ancillary Acquirer services provided in respect of Visa and MasterCard credit cards, such as point of sale terminal rentals and reporting services, would be of little (or no) use or value to merchants;

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<sup>6</sup> See American Express Reference Guide Canada, August 2010, p. 2, accessed online January 15, 2012 at [https://secure.cmax.americanexpress.com/Internet/International/lac/CA\\_en/Merchant/Files/Ref\\_Guide\\_Canada.pdf](https://secure.cmax.americanexpress.com/Internet/International/lac/CA_en/Merchant/Files/Ref_Guide_Canada.pdf).

<sup>7</sup> See *The Nilson Report* Number 967, March 2011 (GSSS5389\_00002602).

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- (i). Similarly, Visa and MasterCard do not supply credit cards to cardholders directly. Rather, credit cards are provided to cardholders by Issuers which also establish the terms and conditions associated with the use of those cards, including credit limits and the interest rates applicable to outstanding balances, subject to certain minimums set by Visa or MasterCard;
- (j). To receive Credit Card Network Services, merchants pay Merchant Service Fees to Acquirers. A Merchant Service Fee has three principal components: (a) an interchange fee that is retained by the Issuer of the credit card; (b) network fees paid to the credit card network, such as Visa or MasterCard; and (c) a margin that is retained by the Acquirer. The largest component, by far, of a Merchant Service Fee is the interchange fee, which represents over 80% of the total fee, on average;<sup>8</sup>
- (k). Issuers compete for cardholders primarily based on interest rates, credit card fees and rewards programs.<sup>9</sup> Visa and MasterCard establish and use interchange fees and other incentive payments to Issuers to secure the credit card issuance business of banks;
- (l). Acquirers in Canada do not, and indeed as a practical matter, cannot, compete for merchants on the basis of reduced interchange or network fees, as these components are effectively the same for all Acquirers in Canada.<sup>10</sup> The interchange and network fees operate as a "floor" price for Merchant Service Fees, below which Acquirers are not able to profitably offer acquiring services,

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<sup>8</sup>

<sup>9</sup> See McKinsey & Company "Perspectives on Canadian Credit Card Business", May 19, 2008 (VISA00526292 at 6312-6322).

<sup>10</sup>

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including Credit Card Network Services, regardless of the size of the merchant.<sup>11</sup> However Canadian Acquirers do compete vigorously for merchants on the basis of the small component of Merchant Service Fees that are retained by the Acquirer;

- (m). Credit cards are the highest cost payment method for most Canadian merchants.<sup>12</sup> Results from a 2006 Bank of Canada survey state that credit card acceptance costs Canadian merchants an average of \$0.82 on an average \$36.50 sale transaction, over three times as much as the average cost to merchants when customers pay with cash or debit card;<sup>13</sup>
- (n). Visa and MasterCard have increased the average level of Canadian interchange fees since the 1990s from rates averaging [REDACTED] of the transaction purchase amount to current rates averaging 1.60% to 1.65% for Visa credit card transactions and 1.85% to 1.90% for MasterCard credit card transactions. Canadian merchants' average Merchant Service Fees have increased in similar proportions over the same period;<sup>14</sup>

<sup>11</sup> As David Evans (an economist whose payment card industry research has previously been funded by Visa) and Richard Schmalensee (who has previously served as an expert witness for Visa) state "[t]he interchange fee puts a floor under the merchant discount. Indeed, since the acquiring side of the business is fairly competitive, one can expect changes in merchant discounts to generally reflect changes in interchange fees." See David Evans & Richard Schmalensee, *Paying with Plastic* (1999) at p. 199. Evans testified before the U.S. Congress in 2009 as follows: "In the interest of transparency, Visa funded my research on the payments card industry for many years." See testimony of David S. Evans before The United States House of Representatives, Committee on Financial Services, Hearing on Credit Card Interchange Fees Act of 2009, October 8, 2009, p. 1, accessed online February 29, 2012 at [http://www.house.gov/apps/list/hearing/financialsvcs\\_dem/david\\_s\\_evans\\_interchange\\_fee\\_testimony\\_100809new.pdf](http://www.house.gov/apps/list/hearing/financialsvcs_dem/david_s_evans_interchange_fee_testimony_100809new.pdf).

<sup>12</sup> See Bradley Examination, December 6, 2011, p. 451, Q. 1387.

<sup>13</sup> See Bank of Canada Review, Winter 2008-2009 "Merchants' Costs of Accepting Means of Payment: Is Cash the Least Costly?" Carlos Arango and Varya Taylor, Table 4 - Merchants' Variable Costs per Transaction (GSSS2177\_00015388 at 5393).

<sup>14</sup> [REDACTED] Visa's representative on discovery Michael Bradley testified that Canadian merchants' Merchant Service Fees increased due to Visa's introduction of premium, Infinite credit cards and interchange fee changes by Visa in Canada. See Bradley Examination, December 6, 2011, p. 387, Q. 1160, and December 9, 2011, pp. 1117-18, Qs. 3181-82. However, Mr. Bradley also testified that (see December 9, 2011, p. 1131, Q. 3231) that "interchange rates have been effectively flat for the past many years. I am thinking back to the early 2000s on an overall basis". His evidence in this regard is inconsistent with the data, reflected in Figure 12 of this report, which was taken from Visa's own documents.

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- (o). In April 2008, Visa introduced premium "Infinite" credit card products with higher domestic interchange rates than its standard credit cards.<sup>15</sup> In June 2008, MasterCard premium "high spend" credit cards were issued in Canada.<sup>16</sup> In April 2009, MasterCard introduced even higher "premium high spend" interchange rates at levels above both the Visa "Infinite" and MasterCard "high spend" rates.<sup>17</sup> These increases in interchange rates resulted in higher Merchant Service Fees, as increases in interchange fees are ultimately passed on to merchants;
- (p). Despite these increases, no appreciable number of merchants have ceased accepting Visa or MasterCard credit cards. Indeed, the number of Canadian merchants that accept Visa and MasterCard credit cards has increased during the period that Merchant Service Fees increased. The CBA reports that the number of Canadian merchant outlets accepting Visa or MasterCard as a form of payment increased 10% between 2005 and 2011.<sup>18</sup> In this proceeding, [REDACTED]
- [REDACTED]
- (q). Canadian general purpose credit card purchase sales volume on Visa, MasterCard, American Express and Diners Club credit cards has increased 213% from \$102 billion in 1998 to \$319 billion in 2010;<sup>20</sup>

<sup>15</sup> See Visa "Electronic Payments and Visa: The Role of Interchange and Other Developments", February 3, 2009 (VISA00028762 at 8775), Response to Qs. 1082-83, p. 362 (Tab 10(a): Visa Canada Member Letter 30/07, "Interchange Rates for Visa Infinite", July 16, 2007) taken under advisement on Bradley Examination, December 6, 2011.

<sup>16</sup> [REDACTED]

<sup>17</sup> [REDACTED]

<sup>18</sup> Canadian Bankers Association "Credit Card Statistics - VISA and MasterCard", February 23, 2012, accessed online on February 27, 2012 under "Credit Card Statistics" at <http://www.cba.ca/en/component/content/publication/69-statistics>. Note: [REDACTED]

<sup>19</sup> [REDACTED]

<sup>20</sup> See *The Nilson Report* Numbers 692 and 967 (GSS5389\_00002602).. Note: Amounts converted to Canadian dollars using December 31, 1998 and December 31, 2010 CA:US dollar wholesale exchange rates as reported on the Oanda website, "Historical Exchange Rates", accessed online February 27, 2012 at <http://www.oanda.com/currency/historical-rates/>.

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- (r). Visa and MasterCard implement and enforce a number of operating rules (defined below as the "Visa Operating Rules" and the "MasterCard Operating Rules"), including the Honor-All-Cards Rules, No-Surcharge Rules, and (at least in the case of MasterCard) a No-Discrimination Rule (collectively, the "Merchant Rules"). The Respondents' No-Surcharge Rules prohibit merchants from adding any fee to a transaction amount because of a customer's use of a Visa or MasterCard branded credit card.<sup>21</sup> The Honor-All-Cards Rules require merchants accepting any of a Respondent's credit cards to accept all of that Respondent's credit cards, regardless of the Issuer, or the type of the card.<sup>22</sup> MasterCard's No-Discrimination Rule provides that "[a] Merchant must not engage in any acceptance practice that discriminates against or discourages the use of a Card in favor of any other acceptance brand";<sup>23</sup>
- (s). Visa and MasterCard require that the Merchant Rules and other merchant acceptance rules be incorporated into Acquirers' agreements with merchants.<sup>24</sup> The Merchant Rules are typically combined by Acquirers into single operating agreements applicable to all credit card brands and types accepted by their merchant customers.<sup>25</sup> Consequently, each Respondent's Merchant Rules have the effect of re-enforcing and backstopping the other Respondent's Merchant Rules;

<sup>21</sup> See Visa International Operating Regulations – 15 October 2011, "Core Principle 6.3, No Surcharging Unless Required by Law, Charging for the Advertised Price" (GSSS5893 00001550 at 2001), "Surcharges 5.1.C (Updated)" (GSSS5893 00001550 at 2067). [REDACTED]

<sup>22</sup> See Visa International Operating Regulations – 15 October 2011, "Core Principle 6.2, Honor All Cards Properly Presented, Honoring All Visa Cards" (GSSS5893 00001550 at 2000), "Honoring Cards" (GSSS5893 00001550 at 2056 to 2061), and "Honor All Cards - Canada Region (Updated)" (GSSS5893 00001550 at 2061); [REDACTED]

<sup>23</sup> [REDACTED]

<sup>24</sup> References to the Respondents' Merchant Rules encompass operating rules located in the Visa International Operating Regulations, the Visa Regional Operating Regulations for Canada, and the MasterCard Rules.

<sup>25</sup> [REDACTED]

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- (t). In many jurisdictions, Visa and MasterCard's No-Surcharge Rules were required to be removed through regulatory action or legal proceedings, or with the consent of Visa and MasterCard. As a consequence, merchants are able to surcharge Visa or MasterCard credit card transactions in many countries and jurisdictions, including Australia, New Zealand, and countries within the European Economic Area ("EEA").<sup>26</sup> In other jurisdictions, including the United States and Canada, the Respondents' Operating Rules permit surcharging (which the Respondents term "convenience fees") by select merchants in order to expand merchant acceptance and increase use of their credit card brands, but prohibit surcharges by merchants generally;<sup>27</sup>
- (u). Based on my experience in the payment card industry and, in particular, with respect to the impact in other jurisdictions of removing or modifying the Honor-All-Cards Rules and No-Surcharges Rules, I believe that modification or removal of the Honor-All-Cards and No-Surcharge Rules in Canada would likely result in the negotiation by Canadian merchants of lower interchange and network fees, resulting in lower Merchant Service Fees. The ability of Canadian merchants to selectively surcharge and/or decline acceptance of all or some of the Respondents' branded credit cards (e.g., premium and other higher-cost Visa and/or MasterCard credit cards), or to at least threaten to do either or both of these things, will improve the leverage of Canadian merchants in negotiations with Visa and MasterCard and their respective Issuers, with regard to both interchange and network fees;

<sup>26</sup> The EEA encompasses the following countries: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and United Kingdom. [REDACTED]

Note: Some countries within the EEA have enacted laws prohibiting credit and/or debit card surcharging. See VISA00303135, Visa worksheet, "Visa Europe" tab (VISA00303135). [REDACTED]

[REDACTED] Visa International Operating Regulations – 15 October 2011, "Surcharges 5.1.C – Surcharges" (GSSS5893\_00001550 at 2067).

<sup>27</sup> See [REDACTED]

[REDACTED] See Visa International Operating Regulations – 15 October 2011, "Convenience Fees" (GSSS5893\_00001550 at 2116 to 2119).



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- (v). In order to preserve and expand the volume of transactions for which Visa and MasterCard branded credit cards and the Respondents' respective networks are used, Visa, MasterCard and their respective Issuers would likely negotiate reductions in interchange and network fees with merchants in exchange for commitments by merchants to honor all cards and to refrain from applying surcharges. Reduced interchange and network fees would likely be provided to merchants in the form of lower Merchant Service Fees or through incentive payments;
- (w). Most merchants are unlikely to simply refuse to accept all of the Respondents' branded credit cards, as merchants' acceptance decisions are commonly made relative to their competitors, and most merchants would be hesitant to adopt payment acceptance policies that could lead to a loss of sales and profits to competitors (which continue to accept all of the Respondents' credit cards);<sup>28</sup> and
- (x). These outcomes are supported by experience in other jurisdictions where the Honor-All-Cards and/or No-Surcharge Rules have been modified or removed. For example, after Visa and MasterCard changed their Honor-All-Cards Rules in the U.S. as a result of the settlement in the "Visa Check" litigation<sup>29</sup> to allow merchants in that country to choose to accept credit cards only, debit cards only, or both, Wal-Mart suspended acceptance of MasterCard debit cards between February and June 2004, only resuming acceptance after MasterCard apparently lowered its rates to win back Wal-Mart's business.<sup>30</sup> In Australia, American Express agreed through an undertaking with the Reserve Bank of Australia in

<sup>28</sup> A 2009 U.S. GAO study states "Although the ability to refuse to accept Visa and MasterCard should provide merchants with the leverage to negotiate lower interchange fees, merchants reported that they could not refuse to take such cards because of customer demand. For example, several merchants told us that if they did not accept credit cards from Visa or MasterCard, their sales would decrease and they would lose business to competitors that did accept those cards." See United States Government Accountability Office, Report GAO-10-45 "Credit Cards", November 2009, p. 36.

<sup>29</sup> "Visa Check" litigation refers to *In re: Visa Check/MasterMoney Antitrust Litigation*, 297 F. Supp. 2d 503 (E.D.N.Y. 2003), *aff'd*, 396 F.3d 96 (2d Cir. 2005).

<sup>30</sup> Los Angeles Times website, "Wal-Mart, MasterCard Agree on Debit Card", Los Angeles Times, June 22, 2004, at <http://articles.latimes.com/2004/jun/22/business/ft-rup22.11>, David Breitkopf, American Banker, June 22, 2004, "Wal-Mart, MasterCard Reach Agreement on Signature Debit".

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2002 to allow Australian merchants to optionally surcharge American Express transactions.<sup>31</sup> This has contributed to a decline of 25.9% in the average American Express merchant acceptance fees paid by Australian merchants between March 2003 and December 2011, from 2.51% to 1.86%, as a percentage of the transaction value.<sup>32</sup>

### III. Canadian Payment Methods Infrastructure

#### Features of General Purpose Credit Cards

17. Canada has a very developed payment card transaction infrastructure. As stated above, Canadian per-inhabitant use of credit and debit payment cards for payment is the second-highest in the world.<sup>33</sup> As of 2009, there were more than 700,000 point of sale terminals in use by Canadian merchants for credit and/or debit card acceptance.<sup>34</sup> Canada's credit card acceptance infrastructure is among the most developed in the world, with most transactions occurring electronically.

18. Visa and MasterCard operate the leading general purpose credit card payment networks in Canada.

19. A general purpose credit card is generally understood to mean a credit card that is accepted as a form of payment at many unrelated merchant locations across a wide geographic

<sup>31</sup> See Reserve Bank of Australia, Reform of Credit Card Schemes in Australia— IV, Final Reforms and Regulation Impact Statement, August 2002 (GSSS5389\_00002484 at 2546).

<sup>32</sup> See Reserve Bank of Australia, Reform of Credit Card Schemes in Australia— IV, Final Reforms and Regulation Impact Statement, August 2002 (GSSS5389\_00002484 at 2546), and Reserve Bank of Australia, Payments Data, "C3 - Merchant Fees for Credit and Charge Cards" accessed online February 16, 2012 at <http://www.rba.gov.au/payments-system/resources/statistics/index.html>.

<sup>33</sup> Of the countries surveyed by the BIS, Canada is ranked second in per-inhabitant use of credit cards and fourth in per-inhabitant use of debit cards. See BIS, Committee on Payment and Settlement Systems, Statistics on payment and settlement systems in the CPSS countries, Figures for 2009, March 2011, Table 7C "Use of payment instruments by non-banks: number of transactions per inhabitant", pp. 424-26.

<sup>34</sup> See *ibid*, Table 11, Terminals located in the country: number of terminals, p. 447, and Task Force for the Payments System Review, "Canadian Payments Landscape", Prepared for the Task Force for the Payments System Review, September, 2010, p. 48, accessed October 25, 2011 at <http://www.paymentsystemreview.ca/wp-content/uploads/Payments-Landscape-Full-Report-e3.pdf>.

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area. General purpose credit cards provide individual cardholders with access to a credit account established and administered by the Issuer of the card.

20. There are two major types of general purpose credit cards. First, cards which require the balance to be paid off in full within a specified time period, often referred to as "charge cards". Second, cards which permit the cardholder to pay only a minimum portion of the balance on the account within a specified period of time and pay the remainder over time, often generically referred to as "credit cards".

21. Another category of credit card consists of "proprietary" or "store" cards. In contrast to general purpose cards, a proprietary card is typically issued by an individual merchant such as a department store or an oil company. A proprietary card has limited acceptance, and usually may only be used at the location(s) of the merchant that issued the card.

22. In addition to the fact that they may be used to purchase goods and services from many unrelated merchants over a wide geographic area, the other features of general purpose credit cards (which differentiate them from debit cards, cash, cheques and other payment methods) include an interest-free period between the time a purchase is made and the date on which payment is due (i.e., deferred payment), revolving credit (i.e., a cardholder may, instead of paying any charges incurred by the prescribed deadline without interest, carry a balance on his or her credit card and pay interest on the outstanding amount), protection against fraudulent transactions, the ability to make purchases remotely over the telephone and on the Internet and, with certain cards, rewards, points or other benefits (such as airline travel, concierge services, and access to lounges in airports) associated with use of those cards.<sup>35</sup>

#### **Features of Debit Cards**

23. Similar to credit cards, debit cards typically may be used across a broad geographic area and at many types of merchant venues. Unlike credit cards, debit cards are often funded directly from cardholders' bank accounts rather than through the extension of credit by the Issuer. Debit

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<sup>35</sup> See, e.g., Bradley Examination, December 5, 2011, pp. 198-210, Qs. 535-75, December 6, 2011, pp. 307-17, Qs. 898-927 [REDACTED]

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cards generally have daily spending and use limits which are closely tied to the balance within the underlying account.

24. Within Canada, debit cards were initially issued by banks bearing their own bank brand, and were primarily intended for use at each bank's Automated Banking Machines ("ABMs"). In 1984, a group of Canadian banks formed the Interac network with the objective of implementing a single, shared national network that would allow Canadians to access their funds from any member bank's ABM network across Canada.<sup>36</sup> Interac subsequently developed a shared point of sale ("POS") debit service called "Interac Direct Payment" with the objective of making each bank member's debit cards interoperable at any Interac-accepting Canadian merchant.<sup>37</sup> The Interac Direct Payment service began as a pilot project in the National Capital Region in 1990, and was launched nationwide in 1994. Within Canada, virtually all debit transactions are processed through Interac. Only a very small number of debit transactions (primarily foreign debit cards and gift or "stored value" cards) are processed over the Visa or MasterCard networks.<sup>38</sup>

25. In 2009, Canada had 115.3 debit card transactions per person.<sup>39</sup> In 2010, there were almost 4 billion Interac debit card transactions in Canada.<sup>40</sup> By year-end 2010, Interac was accepted at 450,700 Canadian merchants, with 727,300 POS terminals.<sup>41</sup>

<sup>36</sup> See "Interac Association: A Backgrounder", September 2007, p. 3, accessed December 1, 2011 at [http://www.interac.ca/pdf/backgrounder\\_en.pdf](http://www.interac.ca/pdf/backgrounder_en.pdf).

<sup>37</sup> See *ibid*, p. 5.

<sup>38</sup> See Citizens Bank of Canada and Canada Post are examples of entities offering Visa gift and stored value/prepaid product debit cards. See Citizens Bank website "Visa Prepaid Cards", accessed March 6, 2012 at [www.rewardgiftcard.ca/](http://www.rewardgiftcard.ca/), and Canada Post website "Visa prepaid card", accessed March 6, 2012 at <http://www.canadapost.ca/cpo/mc/personal/productservices/visagiftcard.jsf#prepaid>.

<sup>39</sup> See BIS, Committee on Payment and Settlement Systems, Statistics on payment and settlement systems in the CPSS countries, Figures for 2009, March 2011, Table 7C "Use of payment instruments by non-banks: number of transactions per inhabitant", pp. 424-26.

<sup>40</sup> See Interac website "Interac 2010 Statistics", accessed online January 16, 2012 at <http://www.interac.ca/media/stats.php>.

<sup>41</sup> See *ibid*, p. 5.

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26. Interac is a not-for-profit membership-governed organization.<sup>42</sup> Interac charges its issuer and acquirer participants flat, per-transaction switch fees, on a cost-recovery basis.<sup>43</sup> The Interac debit service has operated since its inception without interchange fees (this is referred to as an "at-par" system).<sup>44</sup> Interac acquirers generally charge merchants flat, per-transaction fees for Interac processing. Interac's President and CEO testified before the House of Commons Finance Committee in 2009 that the "end merchant cost" for Interac point of sale debit transactions ranges from 3 cents to 15 cents per transaction, with the average being 7 to 8 cents per transaction.<sup>45</sup> Interac permits merchants to surcharge for debit transactions provided the cardholder is notified of the amount of the surcharge directly on the PIN pad screen, so the cardholder has the option of canceling the transaction without cost.<sup>46</sup>

#### Visa and MasterCard Debit Cards

27. In 2009, Visa and MasterCard announced that they were introducing debit products in the Canadian marketplace.<sup>47</sup>

<sup>48</sup> MasterCard originally intended for its "Maestro" debit product to co-

<sup>42</sup> See Interac website "About Us" accessed online January 16, 2012 at [www.interac.ca/about.php](http://www.interac.ca/about.php).

<sup>43</sup> See *ibid.*

<sup>44</sup> Interac testified before the House of Commons Finance Committee that it has no plans to move away from zero interchange for Interac debit transactions, see: testimony of Mr. Mark O'Connell, President and CEO of Interac, House of Commons Canada, Standing Committee on Finance, Evidence, June 16, 2009, p. 8, accessed online January 16, 2011 at <http://www.parl.gc.ca/content/hoc/Committee/402/FINA/Evidence/EV4000797/FINAEV37-E.PDF>.

<sup>45</sup> See *ibid.*, p. 5.

<sup>46</sup> See Interac website "Consumers - Fees" accessed online January 16, 2012 at <http://www.interac.ca/consumers/fees.php>.

<sup>47</sup> See Visa Canada website, News Releases, "Canadians welcome choice when shopping at home, abroad or online with Visa Debit card", 13 October 2009, accessed February 10, 2012 at <http://www.visa.ca/en/aboutcan/mediacentre/news/10132009/index.jsp>, and MasterCard Canada website "MasterCard Canada Press Section, Background: MasterCard Maestro", November 20, 2009, at [http://www.mastercard.com/ca/company/en/press/2009/11\\_20\\_Maestro.html](http://www.mastercard.com/ca/company/en/press/2009/11_20_Maestro.html).

<sup>48</sup> See "Visa Debit Update Canada", 21 October 2009 (VISA00035063 at 5065).

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reside on Interac debit cards, and that Issuers would control whether transactions would be routed through the Interac network or the MasterCard (Maestro) network.<sup>49</sup>

28. However, merchant organizations expressed concern regarding Visa and MasterCard's plans for implementing their debit card services in Canada, and the potential for significant merchant service fees for debit card transactions.<sup>50</sup> The Senate Standing Committee on Banking, Trade and Commerce held hearings with respect to both credit and debit card services in March 2009, and the House of Commons Standing Committee on Finance held additional hearings in May 2009. Subsequently, the Government of Canada implemented the Code of Conduct for the Credit and Debit Card Industry in Canada (the "Code of Conduct"), effective August 16, 2010.<sup>51</sup> Among other things, the Code of Conduct prohibits competing domestic debit applications from different networks from being offered on the same debit card. Further, the Code of Conduct provides that payment card network rules must ensure that merchants who accept credit card payments from a particular network are not obligated to accept debit card payments from that same payment card network, and vice versa.

29. Visa, MasterCard, and Canadian Issuers and Acquirers agreed to abide by the Code of Conduct, with the result that Visa and MasterCard debit card products can be offered in Canada only as standalone products.<sup>52</sup> [REDACTED]

[REDACTED]<sup>53</sup> Currently, only CIBC issues a Visa debit card in Canada, but that card can

<sup>49</sup> See MasterCard Canada website "MasterCard Canada Press Section, Background: MasterCard Maestro", November 20, 2009, at [http://www.mastercard.com/ca/company/en/press/2009/11\\_20\\_Maestro.html](http://www.mastercard.com/ca/company/en/press/2009/11_20_Maestro.html).

<sup>50</sup> See Parliament of Canada website, Proceedings of the Standing Senate Committee on Banking, Trade and Commerce Issue 5 - Evidence, April 23, 2009, accessed January 17, 2012 at <http://www.parl.gc.ca/Content/SEN/Committee/402/bank/05evb-e.htm?Language=E&Parl=40&Ses=2&commid=3>.

<sup>51</sup> See the Department of Finance Canada website "Code Of Conduct For The Credit And Debit Card Industry In Canada" accessed January 16, 2011 at [http://www.fin.gc.ca/n10/data/10-049\\_1-eng.asp](http://www.fin.gc.ca/n10/data/10-049_1-eng.asp). As noted below, both Visa and MasterCard agreed to abide by the Code of Conduct, and have amended their respective Operating Rules within Canada to comply with this requirements of the Code of Conduct.

<sup>52</sup> See [REDACTED]; Visa Regional Operating Rules - Canada, Visa Debit Advance Copy, August 2010 (VISA00171459 at 1468).

<sup>53</sup> See [REDACTED]

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only be used where Interac is not accepted, such as for online payments, and internationally, outside of Canada, at merchant locations that accept the Visa brand for payment.<sup>54</sup>

30. Canadian merchants prefer Interac debit as a payment method due to its lower cost relative to credit cards and other methods of payment. In a 2006 study of merchant acceptance costs and perceptions, the Bank of Canada determined that the per transaction cost to merchants for an average transaction of \$36.50 was lowest for Interac debit, at 19 cents, versus 25 cents for cash and 82 cents for credit cards.<sup>55</sup> During his examination for discovery in this proceeding, Visa representative Michael Bradley testified that for Interac debit transactions, merchants pay acquirers in the range of 3 cents to 15 cents per transaction.<sup>56</sup>

31. The Bank of Canada study referred to above also reported that when merchants were asked which of the three payment methods they prefer consumers to use the most often, 53% favoured debit cards, 39% favoured cash, and only 5% favoured credit cards.<sup>57</sup>

#### **Other Methods of Payment**

32. Cheques: A cheque is a written "order to pay", which one party (the payor) signs and gives to another party (the payee) as payment.<sup>58</sup> A cheque is an order for the payor's financial institution to pay a specified amount to either the payee or, more broadly, the bearer of the cheque, on demand or on or after a specific date.<sup>59</sup> In the context of a retail transaction, the consumer (payor) writes the cheque for the full payment amount of the goods and/or services,

<sup>54</sup> See CIBC website, "CIBC Advantage Debit Card", accessed online February 27, 2012 at <https://www.cibc.com/ca/features/cibc-advantage-card.html>.

<sup>55</sup> See Bank of Canada, Merchant Acceptance, Costs, and Perceptions of Retail Payment Systems: A Canadian Survey, Bank of Canada Discussion Paper 2008-12, August 2008 (GSSS0035\_00001329 at 1354).

<sup>56</sup> See Bradley Examination, December 6, 2011, p. 446, Q. 1369 and pp. 447-48, Qs. 1375-78.

<sup>57</sup> See Bank of Canada, Merchant Acceptance, Costs, and Perceptions of Retail Payment Systems: A Canadian Survey, Bank of Canada Discussion Paper 2008-12, August 2008 (GSSS0035\_00001329 at 1341).

<sup>58</sup> See Canadian Payments Association, "Consumers Paying by Cheque", 2011, p. 1, accessed January 18, 2011 at [http://www.cdnpay.ca/imis15/pdf/pdfs\\_publications/consumer\\_guide\\_cheques.pdf](http://www.cdnpay.ca/imis15/pdf/pdfs_publications/consumer_guide_cheques.pdf).

<sup>59</sup> See *ibid.*

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and the retailer (payee) receives the full face value of the cheque. The timing of the funds' availability depends on the merchant's terms with its depository bank.<sup>60</sup>

33. The Canadian Payments Association ("CPA") reports that in Canada it takes one to four business days for a cheque to clear and be presented to the cheque writer's bank.<sup>61</sup> Accordingly, consumers may benefit from a short "float" period on a cheque payment where they have received goods or services but the purchase amount has not been debited from their account. This period is akin to a similar period with credit card purchases, where the amount of a purchase may take several days to be posted to the cardholder's account. If the cheque cannot be honored by the payor's (cheque writer's) bank because of insufficient funds, a stop payment, or because the account has been closed, the cheque is returned to the payor's bank and a fee is usually charged to the payor's account. This process can take between one to three days in Canada, though image technology may shorten that period, according to the CPA.<sup>62</sup>

34. The aforementioned Bank of Canada survey reported that cheques have a minor share of retail payments in Canada, comprising 5% of transaction value and 3% of transaction volume of the merchant's surveyed.<sup>63</sup> A 2008 McKinsey and Company Study prepared for Visa found that cheque payments in Canada were most prevalent for telecommunications and insurance payments.<sup>64</sup> The average retail cheque payment was reported to be \$150, significantly higher than the average reported cash transaction of \$36.50 and the average debit card transaction of \$50. The use of cheques in Canada as a means of payment has declined significantly.

<sup>60</sup> The Canadian Payments Association describes the cheque deposit process and some of the considerations affecting a payee's (or depositor's) ability to access funds deposited by cheque as follows: "When a cheque is deposited, the depositor's financial institution will update the depositor's account records to show a deposit of the amount indicated on the cheque. Depending on the policies of the depositor's financial institution, the depositor may be able to access the funds at that time, or the funds may not be made available to the depositor (i.e. the funds are placed 'on hold') until their financial institution is assured that payment has been received from the cheque writer's account". Canadian Payments Association, "Consumers Paying by Cheque", 2011, p. 1.

<sup>61</sup> See *ibid.*

<sup>62</sup> See *ibid.*

<sup>63</sup> See Bank of Canada, Discussion Paper 2008-12, "Merchant Acceptance, Costs, and Perceptions of Retail Payments: A Canadian Survey", by Carlos Arango and Varya Taylor (GSSS0035\_00001329 at 1342).

<sup>64</sup> Canadian retail cheque payments were reported as comprising 44% of insurance payments, 38% of telecom payments, and 5% of supermarket payments. See McKinsey & Company "Perspectives on Canadian Credit Card Business", May 19, 2008 (VISA00526292 at 6330).



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According to data from the Bank of International Settlements ("BIS"), the average annual number of cheque payments per inhabitant in Canada declined 34.4% from 51.2% in 2001 to 33.6% in 2009.<sup>65</sup>

35. Direct "Pre-Authorized" Debits: A pre-authorized debit payment is "a withdrawal from your account at a financial institution (FI) that is made by a company or an FI with your permission".<sup>66</sup> Pre-authorized debit payments are often used as a means to make regular payments to an organization or transfer investment funds on an ongoing basis, such as mortgage and utility payments, membership dues, charitable donations, RSP investments and insurance premiums.<sup>67</sup>

36. PayPal: PayPal is a payment service that is used in Canada for online Internet purchases.<sup>68</sup> PayPal is wholly-owned by eBay. eBay reported in its financial statements that in 2011, 35% of PayPal's transaction value was attributable to eBay auctions and other eBay services, while the remaining 65% of PayPal's transaction value resulted from online transactions unrelated to eBay.<sup>69</sup> PayPal is not a substitute for a general purpose credit card in Canada given that it is only accepted by merchants online. In addition, PayPal itself does not provide the revolving credit function available on general purpose credit cards. When an account holder makes a purchase online using PayPal, the funds to pay for that purchase are taken by PayPal from the account holder's bank account or other funding source(s), such as a general purpose credit card.

37. PayPal often operates as a complement to general purpose credit cards. Indeed, a large number of PayPal accounts are actually linked to general purpose credit cards, such as Visa,

<sup>65</sup> See BIS, Committee on Payment and Settlement Systems, Statistics on payment and settlement systems in the CPSS countries, Figures for 2009, March 2011, Table 7C "Use of payment instruments by non-banks: number of transactions per inhabitant", pp. 424-26.

<sup>66</sup> See Canadian Payments Association, "Consumers Paying by Pre-Authorized Debit", 2011, p. 1, accessed January 18, 2011 at [http://www.cdnpay.ca/imis15/pdf/pdfs\\_publications/consumer\\_guide\\_pads.pdf](http://www.cdnpay.ca/imis15/pdf/pdfs_publications/consumer_guide_pads.pdf).

<sup>67</sup> See *ibid.*

<sup>68</sup> See [REDACTED]

<sup>69</sup> See United States Securities and Exchange Commission, Form 10-K, eBay Inc., For the Fiscal Year Ended December 31, 2011, p. 48, accessed online February 27, 2012 at <http://investor.ebayinc.com/secfiling.cfm?filingID=1065088-12-6>.

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MasterCard, American Express and Discover. eBay said the following in its 2010 annual report: "Customers fund a significant portion of PayPal's payment volume using credit cards, and PayPal's financial success will remain highly sensitive to changes in the rate at which its senders fund payments using credit cards."<sup>70</sup> eBay states in its 2011 annual report that "If PayPal were unable to accept payment cards, its business would be seriously damaged. In addition, the velocity of trade on eBay and websites operated by GSI's<sup>71</sup> clients that accept PayPal as a form of payment could decrease and our business would further suffer."<sup>72</sup> Accordingly, PayPal effectively operates as a large merchant, processing payments through the Visa, MasterCard, American Express and Discover general purpose credit card networks.

38. In the United States, PayPal is a co-brand issuer of MasterCard debit cards, and offers certain classes of PayPal accountholders the option to receive a MasterCard-branded PayPal ATM/Debit card, issued by JP Morgan Chase, to use to access funds.<sup>73</sup> PayPal is also a co-brand Issuer of MasterCard credit cards in the United States, in conjunction with GE Capital Retail Bank.<sup>74</sup>

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<sup>70</sup> eBay also states that PayPal's transaction fee expenses are highly dependent on the anchor funding method the customer chooses: "PayPal pays significant transaction fees when customers fund payment transactions using credit cards, lower payments when customers fund payments with debit cards, nominal fees when customers fund payment transactions by electronic transfer of funds from bank accounts, and no fees when customers fund payment transactions from an existing PayPal account balance or use buyer credit issued by GE Money Bank". See United States Securities and Exchange Commission, Form 10-K, eBay Inc., For the Fiscal Year Ended December 31, 2010, p. 25, accessed online January 24, 2012 at <http://investor.ebayinc.com/secfiling.cfm?filingID=1065088-11-3>.

<sup>71</sup> GSI Commerce is a company that was purchased by eBay in June 2011.

<sup>72</sup> See United States Securities and Exchange Commission, Form 10-K, eBay Inc., For the Fiscal Year Ended December 31, 2011, p. 27.

<sup>73</sup> eBay states in its Form 10-K that certain PayPal account holders in the US have access to PayPal co-branded MasterCard ATM/debit cards to access funds: "Qualifying PayPal merchants in the U.S. are eligible to receive a PayPal ATM/debit card, which allows them to withdraw cash from any ATM connected to the Cirrus or Maestro networks and to make purchases at any merchant accepting MasterCard.", *ibid* p. 7.

<sup>74</sup> See PayPal website "PayPal Extras MasterCard", accessed November 29, 2011 at [https://personal.paypal.com/cgi-bin/marketingweb?cmd=\\_render-content&content\\_ID=marketing\\_us/paypal\\_credit\\_card](https://personal.paypal.com/cgi-bin/marketingweb?cmd=_render-content&content_ID=marketing_us/paypal_credit_card)

### General Purpose Credit Card Use in Canada

39. General purpose credit card products have been used to pay for goods and services in Canada since the late 1960s.<sup>75</sup> The above-mentioned 2008 study by McKinsey & Company (prepared for Visa) reported that Canadians prefer to pay by credit cards for high value transactions, with credit card transactions averaging \$111 versus \$46 for debit card transactions and \$15 for cash transactions.<sup>76</sup>

40. Despite their relative longevity, credit card use continues to increase in Canada. Indeed, Canadian credit card use has grown faster than any other payment method over the past 10 years. Data from the BIS shows that between 2001 and 2009, the number of annual credit card transactions per Canadian inhabitant grew from 42.5 to 79.3, an increase of 86.6%.<sup>77</sup>

41. A study by the Canadian Task Force for the Payments System Review, published in September 2010, corroborates the BIS survey data, stating that "[c]redit cards continue to be the fastest-growing payment method (both in terms of the number of transactions and volume), fueled by widespread acceptance, credit availability, high brand awareness and rewards programs."<sup>78</sup> The Canadian Task Force also noted that the compound annual growth rate ("CAGR") of Canadian credit card payment transaction volume from 2004 to 2010 was 8.2%, nearly double that of the next fastest growing payment method, debit cards, which had a CAGR of 4.2% over the same period.<sup>79</sup>

<sup>75</sup> MasterCard commenced issuing and acquiring in Canada in 1973, while Visa started doing so under the Chargex name in 1968. See [redacted] and 1316) and RBC website, "History 1960 - 1979, If Mary uses Chargex, it must be fine..." accessed January 16, 2012 at <http://www.rbc.com/history/quicktofrontier/chargex-visa-detail.html#top>.

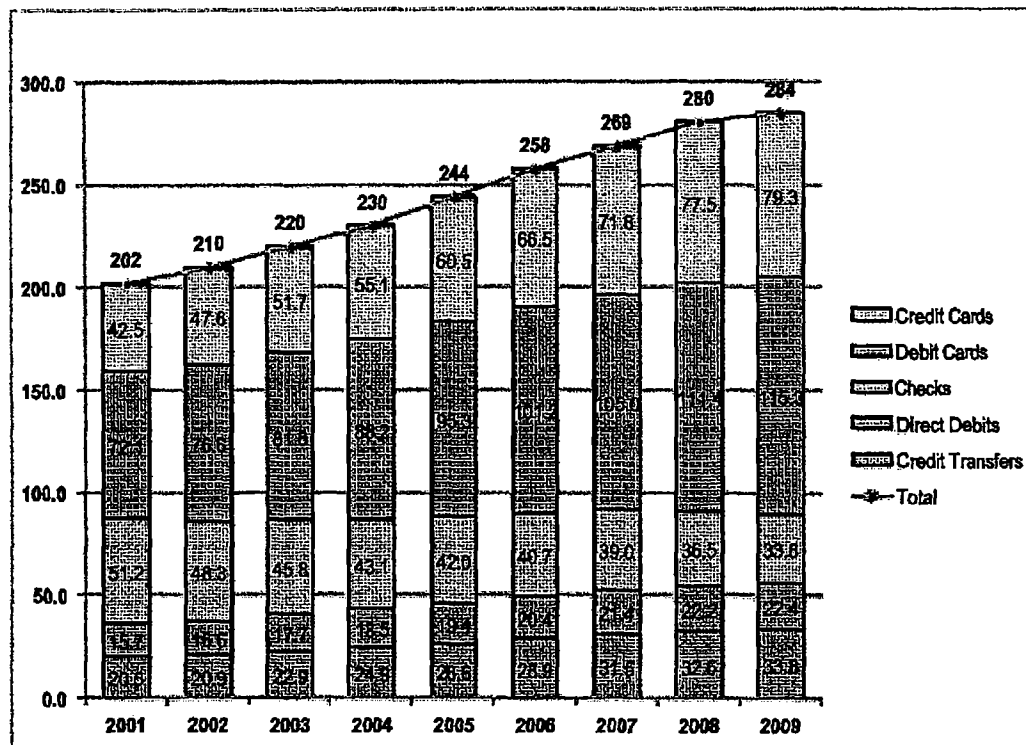
<sup>76</sup> See McKinsey & Company "Perspectives on Canadian Credit Card Business", May 19, 2008 (VISA00526292 at 6329).

<sup>77</sup> See BIS, Committee on Payment and Settlement Systems, Statistics on payment and settlement systems in the CPSS countries, Figures for 2009, March 2011, Table 7C "Use of payment instruments by non-banks: number of transactions per inhabitant", pp. 424-26.

<sup>78</sup> Task Force for the Payments System Review, "Canadian Payments Landscape", Prepared for the Task Force for the Payments System Review, September, 2010, p. 22, accessed on October 25, 2011 at <http://www.paymentsystemreview.ca/wp-content/uploads/Payments-Landscape-Full-Report-e3.pdf>.

<sup>79</sup> See *ibid.*

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**Figure 1: Number of Annual Non-Cash Transactions per Canadian Inhabitant**

Source: BIS, Committee on Payment and Settlement Systems ("CPSS"), Statistics on Payment and Settlement Systems in the CPSS countries (March 2011)<sup>80</sup>

#### Merchant Acceptance in Canada of General Purpose Credit Cards

42. According to the CBA, over 689,000 Canadian merchant outlets accepted Visa and MasterCard credit cards for payment as of the 2011 year end.<sup>81</sup> The above-mentioned McKinsey

<sup>80</sup> The BIS CPSS defines "Credit Transfer" as "a payment order or possibly a sequence of payment orders made for the purpose of placing funds at the disposal of the beneficiary. Both the payment instructions and the funds described therein move from the bank of the payer/originator to the bank of the beneficiary, possibly via several other banks as intermediaries and/or more than one credit transfer system.", and a "Direct Debit" as "preauthorised debit on the payer's bank account initiated by the payee". See Bank for International Settlements, Committee on Payment and Settlement Systems, A glossary of terms used in payments and settlement systems, March 2003, pp. 17, 21, accessed online March 13, 2012 at <http://www.bis.org/publ/cps00b.htm>

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study for Visa reported that within Canada, among credit card accepting merchants, credit card transactions comprised 70% of sales at car rental merchants, 65% of sales at hotels, 52% of sales at department stores, and 41% of sales at supermarkets.<sup>82</sup>

43. For many Canadian merchants, accepting Visa and MasterCard credit cards is a competitive necessity.<sup>83</sup> Many merchants would lose sales if they declined to accept Visa and MasterCard credit cards for payment, particularly if their rivals continued to accept such cards.<sup>84</sup> Merchants generally perceive the loss of profits from a forgone sale to be greater than the Merchant Service Fees they pay for credit card acceptance.<sup>85</sup> Despite increases in Merchant Service Fees, no appreciable number of Canadian merchants have ceased accepting Visa or MasterCard credit cards.<sup>86</sup>

#### General Purpose Credit Card Network Purchase Volume: 1998 to 2010

44. Figure 2 shows Canadian general purpose credit card purchase volume (in billions US\$) for the period between 1998 and 2010, as published in *The Nilson Report*, for Visa, MasterCard, American Express, and Diners Club (to 2004 only). Purchase volume is a measurement of the

<sup>81</sup> See CBA, "Credit Card Statistics - VISA and MasterCard", February 23, 2012, accessed online on February 27, 2012 under "Credit Card Statistics" at <http://www.cba.ca/en/component/content/publication/69-statistics>. Note: [REDACTED]

<sup>82</sup> See McKinsey & Company "Perspectives on Canadian Credit Card Business", May 19, 2008, (VISA00526292 at 6330).

<sup>83</sup> [REDACTED]

<sup>84</sup> See Bradley Examination, December 9, 2011, pp. 1100-1101, Qs. 3116-17.

<sup>85</sup> See *ibid.*

<sup>86</sup> On discovery, Visa representative Michael Bradley could name only one merchant in Canada that had stopped accepting Visa credit cards because of an increase in Merchant Service Fees. See Bradley Examination, December 7, 2011, pp. 608-609, Qs. 1805-1806, December 9, 2011, pp. 1099-1100, Qs. 3114-15. [REDACTED]

[REDACTED] See Visa, Canadian Interchange and Product Plan, July 13, 2010 (VISA00067188 at 7194 to 7195).

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aggregate amount of sale transactions occurring at merchant locations using the identified credit card brands.<sup>87</sup>

45. As stated above, the aggregate value of general purpose credit card purchases conducted using Canadian-issued Visa, MasterCard, American Express, and Diners Club credit cards increased 212.7% between 1998 and 2010, from \$102.0 billion in 1998 to \$319 billion in 2010.<sup>88</sup> In the same period, the number of Canadian general purpose credit card transactions rose from 1.1 billion (in 1998) to 3.0 billion (in 2010), an increase of 172.7%.<sup>89</sup> The average value of a Canadian general purpose credit card purchase also grew from \$93.25 in 1998 to \$106.63 in 2010.<sup>90</sup>

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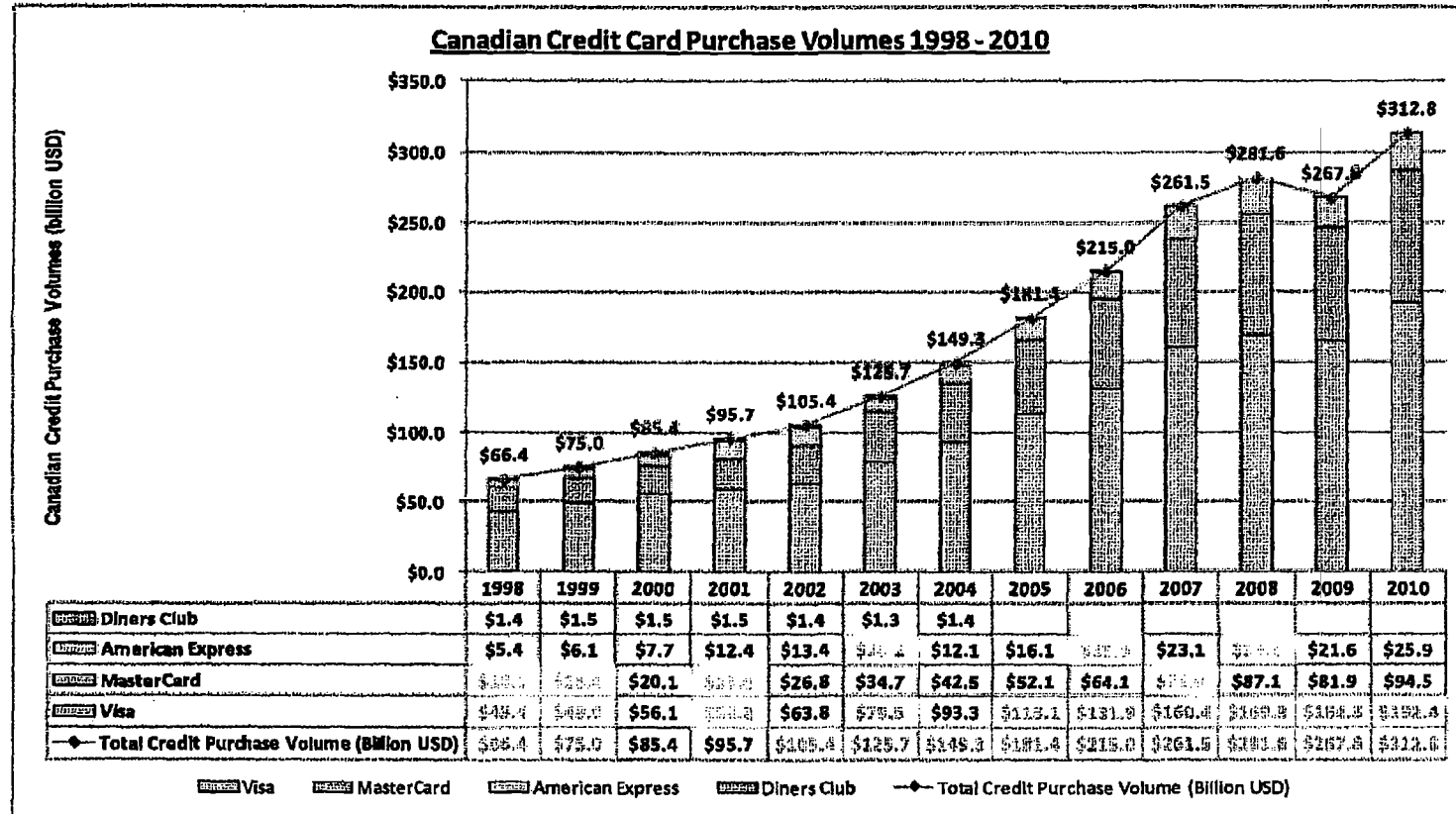
<sup>87</sup> Purchase volume generally refers to purchase sales originating at merchants and excludes figures for ATM, bank branch, and balance transfer "cash advance" transactions. *The Nilson Report* published figures on Canadian general purpose card purchase volumes expressed only in U.S. dollars.

<sup>88</sup> See *The Nilson Report Numbers 692, 967* (GSS5389\_00002602). *Note:* Amounts converted to Canadian dollars using December 31, 1998 and December 31, 2010 CA:US dollar wholesale exchange rates as reported on Oanda website, "Historical Exchange Rates", accessed online on February 27, 2012 at <http://www.oanda.com/currency/historical-rates/>.

<sup>89</sup> See *ibid.*

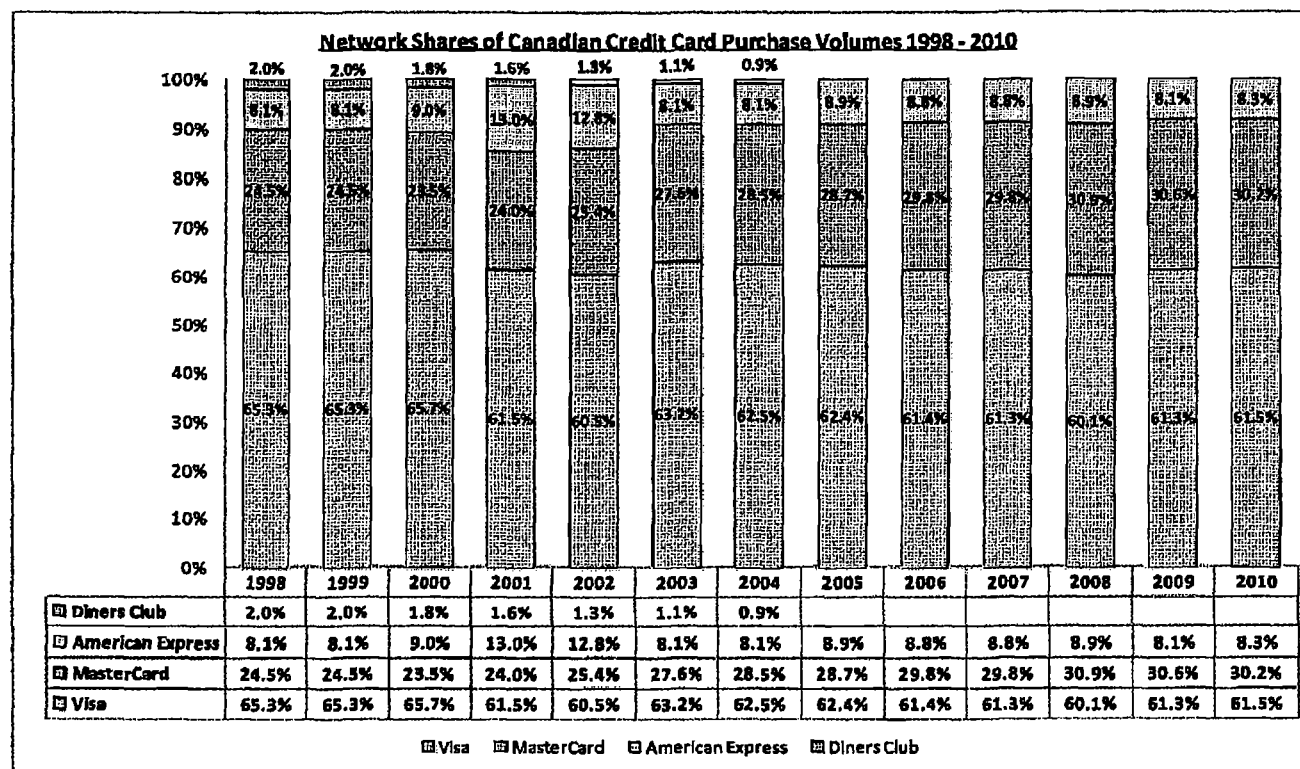
<sup>90</sup> See *ibid.* *Note:* Amounts converted to Canadian dollars using December 31, 1998 and December 31, 2010 CA:US dollar wholesale exchange rates as reported on Oanda website.

Figure 2: Total Credit Card Purchase Volumes (billion US\$) 1998 to 2010<sup>91</sup>



<sup>91</sup> See *The Nilson Report* Number 692, May 1999, *The Nilson Report* Number 718, June 2000, *The Nilson Report* Number 741, June 2001, *The Nilson Report* Number 766, June 2002 (Methodology changes), *The Nilson Report* Number 791, July 2003, *The Nilson Report* Number 811, May 2004, *The Nilson Report* Number 835, June 2005, *The Nilson Report* Number 855, April 2006, *The Nilson Report* Number 878, April 2007, *The Nilson Report* Number 897, February 2008, *The Nilson Report* Number 920, February 2009, *The*

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Figure 3: Canada General Purpose Credit Card Network Market Shares<sup>92</sup>

*Nilson Report* Number 944, March 2010, *The Nilson Report* Number 967, March 2011, Canadian Bankers Association, "Credit Card Statistics - Visa and MasterCard" DB 38 - Public, as of October 2010, accessed October 31, 2011 at [www.cba.ca/en/component/content/publication/69-statistics](http://www.cba.ca/en/component/content/publication/69-statistics).

<sup>92</sup> See Figure 2, above. Note: American Express's Canadian purchase volume share figures reported by *The Nilson Report* in 2001 and 2002 appear to be inflated.



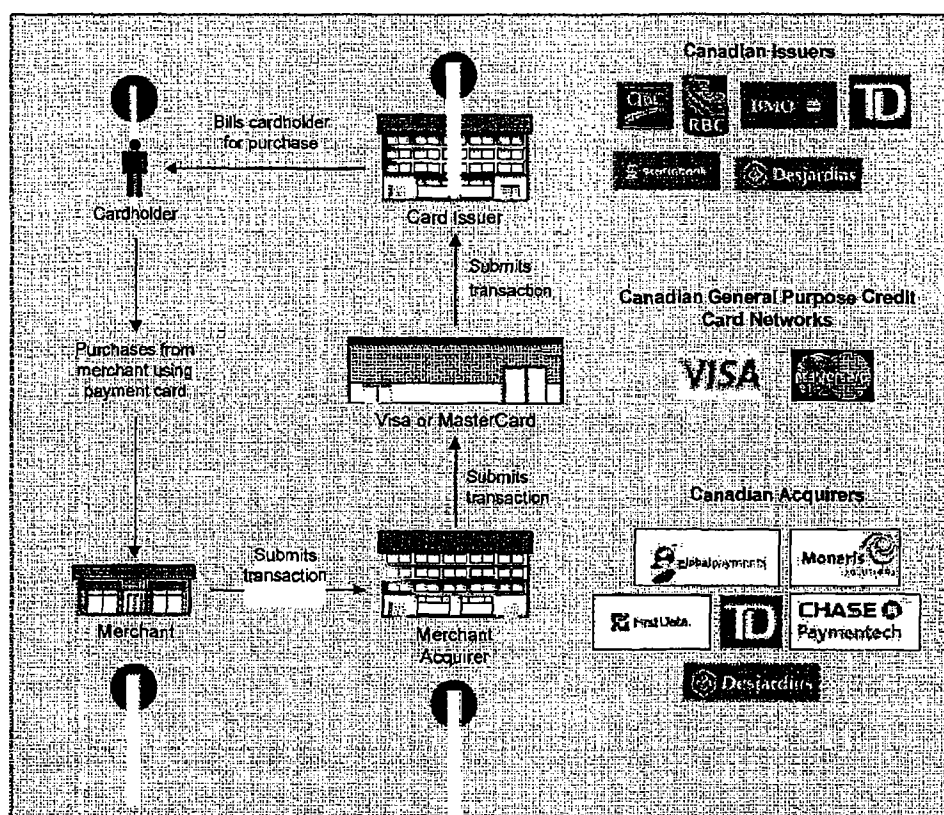
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#### IV. How a General Purpose Credit Card Transaction Occurs

##### Participants in Visa or MasterCard General Purpose Credit Card Transaction

46. A Visa and MasterCard credit card transaction, whether foreign or domestic, involves the same key players: the cardholder, the merchant, the Acquirer, the credit card company and the Issuer. This is sometimes referred to as a "four party" system as it involves four parties in addition to the credit card company (Figure 4).

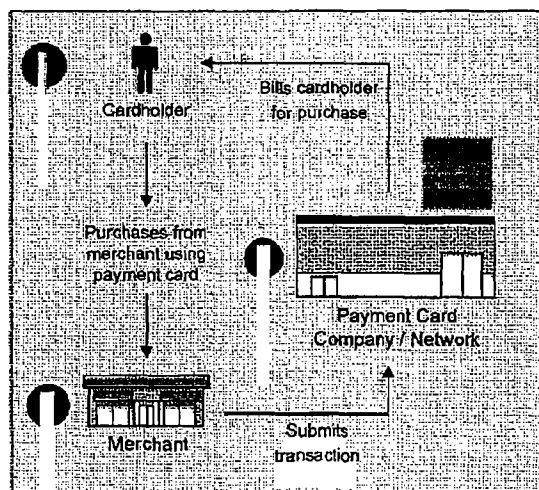
**Figure 4: Four Party Payment Card System**



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47. In contrast to Visa or MasterCard, in Canada, American Express operates a "three party systems" consisting of three participants: the merchant; the payment card company acting as both Issuer and Acquirer; and the cardholder (Figure 5).<sup>93</sup>

**Figure 5: Three Party System**



#### Steps in a General Purpose Credit Card Transaction in a Four Party System

48. All credit card transactions in a four party system require the completion of three basic steps: authorization, clearing and settlement.<sup>94</sup> These steps, in turn, involve a number of sub-steps, the first of which is the use of a credit card by an individual cardholder to purchase goods or services from a merchant.

49. Authorization is a process whereby an Issuer approves or declines a particular transaction based on whether the cardholder has sufficient available credit to cover the transaction amount.

<sup>93</sup> See United States Securities and Exchange Commission, Form 10-K, American Express Company, 2010, p. 10, accessed online January 25, 2012, at <http://ir.americanexpress.com/phoenix.zhtml?c=64467&p=irol-reportsAnnual>. Note: Diners Club operated as a separate three party system in Canada through 2004, when it announced an agreement to convert its cards to MasterCard. I discuss Diners Club Canada's operations in a subsequent section of the report.

<sup>94</sup> As already noted, in a three party system, like the American Express system, the issuing and acquiring functions described in this section are performed by the credit card company itself.

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A merchant submits an authorization request through the merchant's Acquirer and the credit card company's network to the Issuer of the credit card presented for payment. The Issuer sends an electronic message either authorizing or declining the transaction, which is routed through the credit card company's network to the Acquirer and ultimately to the merchant.<sup>95</sup>

50. Clearing describes the electronic movement of transaction data (*i.e.*, cardholder account number, merchant name, transaction amount, transaction date, etc.) from the merchant to the Issuer, through the Acquirer and the credit card company's network.

51. Settlement involves the electronic movement of funds from the Issuer through the credit card company's network to the Acquirer and then to the merchant's account. Settlement is centrally managed by the credit card company, and typically occurs on a daily basis among the payment network participants. Issuers remit funds, less their interchange fees, to the credit card companies' settlement bank(s); these are financial institutions (such as Scotiabank<sup>96</sup>) which serve as clearinghouses, managing the flow of funds in the "net settlement" process between Issuers and Acquirers.<sup>97</sup> Through the settlement bank(s), the credit card companies in turn remit net amounts to the Acquirers, which deduct their fees and then deposit the remaining amounts in merchants' accounts.<sup>98</sup>

52. Within this report, I illustrate various transaction processes with reference to an individual transaction. In practice, however, credit card transactions are not cleared and settled individually. Rather, Acquirers and Issuers clear and settle aggregated groups of multiple merchants' credit card transactions with credit card companies. Transactions cleared through a

<sup>95</sup> Occasionally, an Issuer will respond to an authorization request by sending an electronic message to the merchant requesting that the merchant contact the Issuer to provide additional information before the Issuer approves the transaction. This event is known as a "referral" authorization response.

<sup>96</sup> See "Canadian National Net Settlement Policies and Procedures Guide", January 2012, accessed online at <http://broadcast01p.visabroadcasts.com/xfm/77669a/0/95074b2696042156376000ee698a94dc/16783908>.

<sup>97</sup> See Visa International Operating Regulations - 15 October 2011, "Chapter 7, National Net Settlement" (GSSS5893\_00001550 at 2320 to 2321), [REDACTED]

<sup>98</sup> Occasionally, Acquirers retain some portion of merchants' settlement funds in escrow accounts. This usually occurs with merchants deemed to be higher-risk or with merchants who have a significant amount of sales for services that involve "future delivery," such as airline tickets, cruise line bookings and vacation tours.

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credit card company's network by Acquirers and Issuers, within a given day's cycle, are financially settled in aggregate on the following day (or shortly thereafter).

53. Interchange fees are tallied, summed, and collected in the daily settlement process. In general, a credit card company reports the gross amount of settlement funds each Issuer and Acquirer either owes or is owed as a result of the settlement process. The interchange fees payable to an Issuer are typically "netted" from the Issuer's settlement position with the credit card company. For example, within a credit card company's daily business day settlement process, Issuers typically are charged for the credit card transactions conducted by their cardholders, and credited with the interchange fees generated by these transactions.

54. Conversely, Acquirers are usually credited with funds for credit card transactions deposited by their merchants, less the interchange fees set by the credit card company, which are calculated on each deposited transaction and then credited to the Issuers. Merchants pay Merchant Service Fees to Acquirers, which include interchange fees, network fees and Acquirer service fees. As already noted, interchange and network fees comprise a majority of Canadian merchants' Merchant Service Fees - over 80% on average.<sup>99</sup>

#### **V. Other Credit Card Networks in Canada**

##### **General Purpose Credit Card Networks in Canada**

55. In this section of my report, I discuss the main brands of general purpose credit cards accepted in Canada, other than Visa and MasterCard; namely: American Express, Diners Club and Discover Card.

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### American Express

56. American Express issues credit cards in Canada through AMEX Bank of Canada, which is a wholly-owned subsidiary of the American Express Travel Related Services Company, Inc.<sup>100</sup> American Express' share of Canadian general purpose credit card purchase volume was 8.3% in 2010, and its share by number of transactions in that year was 5.7%.<sup>101</sup> In contrast to Visa and MasterCard, American Express has direct acquiring relationships with Canadian merchants, alongside transaction routing agreements with Canadian Acquirers such as Moneris Solutions, TD Merchant Services ("TDMS"), Chase Paymentech, and Global Payments.<sup>102</sup> These routing agreements permit Acquirers to offer American Express functionality through their terminals, although the Acquirers otherwise play no role in cardholder authorization, financial settlement, or merchant billing for American Express transactions.

57. American Express issues various card products directly in Canada, including their charge cards, credit cards, and several card products directed at small businesses. American Express presently has no active bank issuing relationships in Canada.<sup>103</sup> A document filed by MasterCard with the Competition Bureau in 1998 in connection with the then-proposed merger of the Bank of Montreal ("BMO") and the Royal Bank of Canada ("RBC") states that "the only significant general purpose credit cards in Canada are Visa and MasterCard ... the third (and indeed a distant third) brand of general purpose credit card in Canada is American Express

<sup>100</sup> See American Express Canada website, "About American Express", accessed online January 19, 2012 at <https://www212.americanexpress.com/dsmlive/dsm/int/ca/en/personal/aboutamericanexpress.do?vgnextoid=3de2d2666bb45110VgnVCM100000cecf4ad94RCRD>.

<sup>101</sup> See *The Nilson Report* #967, March 2011 (GSSS5389\_00002602 at 2602, 2608 to 2609).

<sup>102</sup> See American Express Canada website, News Releases, "Major Canadian Payment Processors Support American Express Chip Cards", July 2, 2010, accessed online February 27, 2012 at <http://www.newswire.ca/en/story/636231/major-canadian-payment-processors-support-american-express-chip-cards>.

<sup>103</sup> CIBC announced an issuing relationship with American Express in 2002, but that relationship ended in 2004. See CR80 News website "CIBC Becomes First Canadian Bank to Issue Both American Express and Visa", January 15, 2002, accessed January 30, 2012 at <http://cr80news.com/2002/01/15/cibc-becomes-first-canadian-bank-to-issue-both-american-express-and-visa>, "CIBC Ends American Express Co-Issuing Deal", June 11, 2004, accessed January 30, 2012 at [http://www.paymentsnews.com/2004/06/cibc\\_ends\\_amex.html](http://www.paymentsnews.com/2004/06/cibc_ends_amex.html). See Bradley Examination, December 6, 2011, pp. 417-18, Qs. 1273-77.

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### Diners Club

58. Diners Club operated in Canada as a separate general purpose card brand until April 2004, when its corporate owner, Citicorp, elected to convert Diners Club credit cards issued in Canada and the United States to the MasterCard brand.<sup>107</sup> At the time of the conversion, Diners Club's market share of Canadian general purpose card volume was just under 1.0%.<sup>108</sup> A MasterCard document states that Diners Club's "numerical presence [in Canada] is so small as to be virtually irrelevant."<sup>109</sup> In November 2009, BMO Financial Group of Canada purchased the North American Diners Club franchisee license from Citicorp.<sup>110</sup> BMO presently issues Diners Club cards in Canada with MasterCard branding.<sup>111</sup>

<sup>104</sup> MasterCard Canada, "Maintaining Competition in the Canadian Credit Card Industry", undated (GSS5893\_00003082 at 3093).

<sup>105</sup> E-mail message from Brian Weiner, "RE: Key Stats", October 20, 2008 (VISA00242021 at 2021).

<sup>106</sup> Visa's Merchant Strategic Plan, Undated (VISA00234522 at 4533).

<sup>107</sup> See MasterCard Press Release, "Diners Club and MasterCard Announce Groundbreaking Alliance", MasterCard International Press Release 29 April 2004, (Edited on 7 March 2005), accessed online November 29, 2011 at [http://www.mastercard.com/us/wcc/PDF/10076\\_MasterCard\\_DCA\\_Merchant\\_Release.pdf](http://www.mastercard.com/us/wcc/PDF/10076_MasterCard_DCA_Merchant_Release.pdf). Pursuant to the alliance, Diners Club cards were "redesigned to include the MasterCard account number and MasterCard Mark and hologram on the front of the Card in order to function as MasterCard cards".

<sup>108</sup> See *The Nilson Report* #835, June 2005, pp. 1, 8 and 9.

<sup>109</sup> MasterCard Canada, "Maintaining Competition in the Canadian Credit Card Industry", undated (GSS5893\_00003082 at 3094).

<sup>110</sup> See *The Wall Street Journal*, "Bank Montreal to Buy Diners Club North American Franchise From Citigroup", *The Wall Street Journal*, November 25, 2009, accessed online November 28, 2011 at <http://www.online.wsj.com/article/SB10001424052748704779704574555422806129580.html>.

<sup>111</sup> See Diners Club Canada website, accessed online March 7, 2012 at <https://www.dinersclubcanada.com/home>.

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### **Discover Card**

59. Discover Card is a general purpose credit card brand launched in 1986 in the United States, by Dean Witter Financial Services Group, Inc., a subsidiary of Sears, Roebuck and Co.<sup>112</sup> As of 2010, Discover was the fourth largest general purpose credit brand in the U.S., with a 5.7% share of U.S. general purpose credit card purchase volume, 56.2 million credit cards issued in the United States, and 7.9 million U.S. merchants accepting Discover cards for payment.<sup>113</sup> Discover offers various types of credit, debit and pre-paid cards, including rewards, premium, and business credit card products.<sup>114</sup>

60. Discover is not issued in Canada and has limited acceptance among Canadian merchants, although Discover recently announced its intention to expand its Canadian presence through an agreement with Moneris (Canada's largest Acquirer).<sup>115</sup> Specifically, in October 2010, Discover and Moneris entered into an agreement to expand acceptance by Canadian merchants of Discover credit cards.<sup>116</sup>

## **VI. Overview of Visa and MasterCard Credit Card Payment Networks in Canada**

### **History and Evolution of the Visa and MasterCard Payment Networks in Canada**

61. In 1968, a group of Canadian banks, including RBC, CIBC, The Toronto-Dominion Bank ("TD Bank"), and several others, began issuing general purpose credit cards under the "Chargex"

<sup>112</sup> See Discover Financial Services website "Discover Company Milestones", January 2011, accessed online February 8, 2012 at <http://www.discoverfinancial.com/company/history.shtml>.

<sup>113</sup> See *The Nilson Report* #965, February 2011. Note: As discussed in the report, Discover does not presently issue cards in Canada, though there are some Canadian merchants which accept Discover cards for payment.

<sup>114</sup> See Discover Network website, "Payment Solutions", accessed online February 8, 2012 at <http://www.discovernetwork.com/payment-solutions/>.

<sup>115</sup> See Bloomberg Businessweek website, "Discover to expand card acceptance in Canada", October 26, 2010, accessed online January 19, 2012 at <http://www.businessweek.com/ap/financialnews/D9J3GLB80.htm>. Discover website, "Using Your Card in Canada", accessed January 18, 2012 at <http://www.discover.com/credit-cards/help-center/account/international-use/canada.html>.

<sup>116</sup> See Bloomberg Businessweek website, "Discover to expand card acceptance in Canada", October 26, 2010, accessed online January 19, 2012 at <http://www.businessweek.com/ap/financialnews/D9J3GLB80.htm>.

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brand.<sup>117</sup> In 1977, the bank issuers of Chargex converted their card portfolios to the Visa brand.<sup>118</sup> [REDACTED]

119

62. Visa Inc. is a global company which today has approximately 15,300 licensed members worldwide.<sup>120</sup> Membership in the Visa system is open to any financial institution meeting the financial, legal, and regulatory criteria prescribed in the Visa International Operating Regulations, including any regional rules (the "Visa Operating Rules").<sup>121</sup> Members of the Visa network must agree to abide by the Visa Operating Rules, and agree that those Rules represent a "binding contract" between participants in the Visa system.<sup>122</sup> Visa Inc. owns the Visa trademarks and brands, and licenses them either directly to its members, or to the various regions and groups within the Visa system, which in turn sublicense them to member banks for use according to the terms set forth in the Visa Operating Rules.<sup>123</sup>

<sup>117</sup> See RBC website "History 1960 - 1979, Chargex / Visa\*", accessed online January 16, 2012 at <http://www.rbc.com/history/quicktofrontier/chargex-visa.html>.

<sup>118</sup> See RBC website, "History 1960 - 1979, If Mary uses Chargex, it must be fine..." accessed January 16, 2012 at <http://www.rbc.com/history/quicktofrontier/chargex-visa-detail.html#top>.

<sup>119</sup> See [REDACTED]

<sup>120</sup> See Visa Inc. Corporate Overview, p. 2, accessed online November 28, 2011 at [http://www.corporate.visa.com/\\_media/visa-corporate-overview.pdf](http://www.corporate.visa.com/_media/visa-corporate-overview.pdf).

<sup>121</sup> See Visa International Operating Regulations, 15 October 2011, "Chapter 1 Visa Operating Rules Governance" (GSSS5893\_00001550 at 1648 to 1653) and "Chapter 2 Visa System Participation" (GSSS5893\_00001550 at 1672), and Visa Regional Operating Regulations, Canada, 15 November 2008, "Section 1.1.B Member Responsibilities" and "Appendix E, Article 2 - Customers, Section 2.01 Eligibility (VISA00058074 at 8092 and 8283 to 8285), "Appendix E to the Visa Canada Operating Regulations", 14 January 2010 (GSSS2177\_00020438 at 0447 to 0448).

<sup>122</sup> See Visa International Operating Regulations - 15 October 2011, "Chapter 1 Visa Operating Regulations, Governance, Core Principle 1.1, The Operating Regulations, Binding Contract" (GSSS5893\_00001550).

<sup>123</sup> See Visa International Operating Regulations - 15 October 2011, "Chapter 3: The Visa License, Core Principle 3.1, Intellectual Property, Visa Ownership of Intellectual Property", (GSSS5893\_00001550 at 1700) and "Marks License", (GSSS5893\_00001550 at 1701 to 1703), "Exhibit A to Appendix E to the Visa Canada Operating Regulations, Trade-mark License Provisions for Trade-marks of Visa International" (GSSS2177\_00020438 at 0462 to 0464) and "Exhibit B to Appendix E of the Visa Canada Operating Regulations, Trade-mark License Provisions for Trade-marks of Visa Canada (GSSS2177\_00020438 at 0465 to 0466).



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63. Visa Canada Corporation (previously defined as "Visa") is a wholly-owned subsidiary of Visa Inc.<sup>124</sup> Visa is managed by a senior executive responsible for Visa's activities within Canada, referred to as either the President of Visa Canada or the Visa Canada Country Manager.<sup>125</sup> Visa has services agreements with Acquirers and Issuers in Canada,<sup>126</sup> and those agreements, together with the Visa Operating Rules<sup>127</sup> govern the use and functioning of Visa's credit card payment system in Canada.

64. MasterCard International Incorporated (previously defined as "MasterCard") is a global company with 2,500 principal members located around the world, and approximately 19,400 affiliate members (also located worldwide) which are sponsored by one or more of MasterCard's principal members.<sup>128</sup> As with Visa, licensed membership in the MasterCard system is open to any financial institution meeting the financial, legal, and regulatory criteria specified in the MasterCard Rules (the "MasterCard Operating Rules").<sup>129</sup> Members of MasterCard must agree to abide by the MasterCard Operating Rules.<sup>130</sup> Like Visa, MasterCard owns the MasterCard trademarks and brands, and licenses them to its members.<sup>131</sup>

<sup>124</sup> See Bradley Examination, December 5, 2011, p. 43, Qs. 154-55.

<sup>125</sup> See *ibid*, pp. 36-37, Qs. 118-22.

<sup>126</sup> See *ibid*, p. 52, Q. 188 and pp. 54-55, Q. 196. See also Bradley Examination, December 6, 2011, pp. 397-98, Qs. 1198-1200 and response to questions taken under advisement Q. 204, p. 58 on Bradley Examination, December 5, 2011.

<sup>127</sup> See Visa International Operating Regulations – 15 October 2011, "Chapter 1 Visa Operating Rules Governance", (GSSS5893\_00001550 at 1648 to 1653) and Visa Regional Operating Regulations, Canada, 15 November 2008, "Section 1.1.B Member Responsibilities" (VISA00058074 at 8092). "Appendix E to the Visa Canada Operating Regulations", 14 January 2010, (GSSS2177\_00020438 at 0448).

<sup>128</sup> [REDACTED]

<sup>129</sup> [REDACTED]

<sup>130</sup> [REDACTED]

<sup>131</sup> [REDACTED]

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65. Although MasterCard has a wholly-owned Canadian subsidiary, MasterCard Canada, Inc.,<sup>132</sup> MasterCard is the entity that is responsible for the implementation and enforcement of the MasterCard Operating Rules in Canada.<sup>133</sup>

#### Structures of Visa and MasterCard

66. From their inception and for many years thereafter, Visa and MasterCard were operated as joint-venture operating companies of their member financial institutions. In general, banks around the world held ownership interests in the Visa and MasterCard systems based on their proportional card issuance and sales volumes.<sup>134</sup> In Canada, bank licensees of Visa held ownership interests in Visa Canada, and MasterCard licensees held ownership interests in MasterCard International.<sup>135</sup>

67. In August 2005, MasterCard announced that it intended to change its ownership structure worldwide.<sup>136</sup> Between August 2005 and May 2006, MasterCard and its member banks entered into a series of agreements and understandings related to MasterCard's structure that led to an initial public offering of MasterCard stock on the U.S. stock market through a new entity, MasterCard Inc. in May 2006.<sup>137</sup> As part of MasterCard's public offering of stock, member

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<sup>132</sup> [REDACTED]

<sup>133</sup> [REDACTED]

<sup>134</sup> See Visa USA, Certificate of Incorporation and By-Laws, As amended, 1 October, 2007, Article IV Voting And Meetings, pp. 33 to 35, MasterCard International, Bylaws and Rules, October 2005, Bylaws Article III, "Share Ownership," pp. Article III-1 to Article III-8.

<sup>135</sup> See Visa Inc. Form-10K, Filed November 21, 2008 (period: September 30, 2008), p. 5, and MasterCard Canada, "Maintaining Competition in the Canadian Credit Card Industry", undated (GSSSS5893\_00003082 at 3099).

<sup>136</sup> See MasterCard News Release, "MasterCard Files Registration Statement for Initial Public Offering," September 15, 2005, accessed November 30, 2011 online at [http://www.mastercard.com/us/company/en/newsroom/pr\\_1095.html](http://www.mastercard.com/us/company/en/newsroom/pr_1095.html).

<sup>137</sup> See MasterCard News Release, "MasterCard Incorporated Prices Initial Public Offering," May 24, 2006, accessed November 30, 2011 online at [http://www.mastercard.com/us/company/en/newsroom/pr\\_1266.html](http://www.mastercard.com/us/company/en/newsroom/pr_1266.html).

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banks in Canada and elsewhere were issued several classes of equity shares in the new MasterCard corporate entity corresponding to their prior association ownership interests.<sup>138</sup>

68. In 2006, Visa announced its intention to alter its ownership structure, and reorganized various entities (*i.e.*, Visa USA, Visa International, Visa Canada, and Inovant) under Visa Inc.<sup>139</sup> Visa undertook an initial public offering of stock in March 2008 on the U.S. stock market under the corporate name Visa Inc.<sup>140</sup> Visa International, Visa Canada and other entities became wholly-owned subsidiaries of Visa Inc.<sup>141</sup> As part of Visa Inc.'s IPO and corporate reorganization, Canadian banks were issued stock in the new entity Visa Inc.<sup>142</sup>

#### Financial Institution Membership in Visa and/or MasterCard

69. Within Canada, Visa and MasterCard bylaws and rules historically restricted licensed membership, and the authority to issue cards and/or offer Credit Card Network Services, to financial institutions meeting certain criteria.<sup>143</sup> The primary requirement for membership in either Visa or MasterCard is that the entity be a regulated financial institution in the country in which it operates with the authority to "accept demand deposits" or engage in other approved

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<sup>139</sup> Note: Visa Europe did not become part of Visa Inc. According to Visa Inc.'s Form 10-K 2008 annual report, Visa Europe "remained owned by its member financial institutions and entered into a series of contractual arrangements with Visa Inc. in connection with the reorganization." Visa Inc. Form-10K, Filed November 21, 2008 (period: September 30, 2008), p. 5. See also Visa press release "Visa Announces Global Restructuring," October 11, 2006, accessed November 30, 2011 online at <http://www.corporate.visa.com/media-center/press-releases/press302.jsp>.

<sup>140</sup> See *ibid.* and Visa press release "Visa Inc. Prices Initial Public Offering," March 18, 2008, accessed November 30, 2011 online at <http://www.corporate.visa.com/media-center/press-releases/press757.jsp>.

<sup>141</sup> See Visa Inc. Form-10K, Filed November 21, 2008 (period: September 30, 2008), pp. 5 and 38.

<sup>142</sup> See Visa press release "Visa Announces Global Restructuring," October 11, 2006, Visa Inc. Form-10K, Filed November 21, 2008 (period: September 30, 2008), p. 5.

<sup>143</sup> See Visa International Operating Regulations - 15 October 2011, "Chapter 2 Visa System Participation" (GSSS5893\_00001550 at 1672), Visa Regional Operating Regulations, Canada, 15 November 2008, "Appendix B, Article 2 - Customers, Section 2.01 Eligibility - Customers, subsection c)" (VISA00058074 at 8283 to 8285), "Appendix B to the Visa Canada Operating Regulations", 14 January 2010, "Article 2 Customers" (GSSS2177\_00020438 at 0447 to 0458).

"Maintaining Competition in the Canadian Credit Card Industry", undated (GSSS5893\_00003082 at 3100).

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consumer or commercial financial transactions.<sup>144</sup> For example, the Visa Operating Rules require that any entity wishing to enter into a services agreement to issue Visa credit card products in Canada and/or to offer Visa merchant acquiring services in Canada be "organized under the laws of Canada or a province or territory governing financial institutions, and authorized to accept demand deposits", or be a subsidiary of an entity that meets these criteria.<sup>145</sup>

70. By securing licensed membership in Visa or MasterCard, a Canadian financial institution is granted a license to act as an Issuer (*i.e.*, to issue credit card products) and to act as an Acquirer (*i.e.*, to provide Credit Card Network Services to merchants in Canada).<sup>146</sup> Both the MasterCard and Visa Operating Rules allow licensed members to sponsor affiliates and third parties meeting various financial and operating criteria to participate in the MasterCard and Visa systems (as the case may be), including processors such as Moneris and First Data, which supply acquiring services on behalf of their sponsors.<sup>147</sup>

71. Membership in the Visa or MasterCard systems also requires agreement to comply with Visa's or MasterCard's respective Operating Rules. Financial institutions which are licensed as members of the credit card networks must agree to be bound by the international, regional, and country-level rules of each credit card network and to ensure that any of their affiliates or third party sponsored entities do the same.<sup>148</sup>

<sup>144</sup> [REDACTED]

<sup>145</sup> See Visa Regional Operating Regulations, Canada, 15 November 2008, "Appendix E, Article 2 – Customers, Section 2.01 Eligibility - Customers, subsection e" (VISA00058074 at 8283 to 8285), "Appendix E to the Visa Canada Operating Regulations", 14 January 2010, "Article 2 – Customers" (GSSS2177\_00020438 at 0447 to 0458).

<sup>146</sup> See *ibid.*, and "Exhibit A to Appendix E To Visa Canada Operating Regulations, Trade Mark License Provisions for Visa International (Canada)" (VISA00058074 at 8302 to 8305), "Appendix E to the Visa Canada Operating Regulations", 14 January 2010, "Exhibit A to Appendix E to Visa Canada Operating Regulations, Trade-mark License Provisions for Trade-marks of Visa International" (GSSS2177\_00020438 at 0462 to 0464), "Exhibit B to Appendix E of the Visa Canada Operating Regulations, Trade-mark License Provisions for Trade-marks of Visa Canada" (GSSS2177\_00020438 at 0465 to 0466), and [REDACTED]

<sup>147</sup> See Visa International Operating Regulations – 15 October 2011, Chapter 2, "Core Principal 2.2 – Third Party Registration" (GSSS5893\_00001550 at 1672), "Agents – Third Party and VisaNet Processors" (GSSS5893\_00001550 at 1680 to 1697) and [REDACTED]

<sup>148</sup> See Visa International Operating Regulations – 15 October 2011, Chapter 1, "Visa Operating Rules Governance - Obligation to Comply with Bylaws and Visa International Operating Regulations" (GSSS5893\_00001550 at 1650 to 1653), Chapter 2, "Visa System Participation – Core Principal 2.1, Following the Rules of Participation" (GSSS5893\_00001550 at 1672) and [REDACTED]

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72. The membership structure for Visa and MasterCard generally requires each financial institution member to commence a credit card issuing program. MasterCard's membership requirements differ from those of Visa in that, pursuant to the MasterCard Operating Rules, each member bank must issue a minimum number of cards within a specified time period.<sup>149</sup> The MasterCard Operating Rules do not permit members to only offer MasterCard Credit Card Network Services without also issuing a specified number of MasterCard products. As such, independent, third-party payment processors in Canada, such as First Data or Global Payments, are usually not able to secure membership in MasterCard, and must instead rely on sponsorship arrangements with financial institutions that are licensed members of MasterCard.

**Canadian Issuers of Visa and MasterCard Credit Cards - 2010**<sup>150</sup>

73. Credit card Issuers establish accounts for cardholders, grant lines of credit to cardholders, manage transaction processing, payment and fee activity within cardholders' accounts, and provide reporting and customer services to cardholders. Issuers earn revenues from interest charges paid by cardholders on revolving (unpaid) account balances, from annual fees, transaction fees and other fees charged to cardholders, and from interchange fees paid by merchants.<sup>151</sup>

74. The top five Canadian Issuers of Visa and MasterCard credit cards accounted for 74.9% of combined Visa and MasterCard credit card purchase volume in 2010, while the top ten Canadian Visa and MasterCard Issuers accounted for 95% of that combined purchase volume (Figures 6 and 7).<sup>152</sup> The trend in the Canadian issuing market has been towards consolidation in recent years, with CIBC purchasing Citigroup's Canadian MasterCard credit card issuing business in 2010, and TD Bank purchasing MBNA's Canadian MasterCard credit card portfolio

149

150 As set out in *The Nilson Report* Number 967, March 2011 (GSSS5389\_00002602), the figures include totals for both consumer and commercial credit and prepaid cards, excluding Vancity Savings Credit Union's prepaid card totals.

151

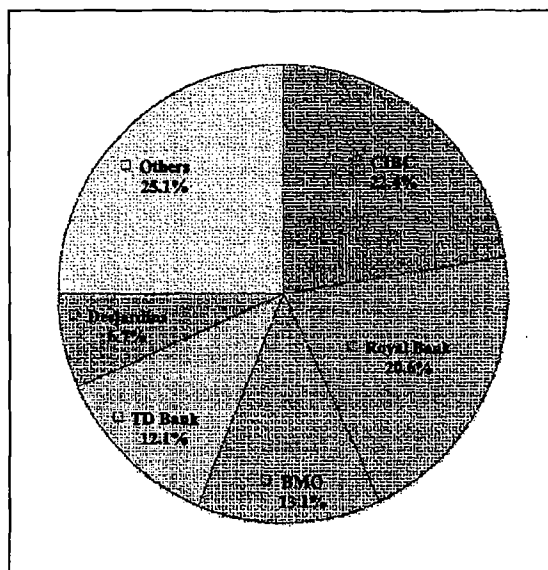
152 See *The Nilson Report* Number 967, March 2011 (GSSS5389\_00002602).

See answer to follow-up questions in respect of Q. 204, p. 36 from the Bradley Examination, December 5, 2011.

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in 2011 from Bank of America Corporation.<sup>153</sup> MBNA was Canada's second largest Issuer of MasterCard credit cards, ranked by 2010 purchase volume, and the largest MasterCard Issuer, ranked by year-end 2010 outstanding cardholder account balances.<sup>154</sup>

**Figure 6: Canadian Issuer Shares of Visa and MasterCard Credit Card Purchase Volume 2010<sup>155</sup>**



#### Direct and Indirect Relationships between Issuers and Acquirers

75. A number of Canadian Issuers have relationships with, or ownership interests in, Canadian Acquirer businesses. Certain Canadian Acquirers, such as TDMS and Desjardins, are part of financial institutions that are also significant Issuers of Visa and MasterCard credit cards,

<sup>153</sup> See TD Group Financial Services website, "Purchase of MBNA Canada Bank's credit card assets by the Toronto-Dominion Bank is completed", December 1, 2011, accessed January 23, 2012 at <http://www.tdmediaroom.com/index.php?s=43&item=1459>, and CIBC website, Media Centre, "CIBC completes acquisition of \$2 billion Canadian MasterCard portfolio from Citigroup", September 1, 2010, accessed January 23, 2012 at <http://micro.newswire.ca/release.cgi?rkey=1809016458&view=14730-0&Start=&htm=0>.

<sup>154</sup> See *The Nilson Report* Number 967, March 2011 (GSSS5389\_00002602).

<sup>155</sup> See *Ibid.* The figures include totals for both consumer and commercial credit and prepaid cards, excluding Vancity Savings Credit Union prepaid card totals. Note: Figures for 2011 were not yet available as of the publication date of this report.

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or subsidiaries of these institutions. As discussed above, other Acquirers have either ownership or marketing/referral relationships with Canadian Issuers. For example, as discussed below, Moneris Solutions is a joint venture between BMO and RBC. These relationships are shown in Figure 7, and are discussed in more detail in a subsequent section of this report.

Figure 7: Canadian Issuers of Visa and MasterCard Credit Cards - 2010<sup>156</sup>

Rank	Canadian Visa / MasterCard Credit Card Issuers	2010 Purchase Volume (mil)(CAD) <sup>4</sup>	Purchase Volume % of Total	Cumulative Share of Issuer Total Visa/MC Purchase Volume	Merchant Acquiring Relationship	Nature of Acquiring Relationship
1	Canadian Imperial (CIBC) <sup>1</sup>	\$ 62,798.3	22.4%	22.4%	Global Payments	Referral
2	Royal Bank	\$ 57,896.4	20.6%	43.0%	Moneris	Ownership of JV
3	Bank of Montreal <sup>2</sup>	\$ 36,875.4	13.1%	56.2%	Moneris	Ownership of JV
4	TD Bank <sup>3</sup>	\$ 33,936.5	12.1%	68.3%	Direct	Direct
5	Desjardins	\$ 18,762.9	6.7%	74.9%	Direct	Direct
6	Scotia Bank/Bank of Nova Scotia	\$ 16,593.2	5.9%	80.9%	Chase Paymentech	Referral
7	Bank of America/MBNA (Now TD Bank)	\$ 11,848.5	4.2%	85.1%		
8	President's Choice (PC) Financial	\$ 10,831.1	3.9%	88.9%	None	None
9	Canadian Tire	\$ 10,234.5	3.6%	92.6%	None	None
10	Natl Bank of Canada	\$ 6,846.9	2.4%	95.0%	Global Payments	Referral
11	Capital One	\$ 2,309.8	0.8%	95.8%	None	None
12	HSBC Financial	\$ 2,302.7	0.8%	96.7%	Global Payments	Referral
13	JP Morgan Chase (fka Sears portfolio)	\$ 2,150.2	0.8%	97.4%	Chase Paymentech	Direct
14	U.S. Bank	\$ 1,895.7	0.7%	98.1%	Elavon Canada Co	Direct
15	ATB Financial	\$ 1,444.4	0.5%	98.6%	Moneris	Referral
16	Vancity Savings Credit Union	\$ 1,252.6	0.4%	99.1%	Desjardins	Direct
17	Laurentian Bank	\$ 989.9	0.4%	99.4%	Moneris	Referral
18	Walmart	\$ 600.0	0.2%	99.6%	None	None
19	Peoples Trust (Horizon Plus)	\$ 429.5	0.2%	99.8%	Direct	Direct
20	Home Trust	\$ 335.0	0.1%	99.9%	ICE Acquiring/Planet Payment	Referral
21	Bank of America (Now TD Bank)	\$ 214.3	0.1%	100.0%		
22	Wells Fargo	\$ 44.0	0.0%	100.0%	None (in Canada)	None
	<b>TOTALS</b>	<b>\$ 280,591.8</b>				

<sup>156</sup> The Nilson Report Number 967, March 2011 (GSSS5389\_00002602). Figure 7 Notes: (1) Includes purchase volume of Citi through August 31, 2010 which CIBC acquired mid-2010; (2) Includes BMO's Diners Club/MasterCard portfolio; (3) TD Bank figures do not include purchase volumes from TD Bank's 2011 acquisition of MBNA/Bank of America's Canadian MasterCard portfolio, (4) Includes consumer credit, commercial credit, and prepaid card purchase volumes.



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Brief Summary of Canadian Acquirers

76. [REDACTED]

[REDACTED]<sup>157</sup> As noted above, it is a joint venture of BMO and RBC formed in 2000 to combine BMO and RBC's respective merchant acquiring businesses.<sup>158</sup> Because of the joint ownership by BMO and RBC, Moneris was one of the first Canadian Acquirers to offer both Visa and MasterCard Credit Card Network Services in Canada's pre-2008, non-dual environment.<sup>159</sup> BMO and RBC bank branches market and sell Moneris' Credit Card Network Services.<sup>160</sup>

77. Global Payments Canada is a subsidiary of Global Payments Inc., and [REDACTED]  
[REDACTED]<sup>161</sup> Global Payments Canada was established following the purchase by Global Payments Inc. of CIBC's and National Bank's respective merchant acquiring businesses in 2000.<sup>162</sup> Global Payments has an alliance relationship with CIBC, whereby CIBC markets and sells Global Payments' Credit Card Network Services.<sup>163</sup> Global Payments' annual report filing with the U.S. Securities and Exchange Commission indicates it is in the process of forming a wholly-owned financial institution in Canada to serve as its sponsor so that it can

<sup>157</sup> [REDACTED] and answer to undertaking to Q. 1226-27 (Chart C), pp.404-405, given on Bradley Examination, December 6, 2011.

<sup>158</sup> [REDACTED]  
and See Moneris Solutions website, "Corporate History", accessed January 11, 2012 at <http://www.moneris.com/en/AboutUs/Company/Corporate%20Information/Corporate%20History.aspx>.

<sup>159</sup> [REDACTED]  
Note: Until 2008, banks in Canada could be a member of MasterCard or Visa, but not both, because Visa prohibited "dual" membership.

<sup>160</sup> See *ibid*, at 5298.

<sup>161</sup> See *The Nilson Report* # 982 p. 9, [REDACTED]  
[REDACTED] answer to undertaking to Q. 1226-27 (Chart C), pp.404-405, given on Bradley Examination, December 6, 2011.

<sup>162</sup> See *ibid*.

<sup>163</sup> See CIBC website, "Business Services / Merchant Services", accessed January 11, 2012 at <http://www.cibc.com/ca/small-business/merchant-services.html>.

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independently supply Visa and MasterCard Credit Card Network Services to Canadian merchants.<sup>164</sup>

78.

[REDACTED]<sup>166</sup>  
[REDACTED]<sup>167</sup>

Chase Paymentech has an acquiring, marketing and sales referral relationship with Scotiabank.<sup>168</sup>

79. TD Merchant Services (previously defined as "TDMS") [REDACTED]<sup>169</sup> is the fourth largest Acquirer in Canada.<sup>170</sup>  
[REDACTED]<sup>170</sup>

<sup>164</sup> Regarding financial institution sponsorship of its acquiring business, Global Payments states in its annual report: "In order to provide credit and debit card transaction processing services for MasterCard, Visa and other payment networks, we must either be a member of these systems or be designated as a certified processor by MasterCard and Visa in addition to being a Merchant Service Provider by MasterCard and an Independent Sales Organization by Visa. Currently, these designations are dependent upon member clearing banks sponsoring us or our membership in various networks and our adherence to the standards of the networks. We have five primary financial institution sponsors in the United States, Canada, the United Kingdom, Spain, the Asia-Pacific region, and the Russian Federation with whom we have sponsorship or depository and clearing agreements and in some cases we have membership in various networks. These agreements allow us to route transactions under the member banks' control and identification numbers to clear card transactions. Certain of the member financial institutions of Visa and MasterCard are our competitors. Visa and MasterCard set the standards with which we must comply". Global Payments also states that "[i]n Canada, we have filed an application with the Canadian regulatory authorities for the formation of a wholly owned loan company in Canada which could serve as our financial institution sponsor. In the interim, through March 2012, we are processing directly through Visa in Canada. We have also entered into an agreement with a financial institution who is willing to serve as our sponsor, if necessary." See Global Payments Inc. 2011 Form 10-K Annual Report, in the year ended May 31, 2011, pp. 6 and 13, accessed August 25, 2011 at <http://www.sec.gov/Archives/edgar/data/1123360/000119312511196004/0001193125-11-196004-index.htm>.

<sup>165</sup> [REDACTED] and answer to undertaking to Q. 1226-27 (Chart C), pp.404-405, given on Bradley Examination, December 6, 2011.

<sup>166</sup> [REDACTED]

<sup>167</sup> [REDACTED]

<sup>168</sup> [REDACTED]

<sup>169</sup> [REDACTED]

<sup>170</sup> See *The Nilson Report* # 982 p. 9.

<sup>171</sup> [REDACTED]

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80.

<sup>173</sup> It has traditionally sold Credit Card Network Services mainly to its own business customers.<sup>174</sup>

81.

<sup>175</sup> Elavon provides Credit Card Network Services to Air Canada and several other Canadian airlines.<sup>176</sup>

82.

<sup>177</sup> It has traditionally relied on Independent Sales Organizations ("ISOs")<sup>178</sup> to market and sell its Credit Card Network Services in Canada.<sup>179</sup>

#### Brief Summary of the Canadian Credit Card Network Services Industry

83. The Canadian market for Credit Card Network Services is large and well-developed relative to other countries in the world.

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<sup>173</sup> answer to undertaking to Q. 1226-27 (Chart C), pp.404-405, given on Bradley Examination, December 6, 2011.

174

<sup>175</sup> answer to undertaking to Q. 1226-27 (Chart C), pp.404-405, given on Bradley Examination, December 6, 2011.

176

<sup>177</sup> answer to undertaking to Q. 1226-27 (Chart C), pp.404-405, given on Bradley Examination, December 6, 2011.

<sup>178</sup> An ISO is a third party firm that specializes in soliciting merchants and signing them up for Credit Card Network Services. ISOs are sponsored by financial institutions licensed by Visa and/or MasterCard. ISOs usually focus their efforts on sales of Credit Card Network Services to small merchants or to merchants in particular industries, such as e-commerce.

179

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[REDACTED]

<sup>180</sup> A 2011 paper by McKinsey & Company states that Canada is the fourth largest payment card transaction acquiring market in the world, behind only the U.S., Japan, and Brazil, and slightly ahead of the U.K., France, and China.<sup>181</sup>

84.

[REDACTED]

<sup>82</sup> I am unaware of any Canadian Acquirer that presently offers only Visa Credit Card Network Services or only MasterCard Credit Card Network Services. Similarly, my understanding is the vast majority of Canadian merchants that accept credit cards accept both Visa and MasterCard, and not only one or the other.

85. The Visa and MasterCard networks and their products are essentially the same from the perspective of Canadian Acquirers. Similarly, from the perspective of Canadian merchants, there is very little difference between Visa and MasterCard Credit Card Network Services or the Respondents' respective credit card products, except that MasterCard Credit Card Network Services are likely to be more expensive for most Canadian merchants than Visa Credit Card

180

[REDACTED]

<sup>181</sup> See McKinsey website, "Global challenges, local opportunities: Trends in merchant acquiring" McKinsey on Payments, September 2011, accessed January 23, 2012 at [http://www.mckinsey.com/client-service/Financial\\_Services/Knowledge\\_Highlights/~media/Reports/Financial\\_Services/MoP12\\_merchant%20acquiring.asbx](http://www.mckinsey.com/client-service/Financial_Services/Knowledge_Highlights/~media/Reports/Financial_Services/MoP12_merchant%20acquiring.asbx).

182

[REDACTED]

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Network Services due to MasterCard's higher interchange fee structures (as discussed later in the report).<sup>183</sup>

### Canadian Acquirers are Competitive

86. [REDACTED]

[REDACTED]

<sup>185</sup> Historically, these and other merchant segments have had little to no credit card acceptance, and correspondingly low amounts of credit card spending relative to other payment methods.<sup>186</sup>

87. [REDACTED]

[REDACTED]

The top seven Acquirers control 95 to 99% of the combined acquired Canadian purchase volume. Figure 8 provides share information for Canadian Acquirers for Visa and MasterCard in 2011, while Figure 9 shows the number of MasterCard merchant locations, as reported by

<sup>183</sup> [REDACTED]

<sup>184</sup> [REDACTED]

<sup>185</sup> [REDACTED]

<sup>186</sup> A 2008 McKinsey & Company study of the Canadian credit card business reported credit card spending as 35% of discount store sales and 8% of QSR sales. See McKinsey & Company "Perspectives on Canadian Credit Card Business", May 19, 2008 (VISA00526292 at 6330). See also Visa, "Global Acceptance Landscape, January 2009" (VISA00104657 at 4712).

<sup>187</sup> [REDACTED] and answer to undertaking to Q. 1226-27 (Chart C), pp.404-405, given on Bradley Examination, December 6, 2011.

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MasterCard, acquired by each of the top five MasterCard Acquirers in Canada as of September 2010.

**Figure 8: Canadian Acquirer Visa and/or MasterCard Purchase Volume Shares: 2011<sup>188</sup>**

Visa Rank	MC Rank	Acquirer	% of Visa Acquired Volume - 2011	% of MC Acquired Volume - Sept 2011
1	1	Moneris		
2	3	Chase Paymentech		
3	2	Global Payments		
5	7	Desjardins		
6	6	Elavon Canada Company		
7	5	First Data Loan Company Canada		
8	8	Others		
		Total	100.0%	100.0%

<sup>188</sup> See *ibid.*

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**Figure 9: MasterCard Merchant Location Counts by Acquirer, 2010<sup>189</sup>**

Rank	Canadian Acquirer	Merchant Location Counts
1	Moneris	
2	Global Payments	
3	Chase Paymentech	
5	First Data Loan Company Canada	
	Total	

**"On-Us" Transactions**

88. Certain Canadian Issuers which operate acquiring businesses, or have relationships with Acquirers, have implemented arrangements to process what are commonly referred to as "On-Us" credit card transactions. An On-Us transaction is one where the Acquirer and the Issuer are the same entity, or related entities, and the transaction may be (but need not be) authorized, cleared and settled directly between the Acquirer and Issuer outside the Visa or MasterCard's network (as the case may be).<sup>190</sup> In practice, [REDACTED] of Canadian Visa transactions are authorized through Visa's network, while approximately [REDACTED] of Visa transactions are cleared and settled outside the Visa network.<sup>191</sup> [REDACTED]

<sup>189</sup> [REDACTED]

<sup>191</sup> See Visa, "Global Acceptance Landscape", January 2009 (VISA00104657 at 4710), and, "Canada Landscape", April 2010 (VISA00049336 at 9337). [REDACTED]

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[REDACTED]<sup>192</sup>  
[REDACTED]

[REDACTED]<sup>193</sup> However, like all other transactions processed through the Visa and MasterCard networks, On-Us transactions remain subject to the Respondents' respective Operating Rules.

### Cross-Border Issuing and Acquiring

89. Financial institutions are generally prohibited by the Visa and MasterCard Operating Rules from issuing or acquiring in jurisdictions in which they are not licensed by Visa or MasterCard.<sup>194</sup> This means that Issuers and Acquirers licensed in Canada cannot, as a general rule, issue credit cards to would-be cardholders outside of Canada or acquire transactions from merchants outside Canada (the latter is termed "cross border acquiring").<sup>195</sup>

[REDACTED]  
[REDACTED] See Bradley Examination, December 7, 2011 pp.599-600, Q. 1784.

<sup>192</sup> [REDACTED]

<sup>193</sup> [REDACTED]

<sup>194</sup> Regarding Issuer licensing, the Visa Operating Rules state: "The Member may use the Visa-Owned Marks only in a country where it is licensed to do so. The written approval request must specify each country where the sponsorship activity will occur. If a Member plans sponsorship activities in any additional country at a later date, it must submit a new request." See Visa International Operating Regulations – 15 October 2011, "Core Principal 3.3, Marks License, Use of Visa-Owned Marks in Country of License" (GSSS5893\_00001550 at 1703). Regarding Acquirer licensing, the Visa Operating Rules state: "an Acquirer must only contract with a Merchant Outlet within the Acquirer's Country of Domicile, as specified in the Visa International Certificate of Incorporation and Bylaws or the applicable Certificate of Incorporation and Bylaws." See Visa International Operating Regulations – 15 October 2011, "Chapter 6 Payment Acceptance" (GSSS5893\_00001550 at 2000). See also Visa Regional Operating Regulations, Canada, 15 November 2008, "Section 4.1 Cross Border Merchant Contracting", at VISA00058074 at 8122).

<sup>195</sup> [REDACTED]

[REDACTED] Visa also has certain exceptions to its country licensing rules, see Visa International Operating Regulations – 15 October 2011, "BIN Licensing",



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90. There are certain limited exceptions to Visa and MasterCard's prohibitions on cross-border acquiring. For example, an Acquirer in Canada can acquire purchases made by Canadian cardholders from U.S. merchants by mail, telephone, or over the Internet. Visa also has an Operating Rule pursuant to which Canadian Acquirers may acquire mail and telephone orders as well as electronic commerce transactions of Canadian Visa credit card holders (processed in Canadian dollars) with merchants in Visa's "U.S. Region". The same rule allows an Acquirer in the U.S. to acquire mail order, telephone order and electronic commerce U.S. dollar transactions of American cardholders with merchants in Visa's "Canada Region".<sup>196</sup>

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#### Basic Steps in a Visa or MasterCard General Purpose Credit Card Transaction

91. Figure 10, below, and the following description illustrate, from a financial processing perspective, the elements of a Visa or MasterCard credit card transaction. For ease and clarity of exposition, I have omitted assessment, service, processing, switch, and other network fees (collectively, "Network Fees") charged by Visa and MasterCard to Acquirers and Issuers for credit card transactions. The basic steps involved in the purchase of an item costing \$1,000 using a Visa or MasterCard credit card are as follows:

(GSSS5893\_00001550 at 1705 to 1706), "Acquirers Jurisdiction" (GSSS5893\_00001550 at 2011 to 2012), and "Airline Merchants" (GSSS5893\_00001550 at 2222 to 2223).

<sup>196</sup> Visa International Operating Regulations – 15 October 2011, "Acquirer's Jurisdiction" (GSSS5893\_00001550 at 2011 to 2012)

197

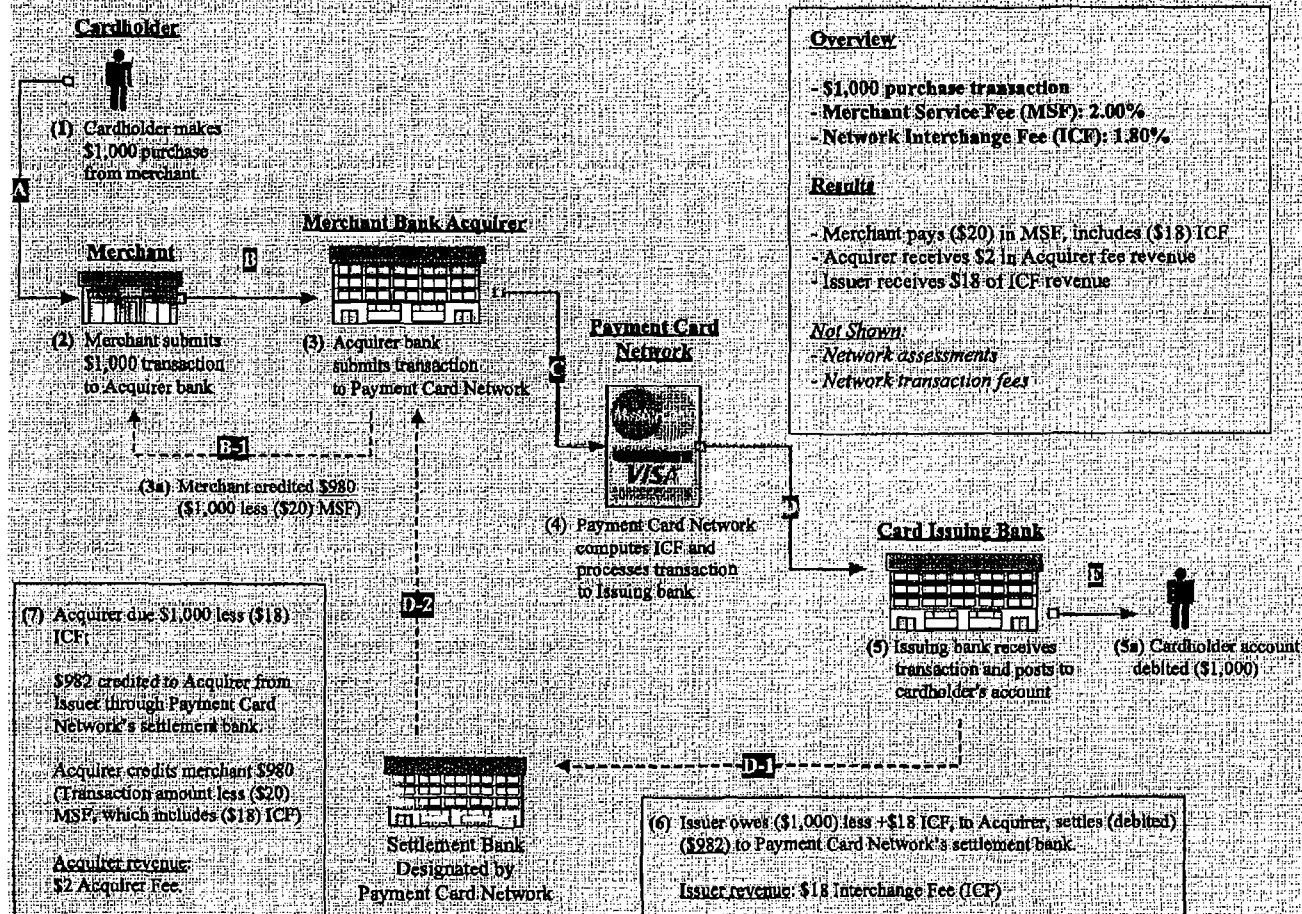
<sup>198</sup> See Visa, "Global Acceptance Landscape", January 2009 (VISA00104657 at 4711).

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- (a) a cardholder presents his or her Visa or MasterCard credit card to pay a merchant for an item costing \$1,000. The merchant requests authorization for the transaction from the cardholder's Issuer through the merchant's Acquirer and the appropriate credit card company;
- (b) once the transaction is approved by the Issuer, the merchant submits the transaction to the Acquirer;
- (c) the Acquirer subsequently submits the authorized \$1,000 transaction to the appropriate credit card company card for clearing;
- (d) the \$1,000 transaction is cleared by the credit card company to the Issuer. Based on various transaction criteria, the credit card company computes an interchange fee. Assuming an interchange fee of 1.8%, the interchange fee in this example will be \$18;
- (e) the cardholder's credit card account is charged \$1,000 by the Issuer, such that the cardholder is now liable to pay the issuer \$1,000 plus interest if that sum is not paid in full by the deadline for doing so;
- (f) at a pre-defined time, the Issuer settles \$982 (*i.e.*, \$1,000 minus the \$18 interchange fee) to the Acquirer through the credit card company's designated settlement bank (*steps D-1 and D-2 in Figure 10*); and
- (g) from the \$1,000 amount payable to the merchant, the Acquirer deducts a Merchant Service Fee. Assume in this example, the Merchant Service Fee is 2% of which the Acquirer will retain 0.2%, then the fee will be \$20, which includes the \$18 interchange fee plus the Acquirer's fee of \$2, and credits \$980 to the merchant's account (*step B-1 in Figure 10*).

92. As a result, the merchant has paid \$20 in fees, of which \$2 was retained by the Acquirer, and \$18 was retained by the Issuer in the form of an interchange fee.

Figure 10 - Visa or MasterCard Canada "Intra-Country" Credit Card Transaction



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## VII. Visa and MasterCard Revenue Sources

93. The Respondents earn fees from both the issuing and the acquiring sides of their respective networks. Most of the Respondents' revenues are directly related to transactions, on either a fixed fee or *ad valorem* basis. A small component of network revenues are fixed, and not directly tied to transactions.

[REDACTED]

Figure 11 is a summary table of Visa and MasterCard's respective Canada Region revenues for 2009.<sup>199</sup>

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<sup>199</sup> Visa figures are based on a fiscal year from October 1, 2008 to September 30, 2009, whereas MasterCard's figures are for calendar year 2009. See Visa, Strategic Pricing Project, January 2010 (VISA00298137 at 8143 to 8148 and 8163 to 8164), Visa, Canada Overview, September 30, 2009 (VISA00558283 at 8287), [REDACTED]

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**Figure 11: Visa and MasterCard Canada Region Revenues for 2009<sup>200</sup>**

Category	Visa (US \$ millions)	% of Visa Canada Region Revenue	MasterCard (US \$ millions)	% of MasterCard Canada Region Revenue
	\$ [REDACTED]	[REDACTED]	\$ [REDACTED]	[REDACTED]
	\$ [REDACTED]	[REDACTED]	\$ [REDACTED]	[REDACTED]
	\$ [REDACTED]	[REDACTED]	\$ [REDACTED]	[REDACTED]
	\$ [REDACTED]	[REDACTED]	\$ [REDACTED]	[REDACTED]
	\$ [REDACTED]	[REDACTED]	\$ [REDACTED]	[REDACTED]
	\$ [REDACTED]	[REDACTED]	\$ [REDACTED]	[REDACTED]
<b>Net Revenue</b>	\$ [REDACTED]	[REDACTED]	\$ [REDACTED]	[REDACTED]

94. Both Visa and MasterCard have agreements with Canadian Issuers, Acquirers, and, in limited circumstances, merchants which provide for incentive and other payments by Visa or MasterCard, reductions in list-price interchange or network fees, and/or the reimbursement of expenses by Visa or MasterCard ("Rebates & Incentives" in Figure 11 above).

#### VIII. Evolution and Trends in the Price of Credit Card Network Services

95. Canadian merchants' Credit Card Network Service costs have increased significantly due to increases in Visa and MasterCard interchange fees, increases in Network Fees, and the introduction and adoption of premium card products, which attract higher levels of interchange. In the period from 2007 to 2011, Visa's average Canadian interchange fee increased 8.7%, from [REDACTED] to 1.62%, and [REDACTED]

[REDACTED] During the same period, both Visa and MasterCard introduced new network "Acquirer assessment" fees of [REDACTED] which were also passed on to merchants in the form of higher Merchant Service Fees.

<sup>200</sup> See *ibid.*

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### History of Canadian Average Credit Card Interchange and Network Fees

96. Generally, there is a very high correlation between the levels of, and changes in, Visa and MasterCard interchange and network fees, and the level of Merchant Service Fees paid by merchants for Visa and MasterCard credit card acceptance.<sup>201</sup> As noted above, Visa and MasterCard interchange fees are the largest component of the Merchant Service Fees paid by merchants in Canada (and in other jurisdictions), and have a significant influence on Merchant Service Fee levels.<sup>202</sup>

97. Visa made its Canadian interchange rate schedules publicly available on its website in November 2008.<sup>203</sup> MasterCard did not make its Canadian interchange rate schedules public until January 2011.<sup>204</sup> However, neither of the Respondents has disclosed publicly how much credit card spending occurs at each interchange level, what the overall historical average rates have been, or the total amount of interchange fees paid by Canadian merchants in different periods. Further, while Visa and MasterCard each list their Issuers and the credit card products they issue on their respective websites, they do not disclose the number of credit cards issued or the amount of spending by card product. Accordingly, information on overall weighted-average Visa or MasterCard Canadian interchange rates and the actual amounts of interchange fees paid by Canadian merchants is generally not publicly available.

98. Information on the historical annual weighted average levels of Visa and MasterCard's respective domestic interchange and network fees is limited. However some information is

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Follow Up", February 25, 2009 (VISA00001415 at 1415).

See E-mail from Mike Bradley "RE:

202 A 2009 U.S. Government Accountability Office (GAO) study states that "Interchange fees generally account for the largest portion of the fees for acceptance of Visa and MasterCard credit cards". See United States Government Accountability Office, Report GAO-10-45 "Credit Cards", November 2009, p. 9; "Visa Financial Business Acumen for Sales", Revised 2/11 (VISA00214569 at 4584), and [REDACTED]

203 See Visa "Canada Issues Brief", November 27, 2008 (VISA00097498), "Interchange Disclosure Communications", November 26, 2008 (VISA00019184), and "Visa Canada Interchange Fees", Undated (VISA00537493 at 7496).

204

[REDACTED] MasterCard Canada website, "MasterCard Interchange Rate Overview", January 2011, accessed February 1, 2012 at [http://www.mastercard.com/ca/wce/PDF/MasterCard\\_Interchange\\_Rate\\_Overview.pdf](http://www.mastercard.com/ca/wce/PDF/MasterCard_Interchange_Rate_Overview.pdf).

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available on MasterCard and Visa's domestic interchange rates at different points in their respective histories of operating general purpose credit card networks in Canada.<sup>205</sup>

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<sup>205</sup> A Visa document titled "Canada Overview", which was prepared for "Presentation to the Global Interchange Meeting", notes that "interchange data not available until 2007 so effective rates estimated for 2001 - 2006 based on rate structure and average ticket size". See Visa, "Canada Overview", September 30, 2009 (VISA00558283 at 8291).

<sup>206</sup> See MasterCard Canada, "Maintaining Competition in the Canadian Credit Card Industry", undated (GSSS5893\_00003082 at 3115).

<sup>207</sup> See *ibid.*, Visa Canada Interchange Rates, Undated (VISA00537493 at 7498).

208

<sup>209</sup> See Visa, "Visa Canada Fee Guide", February 2005 (VISA00070609 at 0687).

<sup>210</sup> See *ibid.*, MasterCard Canada, "Maintaining Competition in the Canadian Credit Card Industry", undated (GSSS5893\_00003082 at 3115).

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211 [REDACTED]  
212 [REDACTED]

102. [REDACTED]  
214 [REDACTED]

103. Figure 12 shows MasterCard's average domestic interchange and Acquirer assessment fee levels in the period between 1998 and 2011 [REDACTED]

[REDACTED]  
216 [REDACTED]

211 [REDACTED]

212 [REDACTED]

213 [REDACTED]

214 [REDACTED] "Visa Canada Interchange Fees", Undated, (VISA00537493 at 7498).

215 [REDACTED]

216 [REDACTED]



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Figure 12: Visa and MasterCard Average Canadian Interchange & Acquirer Assessment Fees and



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Visa, Inc. Interchange Reporting, April 30, 2010 (VISA00312915 at 2916),  
Visa, Canadian Interchange and Product Plan, 13 July 2010 (VISA00067188 at 7197 to 7201), E-mail message from Richard Morrissey, April 19, 2010, "RE:  
Canadian Interchange Product Game Plan 041610.v1.docx" (VISA00502845 at 2845), Visa, "Canada Overview", September 30, 2009 (VISA00558283 at 8293), Visa Canada Interchange Summary  
September 2010 (VISASUPP00006800),

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**Figure 13: Trend in MasterCard's Weighted Average Interchange Rate from 2007 to 2009<sup>218</sup>**



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[Redacted text]

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220 By January 2009, Visa's network acquirer assessment fee had increased [REDACTED] while MasterCard's had increased more than six-fold during the same period: [REDACTED]

105. [REDACTED] 222 Early on, Visa and MasterCard recognized this reality. [REDACTED]

<sup>219</sup> Note: Visa's Acquirer service fees are part of Visa's Network Fees charged to Acquirers. The terms "assessment fee" and "service fee" are often used to describe the same percentage based fees charged by Visa or MasterCard on the amount of sales submitted by merchants (via Acquirers). See Visa, Acquirer Assessment Fee, March 10, 2008 (VISA00072957 at 2957).

<sup>220</sup> See *ibid.*, response to Q. 2969, pp.1053-54, (Tab 32: “Visa Canada Fee Guide”, December 2010 (VISASUPP00006826 at 6832) taken under advisement on Bradley Examination, December 8, 2011, [REDACTED]

<sup>221</sup> See "Visa Financial Business Acumen for Sales", Revised 2/11 (VISA00214569 at 4651).

722. [REDACTED] E-mail from Caroline van der Drift, "FW: Federal Government", January 16, 2009 (VISA00101953 at 1953). Bradley Examination, December 9, 2011, pp. 548-53, Os. 1622-43 and p. 1125, Q. 3203. [REDACTED]

<sup>223</sup> See E-mail from Mike Bradley, "RE: Debit Acceptance Strategy", May 5, 2009 (VISA00001788 at 1788).

224 E-mail from Nancy Varriac, "RE: Federal Government", January 16, 2009, attached to E-mail from Caroline Van der Drift, "FW: Federal Government", January 16, 2009 (VISA00101953).

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**MasterCard Introduces Canadian Premium Credit Card Interchange Rate Structures and Expands Interchange Rate Structures in 2007 – 2008**

106. In October 2006, MasterCard implemented a Canadian "high spend consumer credit card" with significantly higher interchange rates.

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**Visa Introduces Canadian Premium Credit Card Interchange Rates and Expands Rate Structures in 2007 - 2008**

108. Visa announced a new domestic interchange rate structure in March 2007 which took effect in April 2008.<sup>235</sup> Visa's April 2008 Canadian interchange structure included separate rates for 'card present transactions', 'card not present transactions', recurring transactions, and new higher rates for Visa's "Infinite" premium credit card product.<sup>236</sup> Canadian Issuers began issuing Visa Infinite credit cards in 2008.<sup>237</sup> A Visa document states that the Visa Infinite program's

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Visa, "Canadian Interchange and Product Plan", 13 July 2010, (VISA00067188 at 7197 to 7201).

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<sup>235</sup> See Visa "Electronic Payments and Visa: The Role of Interchange and Other Developments", February 3, 2009, at (VISA00028762 at 8775), Response to Qs. 1082-83, p. 362 (Tab 10(a): Visa Canada Member Letter 30/07, "Interchange Rates for Visa Infinite", July 16, 2007) taken under advisement on Bradley Examination, December 6, 2011.

<sup>236</sup> See "Visa Canada Interchange Rates", Undated (VISA00537493 at 7497).

<sup>237</sup> See Bradley Examination, December 6, 2011, p. 349, Qs. 1039-40.

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share of total Visa domestic payment volumes was

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109. While Visa's interchange rate structure has been mostly constant since 2008, as discussed below, Visa and its Issuers have migrated [REDACTED] of cardholder accounts from credit cards attracting lower levels of interchange to Infinite premium cards with higher levels of interchange. Visa did make a change to its domestic interchange rate structure in April 2010 to add an "emerging segments" interchange rate for certain types of merchants, such as utilities, real estate agents, government tax collection entities, universities and other educational institutions, for transactions greater than \$1,000.<sup>242</sup> Visa's changes to Canadian interchange rate changes, the introduction of Infinite premium credit card rates and the introduction of an Acquirer network

<sup>238</sup> See Visa, "Visa Inc. Interchange Reporting", April 30, 2010 (VISA00312915 at 2915). Bradley Examination, December 7, 2011, pp. 591-93, Qs. 1760-63.

<sup>239</sup> See Visa, "Canada Interchange", March 3, 2010 (VISA00064900 at 4904).

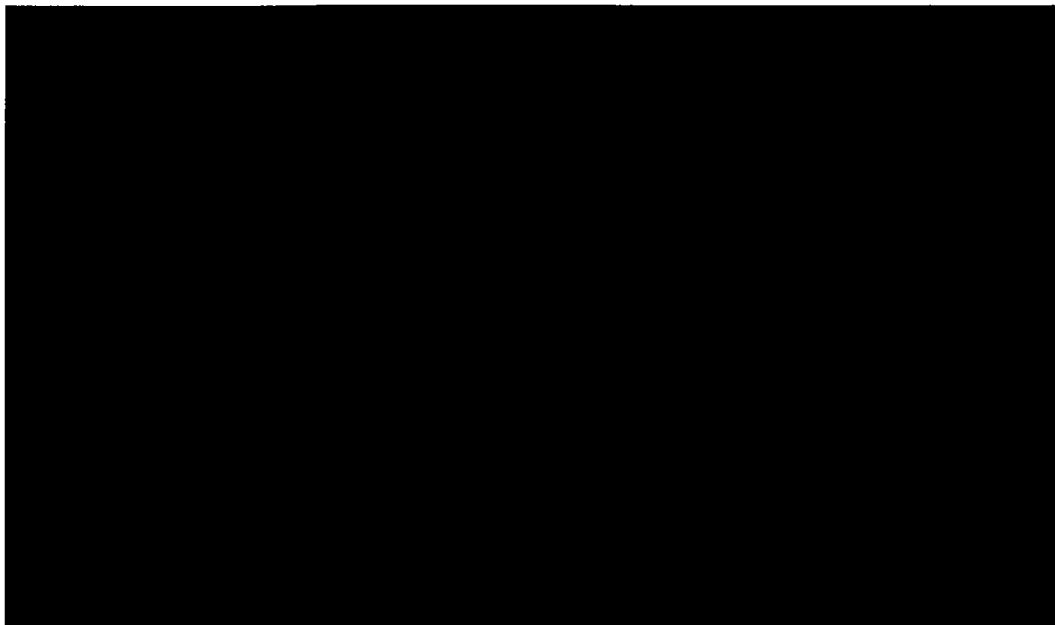
<sup>240</sup> See *ibid.*

<sup>241</sup> See Visa "Canada Performance Rate Program Qualification", February 24, 2011 (VISA00345215 at 5216-18).

<sup>242</sup> See *ibid.* (VISA00537493 at 7493 to 7494) and Visa Canada website, "Visa Canada Interchange Rate Reimbursement Fees", accessed February 2, 2012 at <http://www.visa.ca/en/aboutcan/mediacentre/interchange/pdf/visa-interchange-rates-current.pdf>.

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fee caused Visa's average Canadian interchange rates and Acquirer Network Fees to [REDACTED]  
[REDACTED] between 2008 and 2011, from [REDACTED].<sup>243</sup>



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<sup>243</sup> See *ibid* and MasterCard "Category/Interchange Pricing Strategy Recommendation", Undated (MCW\_CCB\_00114210 at 4210), Visa, "Canadian Interchange and Product Plan", 13 July 2010 (VISA00067188 at 7197 to 7201).

<sup>244</sup> See Visa, "Canada Interchange", March 3, 2010 (VISA00064900 at 4902, 4911), Bradley Examination, December 9, 2011, pp. 1295-97, Qs. 3703-3706.

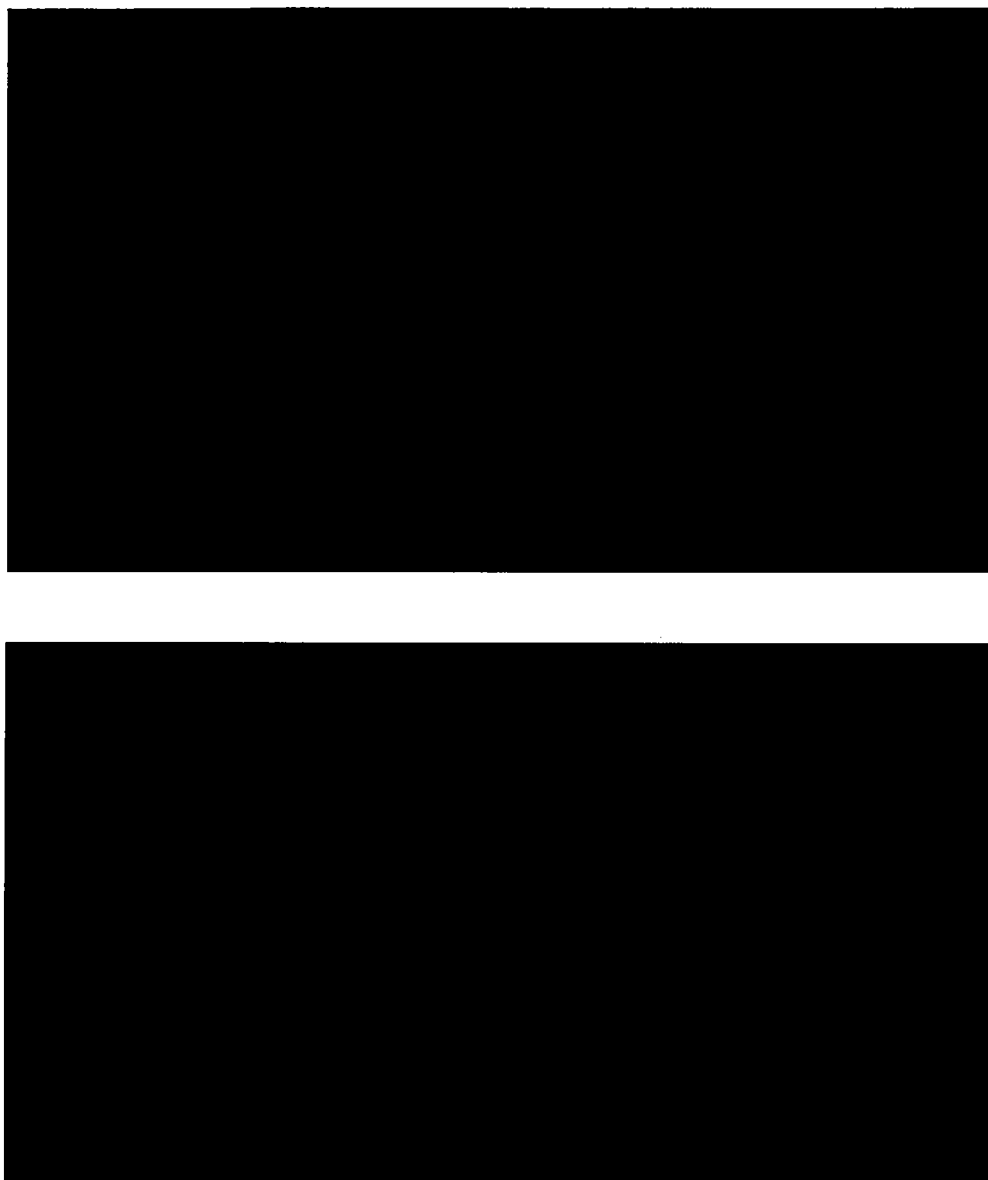
<sup>245</sup> See Visa, "Canadian Interchange and Product Plan", 13 July 2010 (VISA00067188 at 7197 to 7201), E-mail message from Richard Morrissey, "RE: Canadian Interchange Product Game Plan 041610 v1.docx", April 19, 2010, (VISA00502845 at 2845), Visa, "Visa Inc. Monthly Reporting", April 30, 2010 (VISA00312915 at 2915).

<sup>246</sup> See *ibid*, (VISA00067188 at 7193, 7198 to 7199, 7203), Bradley Examination, December 9, 2011, pp. 1157-58, 1296-99, Qs. 3305-08, 3704-07, 3711.

<sup>247</sup> See Visa, "Visa Inc. Operating Committee Americas Monthly Report April 2011", May 16, 2011 (VISA00439506 at 9523), Visa, "Canadian Interchange and Product Plan", 13 July 2010 (VISA00067188 at 7191 and 7196), Bradley Examination, December 9, 2011, pp. 1149-50, Q. 3280, pp. 1190-91, Q. 3392.

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**Figure 14: Visa's 2010 "Situation Assessment" of Interchange Gap vs. MasterCard<sup>248</sup>**



<sup>248</sup>

See Visa, "Canadian Interchange and Product Plan", 13 July 2010 (VISA00067188 at 7190 to 7191).

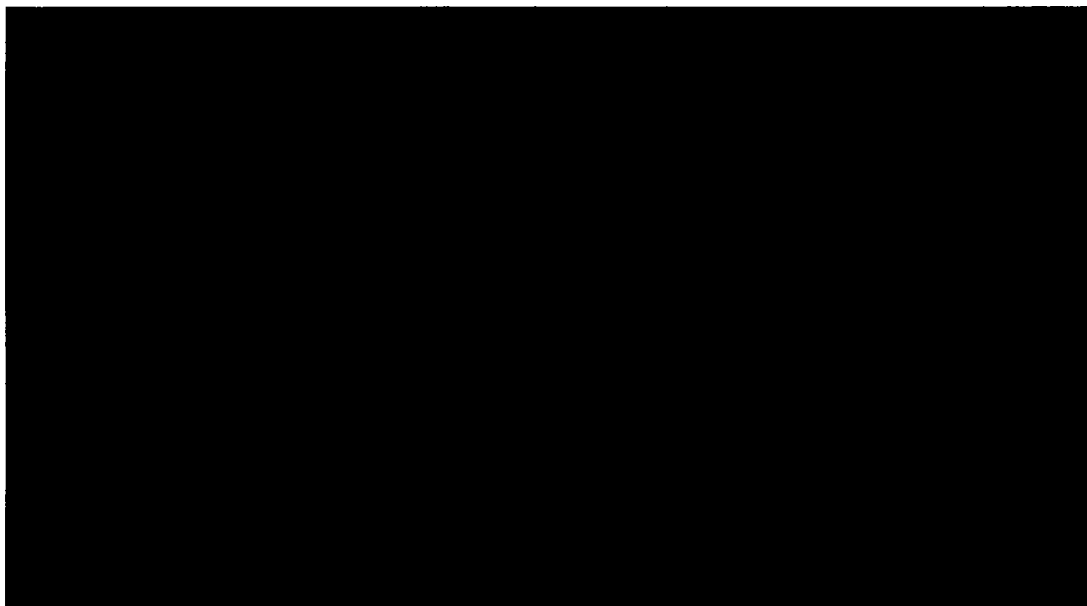


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**Figure 15: Visa April 2011 Monthly Report –**

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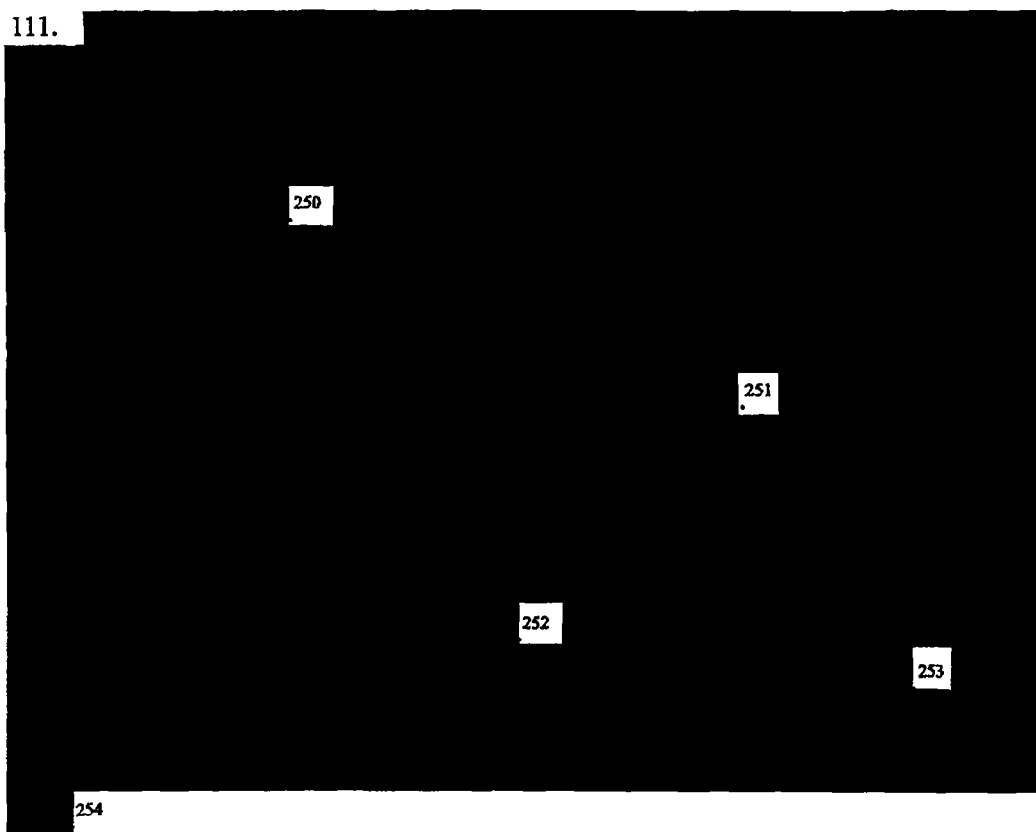
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<sup>249</sup> See Visa, "Visa Inc. Operating Committee Americas Monthly Report April 2011", May 16, 2011 (VISA00439506 at 9523). Note: The header dated "January 2011" appears to be a typographical error as the first page of the report states that the document is an April 2011 monthly report.

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Visa and MasterCard Introduce Network Technologies to Dynamically Reclassify Cards as Rewards or Premium Type Cards Without Card Re-issuance

111.



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<sup>250</sup> [REDACTED] Visa, "October 2009 VisaNet Business Enhancements", June 17, 2009 (VISA00391713 at 1931 to 1941), Bradley Examination, December 9, 2011, pp. 1153, Q. 3291.

<sup>251</sup> See Bradley Examination, December 9, 2011, pp. 1178-79, Qs. 3352-53, [REDACTED]

<sup>252</sup> [REDACTED] Account Level Processing for Canada, December 2, 2008 (VISA00019050).

<sup>253</sup> See *ibid.*

<sup>254</sup> See *ibid.*

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<sup>255</sup> Visa has launched a "super premium" credit card product in the U.S. called "signature preferred".<sup>256</sup>

I discuss competition by Visa and MasterCard for Issuer business further in a subsequent section of the report.

**Merchants are Generally Unaware of Additional Costs Associated with Higher Cost Credit Cards Until they are Billed by their Acquirers**

113. Canadian merchants are generally unaware of the cards that have higher interchange fees until after they are billed.<sup>259</sup> Further, in my experience, very few cardholders have any knowledge of interchange fees, network fees or service fees paid to Acquirers. Many cards lack visual product identifiers.

<sup>255</sup> See Bradley Examination, December 6, 2011, pp. 341-342, Qs. 1008-11.

<sup>256</sup> See Visa website, "Visa Signature", accessed March 5, 2012, at <http://www.usa.visa.com/personal/visa-signature/premium-credit-card.jsp>.

<sup>257</sup> See Bradley Examination, December 9, 2011, pp. 1184-85, 1304-06, Qs. 3372-77, 3730-36.

<sup>258</sup> See *ibid*, pp. 1263-65, Qs. 3607-11.

<sup>259</sup>

<sup>260</sup> See *ibid*.

<sup>261</sup> See *ibid*.

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**IX. Visa and MasterCard's Use of Interchange Rates to Attempt to Increase Issuer Revenues, Card Product Use and their Own Revenues**

114. Visa and MasterCard determine the interchange fees which apply to transactions, both within and outside Canada, involving Canadian-issued credit cards.<sup>263</sup> Where the merchant is located in Canada, the transaction is subject to domestic interchange fees. Where the merchant is located outside of Canada, the transaction is subject to "inter-regional" (i.e., international) interchange fees.<sup>264</sup>

115. Neither Visa nor MasterCard retain interchange fee revenues. Rather, as stated above, interchange fees are paid to Issuers. However, as already discussed, both Visa and MasterCard set interchange fees for transactions on their respective credit card networks and benefit when the interchange rates set by them lead to increased use of their respective credit cards and networks.

116. Interchange rates are one of the primary tools used by Visa and MasterCard to increase issuance and cardholder use of their respective credit cards.<sup>265</sup> Increases in interchange rates generate additional revenue for Issuers. Issuers may use the additional interchange revenues to expand or increase rewards to cardholders, thereby encouraging cardholders to use their Visa and/or MasterCard credit cards more frequently. As discussed later, however, it appears that only a portion of the interchange fees paid by Canadian merchants are passed on to cardholders

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See *ibid* [REDACTED]

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See Visa Regional Operating Regulations, Canada, 15 November 2008, "Appendix E, Article 3 Fees" (VISA00058074 at 8298), and [REDACTED]

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Both Visa and MasterCard define Canada as both a country and a region in their respective Operating Rules. Any purchase made outside of Canada with a Canadian-issued credit card is therefore considered "inter-regional". In contrast, Visa and MasterCard have designated Europe as a region. When transactions occur within Europe where the cardholder's Issuer and the merchant are in different countries within Europe, the transaction is considered "intra-regional" from an operational and fee perspective.

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[REDACTED]

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in the form of rewards and/or lower credit card account fees, with the balance being retained by Issuers as revenue.

**Canadian Interchange Rate Increases are Not Based on Changes in Issuer Costs**

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Visa "Electronic Payments and Visa: The Role of Interchange and Other Developments", February 3, 2009 (VISA00028762 at 8775), Canada Interchange Product Game Plan, April 19, 2010 (VISA00502845), Visa, "Canada Overview", September 30, 2009 (VISA00558283), E-mail message from Richard Morrissey, April 19, 2010, "RE: Canadian Interchange Product Game Plan 041610 v1.docx" (VISA00502845).

267 See Bradley Examination, December 8, 2011, pp. 1070-71, Qs. 3028-30, and December 9, 2011, p. 1233, Q. 3517.

268 E-mail message from Mike Bradley, "RE: CIBC - Emerging Segments meeting follow-up", November 9, 2009 (VISA00401609 at 1609).

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**X. Acquirer Service Fees**

119. The primary sources of revenues for Acquirers are the Merchant Service Fees they collect from merchants, for Visa and MasterCard Credit Card Network Services

Figure 16:

120. As discussed above, Merchant Service Fees reflect three primary components: (i) the Issuer's interchange fee; (ii) Visa or MasterCard's network fees; and (iii) the Acquirer's service fee.<sup>272</sup> The interchange fee is the largest component of the Merchant Service Fee.<sup>273</sup>

<sup>270</sup> See Visa, "2004 Canada Issuer Benchmarking Study", June 2005 (VISA00537356 at 7360 to 7362).

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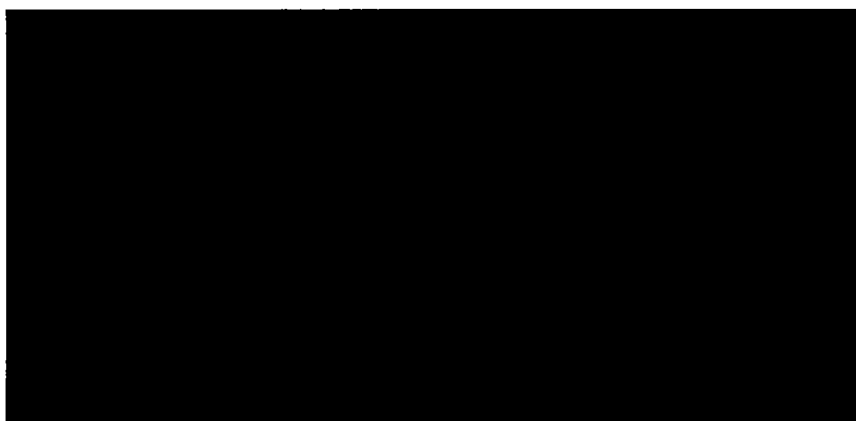
<sup>272</sup> See Canadian Acquirer's Pricing Methodology, Undated (VISA00241513 at 1516).

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**Figure 17: Components of Visa Average Merchant Service Fee in the Canada Region (2008)<sup>277</sup>**



121. Like Acquirers in other jurisdictions, Acquirers in Canada do not and indeed cannot, compete on the basis of Visa and MasterCard interchange or network fees, as these components are effectively the same for all Acquirers in Canada. All Acquirers in Canada are subject to the same Visa and MasterCard default interchange rate schedules and are required to enforce the

<sup>274</sup> See Visa, "Global Acceptance Landscape, January 2009" (VISA00104657 at 4715).

<sup>275</sup> "MDR" is an acronym for Merchant Discount Rate and is sometimes used in Canada and the United States to describe Merchant Service Fees. See Canadian Acquirer's Pricing Methodology, Undated (VISA00241513 at 1516).

<sup>276</sup>

<sup>277</sup> See Visa, "Global Acceptance Landscape, January 2009" (VISA00104657 at 4715). Note: Figure 18 excludes Network Fees other than the Visa Acquirer assessment fee.

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same rules against merchants.<sup>278</sup> The interchange and network fees operate as a "floor" price within the Merchant Service Fee, below which Acquirers cannot profitably offer acquiring services regardless of the size of the merchant.<sup>279</sup>

122. Acquirers are usually willing to accept lower Acquirer service fees for greater transaction volume.<sup>280</sup> As a result, the largest merchants are generally able to secure the lowest Acquirer service fees. Figure 18, below, depicts U.S. Acquirer average net margins (*i.e.*, the Acquirer service fee component of the Merchant Service Fee) by merchant size (based on annual Visa and MasterCard sales volumes).<sup>281</sup> The structure of the Canadian and U.S. acquiring industries is very similar in this regard. Merchants with lower credit card sales volumes pay higher Merchant Service Fees, and higher Acquirer service fees (measured as percentages of the sales amounts).<sup>282</sup>

123. Specifically, Figure 18 indicates that small U.S. merchants pay higher Acquirer service fee margins (182 basis points on average) than the very largest U.S. merchants who are paying an average of 6 basis points.<sup>283</sup> [REDACTED]

<sup>278</sup> [REDACTED]

<sup>279</sup> [REDACTED]

2011, pp. 548-53, Qs. 1622-43 and p. 1123, Q. 3203.

Bradley Examination, December 9,

[REDACTED] See "Canadian Acquirers Pricing Methodology", undated (VISA00241513 at 1516).

<sup>280</sup> "[C]ompetition for merchants with high transaction volumes drives pricing down for large retailers... Acquirers tend to see lower margins from large merchants but are able to price small merchants on a greater margin. Large merchants have more bargaining power because they are bringing more transactions to a scale business." See U.S. Federal Reserve Bank of Philadelphia, Discussion Paper, "The Merchant-Acquiring Side of the Payment Card Industry: Structure, Operations, and Challenges", by Anne Kjos, October 2007, p. 21.

<sup>281</sup> "Net margin" is an industry term referencing the acquirer service fee component of a Merchant Service Fee.

<sup>282</sup> "Due to the 'Americanization' of the acquiring marketplace and low-margin debit transactions, Canadian acquirers are facing significant pricing pressure." [REDACTED]

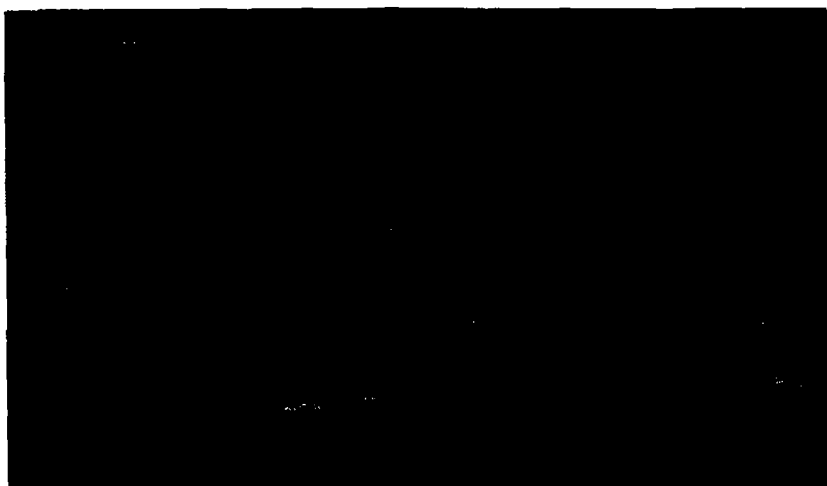
<sup>283</sup> A document produced by Visa in this proceeding contains a very similar chart, albeit limited to merchants with more than US\$50 million in annual bankcard sales. See Visa, "Proposed 2010 Interchange & Acquiring Fee Modifications", January 7, 2010 (VISA00295800 at 5825).



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**Figure 18: Acquirer Revenues ("Net Margins") by Merchant's size (Annual Bankcard Purchase Volumes)<sup>285</sup>**



**Acquirer Merchant Service Fee Pricing: Bundled and Interchange Plus Structures**

**(a) Bundled Merchant Service Fee Pricing Structures**

124. From the inception of Visa and MasterCard credit card acceptance in Canada until the early to mid-2000s, Canadian Acquirers typically quoted and charged merchants a Merchant Service Fee for each credit card brand in the form of a single percentage fee, sometimes termed a "bundled" rate. Bundled rates included, and still do, the interchange fee, the network fee, and the Acquirer service fee. Some Acquirers would go a step further, and determine a single bundled rate that applied to both Visa and MasterCard transactions. Until at least the early 2000s,

<sup>284</sup> See Visa, "Canadian Acquirer's Pricing Methodology" (VISA00241513 at 1516).

<sup>285</sup> U.S. Federal Reserve Bank of Philadelphia, Discussion Paper, "The Merchant-Acquiring Side of the Payment Card Industry: Structure, Operations, and Challenges", by Anne Kjos, October 2007, p. 21.

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bundled rate structures were predominant in Canadian acquiring. The bundled Merchant Service Fees were relatively straightforward for Acquirers to compute and administer, as there was usually only one domestic interchange rate from each card brand that applied to a given merchant's Visa or MasterCard credit card sales transactions.<sup>286</sup>

125. In bundled Acquirer service pricing, the Merchant Service Fee is based on a selected "target" interchange rate or on the interchange rate that applies most frequently to transactions at the merchant involving the brand of credit card in question. Where a target is used, if the merchant submits a credit card transaction for processing that attracts an interchange fee either above or below the target, the difference is charged or credited to the merchant. In industry vernacular, a Merchant Service Fee based on a target interchange rate tier is sometimes referred to as the merchant's "qualified rate." A transaction that attracts an interchange fee outside the target is termed "non-qualified." An example of a transaction attracting an interchange fee outside the Acquirer-determined target rate is one involving the use of a premium or corporate card, or (typically) a "card not present" transaction.

qualified" credit card transactions has become widespread in Canada.<sup>287</sup> At least one Acquirer, TDMS, charges its merchants the amount of the additional interchange fee, plus an additional Acquirer service fee of 0.30%, which TDMS refers to as a "rate adjustment fee" (Figure 19).<sup>288</sup>

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"Maintaining Competition in the Canadian Credit Card Industry", undated (GSS5893 00003082 at 3115), "Visa Canada Fee Guide", February 2005 (VISA00070609 at 0687),

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See Moneris Solutions website "Interchange Rates", accessed online February 29, 2012 at <http://www.moneris.com/en/Support/Help/Interchange.aspx>, and "Moneris Solutions Visa Interchange Differential Rates" accessed online February 29, 2012 at <http://www.moneris.com/en/Support/Help/~media/Files/Moneris%20Interchange%20Differential%20Rates%20EN.aspx>,

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**Figure 19: Excerpt from TD Merchant Services' Sample Merchant Statement<sup>289</sup>**

[REDACTED]						
TD CONSUMER STANDARD	1	885.5	0.11%	0.30%	3.83	
TD INFINITE ELEC.	2	844.8	0.20%	0.30%	4.22	
TD INFINITE STANDARD	3	250.5	0.31%	0.20%	1.53	
TD COMMERCIAL ELEC.	2	300.0	0.30%	0.30%	1.88	
TD COMMERCIAL STANDARD	1	282.5	0.40%	0.30%	2.13	
TD INFINITE ELEC.	3	910.0	0.25%	0.30%	5.10	
TD INFINITE STANDARD	3	110.1	0.22%	0.30%	0.63	
TD COMMERCIAL ELEC.	1	185.0	0.35%	0.30%	1.48	
TD COMMERCIAL STANDARD	1	185.0	0.40%	0.30%	1.48	
<b>TOTAL</b>		<b>4,478.3</b>			<b>22.38</b>	

**(b) "Interchange Plus" Merchant Service Fee Pricing Structures**

127. By 2008, there had been a significant expansion in the number of fee categories. Some merchants asked Acquirers for increased transparency or visibility with respect to the components of the Merchant Service Fees they were being required to pay.<sup>290</sup>

Interchange-plus pricing is referred to within the industry using a number of different terms, including "unbundled" and "cost plus" pricing.

128. Generally, under "interchange-plus" pricing, a merchant agrees to be charged each component fee of the Merchant Service Fee – the interchange fee, the network fees (*i.e.*, assessments and switch fees) and the Acquirer fees – on each transaction. Each component of the Merchant Service Fee paid by the merchant is broken out and billed separately on the statement received by the merchant from its Acquirer. Figure 20 shows "unbundled pricing" from a TDMS pricing proposal to a customer, the \$0.10 per transaction shown is TDMS's Acquirer fee.

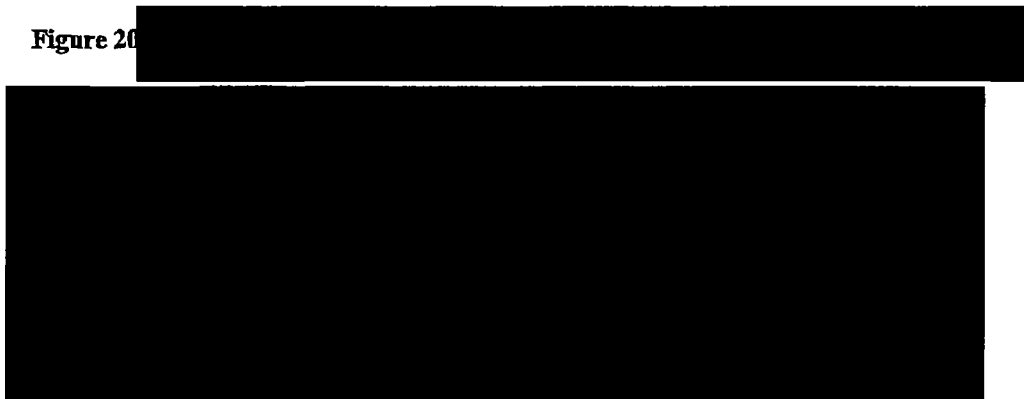
<sup>289</sup> See TDMS website, "Understanding your TD Merchant Services Statement", accessed September 1, 2011 at <http://www.tdcanadatrust.com/document/PDF/merchantservices/tdci-merchantservices-interchange-differential.pdf>.

<sup>290</sup> Based on my industry experience, many large merchants in the Canada and U.S. request "interchange plus" pricing with the Acquirer component of the Merchant Service Fee in a fixed per-transaction amount, separated from Issuer interchange and Network Fee components.

<sup>291</sup>

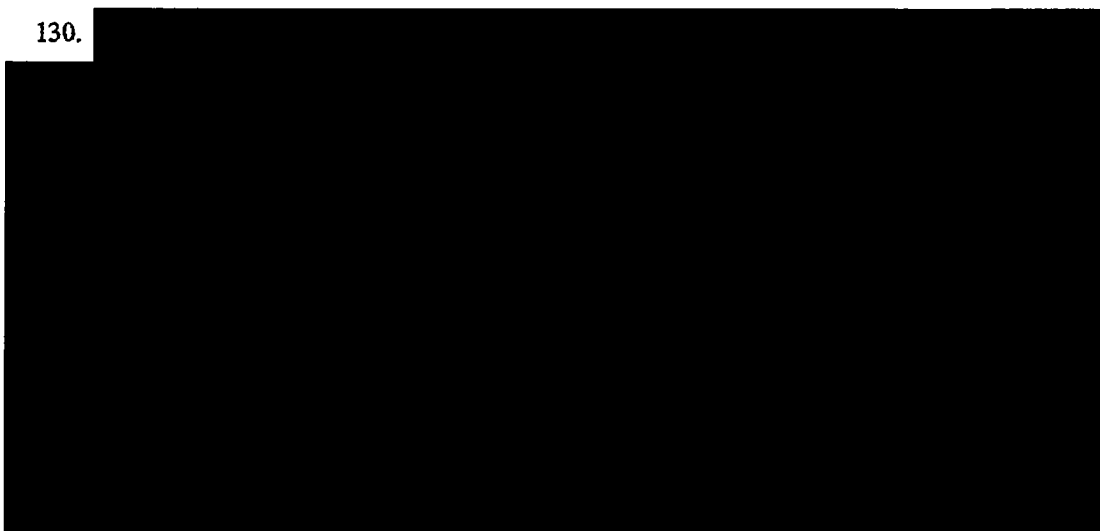
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Figure 20



129. Acquirers have created a number of hybrid types of unbundled pricing, with the result that the labels "interchange-plus", "unbundled" or "cost plus" describe a variety of different arrangements which differ in the form and method of fee computation, as well as in the detail of merchant reporting.

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See Visa, "Global Acceptance Landscape", January 2009 (VISA00104657 at 4715). It appears that the Visa document contains a typo in this section, as the two ranges of figures do not sum to 100%. I believe the document should state 65% to 75% of Canadian merchants have blended Merchant Service Fees and that 25% to 35% have interchange plus Merchant Service Fees.

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# **XI. 2010 Code of Conduct for the Payment Card Industry in Canada**

131. In April 2010, the Department of Finance released a voluntary "Code of Conduct for the Credit and Debit Card Industry in Canada" (previously defined as the "Code of Conduct").<sup>297</sup> The Code of Conduct became effective in August 2010.<sup>298</sup>

132. The Code of Conduct includes a requirement that credit card (and debit) networks modify their Honor-All-Cards Rules so that "merchants who accept credit card payments from a particular network will not be obligated to accept debit card payments from that same payment card network, and vice versa".<sup>299</sup> Further, under the Code of Conduct, payment card network rules must also "ensure that merchants will be allowed to provide discounts for different methods of payment (e.g., cash, debit card, credit card). Merchants will also be allowed to provide differential discounts among different payment card networks."<sup>300</sup>

133. As noted above, both Visa and MasterCard have adopted the Code of Conduct. The Respondents have, accordingly, modified their respective Canadian Honor-All-Cards Rules to permit merchants to accept their branded credit cards without also being obliged to accept the Respondents' branded debit cards, and vice versa.<sup>301</sup> However, the Respondents' Honor-All-Cards Rules, as they relate to credit cards, remain in full force and effect, requiring merchants

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<sup>297</sup> See the Department of Finance website, "Code of Conduct for the Credit and Debit Card Industry in Canada", accessed online October 30, 2011 at [http://www.fin.gc.ca/n10/data/10-049\\_1-eng.asp](http://www.fin.gc.ca/n10/data/10-049_1-eng.asp).

<sup>298</sup> See *ibid*, "Code Of Conduct for Credit and Debit Card Industry Takes Effect", August 16, 2010, accessed online October 30, 2011 at <http://www.fin.gc.ca/n10/10-071-eng.asp>.

<sup>299</sup> See *ibid*, Policy Element #4.

<sup>300</sup> See *ibid*, Policy Element #3.

<sup>301</sup> See Visa International Operating Regulations – 15 October 2011, "Honor All Cards - Canada Region", "Card Acceptance Canada Region", "Visa Cards Issued by Non-Canada Issuers - Canada Region" (GSS55893\_00001550 at 2061, 2063).

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that wish to accept any of the Respondents' branded credit cards to accept all of them, without exception. Similarly, while permitting discounts by payment method, the Code of Conduct leaves the Respondents' rules prohibiting merchants from surcharging Visa and MasterCard credit cards fully intact.

134. The Code of Conduct also includes a requirement that premium credit cards may only be given to consumers who apply for or consent to receiving such cards, and who meet specific spending and/or income thresholds.<sup>302</sup> This requirement has slowed use by the networks and Issuers of Visa's ALP and MasterCard's ALM technologies to convert credit card accounts from basic to premium types.<sup>303</sup>

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## **XII. Competition Between Visa and MasterCard is Focused on Issuers**

### **Credit Card Issuing is Much More Profitable than Acquiring**

135. Visa and MasterCard credit card products in Canada are largely commoditized and offer the same, or similar, functionality from a consumer standpoint. As an example, from a consumer use standpoint, a MasterCard credit card issued by BMO is largely identical to a Visa credit card issued by CIBC, differentiated only by ancillary services. Among other things, there are very few merchants that accept one brand but not the other, either in Canada or internationally, and both cards provide their cardholders with access to cash advances at either ABMs or bank branches.

<sup>302</sup> See Department of Finance, "Code Of Conduct for Credit and Debit Card Industry Takes Effect, Policy Element #9", August 16, 2010.

<sup>303</sup> Code of Conduct Policy Element #9 states: "Payment card network rules will require that premium credit and debit cards may only be given to consumers who apply for or consent to such cards. In addition, premium payment cards shall only be given to a well-defined class of cardholders based on individual spending and/or income thresholds and not on the average of an issuer's portfolio. Premium payment cards have higher than average interchange rates. They must be targeted at individuals who meet specific spending and/or income levels." See the Department of Finance Canada website "Code of Conduct for the Credit and Debit Card Industry in Canada", accessed online on January 16, 2011 at [www.fin.gc.ca/n10/data/10-049\\_1-eng.asp](http://www.fin.gc.ca/n10/data/10-049_1-eng.asp).

<sup>304</sup> See Email from Richard Morrissey, April 19, 2010 (VISA00502845).

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136. Competition between Visa and MasterCard is primarily focused on retaining and attracting Issuers, principally through increased interchange fees. Because, as explained more fully below, the Merchant Rules prevent merchants from surcharging higher-cost Visa and MasterCard credit cards and from declining to accept such cards, the Respondents are able to operate largely without regard to the costs to merchants, despite the fact that, as already discussed, merchants pay for increased interchange fees through higher Merchant Service Fees.

137. Visa and MasterCard compete with one another for the credit card issuing business of financial institutions in countries around the world, including in Canada. [REDACTED]

305 [REDACTED]

138. [REDACTED]

307 [REDACTED]

305 [REDACTED]

306

Visa, "Key Country Snapshots" November 2008 (VISA00096185 at 6188).

307 [REDACTED]

308

See Visa, "Canada FY11 Strategy", September 13, 2010 (VISA00068034 at 8036, 8049-8050).

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[REDACTED] As explained below, in the presence of Merchant Rules, this competition also means higher prices for merchants (and, ultimately, for consumers).<sup>309</sup>

139. Issuing Canadian general purpose credit cards has, and continues to be, a lucrative business for financial institutions, relative to other forms of consumer lending. A 2008 study prepared for Visa by McKinsey & Company reports that credit cards represent only a small portion of Canadian Issuers' total loan amounts, yet provide a higher share of income than any other loan type.<sup>310</sup> The McKinsey study states that "the economics of the [credit card issuing] business have been very attractive ([returns on equity] of 30% or more; pretax [returns on assets] of 50bps and higher) due to attractive fee structures, low acquisition costs (e.g., on branch based accounts), and high attractive spreads (15%+). Economics will come under pressure because of several factors, but should remain attractive."<sup>311</sup> The same study reported that almost 90% of active general purpose credit card accounts in Canada had good credit, and that only 10% were considered risky.<sup>312</sup>

140. In Canada, general purpose credit card issuing generates higher levels of revenues than acquiring and is more profitable. This is consistent with issuing and acquiring businesses I have observed in the U.S., New Zealand, and elsewhere. As an example, in 2010, TD Bank was ranked fourth in Canada in Visa/MasterCard credit card issuing purchase volume, and third in Visa/MasterCard credit card acquiring purchase transaction volume.<sup>313</sup> [REDACTED]

309 [REDACTED]

<sup>310</sup> See McKinsey & Company "Perspectives on Canadian Credit Card Business", May 19, 2008 (VISA00526292 at 6305).

<sup>311</sup> See *ibid* (VISA00526292 at 6293). "Spread" refers to the difference between the interest rates Issuers charge on revolving credit card account balances versus the cost of capital.

<sup>312</sup> See *ibid* (VISA00526292 at 6326).

<sup>313</sup> See *The Nilson Report* Issue 967, March 2011 (GSSS5389\_00002602 at 2602, 2607 to 2609) and *The Nilson Report* Issue 982, October 2011, p. 9.



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### Competition for Cardholders

141. There is active competition in Canada among Issuers of general purpose credit cards to solicit new cardholders, and convert existing cardholders from one Issuer's products to another's. The Financial Consumer Agency of Canada provides a comparative matrix of hundreds of credit card products grouped by categories, such as low-rate credit cards, regular rate credit cards, student credit cards, and retail credit cards.<sup>316</sup> The 2008 study by McKinsey & Company discussed above noted that "competition in the market is intensifying from incumbents, monolines, and new entrants (e.g., Canadian Tire, GE Money, President's Choice) but general profitability for incumbents has held up."<sup>317</sup> The same McKinsey study stated that "to meet changing consumer preferences, issuers have recently launched a plethora of cards," including a number of premium credit card product types.<sup>318</sup>

142. The primary points of competition between Issuers for consumer card issuance and use are financial terms and loyalty/points programs. Issuers compete by offering various financial terms, such as the minimum income level required to obtain an account, the interest rate charged

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<sup>316</sup> Financial Consumer Agency of Canada website, "Credit Cards", accessed online January 15, 2012 at <http://www.fcac-acfc.gc.ca/eng/consumers/creditcard/index-eng.asp>.

<sup>317</sup> "Monolines" or "monoline issuers" are financial institutions whose primary or sole line of business is credit card issuing. Canadian Tire Financial Services, Capital One, and Wal-mart Canada Bank are examples of Canadian Visa and/or MasterCard monoline Issuers.

<sup>318</sup> McKinsey & Company "Perspectives on Canadian Credit Card Business", May 19, 2008 (VISA00526292 at 6312 to 6322 and 6293).

<sup>318</sup> See *ibid*, at 6314 and 6317.

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on revolving (unpaid) account balances and cash advances, the annual fee, and fees (or the absence of such fees) for the issuance of additional cards on the same account. Canadian Issuers also offer various rewards programs, including Air Miles, merchandise, retail store rewards, and cash back rebate programs. Programs involving travel rewards are the most well-known.<sup>319</sup>

143. From a cardholder's standpoint, increases in rewards may incent the cardholder to use a credit card more frequently in place of other methods of payment, including debit cards, cash, cheques or other credit cards with less lucrative rewards. Increased cardholder use of general purpose credit card products, in place of other payment methods, increases the revenues earned by Issuers, Acquirers, and the credit card company, thereby making additional funds available to further incent use. However, increased credit card use also increases the costs to merchants and to users of other forms of payment.

144. As noted above, it is unclear precisely how much of the interchange fees paid by Canadian merchants are passed on by Issuers to cardholders in the form of rewards and/or lower credit card account fees. However, an Australian empirical study from 2005 indicated that credit card interchange fee revenues were not fully passed through to cardholders on a 1:1 basis (e.g., cardholders were not receiving 100% of interchange fee revenues in the form of rewards or lower credit card account fees).<sup>320</sup> The study found that only 30-40% of the reduction in interchange fee revenue received by Issuers following regulatory intervention in that country (which reduced and capped Visa and MasterCard interchange fees) was passed to Australian cardholders in the form of higher service fees.<sup>321</sup> The study also concluded that as a result of the RBA-mandated credit card interchange fee reductions "there has been an impact on levels of rewards offered by [Australian] issuers", but did not quantify this impact.<sup>322</sup>

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<sup>319</sup> McKinsey & Company "Perspectives on Canadian Credit Card Business", May 19, 2008 (VISA00526292 at 6315).

<sup>320</sup> See Review of Network Economics Vol.4, Issue 4 – December 2005, "The Effect of Regulatory Intervention in Two-Sided Markets: An Assessment of Interchange-Fee Capping in Australia", Howard Chang et al., pp. 339 and 349.

<sup>321</sup> See *ibid.*

<sup>322</sup> See *ibid.*, pp 339-40.

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**Acquirers Cannot Compete for Merchants' Credit Card Network Services Business by Negotiating Interchange Fees or Network Fees on Behalf of Merchants**

145. As a practical matter, Canadian Acquirers are required to ensure that interchange and network fee amounts are paid by merchants as part of Merchant Service Fees.<sup>323</sup> Acquirers have no ability or incentive to bilaterally negotiate special interchange fee levels with specific Issuers or special network fee levels with Visa or MasterCard because even if an Acquirer were able to negotiate lower fees from an Issuer, merchants are unable to effectively steer customers to lower-cost credit cards or to effectively differentiate those cards at the point of sale because of the Merchant Rules. Further, even if an Acquirer wished to attempt to negotiate interchange or network fee levels with specific Issuers or credit card companies, the Acquirer would have limited negotiating leverage. Issuers have little or no incentive to agree to interchange rates below the default rates set by Visa and MasterCard, because neither Acquirers nor merchants have sufficient ability to generate incremental use by customers of particular credit card products. As a result of the Merchant Rules, merchants do not have the ability to use surcharges or to selectively refuse certain credit cards so as to influence consumers' choice of brands or types of credit cards at the point of sale.

146. Visa and MasterCard establish the interchange fees and network fees that are ultimately paid by merchants. If interchange fees were designed to be ultimately paid by Acquirers, one would expect Acquirers to negotiate interchange and network fees, and that the level would reflect this competition.<sup>324</sup> In other words, if interchange and network fees were intended to be borne by Acquirers, one would expect to see the largest Acquirers in Canada and/or those with the lowest risk characteristics paying the lowest interchange fees.<sup>325</sup> This is not the case. The same default interchange rates and network fees apply to all Acquirers and their merchant

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<sup>324</sup> See 55 UCLA Law Review, Vol. 55 (2008), pp. 1321 to 1405, "Priceless? The Economic Costs of Credit Card Merchant Restraints", Andrew J. Levitin, p. 1334.

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See Visa, Strategic Pricing Project, January 2010 (VISA00298137 at 8144).

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customers.<sup>326</sup> Rather than Acquirer-specific interchange or network fees, there are (as discussed herein) several Visa and MasterCard interchange rate tiers based on merchant characteristics or types, including lower rates for merchants with high levels of credit card sales, or in the case of Visa, for certain types of merchants such as utilities, real estate agents and governments.<sup>327</sup>

**The Acquirer Service Fee Component of Merchant Service Fees is Decreasing Due to Competition by Acquirers with respect to Credit Card Network Services**

147. Canadian Acquirers do compete vigorously based on the small portion of Merchant Service Fees that is retained by Acquirers as service fees (the Acquirers' margin). Some merchants intensively negotiate the Acquirer service fee component of the Merchant Service Fee, as merchants typically have no ability to negotiate the remaining components of the Merchant Service Fee. A 2008 First Annapolis presentation to MasterCard on the Canadian acquiring industry asserts that "[d]ue to the 'Americanization' of the acquiring marketplace and low-margin debit transactions, Canadian acquirers are facing significant pricing pressures".<sup>328</sup> First Annapolis also notes that the Acquirer service fee component of the Merchant Service Fees charged by Canadian Acquirers decreased from an average of 0.69% of sales volume in 2001 to an average of 0.58% of sales volume in 2006, a decline of 15.9%.<sup>329</sup>

148. [REDACTED]

[REDACTED]<sup>330</sup>

<sup>326</sup> See Visa Canada Interchange Reimbursement Fees, undated, accessed October 30, 2011 at <http://www.visa.ca/en/aboutcan/mediacentre/interchange/index.jsp>, MasterCard Canada Interchange Rate Overview, January 2011, accessed October 30, 2011 at [http://www.mastercard.com/ca/merchant/en/getstarted/interchange\\_rates.html](http://www.mastercard.com/ca/merchant/en/getstarted/interchange_rates.html), Visa Issues Brief, "Acquirer Assessment Fee", March 10, 2008 (VISA00072957 at 2957).

[REDACTED] See *ibid.*, Response to Q. 2969, pp.1053-54, (Tab 32: "Visa Canada Fee Guide", December 2010 (VISASUPP00006826 at 6832)) taken under advisement on Bradley Examination, December 8, 2011.

<sup>327</sup> See *ibid.*

<sup>328</sup> [REDACTED]

<sup>329</sup> See *ibid.*

<sup>330</sup> See *ibid* and Visa, "Global Acceptance Landscape", January 2009 (VISA00104657 at 4715).

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149.

150. Visa and MasterCard Acquirers actively compete on the small portion of the Merchant Service Fees they retain.<sup>335</sup> If Visa and MasterCard credit card interchange fees are reduced, Acquirers will reduce Merchant Service Fees. In the United States, the practical effects of reductions in Visa and MasterCard debit card interchange fees that occurred in October 2011 as a result of the implementation of the Dodd-Frank Act's requirements concerning debit card

<sup>335</sup> A 2009 U.S. Government Accountability Office (GAO) study states "The competition among acquirers gives merchants the opportunity to choose among competing acquirers and negotiate lower costs. Merchants of varying sizes that we interviewed reported that they have multiple acquiring institutions and processors competing for their business and have been able to successfully decrease the acquiring fee portion of their merchant discount fees in recent years." See United States Government Accountability Office, Report GAO-10-45 "Credit Cards", November 2009, p. 36, accessed online October 1, 2011, at <http://www.gao.gov/new.items/d1045.pdf>.

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interchange fees support the conclusion that Acquirers will compete for merchant business by passing interchange fee reductions onto their merchant customers.<sup>336</sup>

### XIII. Challenged Merchant Rules

#### Network Operating Rules are Required Content in Acquirers' Visa and MasterCard Merchant Agreements

151. Both Visa and MasterCard's respective Operating Rules require that merchants have agreements in place with an authorized Acquirer prior to accepting Visa or MasterCard credit cards for payment.<sup>337</sup> The Respondents' respective Operating Rules also prescribe that Acquirers' agreements with merchants must contain provisions requiring their merchant customers to comply with all Visa and MasterCard Operating Rules, including the Merchant Rules.<sup>338</sup> Acquirers are required to enforce the Merchant Rules in the event of non-compliance by the Acquirers' merchant customers.<sup>339</sup>

152. Despite the fact that merchants are required to comply with the Merchant Rules (and other Visa and MasterCard Operating Rules), Visa and MasterCard only began making (abbreviated) versions of their Operating Rules publicly available in 2008.<sup>340</sup> Prior to that time,

<sup>336</sup> The U.S. Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") was enacted on July 21, 2010. Section 1075 of the Dodd-Frank Act amends the U.S. Electronic Fund Transfer Act ("EFTA") (15 U.S.C. 1693 et seq.) by adding a new section 920 regarding interchange transaction fees and rules for payment card transactions. Section 1075 of the Dodd-Frank Act was originated as an amendment to the Dodd-Frank legislation, under the sponsorship of U.S. Senator Dick Durbin. Accordingly, Section 1075 of the Dodd-Frank Act's is often referred to as the "Durbin amendment". See The U.S. Federal Register / Vol. 76, No. 139 / Wednesday, July 20, 2011 / Rules and Regulations, pp. 43394 - 475, Federal Reserve System, 12 CFR Part 235, [Regulation II; Docket No. R-1404], RIN 7100 AD 63, Debit Card Interchange Fees and, Routing, accessed online March 6, 2012 at <http://www.gpo.gov/fdsys/pkg/FR-2011-07-20/pdf/2011-16861.pdf>.

<sup>337</sup> [REDACTED] and Visa International Operating Regulations - 15 October 2011, "Merchant Agreement Requirements" (GSSS5893\_00001550 at 2002).

<sup>338</sup> [REDACTED] and Visa International Operating Regulations - 15 October 2011, "Merchant Agreement Requirements" (GSSS5893\_00001550 at 2002), [REDACTED]

<sup>339</sup> See Visa International Operating Regulations - 15 October 2011, "Merchant Agreement Requirements" (GSSS5893\_00001550 at 2002), [REDACTED]

<sup>340</sup> Visa website, "Visa Inc Makes Operating Regulations Available to the Public", May 8, 2008, accessed online February 1, 2012 at <http://www.corporate.visa.com/media-center/press-releases/press776.jsp>. United States House of Representatives, Committee on the Judiciary, Hearing on H.R. 5546, the "Credit Card Fair Fee Act of 2008", May 15, 2008, Written Statement of

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merchants were wholly dependent on their Acquirers to provide them with information about Visa and MasterCard's credit card acceptance rules, even though they were contractually obligated to follow these rules. Testimony and documents produced in this proceeding indicate that Visa and MasterCard, and their Acquirers, administer and enforce the Operating Rules and have taken steps to address situations where, in their judgment, certain merchants have failed to comply with the Merchant Rules.<sup>341</sup>

### Challenged Operating Rules

153. There are three categories of Visa and MasterCard Operating Rules that are at issue in this proceeding (previously defined as the "Merchant Rules"):

- (a) No-Surcharge Rules: These rules prohibit merchants from adding any fee to a transaction amount resulting from a customer's use of a Visa or MasterCard-branded credit card;<sup>342</sup>
- (b) Honor-All-Cards Rules: These rules require merchants accepting any of the credit cards of a brand (e.g., Visa or MasterCard) to accept all of that brand's credit cards, regardless of the Issuer or the type of the card;<sup>343</sup>
- (c) No Discrimination Rule: This rule prohibits merchants from offering incentives, giving preference, or steering customers away from one brand or type of credit

Joshua Peirez, MasterCard Worldwide, p. 2, accessed online January 15, 2012 at <http://judiciary.house.gov/hearings/pdf/Peirez080515.pdf>

<sup>341</sup>

[E-mail from Darleen Bird, "RE: Convenience Fees", May 6, 2008 (VISA00007517), Visa, "Re: Visa Canada Compliance Acceptance Program - ACP# 2009-025PTC", May 8, 2008 (VISA00028146).

<sup>342</sup> See Visa International Operating Regulations - 15 October 2011, "Core Principle 6.3, No Surcharging Unless Required by Law, Charging for the Advertised Price" (GSSS5893 00001550 at 2001), "Surcharges 5.1.C (Updated)" (GSSS5893 00001550 at 2067).

<sup>343</sup> See Visa International Operating Regulations - 15 October 2011, "Core Principle 6.2, Honor All Cards Properly Presented, Honoring All Visa Cards" (GSSS5893 00001550 at 2000), "Honoring Cards" (GSSS5893 00001550 at 2056 to 2061), and "Honor All Cards - Canada Region (Updated)" (GSSS5893 00001550 at 2061), MasterCard Rules, 7 December 2011, section 5.8.1,

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card.<sup>344</sup> MasterCard's no-discrimination rule reads "[a] Merchant must not engage in any acceptance practice that discriminates against or discourages the use of a Card in favor of any other acceptance brand".<sup>345</sup>

**Requirements that Various Rules and Procedures be Included in Acquirers' Merchant Agreements**

154. As noted above, Visa and MasterCard's respective Operating Rules require that an Acquirer enter into a written agreement with a merchant before that merchant may begin accepting credit cards for payment.<sup>346</sup> Acquirers' merchant agreements typically are constructed to grant the Acquirer a security interest in the merchant's transaction deposit funds, often backed by a signed personal guarantee given by the owner of the business.<sup>347</sup> Acquirer merchant agreements usually contain provisions holding the merchant financially responsible for any damages and penalties assessed against the Acquirer in respect of any violations of, or non-compliance with, the Visa or MasterCard Operating Rules.<sup>348</sup> In other words, if a merchant does not comply with the Visa and/or MasterCard Operating Rules, it risks forfeiting the funds owed to it for deposited credit card transactions, and is exposed to potential fines, liabilities and other penalties.<sup>349</sup>

<sup>344</sup> [REDACTED]

<sup>345</sup> [REDACTED]

<sup>346</sup> See Visa International Operating Regulations – 15 October 2011, Chapter 6 "Merchant Agreement," (GSSS5893 00001550 at 2002 to 2003), and "Merchant Deposits – Canada Region" (GSSS5893 00001550 at 2004).

<sup>347</sup> [REDACTED]

<sup>348</sup> [REDACTED]

<sup>349</sup> [REDACTED]



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### Acquirers Combine the Merchant Rules in Merchant Agreements

155. When the Respondents' respective Operating Rules are combined together in a merchant agreement, the Operating Rules of each of Visa and MasterCard are effectively extended to acceptance of all brands and types of credit cards. For example, the merchant agreements of TDMS, Moneris and First Data combine together and extend Visa and MasterCard's respective Operating Rules, including the Merchant Rules, to each brand and type of credit card accepted by their merchant customers.

156. [REDACTED]

First Data's Merchant

Terms and Conditions group various credit card brands and types together, requiring compliance by First Data's merchant customers with the collective set of network "Rules" which are defined (in part) as "all applicable operating rules and regulations ... of Visa ... MasterCard ... Interac [and] any other payment card association that is applicable to this Agreement..."<sup>351</sup> Among other things, the First Data Terms and Conditions require that goods be sold at the ticketed price, prohibit surcharging by merchants and the application of any other "special conditions" (including minimum or maximum transaction amounts) not required or expressly allowed by the Rules.<sup>352</sup>

157. Moneris' Merchant Operating Manual extends MasterCard's No-Discrimination Rule across all credit card brands accepted by Moneris' merchant customers. In relevant part, the Moneris Operating Manual provides that merchants "must not engage in any acceptance practice that discriminates against or discourages the use of a card in favor of any other particular card

350 [REDACTED]

<sup>351</sup> See First Data Loan Company Canada, Merchant Terms and Conditions 2010, "Article I Relationship Administration, Section 3 Association Rules", p. 4, and "Article II - Card Transactions, Section 8.1 - Fair Acceptance", p. 5, accessed online January 24, 2012 at [http://www.firstdata.com/en\\_ca/home.html](http://www.firstdata.com/en_ca/home.html). Note: The First Data Merchant Terms and Conditions appear to conflict with Interac's operating rule permitting merchants to charge cardholder fees on Interac debit card transactions.

<sup>352</sup> See *ibid.*

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brand".<sup>353</sup> The Moneris Operating Manual also applies the No-Surcharge Rules across all brands, stating "You must not add any surcharges/convenience fees to any transaction".<sup>354</sup>

#### XIV. Networks Market Credit Card Network Services to Merchants

##### Visa and MasterCard's Services are Resold by Acquirers

158. [REDACTED]

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I disagree. As described below, in Canada and elsewhere, Visa and MasterCard Credit Card Network Services are supplied to merchants through Acquirers who act as resellers of these services.

159. Although Acquirers may supply a number of services to merchants, their services are centered on providing merchants with the ability to accept Visa and/or MasterCard branded credit cards for payment, through access to Visa and MasterCard's respective network processing systems. These services (which I have referred to in this report as "Credit Card Network Services") encompass access to, among other things, Visa and MasterCard's respective transaction authorization, transaction clearing, financial settlement, and transaction dispute management services. If Acquirers did not supply Credit Card Network Services, merchants would not be able to accept Visa or MasterCard credit cards as a form of payment and there would be little, if any, point in supplying (and little, if any, demand for) other ancillary services also typically provided by Acquirers to merchants, such as POS terminal rentals and reporting services.

<sup>353</sup> Note: The Moneris Operating Manual appears to conflict with Interac's operating rule permitting merchants to charge cardholder fees on Interac debit card transactions. "You must not add any surcharges/convenience fees to any transaction", "Q. Can I charge a cardholder a fee for using their MasterCard/ Visa or Interac Direct Payment (Debit) Cards? A. No. You cannot charge a fee (surcharge) for card use. Regardless of the types of products you sell, it is against your merchant agreement to charge any cardholder a fee for making a purchase with their credit or debit card". See Moneris Solutions website, "Moneris Solutions' Merchant Operating Manual", pp. 4, 29, 44-45, accessed January 31, 2012 at [http://www.moneris.com/en/Support/Downloads/~media/Files/MerchantServices/merchant\\_manual\\_eng.aspx](http://www.moneris.com/en/Support/Downloads/~media/Files/MerchantServices/merchant_manual_eng.aspx).

<sup>354</sup> See *ibid*, p. 29.

<sup>355</sup> Response of Visa, paras. 6, 41-44, [REDACTED]

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160. Visa and MasterCard control the terms on which Acquirers supply Credit Card Network Services to merchants. The Operating Rules of Visa and MasterCard contain extensive provisions concerning the supply by Acquirers of Visa and MasterCard Credit Card Network Services.<sup>356</sup> Visa's Operating Rules require its Issuers and Acquirers to provide Visa authorization and settlement services to their customers (*i.e.*, merchants in the case of Acquirers and cardholders in the case of Issuers).<sup>357</sup> Visa requires that all Canadian-acquired transactions be authorized, cleared and settled through Visa's system.<sup>358</sup> The Visa Operating Rules also mandate that Acquirers pay merchants for submitted Visa transactions "promptly after transaction receipt deposit",<sup>359</sup> and that Visa Acquirers must "control approval and review of merchants" and the "establishment of [merchant service] fees for Visa transactions".<sup>360</sup>

161. Similarly, MasterCard's Operating Rules require its acquiring members to accept and process MasterCard transactions from any other member's cardholders, and to maintain connections to MasterCard's systems that are accessible 24 hours a day.<sup>361</sup> The MasterCard Operating Rules mandate that Acquirers pay their merchant customers to a Canadian deposit account for all MasterCard transactions the merchants submit for processing.<sup>362</sup> Like Visa, MasterCard's Operating Rules require its Acquirers to review and control the collection of fees

<sup>356</sup> See Visa International Operating Regulations – 15 October 2011, "Chapter 6: Payment Acceptance" (GSSS5893\_00001550 at 2000 to 2261), "Chapter 7: Transaction Processing" (GSSS5893\_00001550 at 2262 to 2333), [REDACTED]

<sup>357</sup> See Visa International Operating Regulations – 15 October 2011, Core Principle 7.1, "Provide Authorization and Settlement Service, Ensuring Seamless Payment Processing", (GSSS5893\_00001550 at 2262), "General Authorization Requirements", Acquirer Provision of Authorization Services" (GSSS5893\_00001550 at 2270), [REDACTED]

<sup>358</sup> See *ibid*, Core Principle 7.4, "Authorize, Clear, and Settle International Transactions" (GSSS5893\_00001550 at 2270), "VisaNet Transaction Types - Reporting - Canada Region", (GSSS5893\_00001550 at 2303), and "Participation in National Net Settlement - Canada Region" (GSSS5893\_00001550 at 2320). *Note:* Where the Issuer and the Acquirer in respect of a transaction are the same entity or are related corporate entities, such transactions (commonly referred to as "on-us" transactions) may be processed outside the Visa network.

<sup>359</sup> See *ibid*, "Payment to Merchants" (GSSS5893\_00001550 at 2321).

<sup>360</sup> See *ibid*, "Member Requirements for Third Party Agents" (GSSS5893\_00001550 at 1693).

<sup>361</sup> [REDACTED]

<sup>362</sup> [REDACTED]

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payable by merchants for MasterCard Credit Card Network Services.<sup>363</sup> MasterCard requires that its Acquirers disclose in writing all [merchant service] fees prior to request for payment or collection.<sup>364</sup>

162. Visa and MasterCard also actively promote Credit Card Network Services publicly and in direct interactions with merchants. Portions of both the Visa and MasterCard websites are dedicated to merchant card acceptance. Visa's website contains a "Merchant Resource Centre" where Visa encourages readers seeking Credit Card Network Services to purchase those services through various Canadian Acquirers. This structure is very similar to how a manufacture refers sales inquiries for its services to downstream resellers (Figure 21). Similarly, MasterCard maintains web pages devoted to merchant acceptance, including one titled "Becoming a MasterCard Merchant" which refers readers to nine Canadian Acquirers for MasterCard Credit Card Network Services (Figure 22).

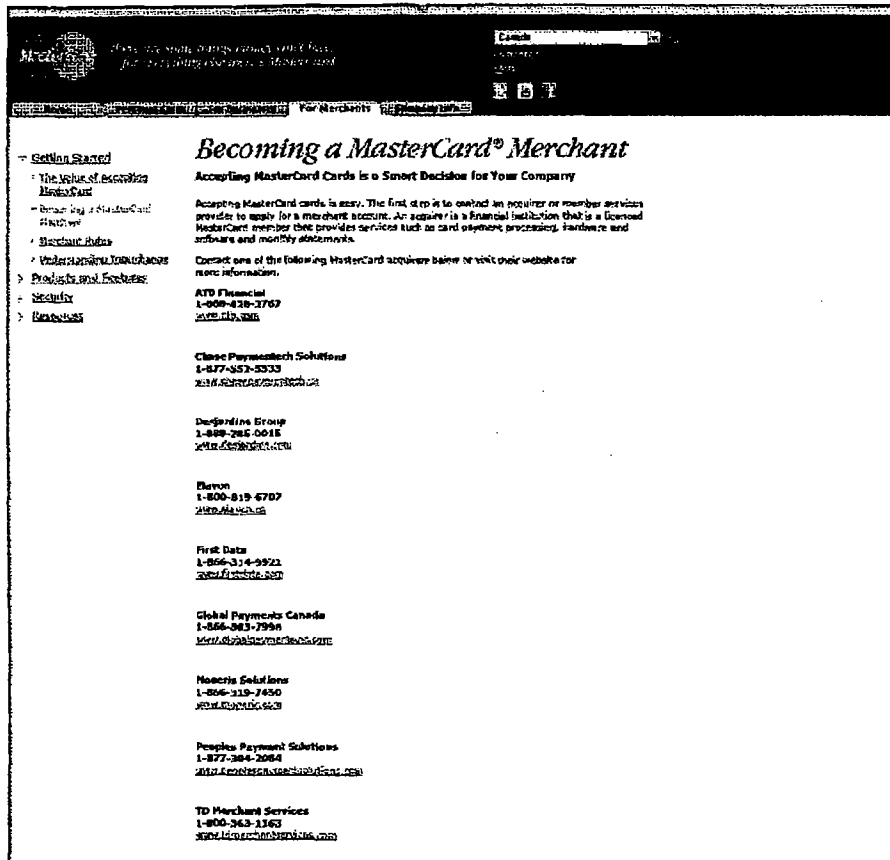
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<sup>363</sup> See *ibid.*, [REDACTED]

<sup>364</sup> See *ibid.*



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Figure 22: "Becoming a MasterCard Merchant"<sup>366</sup>

163. Acquirers in Canada are resellers of Visa and MasterCard's Credit Card Network Services. These services cannot be separated from the set of Acquirer offerings without diminishing the utility to merchants of the other card acceptance-related services supplied by Acquirers (e.g., POS terminals and reporting services). Acquirers that did not offer Visa and MasterCard's Credit Card Network Services would be offering a product with limited-to-no utility for merchants.

<sup>366</sup> See MasterCard Canada website, "Becoming a MasterCard Merchant", accessed December 6, 2011, <http://www.mastercard.com/ca/merchant/en/getstarted/become.html#>.

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## XV. Projected Impact of Removal of Merchant Rules in Canada

164. Based on my experience in the payment card industry and my knowledge of other jurisdictions that have removed or modified the Honor-All-Cards and No-Surcharge Rules, I believe that modification or removal of these rules in Canada would likely result in negotiation between various Canadian merchants, Visa, MasterCard, Issuers and Acquirers leading to lower interchange and network fees.<sup>367</sup> The result would be to increase competition in respect of Merchant Service Fees and reduce the Merchant Service Fees paid by merchants in Canada.

165. In order to preserve and expand the volume of transactions for which Visa and MasterCard branded credit cards are used, Visa, MasterCard and their respective Issuers and Acquirers would likely negotiate reductions in interchange and network fees with merchants in exchange for commitments by merchants to honor all cards and to refrain from applying surcharges. Reduced interchange and network fees would likely be provided to the merchants in the form of lower Merchant Service Fees or incentive payments. With their Honor-All-Cards and No-Surcharge Rules in place, Visa and MasterCard presently negotiate agreements with a limited number of large Canadian merchants to reduce their costs of credit card acceptance in exchange for merchants agreeing to such things as promoting the payment card brands or adopting new Visa and MasterCard technologies (such as contactless cards) for which the Honor-All-Cards rule does not require acceptance. I believe that the number and variety of these agreements would increase if the challenged Merchant Rules were rescinded.

166. These outcomes are supported by experience in other jurisdictions where the Honor-All-Cards and/or No-Surcharge Rules have been removed or modified. For example, after Visa and MasterCard changed their Honor-All-Cards Rules in the U.S. as a result of the settlement in the "Visa Check" litigation<sup>368</sup> (which allowed merchants in that country to choose to accept credit cards only, debit cards only, or both types of payment cards), Wal-Mart suspended acceptance of

<sup>367</sup> A 2009 U.S. Government Accounting Office (GAO) study states "In addition, these [large] merchants [with whom we spoke] reported that their ability to negotiate lower payment costs was limited by their inability to refuse popular network cards as well as network rules for card acceptance, which, among other things, preclude merchants from adding surcharges for credit card payments or rejecting higher-cost cards." See United States Government Accountability Office, Report GAO-10-45 "Credit Cards", November 2009, page 29, accessed online October 1, 2011, at <http://www.gao.gov/new.items/d1045.pdf>

<sup>368</sup> "Visa Check" refers to the *In Re: Visa Check/MasterMoney Antitrust Litigation*, 297 F. Supp. 2d 503 (E.D.N.Y. 2003), aff'd, 396 F.3d 96 (2d Cir. 2005).

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MasterCard debit cards between February and June 2004, only to resume acceptance after MasterCard apparently lowered its rates to win back Wal-Mart's business.<sup>369</sup> In Australia, American Express agreed through an undertaking with the Reserve Bank of Australia in 2002 to allow Australian merchants to optionally surcharge American Express transactions.<sup>370</sup> This has contributed to a decline of 25.9% in the average American Express merchant acceptance fees paid by Australian merchants, from 2.51% to 1.86% as a percentage of the transaction value (Figure # 23).<sup>371</sup>

167. Prior experience in both Canada and in other jurisdictions suggests that lower levels of Merchant Service Fees will lead to increased merchant acceptance and increased levels of credit card transactions. As discussed above, Visa and MasterCard have reduced interchange fees (thereby reducing Merchant Service Fees) in order to increase acceptance among certain merchants segments in Canada and elsewhere. In Australia, since the Reserve Bank of Australia ("RBA") credit card industry reforms were implemented in 2003, the number of credit card POS terminals has grown from 434,000 in 2003 to 734,000 in 2011, an increase of 69%.<sup>372</sup> Similarly, RBA statistics indicate that credit and charge card purchase volume in Australia has grown by an average of 6.11% per year between 2003 and 2011.<sup>373</sup>

<sup>369</sup> See Los Angeles Times website, "Wal-Mart, MasterCard Agree on Debit Card", Los Angeles Times, June 22, 2004, at <http://articles.latimes.com/print/2004/jun/22/business/fi-rup22.11>, David Breitkopf, American Banker, June 22, 2004, "Wal-Mart, MasterCard Reach Agreement on Signature Debit".

<sup>370</sup> See Reserve Bank of Australia, Reform of Credit Card Schemes in Australia— IV, Final Reforms and Regulation Impact Statement 6 (Aug. 2002), page 59, accessed online February 16, 2012 at <http://www.rba.gov.au/payments-system/reforms/cc-schemes/final-reforms/index.html>.

<sup>371</sup> See Reserve Bank of Australia, Reform of Credit Card Schemes in Australia— IV, Final Reforms and Regulation Impact Statement 6 (Aug. 2002), p/ 59, accessed online February 16, 2012 at <http://www.rba.gov.au/payments-system/reforms/cc-schemes/final-reforms/index.html>, and Reserve Bank of Australia, Payments Data, "C3 - Merchant Fees for Credit and Charge Cards" accessed online February 16, 2012 at <http://www.rba.gov.au/payments-system/resources/statistics/index.html>.

<sup>372</sup> See Reserve Bank of Australia website "Payments Data, Schedule C8 - Points of Access to the Australian Payments System", accessed online February 16, 2012 at <http://www.rba.gov.au/payments-system/resources/statistics/index.html>.

<sup>373</sup> See *ibid*, "Payments Data, Schedule C1 - Credit and Charge Card Statistics".



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**Visa and MasterCard Already Permit Merchants to Surcharge in the Form of Convenience Fees**

168. Visa and MasterCard oppose the removal of the No-Surcharge Rules, taking the position that these Rules allow merchants to benefit from Credit Card Network Services without fully paying for them (*i.e.*, "free riding").<sup>376</sup> Further, the Respondents state the No-Surcharge Rules prevent merchants from taking advantage of consumers through "bait and switch" tactics, by introducing unexpected surcharges at the POS.<sup>377</sup> However, the experience to date, relating to the thousands of merchants in Canada, the U.S., and other countries that already surcharge credit cards through Visa's and MasterCard's respective convenience and service fee programs, is inconsistent with assertions that surcharges will reduce acceptance or be harmful to cardholders.

169. MasterCard allows various categories of Canadian merchants, including apartments, rental properties, schools, colleges, universities, courts, and other government entities to impose surcharges, which MasterCard terms "convenience fees".<sup>378</sup>

374

375 See *ibid.*

376 See Response of Visa, para. 60 and Visa Concise Statement of Economic Theory, para. 10;

377 See Visa Response, para. 3 and Visa Concise Statement of Economic Theory, para. 9;

378 See The MasterCard Convenience Fee Program, December 2007, accessed January 15, 2012 at [http://www.mastercard.com/us/merchant/pdf/Convenience\\_Fee\\_Program\\_Sell\\_Sheet.pdf](http://www.mastercard.com/us/merchant/pdf/Convenience_Fee_Program_Sell_Sheet.pdf), and

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[REDACTED]

170. Visa's Operating Rules permit surcharging by some types of U.S. merchants using convenience fees, but Visa has not yet modified its rules to allow Canadian merchants to surcharge.<sup>382</sup> [REDACTED]

[REDACTED]

380 [REDACTED]

381 [REDACTED]

<sup>382</sup> Visa allows some U.S. merchants such as governments, courts, colleges, universities, and schools that accept Visa credit card to add a surcharge termed a "convenience fee," on the condition the fee is charged on transactions using other credit cards and payment methods. See Visa International Operating Regulations – 15 October 2011, "Convenience Fees" (GSSS5893\_00001550 at 2116 and 2119).

<sup>383</sup> See Visa, "Visa Canada Products Update", April 30, 2008 (VISA00347679 at 7685), E-mail from Mike Bradley, "RE: Utilities – Feedback", August 7, 2009 (VISA00392727 at 2727 to 2728).

<sup>384</sup> "Decision Risk Assessment – Convenience Fees in Canada", February 25, 2008 (VISA00056749).

<sup>385</sup> See Visa, "Canada Regional Operating Regulations: Convenience Fees", September 22, 2009 (VISA00062474), and E-mail message from Brian Weiner, RE: Canada Emerging Segments – Comparable vs MC", February 1, 2010 (VISA00148508 at 8508); [REDACTED]

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**Visa, MasterCard, American Express, Discover Card and Diners Club Allow Merchants to Surcharge Without Loss of Merchant Acceptance or Purchase Transaction Volumes**

171. Visa, MasterCard and other general purpose credit card networks allow merchants to surcharge credit card transactions in other countries and jurisdictions. Within the European Economic Area (previously defined as "EEA") countries, for example, Visa, MasterCard, Diners Club, and various debit card networks permit merchants to apply surcharges, except where prohibited by local law.<sup>386</sup> Visa, MasterCard, and Diners Club operating rules also permit merchants in Australia and New Zealand to apply surcharges to transactions involving their respective credit card products, and American Express explicitly permits surcharging in Australia.<sup>387</sup> In New Zealand, Visa and MasterCard voluntarily removed their respective No-Surcharge Rules as part of settlements announced in August 2009 with the New Zealand Commerce Commission.<sup>388</sup> Visa's Interlink PIN debit network operating rules also allow select U.S. merchants to surcharge Visa/Interlink PIN debit card transactions.<sup>389</sup>

<sup>386</sup> See Visa worksheet, "Visa Europe" tab (VISA00303135). [REDACTED]

<sup>387</sup> [REDACTED] Visa International Operating Regulations – 15 October 2011, "Surcharges 5.1.C – Surcharges" (GSSS5893\_00001550 at 2067), Diners Club New Zealand website, "Diners Club Group Card Acceptance Quick Guide and Merchant Terms and Conditions", pp. 8-9, accessed February 1, 2012 at [http://www.dinersclub.co.nz/wp-content/themes/diners/downloads/DC\\_Merchants\\_T-C\\_July\\_2011.pdf](http://www.dinersclub.co.nz/wp-content/themes/diners/downloads/DC_Merchants_T-C_July_2011.pdf). Note: It is unclear if American Express has modified its New Zealand merchant operating agreements to permit surcharging. See American Express Australia website, "RBA Card Reforms Questions & Answers", accessed February 1, 2012 at <http://www.212.americanexpress.com/dsm/live/dsm/int/australia/en/merchants/everydayresources/RBAcardreform.do?vgnextoid=d06e0188cbc8e010VgnVCM100000ccf4ad94RCRD>.

<sup>388</sup> See Commerce Commission New Zealand website, Media Releases, "Commerce Commission and Visa reach agreement to settle credit card interchange fee proceedings", August 12, 2009, accessed online December 2, 2011 at <http://www.comcom.govt.nz/media-releases/detail/2009/commercecommissionandvisareachagre/> and "Commerce Commission and MasterCard agree to settle credit card interchange fee proceedings", August 24, 2009, accessed online December 2, 2011 at <http://www.comcom.govt.nz/media-releases/detail/2009/commercecommissionandmastercardag/>.

<sup>389</sup> Visa Interlink, Inc. Operating Regulations & By-Laws, November 2011, "5.2.C.2 Surcharges", pages 104-105, accessed February 22, 2012 online at <http://www.corporate.visa.com/media/interlink-operating-regulations.pdf>, Visa website: "A Merchant that was operational in the Interlink Network as of 23 September 1993 and was levying a surcharge as of that date may surcharge until 1 November 2012 at its locations operated under the Merchant's Trade Name that are located in the original five-state Interlink Network market area of Arizona, California, Nevada, Oregon and Washington."

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172. Discover eliminated its no surcharge rule in 2006, and permits all merchants in the U.S. and elsewhere to optionally apply surcharges to Discover credit card transactions.<sup>390</sup>

[REDACTED]

173. Experience to date demonstrates that the ability of Australian merchants to surcharge credit card transactions has contributed to decreases in Visa, MasterCard, American Express, and Diners Club Merchant Service Fees. Australian merchants' total fees for Visa and MasterCard acceptance have decreased 40.7% since March 2003, from 1.45% to 0.86% (a total of -0.58), which is 0.13% more than the RBA-mandated Visa and MasterCard interchange rate decreases of 0.45% (Figure 23).<sup>392</sup> American Express and Diners Club merchant fees have not been regulated in Australia, yet these companies' average total merchant fees have declined 25.9% (from 2.51% to 1.86%, or -0.65%) and 10.6% (from 2.36% to 2.11%, or -0.21%), respectively, over the period from March 2003 to December 2011. These figures suggest that merchants' ability to surcharge these credit card brands has contributed to declining average Merchant Service Fees.<sup>393</sup>

<sup>390</sup> See Discover, Merchant Operating Regulations, "2.5 Surcharges and Discounts" Release 11.1, October 15, 2010, Effective Date: April 15, 2011, p. 6, and The Green Sheet, "Discover to drop no surcharge ban", March 1, 2006, accessed online February 1, 2012 at [http://www.greensheet.com/gs\\_archive.php?issue\\_number=060301&story=9](http://www.greensheet.com/gs_archive.php?issue_number=060301&story=9).

<sup>391</sup>

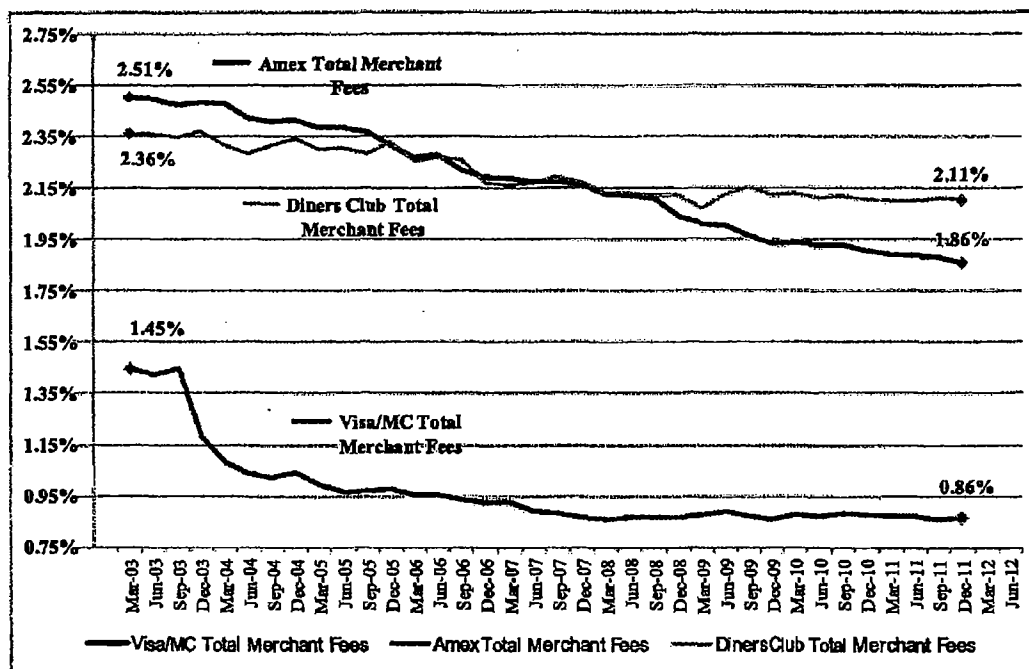
<sup>392</sup> See Reserve Bank of Australia website, "Common Benchmark for Setting of Credit Card Interchange Fees", November 2005, accessed February 16, 2012 at <http://www.rba.gov.au/payments-system/reforms/cc-schemes/cc-fecs-benchmark.pdf>, "Credit Cards, September 2006 Benchmark calculation", accessed online February 16, 2012 at <http://www.rba.gov.au/media-releases/2006/pdf/mr-06-08-benchmark-calc-credit-card.pdf>, and "Payments Data, Schedule C3 – Merchant Fees for Credit and Charge Cards", accessed online February 16, 2012 at <http://www.rba.gov.au/payments-system/resources/statistics/index.html>.

<sup>393</sup> See *ibid*.

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**Figure 23: Australian Merchants' Average Total Fees for Credit Card Acceptance**

**Note:** Australian domestic transaction interchange fees decreased 0.40% in October 2003 and another 0.05% in November 2006.<sup>394</sup>



### Discover Card Network Operates Without a Honor-All-Cards Rule

174.

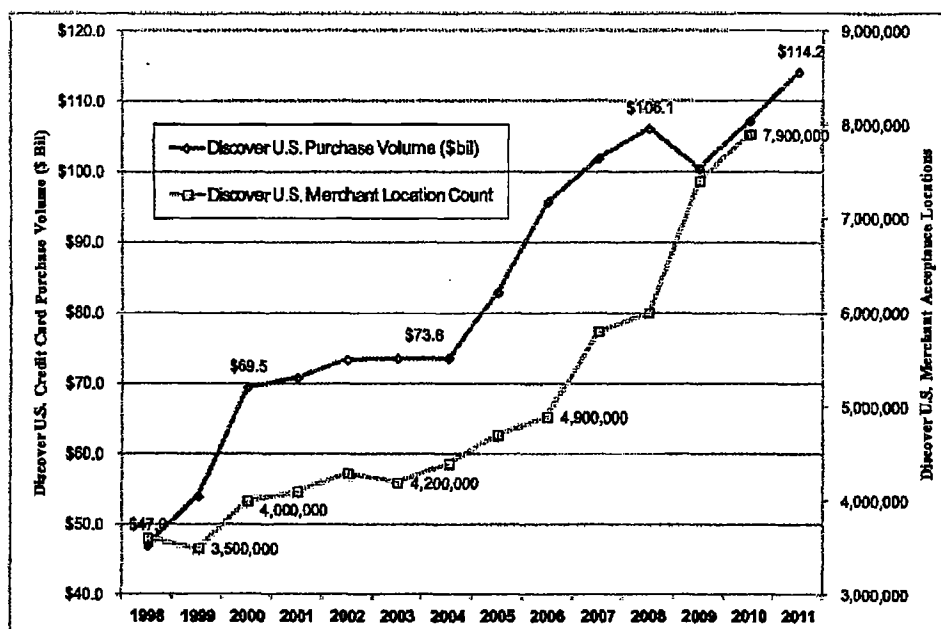
<sup>394</sup> See Reserve Bank of Australia website, "Common Benchmark for Setting of Credit Card Interchange Fees", November 2005, p. 2, accessed February 16, 2012 at <http://www.rba.gov.au/payments-system/reforms/cc-schemes/cc-fees-benchmark.pdf>, "Credit Cards, September 2006 Benchmark calculation", accessed online February 16, 2012 at <http://www.rba.gov.au/media-releases/2006/pdf/mr-06-08-benchmark-calc-credit-card.pdf>.

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<sup>395</sup> However, Discover Card has not had an honor all cards rule since 2003.<sup>396</sup>

175. As shown in Figure 24, below, both the number of U.S. merchant locations accepting Discover credit cards, and Discover's U.S. credit card purchase volumes, have increased markedly since 2003 (when Discover removed its Honor-All-Cards rule) and 2006 (when Discover amended its operating rules to permit U.S. merchants to surcharge Discover credit card transactions).<sup>397</sup>

**Figure 24: Discover Card Purchase Volumes and U.S. Merchants' Accepting, 1998 - 2010**



<sup>395</sup>

<sup>396</sup> Discover Card had an Honor-All-Cards rule at one time but it was repealed in 2003. See Discover Business Services Merchant Operating Regulations, - Revised 05/00 - Revised 09/02, Discover Network Merchant Operating Regulations - Revised 10/04, Discover Network Merchant Operating Regulations, Release 7.2, October 12, 2007, Discover Network Merchant Operating Regulations, Release 8.1, April 4, 2008, DFS Services LLC, Merchant Operating Regulations, Release 11.1, October 15, 2010.

<sup>397</sup> See The Nilson Report #s 689, 712, 738, 760, 784, 805, 828, 851, 874, 902, 924, 942, 965, 986. Note: Beginning in 2006, Discover began contracting with Acquirers to provide Discover Credit Card Network Services, including merchant recruitment, transaction processing, and funds settlement. See Digital Transactions Magazine, "Discover at 25", December 1, 2011, accessed online January 20, 2012, at <http://www.digitaltransactions.net/news/story/3335>.

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**Removal of the Honor-All-Cards Rule**

176. [REDACTED]

Within

Canada, Visa and MasterCard amended their Honor-All-Cards Rules so as not to require merchants to accept both their debit and credit cards. As already noted, however, Visa and MasterCard's respective Canadian Honor-All-Cards Rules continue to prohibit merchants from selectively accepting their respective credit card products.

177. Visa and MasterCard claim that the Honor-All-Cards Rule is an important foundation for their acceptance strategies and generates revenues for themselves, Issuers, and Acquirers.

[REDACTED]

178. Similarly, a December 1997 Visa document produced by Visa in the Visa Check/MasterMoney Antitrust Litigation in the United States, which was made public in 2002, states that the Visa Honor-All-Cards rule is a "cornerstone to the success of Visa", providing "ubiquitous merchant acceptance for all Visa products", and the "ability of members to leverage strong Visa brand equity for all Member Visa products".<sup>400</sup> This document also states that the elimination of the Honor-All-Cards rule would "break down significant entry barriers for new players", "weaken Visa's superior brand position", "decrease[] profitability for members" and

398 [REDACTED]

399 [REDACTED]

<sup>400</sup> See Andersen Consulting, Report Prepared for Visa Regarding the HAC Rules, at 10, Ex. 820 to Decl. G. Schnell Supp. Pls.' Opp'n Defs.' Mot. Summ. J., In re Visa Check, 297 F. Supp. 2d 503 (E.D.N.Y. 2003) (No. 96-CV-5238).

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"decrease[] fees for Visa".<sup>401</sup>

179. However, the modification or removal of Visa and MasterCard's Honor-All-Cards Rules in Canada would not mean that Canadian merchants would be required to refuse to accept specific credit card types or credit cards from specific Issuers in order to reduce their Merchant Service Fees. Most merchants are unlikely to simply refuse to accept the Respondents' branded credit cards, as merchants acceptance decisions are commonly made relative to their competitors, and most merchants would be hesitant to adopt payment acceptance policies that could lead to a shift in volume to competitors (which continued to accept all of the Respondents' credit cards).<sup>403</sup> A more likely outcome is that Canadian merchants would negotiate lower credit card interchange and/or network fees with Acquirers, networks and/or Issuers in exchange for agreeing to accept all credit card types when presented for payment. This predicted outcome is supported by the experience of Discover in the U.S. where merchant acceptance has grown since its Honor-All-Cards Rule was eliminated in 2003. It is also supported by what occurred after Visa and MasterCard revised their respective Honor-All-Cards Rules in the U.S. in 2003 as a result of the settlement with merchant plaintiffs in the "Visa Check" litigation.<sup>404</sup>

**Feasibility of Respondents and Acquirers Providing Merchants with the Capability to Electronically Determine Card Product Types and Merchant Service Fees at the Point of Sale**

180. In order to permit merchants to effectively encourage their customers to use lower-cost payment methods, including lower-cost credit cards, by (among other things) applying a surcharge to credit card transactions or declining acceptance of higher-cost credit cards, merchants must be able to determine (in a timely and efficient manner at the point of sale) the

<sup>401</sup> See *ibid.*

<sup>402</sup> See Visa, "Business Practices Strategy Review | April 2010" (VISA00049336 at 9337).

<sup>403</sup> See United States Government Accountability Office, Report GAO-10-45 "Credit Cards", November 2009, page 29, accessed online October 1, 2011, at <http://www.gao.gov/new.items/d1045.pdf>.

<sup>404</sup> See *In Re: Visa Check/MasterMoney Antitrust Litigation*, 297 F. Supp. 2d 503 (E.D.N.Y. 2003), *aff'd*, 396 F.3d 96 (2d Cir. 2005).



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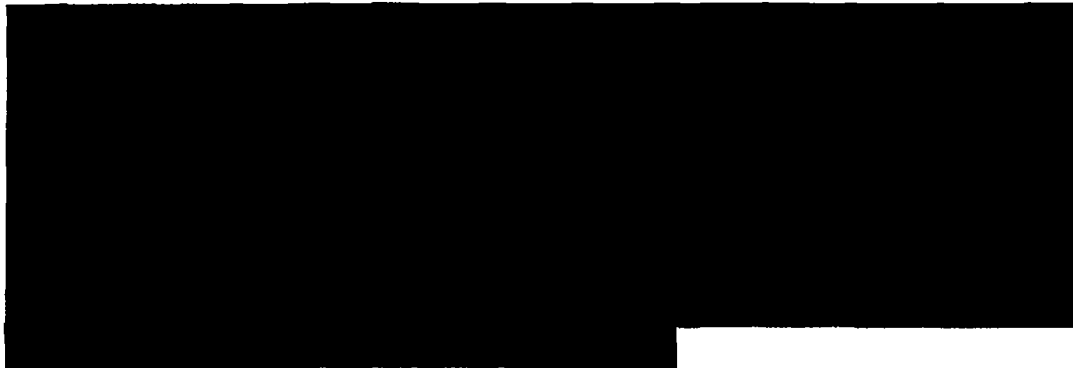
product type of the Respondents' branded credit cards. By determining the product type, merchants may determine the Merchant Service Fees associated with each of the Respondents' branded credit cards and, in particular, which of those cards carry higher Merchant Service Fees.

181. 

182. MasterCard, Visa and Canadian Issuers and Acquirers could provide Canadian merchants with the ability to access or receive product type and payment cost information for credit card transactions electronically through their POS systems. Such facilities could be made available and designed in such a fashion so as to have a negligible effect on the speed of credit card transactions. Many large merchants in the U.S., Canada, and elsewhere currently use payment card account information to determine whether a card is a credit or debit card, whether to prompt the customer to enter a PIN on the merchant's POS system, or to accept a network or service fee, and how the transaction should be routed from the merchant to a network for authorization and clearing.

183. 405 406 

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184. A Visa declaration filed in support of a settlement of litigation between Visa and the U.S. Department of Justice in 2011, concerning Visa's Operating Rules, states that Visa has made a service optionally available to Acquirers in the U.S. since 2006 called the "Product Eligibility Inquiry Service."<sup>409</sup> According to the declaration, Visa's product inquiry service can be used to determine a credit card's specific Visa assigned product type.<sup>410</sup> Based on my experience, disclosure of Visa's assigned product types should permit a merchant to determine at the POS the cost of accepting different Visa credit cards, given certain reasonable hardware and/or software upgrades.

185. Visa and MasterCard could also require their respective Issuers to add conspicuous and uniform product identifiers to the fronts of their credit cards to enable merchants to visually identify higher-cost cards. These changes could be made, and revised cards issued through Issuer's normal re-issuance cycles. As an example, in the 2003 Visa Check litigation settlements, both Visa and MasterCard agreed to require their U.S. debit card issuers to re-brand and re-issue over a three year period the more than 200 million Visa or MasterCard branded debit cards then in circulation to add "Debit" identifiers to the fronts of cards, so as to permit

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<sup>409</sup> See U.S. Department of Justice website, U.S. and Plaintiff States v. American Express Company, et al., "Declaration of Judson Reed", accessed February 1, 2012 at <http://www.justice.gov/atr/cases/americanexpress.html>.

<sup>410</sup> See *ibid.*

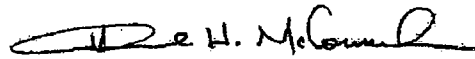
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U.S. merchants to visually identify Visa and MasterCard debit cards and differentiate them from the Respondents' credit cards.<sup>411</sup> The Respondents also agreed to require their issuers to ensure each re-issued debit card have a distinct standardized electronic identity thereby allowing merchants with point of sale card terminals to electronically distinguish debit card and credit card transactions.<sup>412</sup>

### Conclusion

186. Based on my experience in the payment card industry and my knowledge of other jurisdictions that have removed or modified the Honor-All-Cards and No-Surcharge Rules, I believe that modification or removal of Visa and MasterCard's Honor-All-Cards and No-Surcharge Rules in Canada would likely result in negotiation between various Canadian merchants, Visa, MasterCard, Issuers and Acquirers, leading to lower interchange and network fees. The result would be to increase competition in respect of Merchant Service Fees and reduce the Merchant Service Fees paid by merchants in Canada. Further, modification or removal of these rules would be unlikely to result in a loss of levels of Canadian merchant acceptance of the Respondent's credit cards or a decline in aggregate credit card purchase transaction volumes on such cards. These outcomes are supported by experience in other jurisdictions where Visa, MasterCard and other general purpose credit card network's Honor-All-Cards and/or No-Surcharge Rules have been removed or modified. The Respondents and Canadian Acquirers can feasibly provide merchants with the capability to electronically determine card product types and Merchant Service Fees at the point of sale. The Respondents can require Canadian Issuers to brand cards in a standardized fashion to clearly distinguish the product type, and enable merchants to visually determine the Merchant Service Fee applicable to the card.

Date: March 14, 2012



Mike McCormack

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<sup>411</sup> See National Retail Federation website, Constantine & Partners LLP "Merchant Advisory", January 3, 2004, accessed February 22, 2012 at [http://www.nrf.com/modules.php?name=Documents&op=viewlive&sp\\_id=129](http://www.nrf.com/modules.php?name=Documents&op=viewlive&sp_id=129), The Nilson Report #796, "Visa Debit Card Design", pp.1, 4.

<sup>412</sup> See *ibid*.

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**Schedule A – Curriculum Vitae of Mike McCormack****Michael "Mike" H. McCormack**

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E-Mail: mike.mccormack@palmaadvisors.com

**BUSINESS EXPERIENCE**

**Managing Director, Palma Advisors**  
 A Consultancy, Fort Lauderdale, Florida (\*)

**1999 -Present**

Palma Advisors is a consultancy specializing in the payments transaction industry. The firm's customers include financial institutions, government agencies, law firms, merchants, transaction processing companies, and technology companies, both domestic and international. The group specializes in advisory services and managing new payments projects, products, techniques, and technologies.

**Notable Consulting Projects of Mike McCormack**

- ❖ Led 2011 profitability analysis study and merchant accounting system analysis for 5<sup>th</sup> largest merchant acquirer in Middle East / Africa / South Asia region.
- ❖ Conducted payment audit study for multi-national cruise-line merchant with 60+ ships where card processing fees are the third largest company variable expenses after fuel and personnel. Provided an action plan for merchant to realize 10-20% annual savings in card processing expense. Previously undertook similar studies for a large national petroleum merchant and several other retailers.
- ❖ Led forensic accounting analysis and identification effort for a small regional bank with a \$3.5 million loss/out-of-balance condition which occurred over a 5 year period from a merchant acquiring business the bank had divested. The sources of the outage were identified and the bank successfully recovered its funds from the purchasers of the merchant business.
- ❖ Working as payment card industry and merchant acquiring expert witness in U.S. Payment Card Interchange Fee and Merchant-Discount Antitrust Litigation (MDL 1720).

*(\*) From 1999 – 2008, I was affiliated with the firm Noblett & Associates, which closed in 2008.*

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- ❖ Retained by the New Zealand's competition regulatory agency, the Commerce Commission, as a payment card industry expert witness for their regulatory action concerning domestic credit and debit card interchange fees. Settlements in the proceedings were announced with Visa and MasterCard in August 2009 and with bank defendants in September 2009.
- ❖ Worked as merchant acquiring and payment network services expert for plaintiff Discover Financial Services in its damages lawsuit against Visa and MasterCard. Settlements in the case were announced in October 2008.
- ❖ Served as plaintiff consulting and testifying expert in currency conversion fee disclosure litigations in the State of California and in U.S. Federal Court (MDL 1409). A settlement of the case was reached for \$336 million in 2007.
- ❖ Worked as consulting and testifying expert on transaction processing to New Zealand's Commerce Commission in its investigation of nine bank credit card issuers for non-disclosure of currency conversion fees to cardholders. All nine issuers entered guilty pleadings to the charges, reached settlements with the government, and have paid multi-million dollar restitution amounts to several million cardholders.
- ❖ Served for 8 years as the acquiring industry expert for the Constantine-Cannon settlement distribution to millions of merchant class members in the Visa-MasterCard signature debit card litigation settlement. Functioned as liaison with several hundred U.S. merchants for complex claims analysis and issue resolution.
- ❖ Work with merchant card ISO clients in acquisition or sales of merchant card portfolio businesses. I have helped manage four completed acquisition transactions since 2006, including successful sales of two ISO businesses in the very challenging years of 2008 and 2009.
- ❖ Led design, implementation, and enhancement of a new multi-currency merchant card acquiring accounting, processing and interchange system for Planet Payment. Led requirements definition, product design, and major implementation efforts, including development of authorization, clearing, and settlement interfaces with Visa and MasterCard, and integration with several large banks, and TSYS. The system is now supporting processing for 70+ Banks in the United States, Canada, Hong Kong, Malaysia, Singapore, the Philippines, China, the U.K, South Africa, United Arab Emirates, and other countries. Planet Payment made an \$18 million equity placement on the London Stock Exchange in 2008.
- ❖ Presently serve on editorial board of the weekly payments industry publication *ISO & Agent Weekly*, published by Source Media.

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**CONCENTRIC NETWORK CORPORATION**  
 Network Services Provider, Cupertino and San Jose, California

1996-2001

**Senior National Sales Engineer (Employee, 1996-1999, Consultant, 1999-2001)**

- Managed development and implementation of Internet access services for Intuit, Microsoft, Pacific Bell, and other enterprise customers. Accounts comprised approximately 50% of Concentric's 1999 revenue of \$140 million.
- Subject matter expert at Concentric for managing its merchant card processing services with Chase Merchant Services (then First USA Paymentech).

**WELLS FARGO BANK**  
 Walnut Creek, California

1989-1996

**Assistant Vice President & Senior Project Manager**  
**Merchant Card Services, Business Banking Group**

- Acquiring business subject matter expert on association and debit network interfaces, rules, and settlement operations. Managed Visa and MasterCard bankcard and debit POS network association affairs and rules compliance. Managed all initiatives and projects involving card associations and networks, including (twice a year) interchange fee and merchant pricing projects.
- Managed the all payment network settlement and general ledger functions for Wells Fargo's merchant business. Designed and implemented the settlement processes used by Wells Fargo since its 1994 joint-venture alliance with First Data.
- Represented Wells Fargo as Member of MasterCard's Maestro and Visa's Interlink Operations Committees from 1994 - 1996.
- Designed and led approval for innovative electronic capture bank branch cash advance product that resulted in a \$2 million dollar net gain in additional revenue and expense savings for Wells Fargo in 1996. The product is the one used by WFB branches across the U.S. today (2010).
- Assistant Leader in project to form alliance joint venture with First Data and convert 48,000 merchant accounts, which resulted in Wells Fargo's merchant division profitability increasing 130% in 1995. This was the largest conversion ever undertaken in the industry at the time, and Wells Fargo continues its First Data alliance structure today. The joint venture merchant card processing structure was subsequently replicated by First Data and several dozen banks in the U.S., Latin America and Asia over the past 16 years.
- Responsible for merchant acquiring component of Mondex stored value "chip" card product initiative. Recruited and implemented 22 merchants for San Francisco pilot, including Starbucks and Walgreens' locations.

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**WELLS FARGO BANK**  
**Project & Operations Manager**

1989-1991

**Item Processing Division, Customer Information Services Group**

- Core member of project team which implemented of IBM's check processing control system (CPCS) in Wells Fargo's two check processing centers and replacement of several in-house check processing systems. The system is in use at Wells Fargo today (2007) and is the basis for Wells' image-check services.
- Managed operations unit in Wells Fargo's check processing division, and exception item processing group staff of 14.

**EDUCATION**

**Stanford University**

Palo Alto, California

**M.A., Ford Dorsey Program in International Policy Studies**  
 Conferred June 1991

**California Polytechnic State University**

San Luis, Obispo, California

**B.A., Cum Laude, Political Science**  
 Conferred June 1988

**PUBLICATIONS & SPEECHES**

**"Places You Will Go With Cross-Border Acquiring"**

Given at Electronic Transaction Association Show, March 5, 2000

**Payment Card Industry Data Security Standard (PCI DSS)**

Briefing for National Restaurant Association Members, July 20, 2007, with Steve Cannon, Esq.

Located at

[www.restaurant.org/pdfs/events/business/20070720\\_webinar\\_pci\\_mccormack.pdf](http://www.restaurant.org/pdfs/events/business/20070720_webinar_pci_mccormack.pdf)

**"The Currency Of Progress?"**

With Steve Cannon, Esq.

Located at [www.hospitalitylawyer.com/Newsletters/PaymentSecurity\\_Nov09.pdf](http://www.hospitalitylawyer.com/Newsletters/PaymentSecurity_Nov09.pdf)

**"Critical Issues in Payment Card/Merchant Relations"**

Hospitality Law Conference, Houston Texas Feb. 4 and 5, 2010

With Steve Cannon, Esq.

Agenda at [www.hospitalitylawyer.com/index.php?id=53#GenlSession\\_8](http://www.hospitalitylawyer.com/index.php?id=53#GenlSession_8)

PUBLIC

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**PATENTS**

Co-Inventor of patent "Time-of-Transaction Foreign Currency Conversion", granted U.S. Patent Number 7,660,768 in February 2010, and filed and granted in many other countries including Singapore, Australia, New Zealand, Canada, and the Philippines

**PERSONAL**

Married, two sons



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**Schedule B – Previous Experience as Testifying and Consulting Expert**

- (a) Adam A. Schwartz v. Visa International Corp., Visa International Service Association, Inc., Visa U.S.A., Inc., and MasterCard International Incorporated, Superior Court of California, County of Alameda – testified in 2002 & 2003

*Expert witness for plaintiff.*

- (b) Mayor Pharmaceutical Laboratories v. Compass Bank Inc. et al., Superior Court of the State of Arizona, In And For The County Of Maricopa, No. CV02-1642 Phx.(Az. Sup. Ct.) – testified in 2004

*Expert witness for plaintiff.*

- (c) Ross v. Visa USA et al. MDL Docket Number 1409 (S.D.N.Y.) – testified in 2005

*Expert witness for plaintiff.*

- (d) Ross v. American Express Co., et al. No. CV-05723 (S.D.N.Y.) (related to MDL 1409 In re Currency Conversion Fee Antitrust Litigation) – testified in 2005

*Expert witness for plaintiff.*

- (e) Briefs of Evidence, in New Zealand Commerce Commission v. ANZ National Bank Limited, Westpac Banking Corporation, and American Express International (NZ) Incorporated, Disclosure of Currency Conversion Fees, Fair Trading Act 1986, CRI 2004-004-022528 and CRI 2005-499-006805

*Expert witness for New Zealand Commerce Commission.*

- (f) Discover Financial Services, DFS Services LLC, and Discover Bank v. Visa U.S.A., Inc., Visa International Services Association, MasterCard Incorporated, and MasterCard International Incorporated, Civ Action No. 04-CV-7844 (BSJ) – testified in 2008

*Expert witness for plaintiff.*

- (g) Montrenes Financial Services Inc. v. Calvin Lim, Jerry Vigil, Kirk Moore, Michael Little, Superior Bankcard Services, Inc., Superior Court of California, County of Orange, Case No. 04CC08276 – testified in 2008

*Expert witness for plaintiff.*

- (h) Tim Deernick et al. v. Save Mart Supermarkets, a California Corporation, dba S-Mart, SaveMart Foods, and Food Maxx, Superior Court of California, County of San Joaquin, Case No. CV024368 – testified in 2008

*Expert witness for plaintiff.*

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- (i) The Marcus Corporation, on behalf of itself and all similarly situated persons v. American Express Company and, American Express Travel Related Services Company, Inc., Civ Action No. Civ. Action No. 04 Civ. 05432 (GBD), Southern District of New York - Declaration filed, June 2008

*Declaration Filed June 2008.*

- (j) U.S. Bank National Association, as successor in interest to Multi Service Corporation, and Multi Service Corporation, Claimants, v. PerfectStop Partners, L.P.; Perfect Stop, Inc. et. al., American Arbitration Association, Case Management Center, Houston, Texas, Case No. 70 180 Y 00849 05 – testified in 2008

*Expert witness for counter-claim defendant (Perfect Stop).*

- (k) Brief of Evidence, in New Zealand Commerce Commission v. Cards NZ Limited and Others, October 2008

*Expert witness for New Zealand Commerce Commission.*

- (l) Amended Brief of Evidence, in New Zealand Commerce Commission v. Cards NZ Limited and Others, May 2009

*Expert witness for New Zealand Commerce Commission.*

- (m) American Arbitration Association, Atlanta Office, MerchantServices.Com, Inc., claimant, v. Nova Information Systems Inc., N/K/A Elavon, Inc., respondent, Case No. 30 181 00599 08 – testified in June 2010

*Expert witness for plaintiff.*

- (n) In RE Payment Card Interchange Fee and Merchant-Discount Antitrust Litigation, MDL Docket Number 1720 (E.D.N.Y.) – testified in August 2010

*Expert witness for plaintiff.*

- (o) Montrenes Financial Services, Inc. dba US Merchant Services, a California Corporation, RST Ventures, Inc., a California Corporation, and Dan Montrenes, and Individual v. Paul, Hastings, Janofsky & Walker LLP, and Michael Hood, an individual, Superior Court of California, County of Orange, Case No: 30-2009 00119750 – testified in April 2011

*Expert witness for plaintiff.*

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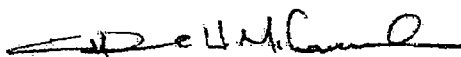
**Schedule C - Acknowledgement of Expert Witness**

I, Mike McCormack, acknowledge that I will comply with the Competition Tribunal's code of conduct for expert witnesses which is described below:

1. An expert witness who provides a report for use as evidence has a duty to assist the Tribunal impartially on matters relevant to his or her area of expertise.
2. This duty overrides any duty to a party to the proceeding, including the person retaining the expert witness. An expert is to be independent and objective. An expert is not an advocate for a party.

March 14, 2012

Date

Mike McCormack

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### **Schedule D – Materials Relied Upon**

Adam J. Levitin, Priceless?: The Economic Costs of Credit Card Merchant Restraints, 55 UCLA L.REV. 1321 (2008)

Amended and Restate Bylaws of Visa Inc., as Amended Effective 27 January 2011 (Public Version)

Amended and Restated Bylaws of MasterCard International Incorporated, Effective as of 31 August 2009

American Express Australia website, "RBA Card Reforms Questions & Answers", accessed February 1, 2012 at <http://www212.americanexpress.com/dsm/live/dsm/int/australia/en/merchants/everydayresources/RBAcardreform.do?vgnextoid=d06e0188cbc8e010VgnVCM100000cef4ad94RCRD>

American Express Reference Guide Canada, August 2010, p. 2, accessed online January 15, 2012 at [https://secure.cmax.americanexpress.com/Internet/International/lac/CA\\_en/Merchant/Files/Ref\\_Guide\\_Canada.pdf](https://secure.cmax.americanexpress.com/Internet/International/lac/CA_en/Merchant/Files/Ref_Guide_Canada.pdf)

American Express Canada website, "About American Express", accessed online January 19, 2012 at <https://www212.americanexpress.com/dsm/live/dsm/int/ca/en/personal/aboutamericanexpress.do?vgnextoid=3de2d2666bb45110VgnVCM100000cef4ad94RCRD>

American Express Canada website, News Releases. "Major Canadian Payment Processors Support American Express Chip Cards", July 2, 2010, accessed online February 28, 2012 at [www.newswire.ca/en/story/636231/major-canadian-payment-processors-support-american-express-chip-cards](http://www.newswire.ca/en/story/636231/major-canadian-payment-processors-support-american-express-chip-cards)

Ann Kjos, Federal Reserve Bank of Philadelphia, "The Merchant-Acquiring Side of the Payment Card Industry: Structure, Operations, and Challenges", October 2007, accessed online October 15, 2011 at <http://www.philadelphiafed.org/consumer-credit-and-payments/payment-cards-center/publications/discussion-papers/2007/D2007OctoberMerchantAcquiring.pdf>

Andersen Consulting, Report Prepared for Visa Regarding the HAC Rules, at 10, Ex. 820 to Decl. G. Schnell Supp. Pls.' Opp'n Defs.' Mot. Summ. J., In re Visa Check, 297 F. Supp. 2d 503 (E.D.N.Y. 2003) (No. 96-CV-5238)

Bank for International Settlements, Committee on Payment and Settlement Systems, Statistics on payment and settlement systems in the CPSS countries, Figures for 2009, March 2011

Bank for International Settlements, Committee on Payment and Settlement Systems, A glossary of terms used in payments and settlement systems, March 2003, accessed online March 13, 2012 at <http://www.bis.org/publ/cpss00b.htm>

- 121 -

Bank of Canada Review, winter 2008–2009 "Merchants' Costs of Accepting Means of Payment: Is Cash the Least Costly?" Carlos Arango and Varya Taylor

Bank of Canada, "Merchant Acceptance, Costs, and Perceptions of Retail Payment Systems: A Canadian Survey", Bank of Canada Discussion Paper 2008-12, August 2008

Bloomberg Businessweek website, "Discover to expand card acceptance in Canada", October 26, 2010, accessed online January 19, 2012 at [www.businessweek.com/ap/financialnews/D9J3GLB80.htm](http://www.businessweek.com/ap/financialnews/D9J3GLB80.htm)

Canada Post webpage "Visa prepaid card", accessed online March 6, 2012 at <http://www.canadapost.ca/cpo/mc/personal/productservices/visagiftcard.jsf#prepaid>

Canadian Bankers Association "Credit Card Statistics - VISA and MasterCard", September 23, 2011 and February 23, 2012

Canadian Competition Bureau, "The Competition Bureau's Letter to Financial Institutions – Duality and Dual Governance of Credit card Networks in Canada", November 2008

Canadian Payments Association, "Consumers Paying by Cheque", 2011, accessed January 18, 2012 at [http://www.cdnpay.ca/imis15/pdf/pdfs\\_publications/consumer\\_guide\\_cheques.pdf](http://www.cdnpay.ca/imis15/pdf/pdfs_publications/consumer_guide_cheques.pdf).

Canadian Payments Association, "Consumers Paying by Pre-Authorized Debit", 2011, p. 1, accessed January 18, 2012 at [http://www.cdnpay.ca/imis15/pdf/pdfs\\_publications/consumer\\_guide\\_pads.pdf](http://www.cdnpay.ca/imis15/pdf/pdfs_publications/consumer_guide_pads.pdf)

CIBC webpage, "Business Services / Merchant Services", accessed January 11, 2012 at [www.cibc.com/ca/small-business/merchant-services.html](http://www.cibc.com/ca/small-business/merchant-services.html)

CIBC website, Media Centre, "CIBC completes acquisition of \$2 billion Canadian MasterCard portfolio from Citigroup", September 1, 2010, accessed January 23, 2012 at <http://micro.newswire.ca/release.cgi?rkey=1809016458&view=14730-0&Start=&htm=0>

Citizens Bank webpage "Visa Prepaid Cards", accessed March 6, 2012 at [www.rewardgiftcard.ca/](http://www.rewardgiftcard.ca/)

CR80 News website, "CIBC Becomes First Canadian Bank to Issue Both American Express and Visa", January 15, 2002, accessed January 30, 2012 at [www.cr80news.com/2002/01/15/cibc-becomes-first-canadian-bank-to-issue-both-american-express-and-visa](http://www.cr80news.com/2002/01/15/cibc-becomes-first-canadian-bank-to-issue-both-american-express-and-visa)

David Breitkopf, American Banker, June 22, 2004, "Wal-Mart, MasterCard Reach Agreement on Signature Debit".

David Evans & Richard Schmalensee, Paying With Plastic, 1st Edition (1999)

- 122 -

Department of Finance Canada "Code Of Conduct For The Credit And Debit Card Industry In Canada"

Department of Finance Canada, "Code Of Conduct For Credit And Debit Card Industry Takes Effect", August 16, 2010, accessed online October 30, 2011 at <http://www.fin.gc.ca/n10/10-071-eng.asp>

DFS Services LLC, Merchant Operating Regulations, Release 11.1, October 15, 2010

Digital Transactions Magazine, "Discover at 25", December 1, 2011, accessed online January 20, 2012, at [digitaltransactions.net/news/story/3335](http://digitaltransactions.net/news/story/3335)

Discover Business Services Merchant Operating Regulations, - Revised 05/00

Discover Business Services Merchant Operating Regulations, - Revised 09/02

Discover Financial Services website "Discover Company Milestones, January 2011, accessed online February 8, 2012 at [www.discoverfinancial.com/company/history.shtml](http://www.discoverfinancial.com/company/history.shtml)

Discover Network Merchant Operating Regulations – Revised 10/04

Discover Network Merchant Operating Regulations, Release 7.2, October 12, 2007

Discover Network Merchant Operating Regulations, Release 8.1, April 4, 2008

Discover Network Merchant Operating Regulations, Release 8.2, October 3, 2008

Discover Network website, "Payment Solutions", accessed online February 8, 2012 at [www.discovernetwork.com/payment-solutions](http://www.discovernetwork.com/payment-solutions)

Discover Press Release, "Discover Financial Services to Acquire Diners Club International Network" accessed online January 18, 2012 at [investorrelations.discoverfinancial.com/phoenix.zhtml?c=204177&p=irol-newsArticle&ID=1126183](http://investorrelations.discoverfinancial.com/phoenix.zhtml?c=204177&p=irol-newsArticle&ID=1126183)

Discover website, "Using Your Card in Canada", accessed January 18, 2012 at [www.discover.com/credit-cards/help-center/account/international-use/canada.html](http://www.discover.com/credit-cards/help-center/account/international-use/canada.html)

Financial Consumer Agency of Canada, "Credit Cards and You: Credit Card Comparison Tables", accessed January 22, 2012 at [www.fcac-acfc.gc.ca/eng/resources/publications/PaymentOptions/CreditCardsYou/CreditCardComparisonTables-eng.asp](http://www.fcac-acfc.gc.ca/eng/resources/publications/PaymentOptions/CreditCardsYou/CreditCardComparisonTables-eng.asp)

First Data Loan Company Canada, Merchant Terms and Conditions 2010, "Article I Relationship Administration, Section 3 Association Rules", page 4", accessed online January 24, 2012 at [www.firstdata.com/en\\_ca/home.html](http://www.firstdata.com/en_ca/home.html)

- 123 -

Global Payments Inc. 2011 Form 10-K Annual Report, in the year ended May 31, 2011

Historical Canadian – U.S. dollar exchange rate information obtained at Oanda website 22 January 2012, at [www.oanda.com/currency/historical-rates/](http://www.oanda.com/currency/historical-rates/)

Interac 2010 Statistics

Interac Association: A Backgrounder", September 2007

Los Angeles Times website, "Wal-Mart, MasterCard Agree on Debit Card", Los Angeles Times, June 22, 2004, at <http://articles.latimes.com/2004/jun/22/business/fi-rup22.11>

Master Card News Release, "MasterCard Incorporated Prices Initial Public Offering," May 24, 2006, accessed November 30, 2011 online at [www.mastercard.com/us/company/en/newsroom/pr\\_1266.html](http://www.mastercard.com/us/company/en/newsroom/pr_1266.html).

MasterCard Canada "MasterCard Canada Press Section, Backgrounder: MasterCard Maestro", November 20, 2009

MasterCard Canada website, "Becoming a MasterCard Merchant", accessed December 6, 2011, [www.mastercard.com/ca/merchant/en/getstarted/become.html#](http://www.mastercard.com/ca/merchant/en/getstarted/become.html#)

MasterCard Canada website, "MasterCard Interchange Rate Overview", January 2011, accessed February 1, 2012 at [www.mastercard.com/ca/wce/PDF/MasterCard\\_Interchange\\_Rate\\_Overview.pdf](http://www.mastercard.com/ca/wce/PDF/MasterCard_Interchange_Rate_Overview.pdf)

MasterCard Incorporated Fiscal Year 2008 Form 10-K Annual Report, Filed on 02/19/2009 (Period: 12/31/2008)

MasterCard Incorporated, Fiscal Year 2010 Form 10-K Annual Report, Filed on 02/24/2011 (Period 12/31/2010)

MasterCard news release, "MasterCard Files Registration Statement for Initial Public Offering," September 15, 2005, accessed November 30, 2011 online at [www.mastercard.com/us/company/en/newsroom/pr\\_1095.html](http://www.mastercard.com/us/company/en/newsroom/pr_1095.html).

MasterCard press release "Diners Club and MasterCard Announce Groundbreaking Alliance", MasterCard International Press Release 29 April 2004, (Edited on 7 March 2005)

MasterCard Rules, 7 December 2011 (public version)

MasterCard Worldwide, U.S. Region Operations Bulletin No. 5, "Announcing the Product Inquiry Service", 22 July 2011

- 124 -

McKinsey website, "Global challenges, local opportunities: Trends in merchant" McKinsey on Payments, September 2011, accessed January 23, 2012 at [acquiringwww.mckinsey.com/client-service/Financial\\_Services/Knowledge\\_Highlights/~media/Reports/Financial\\_Services/MoP12\\_merchant%20acquiring.ashx](http://acquiringwww.mckinsey.com/client-service/Financial_Services/Knowledge_Highlights/~media/Reports/Financial_Services/MoP12_merchant%20acquiring.ashx)

Moneris Solutions webpage "Corporate History", accessed January 11, 2012 at [www.moneris.com/en/AboutUs/Company/Corporate%20Information/Corporate%20History.aspx](http://www.moneris.com/en/AboutUs/Company/Corporate%20Information/Corporate%20History.aspx)

Moneris Solutions website, "Moneris Solutions' Merchant Operating Manual", page 4, accessed January 31, 2012 at [www.moneris.com/en/Support/Downloads/~media/Files/MerchantServices/merchant\\_manual\\_eng.ashx](http://www.moneris.com/en/Support/Downloads/~media/Files/MerchantServices/merchant_manual_eng.ashx)

National Association of Convenience Stores (NACS) online, News Release "Visa Announces Release of Operating Rules", July 17, 2006, accessed February 22, 2012 online at [www.nacsonline.com/NACS/News/Daily\\_News\\_Archives/July2006/Pages/nd0717063.aspx](http://www.nacsonline.com/NACS/News/Daily_News_Archives/July2006/Pages/nd0717063.aspx)

National Retail Federation website, Constantine & Partners LLP "Merchant Advisory", January 3, 2004, accessed February 22, 2012 at [http://www.nrf.com/modules.php?name=Documents&op=viewlive&sp\\_id=129](http://www.nrf.com/modules.php?name=Documents&op=viewlive&sp_id=129)

New Zealand Commerce Commission, Media Release, "Commerce Commission and Visa Reach Agreement to Settle Visa Credit Card Interchange Fee Proceedings", August 12, 2009, and Media Release "Commerce Commission and MasterCard Reach Agreement to Settle MasterCard Credit Card Interchange Fee Proceedings", August 24, 2009, accessed online February 16, 2012 at [www.comcom.govt.nz/media-releases/show/2009](http://www.comcom.govt.nz/media-releases/show/2009)

Oanda website, "Historical Exchange Rates", accessed online on February 27, 2012 at [www.oanda.com/currency/historical-rates/](http://www.oanda.com/currency/historical-rates/)

Payment news website, "CIBC Ends American Express Co-Issuing Deal", June 11, 2004, accessed January 30, 2012 at [www.paymentsnews.com/2004/06/cibc\\_ends\\_ameri.html](http://www.paymentsnews.com/2004/06/cibc_ends_ameri.html)

Paypal webpage "PayPal Extras MasterCard", accessed November 29, 2011 at [https://personal.paypal.com/cgi-bin/marketingweb?cmd=\\_render-content&content\\_ID=marketing\\_us/paypal\\_credit\\_card](https://personal.paypal.com/cgi-bin/marketingweb?cmd=_render-content&content_ID=marketing_us/paypal_credit_card)

Proceedings of the Standing Senate Committee on Banking, Trade and Commerce, Issue 5 - Evidence, April 23, 2009

Royal Bank of Canada (RBC) website "History 1960 – 1979, Chargex / Visa\*\*", accessed online January 16, 2012 at <http://www.rbc.com/history/quicktofrontier/chargex-visa.html>

Royal Bank of Canada (RBC) website, "History 1960 – 1979, If Mary uses Chargex, it must be fine..." accessed January 16, 2012 at [www.rbc.com/history/quicktofrontier/chargex-visa-detail.html#top](http://www.rbc.com/history/quicktofrontier/chargex-visa-detail.html#top)



- 125 -

Reserve Bank of Australia, Payments Data, accessed on various dates at [www.rba.gov.au/payments-system/resources/statistics/index.html](http://www.rba.gov.au/payments-system/resources/statistics/index.html)

Reserve Bank of Australia, Review of Card Surcharging: A Consultation Document, June 2011, accessed online at [www.rba.gov.au/publications/consultations/201106-review-card-surcharging/pdf/201106-review-card-surcharging.pdf](http://www.rba.gov.au/publications/consultations/201106-review-card-surcharging/pdf/201106-review-card-surcharging.pdf)

Reserve Bank of Australia, "Common Benchmark for Setting of Credit Card Interchange Fees", November 2005, accessed January 10, 2012 at [www.rba.gov.au/payments-system/reforms/cc-schemes/cc-fees-benchmark.pdf](http://www.rba.gov.au/payments-system/reforms/cc-schemes/cc-fees-benchmark.pdf)

Reserve Bank of Australia, "Credit Cards, September 2006 Benchmark calculation", accessed online January 10, 2012 at [www.rba.gov.au/media-releases/2006/pdf/mr-06-08-benchmark-calc-credit-card.pdf](http://www.rba.gov.au/media-releases/2006/pdf/mr-06-08-benchmark-calc-credit-card.pdf)

Reserve Bank of Australia, "Reform Of Credit Card Schemes In Australia IV, Final Reforms And Regulation Impact Statement", August 2002, accessed online February 16, 2012 at [www.rba.gov.au/payments-system/reforms/cc-schemes/final-reforms/index.html](http://www.rba.gov.au/payments-system/reforms/cc-schemes/final-reforms/index.html)

Review of Network Economics Vol.4, Issue 4 – December 2005, "The Effect of Regulatory Intervention in Two-Sided Markets: An Assessment of Interchange-Fee Capping in Australia", Howard Chang et al

Scotia Bank webpage, "Merchant Services", accessed January 11, 2012, at <http://www.scotiabank.com/ca/en/0,,1139,00.html>

Task Force for the Payments System Review, "Canadian Payments Landscape", Prepared for the Task Force for the Payments System Review, September, 2010

Task Force for the Payments System Review, "Canadian Payments Landscape", September, 2010

The Competition Tribunal, Notice of Application, December 15, 2010

The Competition Tribunal, Response of MasterCard International Incorporated, January 31, 2011

The Competition Tribunal, Response of Visa Canada Corporation, January 31, 2011

The Competition Tribunal, Response of MasterCard International Incorporated, January 31, 2011

The Competition Tribunal, Reply of the Commissioner of Competition, February 14, 2011

TD Group Financial Services Website, "Purchase of MBNA Canada Bank's credit card assets by the Toronto-Dominion Bank is completed", December 1, 2011, accessed January 23, 2012 at <http://td.mediaroom.com/index.php?s=43&item=1459>

- 126 -

TD Merchant Services website, "Understanding your TD Merchant Services Statement", accessed September 1, 2011 at [www.tdcanadatrust.com/document/PDF/merchantservices/tdct-merchantservices-interchange-differential.pdf](http://www.tdcanadatrust.com/document/PDF/merchantservices/tdct-merchantservices-interchange-differential.pdf)

TD Merchant Services, letter to Canadian Chamber of Commerce, January 24, 2011, accessed January 15, 2012 at [www.kawarthachamber.ca/files/edocs/TDMS%20Offer%20Letter.pdf](http://www.kawarthachamber.ca/files/edocs/TDMS%20Offer%20Letter.pdf)

The Green Sheet, "Discover to drop no surcharge ban", March 1, 2006, accessed online February 1, 2012 at [www.greensheet.com/gs\\_archive.php?issue\\_number=060301&story=9](http://www.greensheet.com/gs_archive.php?issue_number=060301&story=9)

The MasterCard Convenience Fee Program, December 2007, accessed January 15, 2012 at [www.mastercard.com/us/merchant/pdf/Convenience\\_Fee\\_Program\\_Sell\\_Sheet.pdf](http://www.mastercard.com/us/merchant/pdf/Convenience_Fee_Program_Sell_Sheet.pdf)

*The Nilson Report* Number 689

*The Nilson Report* Number 692

*The Nilson Report* Number 712

*The Nilson Report* Number 718

*The Nilson Report* Number 738

*The Nilson Report* Number 741

*The Nilson Report* Number 760

*The Nilson Report* Number 766

*The Nilson Report* Number 784

*The Nilson Report* Number 787

*The Nilson Report* Number 791

*The Nilson Report* Number 805

*The Nilson Report* Number 811

*The Nilson Report* Number 828

*The Nilson Report* Number 833

*The Nilson Report* Number 835

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*The Nilson Report* Number 851

*The Nilson Report* Number 855

*The Nilson Report* Number 862

*The Nilson Report* Number 874

*The Nilson Report* Number 878

*The Nilson Report* Number 897

*The Nilson Report* Number 902

*The Nilson Report* Number 920

*The Nilson Report* Number 924

*The Nilson Report* Number 936

*The Nilson Report* Number 942

*The Nilson Report* Number 944

*The Nilson Report* Number 965

*The Nilson Report* Number 967

*The Nilson Report* Number 982

*The Nilson Report* Number 983

*The Nilson Report* Number 986

The Wall Street Journal, "Bank Montreal to Buy Diners Club North American Franchise From Citigroup", November 25, 2009

Transcripts of the Examination for Discovery of Michael Bradley, December 5-9, 2011, and answers to undertakings

Transcripts of the Examination for Discovery of Kevin Stanton, November 11, 14-16 and December 22, 2011, and answers to undertakings

- 128 -

U.S. Department of Justice, Office of Public Affairs, "Justice Department Sues American Express, MasterCard and Visa to Eliminate Rules Restricting Price Competition; Reaches Settlement with Visa and MasterCard", October 4, 2010, accessed online February 22, 2012 at [www.justice.gov/opa/pr/2010/October/10-at-1115.html](http://www.justice.gov/opa/pr/2010/October/10-at-1115.html)

U.S. Department of Justice Website, U.S. and Plaintiff States v. American Express Company, et al., "Declaration of Judson Reed", accessed February 1, 2012 at [www.justice.gov/atr/cases/americanexpress.html](http://www.justice.gov/atr/cases/americanexpress.html)

U.S. Federal Register / Vol. 76, No. 139 / Wednesday, July 20, 2011 / Rules and Regulations, pp. 43394 – 475, Federal Reserve System, 12 CFR Part 235, [Regulation II; Docket No. R-1404], RIN 7100 AD 63, Debit Card Interchange Fees and, Routing, accessed online March 6, 2012 at <http://www.gpo.gov/fdsys/pkg/FR-2011-07-20/pdf/2011-16861.pdf>

U.S. Federal Reserve Bank of Philadelphia, Discussion Paper, "The Merchant-Acquiring Side of the Payment Card Industry: Structure, Operations, and Challenges", by Anne Kjos, October 2007, page 21, presenting research from First Annapolis Consulting.

United States Government Accountability Office, Report GAO-10-45 "Credit Cards", November 2009, accessed online October 1, 2011, at [www.gao.gov/new.items/d1045.pdf](http://www.gao.gov/new.items/d1045.pdf)

United States House of Representatives, Committee on the Judiciary, Hearing on H.R. 5546, the "Credit Card Fair Fee Act of 2008", May 15, 2008, Written Statement, Joshua Peirez, MasterCard Worldwide, page 2, accessed online January 15, 2012 at <http://judiciary.house.gov/hearings/pdf/Peirez080515.pdf>

United States Securities and Exchange Commission, Form 10-K, American Express Company, 2010, accessed online January 25, 2012, at <http://ir.americanexpress.com/phoenix.zhtml?c=64467&p=irol-reportsAnnual>

United States Securities and Exchange Commission, Form 10-K, eBay Inc., For the Fiscal Year Ended December 31, 2010, accessed online January 24, 2012 at <http://investor.ebayinc.com/secfiling.cfm?filingID=1065088-11-3>

Visa Canada News Releases, "Canadians welcome choice when shopping at home, abroad or online with Visa Debit card", 13 October 2009

Visa Canada website, "Merchant Resource Centre", accessed December 6, 2011, [www.visa.ca/en/merchant/acceptingvisa/becoming-a-visa-merchant/index.jsp](http://www.visa.ca/en/merchant/acceptingvisa/becoming-a-visa-merchant/index.jsp)

Visa Canada website, "Visa Canada Interchange Rate Reimbursement Fees", accessed February 2, 2012 at [www.visa.ca/en/aboutcan/mediacentre/interchange/pdf/visa-interchange-rates-current.pdf](http://www.visa.ca/en/aboutcan/mediacentre/interchange/pdf/visa-interchange-rates-current.pdf)

Visa Canada website, Visa Chip Cards, The Benefits of Chip & PIN for merchants, accessed December 6, 2011, <http://www.visa.ca/chip/merchants/benefitsofchippin/index.jsp>

PUBLIC

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Visa Inc. Corporate Overview, page 2, accessed online November 28, 2011 at [corporate.visa.com/\\_media/visa-corporate-overview.pdf](http://corporate.visa.com/_media/visa-corporate-overview.pdf).

Visa Inc. Form-10K, Filed November 21, 2008 (period: September 30, 2008)

Visa International Operating Regulations – 18 October 2011 (Public Version)

Visa Interlink, Inc. Operating Regulations & By-Laws, November 2011, accessed February 22, 2012 online at [corporate.visa.com/\\_media/interlink-operating-regulations.pdf](http://corporate.visa.com/_media/interlink-operating-regulations.pdf)

Visa press release "Visa Announces Global Restructuring," October 11, 2006, accessed November 30, 2011 online at [corporate.visa.com/media-center/press-releases/press302.jsp](http://corporate.visa.com/media-center/press-releases/press302.jsp).

Visa press release, "Visa USA Posts Interchange Rates on Website", October 17, 2006, accessed online August 25, 2011 at [corporate.visa.com/media-center/press-releases/press652.jsp](http://corporate.visa.com/media-center/press-releases/press652.jsp)

Visa press release "Visa Inc. Prices Initial Public Offering," March 18, 2008, accessed November 30, 2011 online at [corporate.visa.com/media-center/press-releases/press757.jsp](http://corporate.visa.com/media-center/press-releases/press757.jsp)

Visa USA, Certificate of Incorporation and By-Laws, as amended, 1 October, 2007

CT-2010-010

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF an application by the Commissioner of Competition pursuant to section 76 of the *Competition Act*;

AND IN THE MATTER OF certain agreements or arrangements implemented or enforced by Visa Canada Corporation and MasterCard International Incorporated.

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

VISA CANADA CORPORATION and  
MASTERCARD INTERNATIONAL INCORPORATED

Respondents

- and -

THE TORONTO-DOMINION BANK  
THE CANADIAN BANKERS ASSOCIATION

Intervenors

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EXPERT REPORT OF MIKE McCORMACK  
MARCH 14, 2012

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