

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

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE FILED / PRODUIT February 10, 2011 CT-2010-010 Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 16

- and -

**VISA CANADA CORPORATION and
MASTERCARD INTERNATIONAL INCORPORATED**

Respondents

**AFFIDAVIT OF DARREN HANNAH
(sworn February 10th, 2011)**

I, Darren Hannah, of the City of Mississauga, in the Province of Ontario, MAKE OATH
AND SAY:

1. I am Director, Banking Operations for the Canadian Bankers Association (“CBA”). As such, I have personal knowledge of the matters referred to in this affidavit.

A. Overview

2. The CBA seeks to intervene in the Commissioner’s Application seeking an order against the respondents pursuant to section 76 of the *Competition Act* (price maintenance) in relation to their credit card network rules.

3. The CBA's member banks are interested in this Application because they will be directly affected by the outcome, and in particular, by any changes to the respondents' rules. The CBA's member banks have multiple roles in the Canadian credit card system – as the principal *customers* of the respondents' credit card networks, *issuers* of credit cards, and *providers* of retail banking services to their customers, including cardholders. The CBA's member banks are therefore uniquely positioned to explain the credit card system as a whole and the importance of the challenged rules from the perspectives of key participants in that system. The CBA's perspectives on these issues will be useful to the Tribunal and different from those of the Commissioner and the respondents. If granted leave to intervene, the CBA proposes to lead evidence and make submissions on only the issues raised by the parties, and will not raise new issues. The CBA proposes to explain how the challenged network rules are pro-competitive and help to ensure the efficiency, integrity, and reliability of the Canadian credit card system as a whole, for the benefit all participants in the credit card system, including merchants, issuers, acquirers, network providers, and consumers.

B. The CBA and its Mandate

4. The CBA is a national organization representing the Canadian banking industry. Its members consist of 51 domestic chartered banks, foreign bank subsidiaries, and foreign bank branches operating in Canada, and their 263,400 employees.

5. Created by Act of Parliament in 1891, the CBA serves its members in matters of concern to the banking industry as a whole. Its main activities are in the fields of legislation, education, publications, public relations, information, research, and bank security. The CBA's mandate includes advocating for public policies that contribute to a sound, successful banking system that benefits Canadians and the Canadian economy.

6. The CBA has a long history of intervening before courts, tribunals, and other decision-makers on legal issues affecting the banking industry. For example, the CBA recently testified before the Standing Committee on Banking, Trade and Commerce on issues relating to Canada's credit card and debit card systems (**Exhibit A**), and has made submissions on Canada's credit and debit card marketplace to the Joint Meeting of the Standing Committee on Finance and the Standing Committee on Industry, Science and Technology (CBA Submission, *Canada's Credit Card and Debit Card Marketplace*, May 28, 2009) (**Exhibit B**). The CBA has also been a party

to or intervener in many cases before the Supreme Court of Canada, Federal Court of Appeal, and provincial appellate courts. Most recently, the CBA was granted leave to intervene in references before the Quebec Court of Appeal, Alberta Court of Appeal, and Supreme Court of Canada to determine whether Parliament has the constitutional authority to enact a proposed Canadian *Securities Act*. A list of some of the cases in which the CBA has participated is attached as **Exhibit C**.

C. The CBA's Interest in the Commissioner's Application

7. The CBA's 51 member banks are key participants in the Canadian credit card system as the principal customers of the respondents' credit card networks and as credit card issuers. In particular, many of the CBA's member banks function as:

- **Card issuers.** Many of the CBA's member banks are issuers of credit cards to consumers and merchants. This includes large credit card issuers such as Bank of Montreal ("BMO"), The Bank of Nova Scotia ("BNS"), Canadian Imperial Bank of Commerce ("CIBC"), Royal Bank of Canada ("RBC"), The Toronto-Dominion Bank ("TD"), and smaller credit card issuers such as Capital One Bank (Canada Branch), Canadian Tire Bank, Canadian Western Bank, HSBC Bank Canada, JP Morgan Chase Bank, N.A., MBNA Canada Bank, and President's Choice Bank; and
- **Customers of the Visa and MasterCard credit card networks.** Collectively, the CBA's member banks are the principal customers of the Visa and MasterCard credit card networks. In addition, four CBA member banks (RBC, CIBC, Canadian Tire Bank, and JP Morgan Chase Bank, N.A.) are customers of both respondents and issue both Visa-branded and MasterCard-branded credit cards.

8. The CBA's member banks also have significant commercial relationships with their personal and commercial retail banking customers, including cardholders. The Canadian retail banking industry in Canada is intensely competitive. The CBA's member banks are extremely responsive to their customers' needs and constantly try to improve their retail banking services, including their credit card services. As such, the CBA's members have deep knowledge of the issues faced by customers and merchants in connection with the credit card networks.

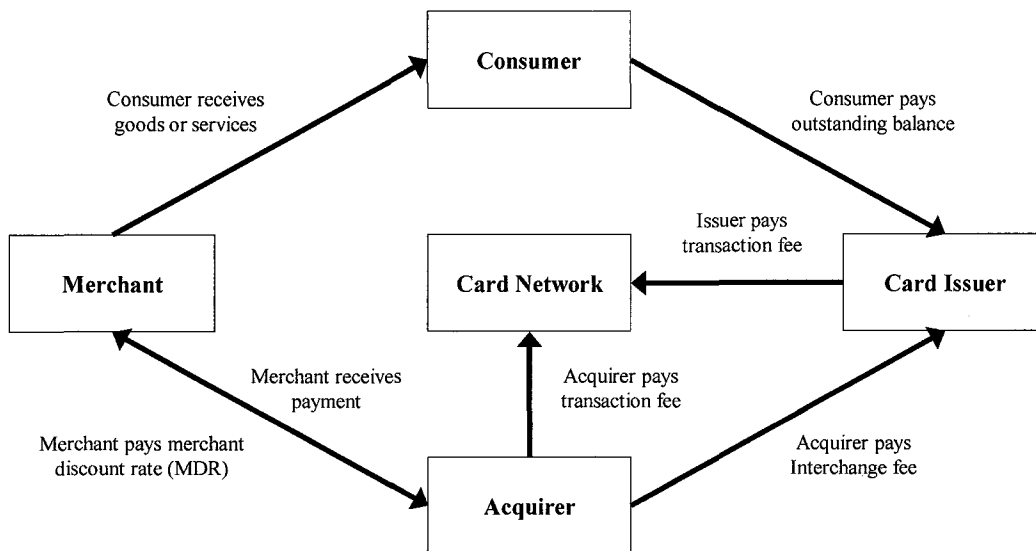
9. In addition, certain banks have an interest in the business of acquiring credit card transactions or operate their own acquiring business. For example, TD is the only chartered bank in Canada that directly carries on its own acquiring business, and processes over \$60 billion annually in payments as an acquirer. Also, BMO and RBC each own a 50% non-controlling interest in Moneris Solutions Corporation, which operates an acquiring business that annually processes 2.5 billion credit and debit card transactions across North America.

10. As a result of these functions, the CBA’s members have a direct and significant interest in the competitiveness, efficiency, and reliability of the Canadian credit card system. Any rule changes to this system would directly affect the CBA’s member banks and their customers.

D. The CBA’s Distinct Perspectives on the Commissioner’s Application

11. The credit card systems operated by Visa and MasterCard are often called “four-party” systems (see Figure 1 below) because of the key roles played by (1) card issuers (and their cardholders), (2) merchants, (3) acquirers, and (4) the credit card networks.

Figure 1: The Four Party Credit Card Payment System



12. The CBA's member banks have multiple perspectives on this system because of the multiple roles they have in it. These perspectives can be illustrated by considering the following eight steps involved in a typical four-party system credit card transaction:

Step one: The credit card issuer issues a credit card to a cardholder.

Step two: The cardholder provides card information to the merchant in order to make a purchase (e.g., for a \$100 purchase).

Step three: The merchant sends the credit card and purchase information to the acquirer to obtain payment authorization through the credit card network to complete the transaction.

Step four: The acquirer forwards the information to the credit card network, which in turn forwards the information to the issuer for authorization.

Step five: The credit card issuer authorizes the transaction, and the credit card network passes this authorization back to the acquirer.

Step six: The acquirer advises the merchant that the transaction has been authorized, and the merchant completes the transaction with the cardholder.

Step seven: On a daily basis, the credit card network settles transactions between issuers and acquirers on a net settlement basis. Issuers charge the full value of the transaction on the cardholder's monthly statement (in this hypothetical example, \$100), and the merchant receives \$100 from the acquirer. Depending on the merchant's relationship with its acquirer, it may pay all fees monthly or daily. In any event, the net funds to the merchant in this hypothetical example would be \$98.00, based on a Merchant Discount Rate ("MDR") of 2%, which includes the network established default interchange rate ("DIF") of 1.5% and a gross acquirer margin of .50%. The network established DIF is the rate or fee that an acquirer will pay to an issuer in a typical credit card transaction.

Step eight: The cardholder is obliged to settle the bill, in whole or in part, with the credit card issuer (in this example, \$100) no earlier than 21 days following the cardholder's purchase described in step two.

The credit card networks also exchange information with, and charge transaction service fees to, both issuers and acquirers. All participants in the four-party system benefit, and therefore all share in its costs.

13. If granted leave to intervene, the CBA would explain the Canadian credit card system from these multiple perspectives and the impact of the challenged network rules on the credit card system as a whole. These perspectives will be useful to the Tribunal and different from those of the existing parties to the Application (the Commissioner and the respondent card networks).

E. An Outline of the CBA's Proposed Submissions

14. If granted leave to intervene, the CBA proposes to file evidence and argument that addresses only the issues raised in the Application. The CBA undertakes not to raise any new issues. By way of outline, the CBA would propose to submit as follows.

15. The Canadian payment services market is highly competitive. This benefits both consumers and businesses. Credit cards are but one among many forms of payment that consumers can choose when deciding how to make a purchase and that businesses can accept as a form of payment from their customers. Visa-branded and MasterCard-branded credit cards compete with other network-branded cards, debit cards, private label credit cards, retail gift cards, cash, and cheques, as well as unregulated electronic payment services like PayPal. Each payment form has its own costs and benefits.

16. Currently over 80% of Canadian households have at least one credit card. In 2009, Canadian consumers held over 69 million Visa and MasterCard credit cards, which accounted for approximately \$265 billion in net retail sales or 29% of consumer spending in Canada. The CBA's member banks issue approximately 90% of the credit cards in use in Canada. These credit cards are accepted at over 660,000 locations nationally and 30 million worldwide. This helps promote the federal government's policy of helping Canada becoming a global leader in electronic commerce.

17. Canadian consumers and merchants benefit from efficient, reliable, and widely accepted credit card networks. Credit card networks allow cardholders to make payments at points of sale domestically and worldwide, and provide ready access to a revolving credit facility when

required. They also provide merchants guaranteed payment, reduced and more secure handling costs, increased sales, and the ability to sell on-line to a global market.

18. There is intense inter-brand and intra-brand credit card competition in Canada, including: competition among both credit card networks for card issuers, as seen most recently by RBC, CIBC, Canadian Tire Bank, and JP Morgan Chase Bank N.A. becoming dual issuers (*i.e.*, issuers of both Visa-branded and MasterCard-branded cards); and competition among bank issuers and non-bank issuers for cardholders, as seen by the significant differentiation among the hundreds of major credit cards with different fees, options, and rewards. This competition further benefits Canadian consumers and merchants.

19. Canada has a highly evolved, efficient, and reliable credit card system that is a critical foundation of commerce in this country. Any changes to this system must be considered with the utmost care and based on all relevant information and perspectives.

20. In particular, from the banks' perspective as issuers of credit cards to consumers and businesses, the two challenged network rules common to Visa and MasterCard – “no surcharging” and “honour all cards” – are critical to the efficiency, integrity, and reliability of Canada's credit card network. Importantly, the banks do not establish these network rules; rather, these are established by the card networks themselves. Each of these rules serve important functions:

- (a) For a credit card to be valuable to its customers, cardholders must have confidence that the card brand will be widely accepted domestically and internationally. The “honour all cards” rule provides this certainty. If cardholders cannot be sure that their card will be accepted by a merchant who advertises acceptance of their card brand, they will find themselves in the embarrassing position of having their card rejected at the point of sale, and they will be less likely to obtain and use credit cards. Moreover, issuers, not merchants, will have to deal with the customer complaints and card cancellations that result. Accordingly, eliminating the “honour all cards” rule would harm both issuers (especially smaller issuers) and cardholders, and undermine a fundamental premise of the networks – universal acceptance or “ubiquity.”

- (b) Similarly, eliminating the “no surcharging” rule would impose a financial penalty on cardholders. The Tribunal would be licensing merchants to charge customers *additional fees* when customers use their credit cards to make payment. This would not promote competition or economic welfare in Canada. It would simply cause a wealth transfer from consumers to merchants. In countries where surcharging is permitted, the evidence is clear – surcharging has not had a measurable impact on retail prices and has simply resulted in a wealth transfer from consumers to merchants.

21. Merchants can and do choose which forms of payment they are willing to accept. Merchants are always free to (and many do) refuse to accept credit cards and steer customers to other forms of payment through their own private label cards, cash discounts, loyalty cards, and other means.

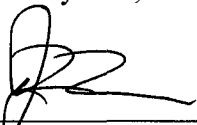
22. Regarding the Commissioner’s specific allegations under s. 76 of the *Competition Act*, if granted leave to intervene, the CBA’s member banks would support the respondents’ positions but from their different perspectives as participants in the respondents’ credit card networks. The CBA would explain that the Credit Card Network Services (as defined in the Application) do not meet the definition of “products” that are resold for the purposes of s. 76 of the *Competition Act*. Further, the network rules do not by agreement, threat, promise or any like means influence upward, or discourage the reduction of, the price at which another person supplies or offers to supply or advertise a product within the meaning of section 76. Moreover, the CBA would also explain how the network rules do not have an adverse impact on competition in any market: to the contrary, the network rules are pro-competitive and enhance economic efficiency.

23. The issues raised in the Commissioner’s Application (and in particular, the merchant complaints echoed therein) were the subject of lengthy Parliamentary hearings commencing in 2008 in which the CBA participated, together with merchant groups, consumer groups, the networks, and government. This culminated in April 2010 with the release of the federal Department of Finance’s *Code of Conduct for the Credit Card and Debit Card Industry in Canada* (**Exhibit D**) and the *Payment Card Networks Act* (**Exhibit E**). As evidenced by the *Code of Conduct* and the *Payment Card Networks Act*, after careful study and broad consultation,

the federal government decided not to eliminate or change the respondents' network rules. The CBA's members have endorsed the *Code of Conduct*.

24. If granted leave to intervene, the CBA would not seek costs, and asks that it not be liable to pay the costs of any other party.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario, on
February 10th, 2011.



Commissioner for Taking Affidavits



DARREN HANNAH

The document that is being electronically submitted to the Tribunal is an electronic version of a paper document that has been signed by the affiant. The signed document in paper copy is available and will be produced if requested by the Tribunal.

This is **Exhibit A** referred to in the
Affidavit of Darren Hannah, sworn before
me on this 10th day of February, 2011

A handwritten signature in black ink, consisting of stylized initials and a surname, positioned above a horizontal line.

A Commissioner for taking oaths, etc.

Payment Cards in Canada: Choice and Competition for Consumers and Businesses

Remarks by Nancy Hughes Anthony

President and CEO

Canadian Bankers Association

for

Senate Committee on Banking, Trade and Commerce

April 1, 2009

Ottawa

CHECK AGAINST DELIVERY

Good afternoon.

It is my pleasure to be here today to participate in the Committee's discussions of the payment card systems in Canada.

I am joined by my colleagues from the Canadian Bankers Association – Terry Campbell, Vice President of Policy and Darren Hannah, Director, Banking Operations. We also have for you an information package on the issues that we will be discussing this morning.

The CBA represents our 50 member banks, including domestic chartered banks, foreign bank subsidiaries and foreign bank branches operating in Canada. We are a source of public information and research on banks in Canada, we provide a forum for discussion on issues of common interest to our members and we advocate for banks at the municipal, provincial and federal government levels.

Banks in Canada – stable and secure

When we were here a few weeks ago, I shared with you some information about our banks and about their role in this time of economic turmoil. If I may, I would like to very briefly highlight a couple of those points again today because they are important to our discussion on payment cards.

Banks in Canada make a significant contribution to the Canadian economy. They employ a quarter of a million Canadians and contribute 3.3 per cent to the Gross Domestic Product – the nation's output.

As well, most Canadians are shareholders in Canadian banks either directly or through the Canada Pension Plan (CPP), other pension and mutual funds. Pension funds and RRSPs are the main beneficiaries of the billions of dollars that the banks pay in dividends each year.

We have a very stable and secure banking system in Canada. Our banks have largely avoided the difficulties that banks around the world are now facing because Canada's banks are diversified, well-capitalized and well-managed, with prudent lending practices. We have a strong regulatory system for the financial sector and a solid mortgage market.

What does this mean for Canada and Canadians?

It means that unlike so many other countries, Canadian taxpayers have not had to bail out financial institutions, not had to inject capital into our institutions, and not had to set up public entities to buy toxic assets.

In contrast, in order to inject liquidity into a market affected by the global credit freeze, the federal government chose to purchase sound, insured mortgages at commercial rates through the Canada Mortgage and Housing Corporation (CMHC) – an investment by the government that will turn a profit for the Canadian taxpayer.

Our banks are doing their part. They are continuing to lend to both consumers and businesses. In fact, the most recent Bank of Canada lending figures show that bank lending to businesses in February of this year is up over 9 per cent from the year before.

Impact of global turmoil on our banks

Nonetheless, the turmoil in the global financial markets has had an impact on our banks. In particular, when we look at the cost of credit there are some challenges facing banks.

The fact is there is a new reality in the credit marketplace here and internationally. Certain types of credit – like commercial paper, the securitization market, the bond market – are no longer functioning properly around

the world, resulting in relatively higher cost than in the past. This affects the banks' overall cost of borrowing and therefore, has an impact on the consumer, particularly for medium and longer-term borrowing.

Another factor that affects the rates that banks set for their loans is risk. We are in a recession, and that has an impact on the creditworthiness of customers – both retail and business. As prudent lenders, banks need to adjust their pricing to reflect this new risk reality.

These are the factors that determine the cost of credit. I know that many people think that the Bank of Canada determines the cost of credit. This is not the case. Banks borrow less than 1% of their funds from the Bank of Canada.

The impact of the global financial turmoil has also meant that our banks have increased their provisioning for credit losses. In the first quarter reports of Canada's big six banks which were reported recently, loan loss provisioning was close to two and half billion dollars – an increase of 124% from the same time the year before.

The bottom line is that Canada's banking system, like Canada itself, is not immune to what is going on in the global financial market.

Payment card market

I would like to take a few minutes to describe the payment market in Canada, particularly credit cards, and how Canadian consumers and businesses benefit from the tremendous competition and choice in that marketplace.

While we are focussed on credit cards today, we should remember that they are not the only type of payment available to consumers. They are one form of payment that consumers can choose when deciding on how to make a purchase. They compete with cash, cheques, debit cards, as well as unregulated electronic payments services like PayPal.

The decision about which one to use is up to the consumer, and the decision about which one to accept is up to the business owner.

Credit cards

Consumer benefits

Credit cards are primarily a convenient and secure payment tool. And as a payment tool, there are many benefits to the consumer:

- An interest-free period of up to 51 days from purchase to payment, depending on the card, as long as the balance is paid in full when owing.
- Choice – there are hundreds of institutions including retailers, credit unions and banks offering major credit cards in Canada – most offering multiple card products; some with rewards, loyalty and insurance products attached and some with low-rate plain vanilla options.
- Extensive global use – credit cards are accepted at over 661,000 outlets in Canada and 30 million locations around the world.

Effective credit card interest for most Canadians = zero

When it comes to interest rates on credit cards there is a great deal of misinformation and confusion about what Canadians actually pay. In fact, the vast majority of Canadians pay no interest. Zero interest.

A recent Boston Consulting Group study found that 70% of Canadian households regularly pay off their credit card balances in full every month, so for them the interest rate is zero. The same survey found that in the United States this is true for only 50% of households. We also know that it is only about 50% in Australia and 56% in the UK.

It is interesting to note that income is not a factor on who pays off their credit cards. Statistics Canada found that the percentage of low, middle and high income families paying off their credit cards every month is roughly the same.

Low-rate cards / loan products

For those customers that don't pay off their balance in full, there are more than 60 low-rate cards on the market. And banks have been leaders in developing these low-rate cards.

Banks also offer some prime-plus cards with an interest rate directly linked to the prime rate, so that option is available to consumers. And with the prime rate at historic lows, these cards are very affordable.

In fact, if a customer is having difficulty with their credit card payments, they are encouraged to talk to their bank because there are options such as lines of credit and other products for longer-term borrowing.

The goal is to help them better manage their finances, maintain a good credit rating and continue to have access to credit.

Most Canadians know they have choices when it comes to borrowing and managing credit. They are making smart credit decisions such as increasingly using lower cost credit products in situations where it is appropriate. While a large proportion of Canadian households have credit cards, credit card balances account for only 3 percent of household debt. And personal lines of credit, for example, account for 9% of total household debt.

Competition and choice – for consumers and businesses

There are as many reasons for possessing a credit card as there are types and varieties of cards. With so much choice from the many cards on the market, Canadians have a great resource available to help choose the card that is right for them. The Financial Consumer Agency of Canada (FCAC) has on its web site an extensive list of cards and features and interest rates. This is a great tool and we promote it through the CBA web site as well.

It is important to note that there are many more institutions and organizations other than banks that issue and distribute credit cards. The list includes retailers, credit unions, caisses populaires, charities and universities. Non-banks represent a significant proportion of all credit card issuers in Canada. I encourage the Committee to consider the full credit card marketplace.

Just as consumers can, and do, choose the form of payment they want to offer, businesses can choose the form of payment they are willing to accept. Businesses can accept cash, cheques, credit cards, or debit cards. They can accept some brands of credit cards but not others. They can offer discounts for cash payments. And business owners exercise this freedom.

For example, nearly one in three retailers do not accept cheques even though virtually every adult Canadian has a chequing account. The decision is up to the business owner based on the value they receive from each form of payment, including credit cards.

Credit card pricing

Turning to pricing, there are a number of factors that go into the fees and rates.

As I just mentioned, customers enjoy an interest-free period from purchase to payment, depending on the card, as long as the balance is paid in full when owing.

Customers have access to unsecured credit where no collateral is needed, which makes it a higher risk for the credit card issuer.

There are significant costs to operating the credit card system. These include:

- processing a large volume of transactions;
- technology that is constantly updated to support transactions;
- preparing and mailing statements and collecting payments;
- and the costs for providing value-added rewards programs;

Fraud and Reimbursement

A significant cost is related to fraud and reimbursement. For banks, and for all credit card issuers, maintaining a reliable and secure system is of the highest priority. This requires investing millions of dollars each and every year to prevent credit card fraud and indemnify customers that suffered a loss as a result of criminal activities performed on their account.

Banks must continually focus on and significantly invest in financial crime prevention, detection and investigation to protect its customers from organized crime attacking the credit card system. When criminals succeed in stealing from our customers, we reimburse our customers and seek to learn from the experience to prevent it from reoccurring.

In 2008, in addition to the significant investment that the industry made on crime prevention and investigations, financial institutions reimbursed to their Canadian credit and debit card customers more than a half a billion dollars representing the losses these customers suffered as a result of criminal activities.

Presently, our industry is making a significant financial commitment in rolling out Chip and Pin technology to offer an even safer and more secure payment card environment for our customers and for the businesses that accept cards. Maintaining consumer confidence in the security of the payments system in Canada is in everyone's interest, and we are making every effort to do just that.

Debit Cards

Let me turn briefly to debit cards. We are pleased that you are taking a holistic look at the payments system, including debit cards.

Customers are best served by an open, competitive marketplace. That principle holds true in every sector of the economy including the retail and small business sectors as well as the debit card market.

While the current debit card system in Canada has served Canadians well, it needs to grow and evolve to meet the needs of a more integrated global economy.

Debit innovation could offer benefits for both merchants and consumers by driving innovations in debit payment technologies such as contactless payments, mobile payments and e-commerce. Debit market choice and competition is also an international trend. Canada should not be left behind.

Banks helping during recession

Before concluding I would like to take a minute and talk about what banks are doing to help their customers through this difficult economic time.

Canadians who have suffered a job loss or reduction in income and who are concerned about getting through these tough times should contact their bank, and the earlier the better. They can work with their banker to explore options to help them manage and repay their mortgage, credit card, or personal or business loan.

Banks continue to treat every situation on a case-by-case basis. There are a number of tools in the toolkit that banks can use, depending on the circumstances of the individual.

Credit Counselling

In addition to the steps that banks are taking with individual customers, we support the good work that not-for-profit credit counselling agencies do to help people manage their personal finances.

For more than 40 years banks have been supporting not-for-profit credit counselling agencies that are helping borrowers to learn better money and credit management skills and to repay their loans. This is part of a broader and on-going industry commitment to financial literacy for all Canadians.

Financial Literacy

This leads me to my last point and that is about our financial literacy program for high school students. The CBA has been involved in financial literacy at the high school level for over a decade. Last year we redeveloped our program, now called *YourMoney*, in close collaboration with the Financial Consumer Agency of Canada. Through the *YourMoney* program we are working with 1,000 banker volunteers in communities across Canada and have reached almost 175,000 high school students. The goal is to help students with practical information about budgeting, saving, borrowing, investing and keeping their money safe.

Conclusion

In closing, I want to go back to where I started – Canada's banks are strong, secure and Canadians remain confident in their banking system. This is an advantage for Canada that other countries do not have. Keeping that advantage will be crucial to the recovery of Canada's economy and to the long-term prosperity of Canadians.

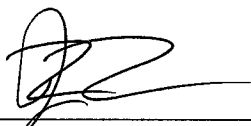
Part of that strong and stable banking system is our vibrant credit card marketplace with tremendous choice and competition benefitting customers and businesses.

All Canadians can rely on a credit card network that is secure, reliable and affordable.

Thank you to the Committee for inviting us here today.

I will be pleased to respond to your questions.

This is **Exhibit B** referred to in the
Affidavit of Darren Hannah, sworn before
me on this 10th day of February, 2011

A handwritten signature in black ink, consisting of a large, stylized initial 'D' followed by a horizontal line extending to the right.

A Commissioner for taking oaths, etc.



Canada's Credit and Debit Card Marketplace

Submission to the Joint Meeting of the
Standing Committee on Finance and the
Standing Committee on Industry, Science
and Technology

The Canadian Bankers Association

May 28, 2009

Introduction

The Canadian Bankers Association (CBA) represents its 50 member banks, including domestic chartered banks, foreign bank subsidiaries and foreign bank branches operating in Canada. Of these banks, 17 issue credit cards. In terms of employment, CBA member banks employ a quarter of a million Canadians, an increase of 16 per cent over the past ten years. In fact, banks account for 1.5 per cent of total employment in Canada. When it comes to Gross Domestic Product, banks contribute 3.3 per cent to the nation's output.

The CBA is a source of public information and research on banks in Canada; we provide a forum for discussion on issues of common interest to our members and we advocate for sound policies for banks at the municipal, provincial and federal government levels.

The CBA appeared before the Senate Banking Committee last month as part of its hearings on the issue of payment cards and has also met with many Members of Parliament, including many around this table, as well as with both the Canadian Federation of Independent Business and the Retail Council of Canada. The CBA has been actively engaged in discussions related to credit cards and has heard the issues that have been raised – for instance, on interchange fees, the introduction of certain types of premium cards into the market, interest rates on certain cards, as well as the future of the debit card system in this country.

The CBA welcomes this opportunity to present the banking industry's perspective on the card payments system, and to provide some suggestions about what the banking industry can do better when it comes to disclosure and transparency for the consumer. The banking industry strongly supports enhanced levels of disclosure and transparency.

It is important to remember, however, that the payment card market in Canada is a very sophisticated and complex system with a range of different players, each with its own roles and responsibilities. While the CBA is pleased to offer our thoughts and suggestions on issues from the perspective of institutions which issue cards, there are a range of matters – the setting of interchange fees, the terms of merchant-acquirer contracts and the "honour all cards rule", for example – which the banking industry does not control and where we are not able to provide substantive comments.

It is also important to remember that in a competitive marketplace, where individual institutions are actively competing for customer business, information regarding bank operations, revenues, expenses, fees and business strategies is highly confidential and proprietary in nature. It is information that banks do not share among themselves or with the CBA to ensure full compliance with the Competition Act, and – like any other business in the marketplace – would not wish to have divulged to competitors.

Canada has a highly evolved, secure and efficient payment card system that is at the heart of the commerce economy in this country. The system is a critical element in ensuring that individual Canadians have access to credit and that retailers have certainty of payment. While it can be improved upon to continue to serve customers and retailers alike, we have to keep in mind that any changes to that system need to be considered carefully.

Payment card market

In the payment market in Canada, particularly credit cards, consumers and businesses benefit from the tremendous competition and choice in that marketplace.

Credit cards are not the only type of payment available to consumers and businesses. They are one form of payment that consumers can choose when deciding how to make a purchase, and that businesses can accept as a form of payment from their customers. Credit cards compete with cash, cheques, debit cards, as well as unregulated electronic payments services like PayPal. Each form of payment has its benefits and it is readily apparent that credit cards offer significant benefits to both the customer and the business. There are over 68 million credit cards in Canada, and they account for 29 per cent of consumer spending¹.

Credit cards

Consumer benefits

Much of the recent commentary about credit cards has not been balanced. While there are areas for improvement, it is fair to say that Canadians are well-served by the credit card marketplace.

For consumers, credit cards are primarily a convenient and secure payment tool. And as a payment tool, there are many benefits to the consumer:

- An interest-free period of up to 51 days from purchase to payment, depending on the card, as long as the balance is paid in full when owing.
- Choice – there are hundreds of institutions including retailers, credit unions and banks offering major credit cards in Canada – most offering multiple card products; some with rewards, loyalty and insurance products attached; and some with low-rate plain vanilla options.
- Extensive global use – credit cards are accepted at over 661,000 outlets in Canada and 30 million locations around the world.
- Value-added benefits and rewards – many credit cards offer Canadians a host of cardholder benefits and rewards such as travel medical insurance, travel rewards points, cash back, and discounts or rebates on everyday essentials such as gasoline and groceries.

¹ Source: Visa Canada Research, 2008

Competition and choice – for consumers

When it comes to competition, Canadians have a great resource available to help choose the card that is right for them. The Financial Consumer Agency of Canada (FCAC) has on its web site an extensive list of cards, features and interest rates. And Canadians understand that they have choice and that they are in the driver's seat when it comes to selecting the card that is right for them. Recent research found that 95 per cent of Canadians believe consumers have a responsibility to shop around for the most appropriate credit card for their use if they want to ensure the lowest cost and the lowest rates².

It is important to note that there are many more institutions and organizations other than banks that issue and distribute credit cards, including retailers, credit unions, and caisses populaires.

Effective credit card interest for most Canadians = zero

When it comes to interest rates on credit cards there is a great deal of misinformation and confusion about what Canadians actually pay. In fact, the vast majority of Canadians pay no interest. Zero interest.

A recent Boston Consulting Group study found that 70 per cent of Canadian households regularly pay off their credit card balances in full every month, so for them the interest rate is zero. The same survey found that in the United States this is true for only 50 per cent of households. We also know that it is only about 50 per cent in Australia and 56 per cent in the UK³.

It is interesting to note that income is not a factor on who pays off their credit cards. Statistics Canada found that the percentage of low, middle and high income families paying off their credit cards every month is roughly the same⁴. For those customers that don't pay off their balance in full, there are more than 60 low-rate cards on the market⁵. And Canada's banks have been leaders in developing these low-rate cards.

Competition and choice for businesses

Just as consumers can, and do, choose the form of payment they want to offer, businesses can choose the form of payment they are willing to accept. Businesses can accept cash, cheques, credit cards, or debit cards. They can offer discounts for cash payments. And business owners exercise this freedom.

For example, nearly one in three retailers do not accept cheques even though virtually every adult Canadian has a chequing account. There is no question that accepting cheques carries a greater level of risk for the retailer because of NSF cheques and fraud. The decision is up to the business owner based on the value they receive from each form of payment, including credit cards.

² Strategic Counsel research, May 2009.

³ Household spending survey, Boston Consulting Group, 2009

⁴ Statistics Canada Survey of Financial Security, 2005

⁵ FCAC Card Comparison – as of January 2009

When it comes to the value retailers receive from credit cards, the list is extensive. It includes:

- guaranteed payment
- reduced cash handling costs
- security and safety from handling less cash
- increased sales
- the ability to sell on credit
- ability to sell online to a world-wide market

These are significant benefits to retailers of all sizes. It would come as no surprise then that there are costs to providing this service to retailers.

Interchange fees

With respect to interchange fees, which are a focal point of this Joint Committee's deliberations, there are a few points that should be highlighted:

- Interchange rates are set by the credit card companies, not issuers or acquirers.
- Further, while Visa and MasterCard do not receive the interchange fee directly, they do receive:
 - a transaction fee from acquirers and,
 - a transaction fee from card issuers like banks, credit unions etc.

In a credit card transaction, all participants benefit from the transaction so all share in the cost.

- The consumer may pay an annual fee (depending upon his/her card) and/or interest (if he/she carries a balance) to the card issuer;
- The merchant pays a merchant discount rate to the acquirer;
- The acquirer and the card issuer pay transaction fees to the card company (Visa or MasterCard);
- The acquirer pays an interchange fee to the card issuer.

(See Appendix 1 – Flow Chart of Card Transactions)

A key issue raised in the Committee hearings is the disclosure of interchange fees by card companies and acquirers to merchants. The CBA notes from these hearings that Visa and MasterCard have heard these concerns and we understand they will be working more closely with retailers to resolve them. This is a very positive step forward in this area.

And even though banks do not set these fees, banks are always working to improve clarity and disclosure to their own customers, and CBA members agree that there are things that can be further enhanced to assist consumers in better understanding the process. Banks as card issuers are considering better explanations for their card customers about the cost of interchange fees to merchants when credit cards are used. This is in addition to the great amount of new disclosure information that will be required by banks as a result of the regulations just announced by the federal government.

Premium cards

One of the key issues that has been raised during the public policy debate about the payment card system is the introduction of so-called “premium cards” into the Canadian market, and particularly how these cards were introduced. The CBA has heard these concerns and has some suggestions to make. Before addressing these concerns, however, it is important to be very clear on what a “premium card” actually is, since there has been a great deal of confusion in discussions on this matter.

What is a “premium card”?: Some stakeholders use the term “premium card” to refer to any card that has certain level of rewards or benefits, such as a gold card. In the context of the public policy discussion before this Committee, however, a *true* “premium card” is a very specific class of credit card that has enhanced rewards and benefits and which attracts a somewhat higher interchange rate. This difference is important, because while there are many cards in circulation with enhanced benefits and rewards, the number of *true* “premium cards” in circulation is very small. CBA estimates that true premium cards account for only 9 per cent of banks’ credit card accounts.

In fact, eligibility for the true premium card is restricted both by the card companies and by the issuers. Card companies place conditions around the true premium card product offering such as income and spending thresholds or enhanced rewards requirements for the premium card products. In addition, since the premium card is meant to be targeted at a select group of clientele, issuers have set their own application criteria in addition to the restrictions imposed by the card companies. As a consequence, for retailers, premium cardholders are premium customers – they have higher incomes and they spend more money.

It is also important to understand that the incremental interchange associated with a true premium card is not as high as some would have you believe. Premium cards attract an additional 20-35 basis points (0.2-0.35 per cent) of interchange (approximate), which translates into an additional \$0.20-\$0.35 on a \$100 purchase.

Concerns about premium cards: The CBA knows that this Committee has heard a great deal about premium cards, particularly around the introduction and issuing of some of these cards to consumers. While banks have had few complaints from consumers – indeed the experience for most consumers has been positive in light of proactive efforts by banks to provide them with products featuring increased benefits and security at no cost – we also agree that there was confusion on the part of some consumers when these cards were introduced. There could have been better and clearer communications to the consumer about why these cards were being introduced. Going forward, the lesson learned is that more care needs to be taken to ensure that there is greater clarity for the consumer in any such future implementation.

Another concern that has been raised is the question of credit cards being sent to consumers without their consent. Again, the intent was to try to proactively match clients with the product that gives them the best value. When premium cards were made available by the card companies, it was apparent that some current cardholders would obtain better value from a premium card at no additional cost, so the new product offered the cardholder better value. CBA members are competing for new customers, and actively trying to provide clients with the best value from the products that are available is part of that competition. Having said that, banks have heard the concerns and are reviewing their practices around issuing these cards.

As well, there is concern that true premium cards have been sent to people who perhaps should not have received them. As has been noted above, there are clear criteria and requirements imposed by the card companies and the issuers, and so a step that could be taken by the banks is to further clarify for consumers what the applicant eligibility requirements are for true premium cards.

New credit card regulations

The federal government has introduced new regulations governing credit cards. While the full implications of these proposed regulations are still unclear, they will have a big impact on financial institutions that issue credit cards. These regulations will require significant changes to products, systems and processes. Canada's credit card systems are extensive and sophisticated and implementing these regulations will be costly.

These regulations may also limit the banks' ability to provide some of the services customers have come to expect, limit the number of credit card options and may reduce credit availability to some customers. As well, they come at a time when banks, like all other sectors, are feeling the effects of the recession and when banks face increasing risk associated with credit cards.

Furthermore, the CBA believes that imposing US-style solutions on a well-functioning Canadian credit card market is neither necessary nor effective. The Canadian market is very different from that of the US:

- Canadians use credit cards primarily as a payment card whereas Americans tend to use them as a credit vehicle. Over 70 per cent of Canadians pay off their credit card every month; while fewer than half of Americans do.
- Canadian credit card pricing structures are different and tend to have far fewer, and far lower, fees than cards in the US.
- Aspects of the credit market that are common in the US and in much of the rest of the world – late payment fees, for example – are not applied by issuers in Canada.

The banking industry agrees that it is important that consumers understand the terms and conditions of a credit card or any financial product. In fact, banks in Canada already adhere to federal regulation that requires them to fully disclose information about terms, fees and interest rates to credit card customers. Banks are always willing to look at ways to make their written materials easier to understand, and will work with the government to this end.

The CBA and its members will review the proposed regulations and provide feedback to the federal government as part of its consultation process. The goal is to make sure customers continue to have the kind of convenience, choice and services they have come to expect.

Debit Cards

Customers are best served by an open, competitive marketplace. That principle holds true in every sector of the economy including the retail and small business sectors as well as the debit card market.

Canadians are among the heaviest users of debit cards in the world. The success of debit cards in Canada can be attributed in large measure to the fact that Canadians are attracted to the convenience of debit.

Interac can rightfully take some credit for that. Interac is a very strong brand in Canada. It is widely recognized by Canadian consumers and accepted at over 400,000 locations coast-to-coast.

While the current debit card system in Canada has served Canadians well, it needs to grow and evolve to meet the needs of a more integrated global economy. For example, Canadians' ability to use their debit cards for point-of-sale purchases outside of Canada is very limited, so Canadians are often denied this choice of payment when travelling abroad.

Debit innovation could offer benefits for both merchants and consumers by driving innovations in debit payment technologies such as contactless payments, mobile payments and e-commerce. Canadians are engaging in e-commerce in record numbers. For example, in 2007, 45 per cent of home internet users ordered personal goods and services online. However, nearly all on-line retail sales in Canada are done with credit cards even though debit card transactions outnumber credit card transactions by a factor of 1.4:1. Clearly there is unfilled consumer demand – competition and innovation could fill that demand. In addition, mobile payments are growing rapidly worldwide but are in their infancy in Canada. Competition among debit networks could accelerate the development of new mobile technologies in Canada.

For competition to be an effective driver of innovation, we need to ensure that all competitors have the freedom to compete fully in an open marketplace, including Interac. All competitors must be given the latitude they need to develop new products, introduce new services and structure their businesses in ways that are best suited to the needs of a competitive marketplace. That principle underlies all competitive markets and ensures that markets deliver the best and most innovative products to Canadians.

We recognize that there are questions and concerns about the introduction of new debit card systems into Canada; however, the reality is that competition in retail payments services already exists. Conventional debit card systems, and the institutions that provide them, are facing increasing competition from unregulated payments services providers such as PayPal. Since 2002, the value of PayPal transactions has grown from US\$1.5 billion to US\$14 billion (2007) – a growth rate of 45 per cent per year.⁶ PayPal's Total Payment Volume in 2008 represented nearly 9 per cent of global e-commerce and 15 per cent of US e-commerce⁷. According to eBay, PayPal will handle as much as 14 per cent of online payments globally by 2011.⁸ To remain competitive, service providers and card issuers need flexibility to offer their customers more and better payments services. Competition is key to generating those innovations and making them available to customers.

⁶ Calculated from statistics in Nikil Chande, *A Survey and Risk Analysis of Selected Non-bank Retail Payments Systems*. Bank of Canada Discussion Paper 2008-17. p. 11 (Chart 2).

⁷ Source: <https://www.paypal-media.com/documentdisplay.cfm?DocumentID=2260>

⁸ Source: Bloomberg, March 2009.

Banks helping during recession

Canadians who have suffered a job loss or reduction in income and who are concerned about getting through these tough times should contact their bank, and the earlier the better. They can work with their banker to explore options to help them manage and repay their mortgage, credit card, or personal or business loan.

Banks continue to treat every situation on a case-by-case basis. There are a number of tools in the toolkit that banks can use, depending on the circumstances of the individual.

In the meantime, banks continue to lend to credit-worthy customers. Even as non-bank providers have reduced their lending or withdrawn from the marketplace entirely, Canada's banks have continued to make credit available to Canadian businesses and individual customers. Month after month since the financial crisis erupted, Bank of Canada data shows that Canada's banks have increased their lending to businesses over the same period a year before. As of the end of April 2009, for instance, bank lending to businesses was up 6.3 per cent compared to April 2008, still higher than the increase in financing from all sources (at 3.7 per cent). In terms of lending to individuals, total personal credit from banks in April 2009 was up 14 per cent over the same month last year⁹.

Financial Literacy

The CBA has been involved in financial literacy at the high school level for over a decade. Last year the CBA redeveloped its program, now called *YourMoney*, in close collaboration with the Financial Consumer Agency of Canada, and offers a seminar-based classroom presentation on the fundamentals of financial literacy. Through the *YourMoney* program the CBA is working with 1,000 banker volunteers in communities across Canada and have reached more than 175,000 high school students. The goal is to help students with practical information about budgeting, saving, borrowing, investing and keeping their money safe.

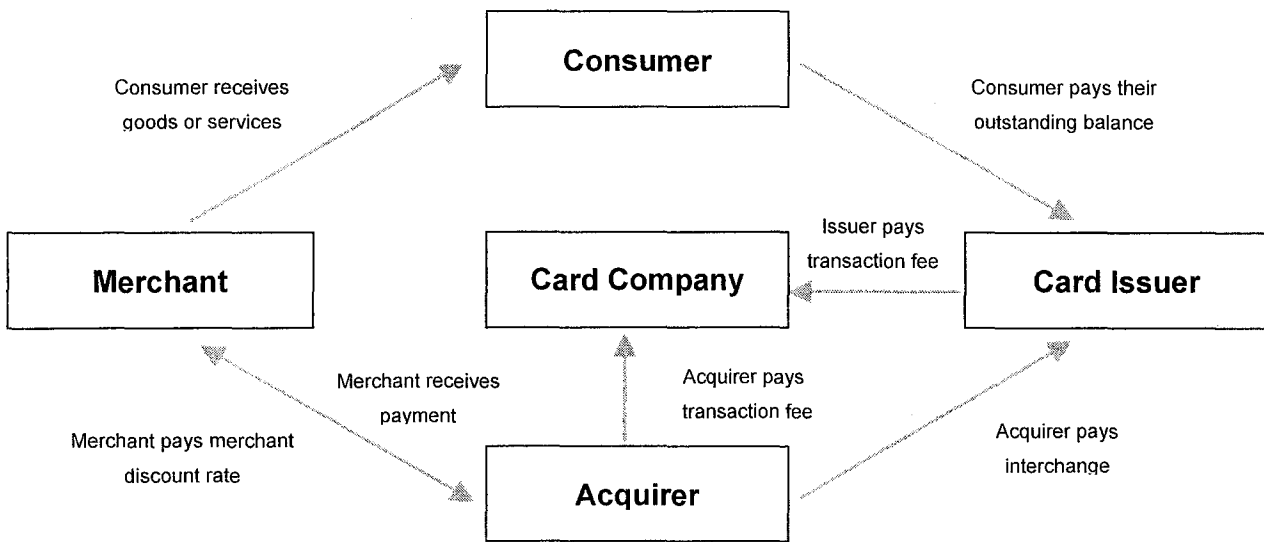
Conclusion

The payment system in Canada and around the world, particularly the credit card market, has evolved to the point where most Canadians take for granted the level of sophistication, efficiency and the breadth of the credit card system that exists. The system in Canada works well for individuals and businesses, and is a critical element in ensuring that access to credit and the flow of payments continue to work efficiently for the benefit of the economy as a whole. While improvements can be made to the system – and the CBA has made some suggestions in this submission – it is important that policy-makers and legislators carefully consider the potential impacts on all aspects of the system, and on consumers and businesses, before new measures are considered.

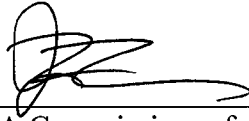
⁹ Bank of Canada, Weekly Financial Statistics, May 22, 2009

Appendix 1 – Flow Chart of Card Transactions

Card Transactions: Who Pays Whom?



This is **Exhibit C** referred to in the
Affidavit of Darren Hannah, sworn before
me on this 10th day of February, 2011



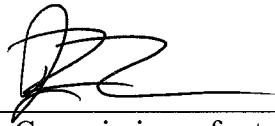
A Commissioner for taking oaths, etc.

Exhibit C

Selected Cases Affecting the Banking Industry In Which The CBA Has Intervened

1. *Reference re Canadian Securities Act*, Quebec Court of Appeal (argued January 17-20, 2011)(pending) (constitutionality of Parliament creating a national securities regulator).
2. *Reference re Canadian Securities Act*, Alberta Court of Appeal (argued January 24, 2011)(pending) (constitutionality of Parliament creating a national securities regulator).
3. *Reference re Canadian Securities Act*, Supreme Court of Canada (scheduled April 13-14, 2011) (constitutionality of Parliament creating a national securities regulator).
4. *Tele-Mobile Co. v. Ontario*, [2008] 1 S.C.R. 305 (production orders under the *Criminal Code*).
5. *Royal Bank of Canada v. Canada*, 2007 FCA 72 (*Excise Tax Act* issues).
6. *Rezek v. Canada*, 2005 FCA 227 (taxation of convertible hedging).
7. *Gifford v. Canada*, [2004] 1 S.C.R. 411 (interest deductibility under the *Income Tax Act*).
8. *Bank of Nova Scotia v. British Columbia (Superintendent of Financial Institutions)*, 2003 BCCA 29 (constitutional application of provincial insurance regulations to banks).
9. *Continental Bank Leasing Corp. v. Canada*, [1998] 2 S.C.R. 298 (partnership tax issues).
10. *Bank of Nova Scotia v. Dunphy Leasing Enterprises Ltd.*, [1994] 1 S.C.R. 552 (interest rate on non-mortgage loans).
11. *National Bank of Canada v. Atomic Slipper Co.*, [1991] 1 S.C.R. 1059 (security issues under the *Bank Act*).
12. *Canadian Bankers Association v. Saskatchewan (Attorney General)*, [1956] S.C.R. 31 (constitutionality of Saskatchewan's *Moratorium Act* under s. 91(21) of the *Constitution Act, 1867*).

This is **Exhibit D** referred to in the
Affidavit of Darren Hannah, sworn before
me on this 10th day of February, 2011

A handwritten signature in black ink, consisting of stylized initials and a horizontal line extending to the right.

A Commissioner for taking oaths, etc.



[Home](#) > [Publications and reports](#) > [Code of Conduct for the Credit and Debit Card Industry in Canada](#)

CODE OF CONDUCT FOR THE CREDIT AND DEBIT CARD INDUSTRY IN CANADA

PURPOSE

The purpose of the Code is to demonstrate the industry's commitment to:

1. Ensuring that merchants are fully aware of the costs associated with accepting credit and debit card payments thereby allowing merchants to reasonably forecast their monthly costs related to accepting such payments.
2. Providing merchants with increased pricing flexibility to encourage consumers to choose the lowest-cost payment option.
3. Allowing merchants to freely choose which payment options they will accept.

SCOPE

The Code applies to credit and debit card networks, (referred to herein as payment card networks), and their participants (e.g. card issuers and acquirers¹).

The payment card networks that choose to adopt the Code will abide by the policies outlined below and ensure compliance by their participants. The Code of Conduct will be incorporated, in its entirety, into the payment card networks' contracts, governing rules and regulations.

The Code will apply within 90 days of being adopted by the card networks and their participants. Networks and acquirers will have up to nine months to implement Element 1. Issuers will have up to one year to re-issue cards already in circulation that contravene Element 6 or 7.

REQUIREMENTS FOR PAYMENT CARD NETWORKS

By adopting the Code, payment card networks agree to provide any requested information regarding actions taken by themselves or participants to the Financial Consumer Agency of Canada, for the purpose of monitoring compliance with the Code. In addition, payment card networks agree to pay for the fees associated with monitoring compliance with the Code, as determined by the Financial Consumer Agency of Canada.

POLICY ELEMENTS

1. Increased Transparency and Disclosure by Payment Card Networks and Acquirers to Merchants

The payment card networks and their participants will work with merchants, either directly or through merchant associations, to ensure that merchant - acquirer agreements and monthly statements include a sufficient level of detail and are easy to understand. Payment card networks will make all applicable interchange rates easily available on their websites. In addition, payment card networks will post any upcoming changes to these fees once they have been provided to acquirers.

Payment card network rules will ensure that merchant statements include the following information:

- Effective merchant discount rate² for each type of payment card from a payment card network;
- Interchange rates and, if applicable, all other rates charged to the merchants by the acquirer;
- The number and volume of transactions for each type of payment transaction;
- The total amount of fees applicable to each rate; and,
- Details of each fee and to which payment card network they relate.

This information must be presented in a manner that is clear, simple and not misleading.

2. Payment card network rules will ensure that merchants will receive a minimum of 90 days notice of any fee increases or the introduction of a new fee related to any credit or debit card transactions. Payment card networks will provide at least 90 days notice to acquirers for rate and / or fee changes and at least 180 days notice for structural changes³.

Notification is not required for fee changes made in accordance with pre-determined fee schedules, such as those based on merchant sales volume, provided that the schedules are included in the merchant's contract.

3. Payment card network rules will ensure that following notification of a fee increase or the introduction of a new fee, merchants will be allowed to cancel their contracts without penalty.

By signing a contract with an acquirer, a merchant will have the right to cost certainty over the course of their contract. As a result, in the event of a fee increase or the introduction of a new fee, merchants will be allowed to opt out of their contracts, without facing any form of penalty, within 90 days of receiving notice of the fee increase or the introduction of a new fee.

Merchants may not cancel their contracts in relation to fee increases made in accordance with pre-determined fee schedules, such as those based on merchant sales volume, provided that the schedules are included in the merchant's contract.

4. Payment card network rules will ensure 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.

Payment card networks will not require merchants to accept both credit and debit payments from their payment card network. A merchant can choose to accept only credit or debit payments from a network without having to accept both.

5. Payment card network rules will 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.

Discounts will be allowed for any payment method. As well, differential discounting will be permitted between payment card networks.

Any discounts must be clearly marked at the point-of-sale.

6. Competing domestic applications from different networks shall not be offered on the same debit card. However, non-competing complementary domestic applications from different networks may exist on the same debit card.

A debit card may contain multiple applications, such as PIN-based and contactless. A card may not have applications from more than one network to process each type of domestic transaction, such as point-of-sale, Internet, telephone, etc. This limitation does not apply to ABM or international transactions.

7. Payment card networks will ensure that co-badged debit cards are equally branded.

Payment card network rules shall ensure that the payment networks available on payment cards will be clearly indicated. Payment card networks will not include rules that require that issuers give preferential branding to their brand over others. To ensure equal branding, brand logos must be the same size, located on the same side of the card and both brand logos must be either in colour or black and white.

8. Payment card network rules will ensure that debit and credit card functions shall not co-reside on the same payment card.

Debit and credit cards have very distinct characteristics, such as providing access to a deposit account or a credit card account. These accounts have specific provisions and fees attached to them. Given the specific features associated with debit and credit cards, and their corresponding accounts, such cards shall be issued as separate payment cards. Consumer confusion would be minimized by not allowing debit and credit card functions to co-reside on the same payment card.

9. 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 a higher than average interchange rate. They must be targeted at individuals who meet specific spending and/or income levels.

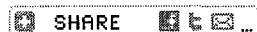
10. Payment card network rules will ensure that negative option acceptance is not allowed.

If payment card networks introduce new products or services, merchants shall not be obligated to accept those new products or services. Merchants must provide their express consent to accept the new products or services.

¹ "Acquirers" are entities that enable merchants to accept payments by credit or debit card, by providing merchants with access to a payment card network for the transmission or processing of payments.

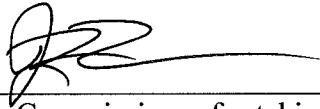
² The effective merchant discount rate is calculated as the total fees paid by the merchant to an acquirer, related to the processing of a specific type of payment card from a payment card network, divided by the total sales volume for that type of payment card.

³ Structural changes are significant changes to the fee structure for a payment card network. This includes the introduction of new types of interchange or other fees, a change to the interchange rate structure or the introduction of a new type of credit or debit card.



Date Modified: 2010-05-18

This is **Exhibit E** referred to in the
Affidavit of Darren Hannah, sworn before
me on this 10th day of February, 2011

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A Commissioner for taking oaths, etc.



CANADA

CONSOLIDATION

CODIFICATION

Payment Card Networks Act

Loi sur les réseaux de cartes de paiement

S.C. 2010, c. 12, s. 1834

L.C. 2010, ch. 12, art. 1834

NOTE

[Enacted by section 1834 of chapter 12 of the Statutes of Canada, 2010; Act, other than sections 6 and 7, in force on assent July 12, 2010.]

NOTE

[Édictée par l'article 1834 du chapitre 12 des Lois du Canada (2010); loi, à l'exception des articles 6 et 7, en vigueur à la sanction le 12 juillet 2010.]

Current to January 16, 2011

À jour au 16 janvier 2011

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OFFICIAL STATUS
OF CONSOLIDATIONS

CARACTÈRE OFFICIEL
DES CODIFICATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1^{er} juin 2009, prévoient ce qui suit :

Published
consolidation is
evidence

31. (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

31. (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Codifications
comme élément
de preuve

Inconsistencies
in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

Incompatibilité
— lois

NOTE

Shaded provisions in this document are not in force.

NOTE

Les dispositions ombrées dans ce document ne sont pas en vigueur.



2010, c. 12, s. 1834

2010, ch. 12, art. 1834

An Act respecting payment card networks

Loi concernant les réseaux de cartes de paiement

[Assented to 12th July 2010]

[Sanctionnée le 12 juillet 2010]

SHORT TITLE

TITRE ABRÉGÉ

Short title

1. This Act may be cited as the *Payment Card Networks Act*.

1. *Loi sur les réseaux de cartes de paiement*.

Titre abrégé

PURPOSE

OBJET

Purpose

2. The purpose of this Act is to regulate national payment card networks and the commercial practices of payment card network operators.

2. La présente loi a pour objet de réglementer les réseaux nationaux de cartes de paiement et les pratiques commerciales des exploitants de ces réseaux.

Objet

INTERPRETATION

DÉFINITIONS

Definitions

3. The following definitions apply in this Act.

3. Les définitions qui suivent s'appliquent à la présente loi.

Définitions

"acquirer"
« acquéreur »

"acquirer" means an entity that enables merchants to accept payments by payment card by providing merchants with access to a payment card network for the transmission or processing of those payments. It does not include that entity's agent or mandatary.

« acquéreur » Entité qui permet aux commerçants d'accepter les paiements par carte de paiement en leur donnant accès à un réseau de cartes de paiement pour la transmission et le traitement de ces paiements. Sont exclus de la présente définition les mandataires d'une telle entité.

« acquéreur »
"acquirer"

"entity"
« entité »

"entity" means a corporation, trust or partnership, or an unincorporated association or organization.

« carte de paiement » Carte de crédit ou de débit — ou tout autre instrument réglementaire — utilisée pour avoir accès à un compte de crédit ou de débit aux conditions fixées par l'émetteur. Sont exclues de la présente définition les cartes de crédit ne pouvant être utilisées qu'à l'égard des commerçants spécifiés sur ces cartes.

« carte de paiement »
"payment card"

"issuer"
« émetteur »

"issuer" means an entity or provincial Crown corporation that issues payment cards.

« émetteur » Entité ou société d'État provinciale qui émet des cartes de paiement.

« émetteur »
"issuer"

"Minister"
« ministre »

"Minister" means the Minister of Finance.

"payment card"
« carte de paiement »

"payment card" means a credit or debit card — or any other prescribed device — used to access a credit or debit account on terms specified by the issuer. It does not include a credit card issued for use only with the merchants identified on the card.

Payment Card Networks — January 16, 2011

“payment card network”
« réseau de cartes de paiement »

“payment card network” means an electronic payment system — other than a prescribed payment system — used to accept, transmit or process transactions made by payment card for money, goods or services and to transfer information and funds among issuers, acquirers, merchants and payment card users.

« entité » Personne morale, fiducie, société de personnes ou organisation ou association non dotée de la personnalité morale.

« entité »
“entity”

“payment card network operator”
« exploitant de réseau de cartes de paiement »

“payment card network operator” means an entity that operates or manages a payment card network, including by establishing standards and procedures for the acceptance, transmission or processing of payment transactions and by facilitating the electronic transfer of information and funds.

« exploitant de réseau de cartes de paiement » Entité qui exploite ou gère un réseau de cartes de paiement, notamment par l’établissement de normes et de procédures pour l’acceptation, la transmission et le traitement d’opérations de paiement et la facilitation de transferts électroniques de renseignements et de fonds.

« exploitant de réseau de cartes de paiement »
“payment card network operator”

« ministre » Le ministre des Finances.

« ministre »
“Minister”

« réseau de cartes de paiement » Système de paiement électronique — à l’exception d’un système de paiement réglementaire — servant à accepter, transmettre ou traiter les opérations effectuées par carte de paiement en échange d’argent, de biens ou de services, et à transférer des renseignements et des fonds entre des émetteurs, des acquéreurs, des commerçants et des utilisateurs de cartes de paiement.

« réseau de cartes de paiement »
“payment card network”

APPLICATION

CHAMP D’APPLICATION

Application

4. This Act applies to payment card network operators.

4. La présente loi s’applique aux exploitants de réseaux de cartes de paiement.

Application

FINANCIAL CONSUMER AGENCY OF CANADA

AGENCE DE LA CONSOMMATION EN MATIÈRE FINANCIÈRE DU CANADA

Supervision

5. (1) The Financial Consumer Agency of Canada, established under section 3 of the *Financial Consumer Agency of Canada Act*, is responsible for supervising payment card network operators to determine whether they are in compliance with the provisions of this Act and the regulations.

5. (1) Il incombe à l’Agence de la consommation en matière financière du Canada, constituée par l’article 3 de la *Loi sur l’Agence de la consommation en matière financière du Canada*, de superviser les exploitants de réseaux de cartes de paiement pour s’assurer qu’ils se conforment aux dispositions de la présente loi et des règlements.

Supervision

Examination and inquiry

(2) The Commissioner of the Financial Consumer Agency of Canada, appointed under section 4 of the *Financial Consumer Agency of Canada Act*, must, from time to time but at least once in each year, make or cause to be made any examination and inquiry that the Commissioner considers necessary to determine whether the provisions of this Act and the regulations are being complied with and, after the conclusion of each examination and inquiry, must report on it to the Minister.

(2) Afin de s’assurer que les exploitants de réseaux de cartes de paiement se conforment aux dispositions de la présente loi et des règlements, le commissaire de l’Agence de la consommation en matière financière du Canada, nommé en application de l’article 4 de la *Loi sur l’Agence de la consommation en matière financière du Canada*, procède ou fait procéder, au moins une fois par année, à un examen et à une enquête dont il fait rapport au ministre.

Examen ou enquête

Power of Commissioner on inquiry

(3) For the purposes of this section, the Commissioner has all the powers of a person appointed as a commissioner under Part II of

(3) Le commissaire jouit, pour l’application du présent article, des pouvoirs conférés aux commissaires en vertu de la partie II de la *Loi*

Pouvoirs du commissaire —
Loi sur les enquêtes

Réseaux de cartes de paiement — 16 janvier 2011

the *Inquiries Act* for the purpose of obtaining evidence under oath, and may delegate those powers to any person acting under the Commissioner's direction.

sur les enquêtes pour la réception des dépositions sous serment; il peut les déléguer à toute personne exécutant ses directives.

Access to records

(4) For the purposes of this section, the Commissioner or a person acting under the Commissioner's direction

(4) Pour l'application du présent article, le commissaire ou toute personne exécutant ses directives :

Accès aux renseignements

(a) has a right of access to any records, including electronic records, of a payment card network operator; and

a) a accès aux documents, notamment sous forme électronique, de tout exploitant de réseau de cartes de paiement;

(b) may require the directors or officers of a payment card network operator to provide information and explanations, to the extent that they are reasonably able to do so.

b) peut exiger des administrateurs ou des dirigeants de tout exploitant de réseau de cartes de paiement qu'ils lui fournissent, dans la mesure du possible, les renseignements et éclaircissements qu'il réclame.

Required information

(5) A payment card network operator must provide the Commissioner with any information that the Commissioner may require for the purposes of this section.

(5) Tout exploitant de réseau de cartes de paiement est tenu de fournir au commissaire tout renseignement que celui-ci peut exiger pour l'application du présent article.

Renseignements à fournir

Confidential information

(6) Subject to subsection (7), information regarding the business or affairs of a payment card network operator, or regarding persons dealing with one, that is obtained by the Commissioner or by a person acting under the Commissioner's direction, in the course of the exercise or performance of powers, duties and functions under this section or under subsection 5(1.1) or (2.1) of the *Financial Consumer Agency of Canada Act*, and any information prepared from that information, is confidential and must be treated accordingly.

(6) Sous réserve du paragraphe (7), sont confidentiels et doivent être traités comme tels les renseignements concernant l'activité commerciale et les affaires internes de l'exploitant de réseau de cartes de paiement ou concernant une personne faisant affaire avec lui — ainsi que les renseignements qui sont tirés de ceux-ci —, obtenus par le commissaire ou par toute autre personne exécutant ses directives, dans le cadre de l'exercice des attributions visées au présent article et aux paragraphes 5(1.1) et (2.1) de la *Loi sur l'Agence de la consommation en matière financière du Canada*.

Caractère confidentiel des renseignements

Disclosure permitted

(7) If the Commissioner is satisfied that the information will be treated as confidential by the person to whom it is disclosed, the Commissioner may disclose it to the Deputy Minister of Finance, or any officer of the Department of Finance authorized in writing by the Deputy Minister of Finance, for the purpose of policy analysis related to the regulation of payment card network operators.

(7) S'il est convaincu que les renseignements seront traités comme confidentiels par leur destinataire, le commissaire peut communiquer ces renseignements au sous-ministre des Finances, ou à tout fonctionnaire du ministère des Finances que celui-ci a délégué par écrit, pour l'analyse de la politique en matière de réglementation des exploitants de réseaux de cartes de paiement.

Communication autorisée

Compliance agreement

(8) The Commissioner may enter into an agreement, called a "compliance agreement", with a payment card network operator for the purpose of implementing any measure designed to further compliance by it with the provisions of this Act and the regulations.

(8) Il peut conclure un accord, appelé « accord de conformité », avec un exploitant de réseau de cartes de paiement afin de mettre en œuvre des mesures visant à favoriser le respect par celui-ci des dispositions de la présente loi et des règlements.

Accord de conformité

REGULATIONS

Regulations

6. The Governor in Council may, on the recommendation of the Minister, make regulations

(a) respecting payment card networks;

(b) specifying the types of rates that a payment card network operator must disclose and the manner in which the disclosure must be made;

(c) prescribing the time and manner in which a payment card network operator must give notice of any new rates or any changes in its rates or fee schedules, as well as to whom the notice must be given;

(d) prescribing conditions regarding the issuance of payment cards that a payment card network operator must include in any agreement entered into with an issuer;

(e) prescribing conditions that a payment card network operator must include in any agreement entered into with an acquirer;

(f) prescribing anything that by this Act is to be prescribed; and

(g) generally for carrying out the purposes and provisions of this Act.

GENERAL

Enforcing conditions

7. A payment card network operator that is a party to an agreement containing any of the conditions required by regulations made under paragraph 6(d) or (e) must take reasonable measures to enforce those conditions.

Exemption

8. The Minister may, by order, exempt a payment card network operator from any of the provisions of this Act or the regulations.

RÈGLEMENTS

Règlements

6. Le gouverneur en conseil peut, sur recommandation du ministre, prendre des règlements

a) concernant les réseaux de cartes de paiement;

b) précisant le type de taux que doivent communiquer les exploitants de réseaux de cartes de paiement et les modalités associées à cette communication;

c) prévoyant les modalités et les destinataires du préavis que doivent donner les exploitants de réseaux de cartes de paiement relativement à tout nouveau taux ou à toute modification apportée à leurs taux ou à leurs tarifs;

d) prévoyant les conditions concernant l'émission de cartes de paiement que les exploitants de réseaux de cartes de paiement doivent inclure dans tout accord qu'ils concluent avec un émetteur;

e) prévoyant les conditions que les exploitants de réseaux de cartes de paiement doivent inclure dans tout accord qu'ils concluent avec un acquéreur;

f) prévoyant toute autre mesure d'ordre réglementaire prévue par la présente loi;

g) prévoyant toute autre mesure d'application de la présente loi.

DISPOSITIONS GÉNÉRALES

Respect des conditions

7. Tout exploitant de réseau de cartes de paiement qui est partie à un accord énonçant des conditions prévues par règlement pris en vertu des alinéas 6d) ou e) est tenu de prendre toute mesure raisonnable pour faire respecter ces conditions.

Exemption

8. Le ministre peut, par arrêté, soustraire tout exploitant de réseau de cartes de paiement à l'application de telle disposition de la présente loi ou des règlements.

THE COMMISSIONER OF COMPETITION

- and -

VISA CANADA CORPORATION and
MASTERCARD INTERNATIONAL
INCORPORATED
Respondents

CT-2010-010

Applicant

THE COMPETITION TRIBUNAL

Proceeding commenced at Ottawa

AFFIDAVIT OF DARREN HANNAH

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

Mahmud Jamal 416.862.6764

mjamal@osler.com

Michelle Lally 416.862.5925

mlally@osler.com

Jason MacLean 416.862.4896

jmaclean@osler.com

Lawyers for the Proposed Intervenor,
Canadian Bankers Association