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PUBLIC

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 ASSOCIATIONS and
THE TORONTO-DOMINION BANK**

Intervenors

WITNESS STATEMENT OF DOUGLAS SWANSSON

1. I am the Head of Payment Services at Coles Supermarkets Pty Ltd, a position I have held since 2006. In this position, I am responsible for the electronic payments strategy, industry and regulatory relations, and electronic-funds-transfer ("EFT") operations for the group's supermarket and other retail operations as described in paragraph 7 below. For the purpose of this statement, I will refer to these retail operations collectively as "Coles".

2. In addition to the above responsibilities, I am a director of EFTPOS Payments Australia Limited ("EFTPOS"), a joint venture company established in 2009 by Australia's major retail financial institutions and retailers to manage, promote and develop the Australian debit card system.

3. From 2000 to 2006, I was the Group Manager of Payments at Coles, with responsibility for managing key external acquiring relationships, including contractual or commercial agreements, as well as oversight of industry and regulatory reform of the payments industry.

4. I have a Bachelor of Commerce with Honours and a Bachelor of Laws from the University of Melbourne, which I received in 1994.

5. Prior to joining Coles in 2000, I held a number of positions in the Finance and Global Payments divisions of National Australia Bank Limited.

Overview of Coles

6. Coles is one of Australia's largest retailers, with more than 102,000 employees and over 2,200 retail outlets across the country.

7. Coles operates 741 supermarket stores under the "Coles" and "Bi-Lo" brands and 785 liquor stores under the "Vintage Cellars", "1st Choice Liquor Superstores" and "Liquorland" brands. Coles also operates, in an alliance with Shell, 620 fuel and convenience stores ("Coles Express"). Coles processes approximately 18 million customer transactions a

week across these retail channels. In addition to its retail operations, Coles operates 93 hotels under the "Spirit Hotels" brand.

8. Coles operates in highly competitive markets throughout Australia and faces competition from a number of significant competitors, including from Woolworths, Aldi, and IGA in the supermarket sector. As a result of intense competition, margins in the retail sectors in which Coles operates are low.

9. Since 2007, Coles has operated as a division of Wesfarmers Ltd. ("Wesfarmers"), one of Australia's largest publically-traded companies and employers. Wesfarmers' business operations include supermarkets, department stores, home improvement and office supplies, coal mining, insurance, chemicals, energy and fertilisers, and industrial and safety products.

Payment Methods Accepted by Coles

10. At its retail outlets, including its supermarkets, liquor stores and fuel and convenience sites, Coles accepts cash, cheque, EFTPOS debit, Visa and MasterCard scheme debit, general purpose credit cards and charge cards (Visa, MasterCard, American Express and Diners), and fuel cards (at the Coles Express stores) as forms of payment. Coles also has some online sales and accepts general purpose credit card and charge cards (Visa, MasterCard, American Express and Diners) and Visa and MasterCard scheme debit for such transactions.

11. For Coles, accepting credit cards, particularly Visa and MasterCard credit cards, is necessary to the continued success of its retail operations. Customers of Coles have become accustomed to, and expect to have, the option of paying for their purchases, both in-store and online, with credit cards. This is evidenced by the proportion of transactions that take place on credit cards, summarised below. Given the competitive markets in which Coles operates, any

decision to decline to accept Visa or MasterCard credit cards would put Coles at a significant competitive disadvantage relative to its competitors that continue to accept such credit cards.

12. Coles earned total revenues of approximately AUD \$34 billion (inclusive of GST) in 2011 across all its retail operations (approximately CDN \$36 billion as at the date hereof). Transactions on general purpose credit cards and charge cards amounted to approximately AUD [REDACTED] (inclusive of GST), accounting for [REDACTED] of Coles' 2011 retail sales. Of those credit card and charge card transactions, approximately [REDACTED] were on Visa, [REDACTED] were on MasterCard, [REDACTED] were on American Express and [REDACTED] were on Diners. In terms of other forms of payment, cash [REDACTED] EFTPOS debit [REDACTED] fuel cards [REDACTED] and Visa and MasterCard scheme debit [REDACTED] accounted for the remainder of Coles' 2011 sales. The share of transactions using cheques was insignificant.

Regulation of Credit Cards by the Reserve Bank of Australia

13. Soon after I joined Coles, the Reserve Bank of Australia (the "RBA") began, in April 2001, a lengthy reform project regarding the payments systems in Australia, including the Visa and the MasterCard credit card networks. As Coles has invested in and operates its own electronic payments network, and is a merchant directly impacted by any reform to the payments systems in Australia, I was engaged directly with the issues reviewed by the RBA and followed the reform process closely.

14. Following a lengthy consultation process, the RBA released its reforms of the scheme credit card payments systems on 27 August 2002. These reforms required that an objective, transparent and cost-based benchmark be used to determine a weighted cap on the level of interchange fees applicable to Visa and MasterCard credit card transactions (and, at that time, Bankcard transactions as well) (the "Interchange Fees Standard"). The RBA reforms also required that the Card scheme rules that prohibited merchants from surcharging credit card

transactions (the "No Surcharge Rule"), implemented and enforced by Visa and MasterCard and the scheme members prior to the RBA's reforms, be removed and that the requirements for access to the credit networks be eased.

15. Prior to the RBA's reforms, the average interchange fee on Visa and MasterCard credit card transactions in Australia as determined and published by the RBA was 0.95%. These high interchange fees were passed through to merchants as the largest component of the fees charged to merchants for credit card acceptance. As a result of the Visa and MasterCard operating rules, acquirers were required to prohibit merchants from surcharging customers for transactions made with a Visa or MasterCard credit card. Since merchants had no ability to recover the high costs of a Visa or MasterCard credit card transaction directly, the high costs associated with credit card acceptance were ultimately passed on to all consumers through higher prices for goods and services.

16. The Interchange Fees Standard introduced in 2002 mandates that the average of interchange fees implemented by Visa and MasterCard must not exceed the common cost-based benchmark as calculated in accordance with the Interchange Fees Standard. At the time of the first round of reforms, that took effect in July 2003, the RBA calculated that the cost-based benchmark for the weighted average interchange fee applicable to Visa and MasterCard transactions was 0.55%. As a consequence, the RBA's Interchange Fees Standard required that weighted-average interchange fees for Visa and MasterCard credit card transactions were not to exceed that cap of 0.55%. In 2006, the RBA conducted a review of the relevant costs and reduced the interchange fee benchmark to 0.50%. That benchmark continues to apply today.

17. Prior to the implementation of the RBA's reforms, Coles paid card acceptance fees of, on average, [REDACTED] on Visa credit cards, [REDACTED] on MasterCard credit cards, [REDACTED] on American Express credit cards and [REDACTED] on Diners credit cards. [REDACTED]

[REDACTED]

18. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20. As evidenced by the numbers described above, Coles has seen a significant reduction in the level of card acceptance fees paid since the RBA's reforms.

The No Surcharge Rule

21. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22. [REDACTED]

[REDACTED]

[REDACTED]

23.

[REDACTED]

24. Similarly, on one occasion, Coles elected to apply a surcharge to transactions using certain brands of fuel cards accepted at Coles Express for which it was incurring higher card acceptance fees. Surcharging allowed Coles to recover the higher costs that Coles Express was incurring in accepting those cards. [REDACTED]

[REDACTED]

25.

[REDACTED]

- 8 -

[REDACTED]

[REDACTED]

26.

[REDACTED]


[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Dated: 8 March 2012


DOUGLAS SWANSSON

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**WITNESS STATEMENT OF DOUGLAS SWANSSON
(March 7, 2012)**

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