



Reference: *The Commissioner of Competition v. Visa Canada Corporation and MasterCard International Incorporated*, 2012 Comp. Trib. 4

File No.: CT-2010-10

Registry Document No.: 158

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.

B E T W E E N:

The Commissioner of Competition
(applicant)

and

Visa Canada Corporation
MasterCard International Incorporated
(respondents)

and

The Toronto-Dominion Bank
The Canadian Bankers Association
(intervenors)



Date of hearing: 20120116

Before Judicial Member: Phelan J.

Date of Order: January 24, 2012

Order signed by: Mr. Justice M. Phelan

**ORDER REGARDING MOTIONS ARISING FROM THE EXAMINATIONS FOR
DISCOVERY**

[1] **FURTHER** to the motion filed by the Commissioner of Competition (the "Commissioner") on January 10, 2012, regarding, among other things, undertakings and questions refused or taken under advisement during the examinations for discovery of MasterCard International Incorporated ("MasterCard") and Visa Canada Corporation ("Visa");

[2] **AND FURTHER** to the motions filed by MasterCard and Visa, respectively, on January 10, 2012, regarding, among other things, undertakings and questions refused or taken under advisement during the examination for discovery of the Commissioner;

[3] **AND UPON** being advised that the motions have been settled by the parties and that they have respectively agreed to provide answers to certain undertakings and/or certain questions that were refused or taken under advisement during the examinations for discovery of their respective representatives;

[4] **AND UPON** hearing the submissions of counsel for the Commissioner, counsel for MasterCard and counsel for Visa;

[5] **AND WHEREAS** all parties consent to this Order;

THE TRIBUNAL ORDERS THAT:

[6] The Commissioner will provide to Visa and MasterCard answers to questions 111, 112, 116, 117 and 1062, in the manner and to the extent agreed upon between the parties, from the examination of Richard Bilodeau, by no later than noon on January 23, 2012, and responses to questions 73 and 74 from the examination of Richard Bilodeau by no later than January 27, 2012.

[7] The Commissioner's representative, Richard Bilodeau, will attend for a follow-up examination of not more than two hours on January 24, 2012.

[8] Visa will provide to the Commissioner answers to the following questions, in the manner and to the extent agreed upon by the parties, by no later than January 27, 2012:

- (a) Questions 204, 491, 690, 1035, 1403-05, 1411, 1427, 1437-38, 1508, 1571-72, 1573, 1892, 1896, 1900, 2021, 2120, 2121, 2146, 2147, 2149, 2519, 2656, 2715-16, 2727-29, 2757-58, 2759, 2768, 2769, 2771, 2772, 2773, 2774, 2831, 3246, 3600-02, 3682-83 and 3754 from the examination of Michael Bradley;
- (b) Questions 1(i), 1(ii), 2(i), 2(ii), 2(iii), 2(iv), 2(v), 2(vi), 2(xi), 2(xii), 2(xiii), 3(i), 3(ii), 3(iii), 4(iii), 5(i), 5(ii), 5(iii), 6(i), 6(ii), 6(iii), 6(iv), 8(i), 8(ii), 8(iii), 9(i), 9(ii), 10(i), 10(ii), 11(ii), 11(iii), 11(iv), 11(v) and 11(vi) from the data request provided by the Commissioner to Visa on December 23, 2011; and
- (c) Questions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 25, 26, 27, 28, 29, 30, 33, 34 and 35 from the questions relating to foreign jurisdictions provided by the Commissioner to Visa on December 19, 2011.

[9] If requested by the Commissioner, Visa's representative, Michael Bradley, will attend for a follow-up examination of not more than two hours on a date to be agreed upon that is on or before February 6, 2012.

[10] MasterCard will provide to the Commissioner answers to the following questions, in the manner and to the extent agreed upon by the parties, by no later than January 27, 2012 for questions relating to Canada, and by no later than February 1, 2012 for questions relating to foreign jurisdictions:

- (a) Questions 982, 1052, 1089, 1127, 1157, 1168-69, 1572, 1606, 1608, 1609, 1611, 1638, 1639, 1686, 2144, 2190, 2197, 2708, 2780, 2797, 2831, 2834-35, 2839, 2844, 2845, 2858, 2859, 2889, 2890, 2894, 2908, 2912, 2923, 2925, 2926, 2927, 2942, 2972, 2979, 3004, 3006, 3010, 3019, 3032, 3033-34, 3035, 3037-38, 3039, 3040-41, 3043, 3044, 3045, 3047, 3068, 3071, 3074-75, 3076, 3077, 3078-79, 3087-89, 3093, 3099, 3102-03, 3104-05, 3106, 3108-09, 3109, 3110-11, 3119, 3121, 3124, 3129, 3131, 3153, 3135-39, 3157-63, 3164-68, 3169, 3170, 3199, 3211, 3212-13, 3214, 3221, 3233-34, 3234, 3237-38, 3247, 3251, 3254-55, 3256, 3260-61, 3270, 3278, 3284, 3293-94, 3304-07, 3300, 3330-01, 3341, 3342, 3346, 3374, 3377 and 3385 from the examination of Kevin Stanton;
- (b) Questions 1(i), 1(ii), 1(iii), 2(i), 2(ii), 2(iii), 2(iv), 2(v), 2(vi), 2(vii), 2(viii), 2(x), 2(xi), 2(xiii), 2(xiv), 2(xv), 3(i), 3(ii), 3(iii), 4(ii), 4(iii), 5(i), 6(i), 6(ii), 6(iii), 7(i), 8(i), 8(ii), 8(iii), 9(i), 9(ii), 10(i), 10(ii), 11(i) and 11(ii) from the data request provided by the Commissioner to MasterCard on December 22, 2011; and
- (c) Questions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 62, 63, 64, 66, 67, 68, 69, 70 and 71 from the questions relating to foreign jurisdictions provided by the Commissioner to MasterCard on December 15, 2011.

[11] If requested by the Commissioner, a representative of MasterCard to be agreed upon by the parties, will attend for a follow-up examination of not more than two hours on a date to be agreed upon that is on or before February 6, 2012.

[12] There shall be no costs of these motions.

DATED at Ottawa, this 24th day of January, 2012.

SIGNED on behalf of the Tribunal by Justice Phelan.

(s) Michael L. Phelan

COUNSEL:

For the applicant:

The Commissioner of Competition

Adam Fanaki

For the respondents:

MasterCard International Incorporated

Adam Chisholm

Visa Canada Corporation

Randall Hofley