

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.

B E T W E E N:

THE COMMISSIONER OF COMPETITION

Applicant

**VISA CANADA CORPORATION AND
MASTERCARD INTERNATIONAL INCORPORATED**

Respondents

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE FILED / PRODUIT February 10, 2011 CT-2010-10 Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 19

THE TORONTO-DOMINION BANK

Applicant for Leave to Intervene

**MOTION FOR LEAVE TO INTERVENE
OF THE TORONTO-DOMINION BANK**

THE TORONTO-DOMINION BANK ("TD") seeks leave of The Competition Tribunal (the "Tribunal") pursuant to subsection 9(3) of the *Competition Tribunal Act*, R.S.C. 1985, c. 19 (2nd Supp.), as amended, to intervene in this proceeding. In support of its Request, TD relies upon the Affidavit of Jim Sallas and Jeff van Duynhoven, dated February 9, 2011.

The name and address of the proposed Intervenor are as follows:

The Toronto-Dominion Bank
66 Wellington St. West
TD Tower, 4th Floor
Toronto, Ontario M5K 1A2

Attention: General Counsel, TD Legal

The address for service of the proposed Intervenor is:

McCarthy Tétrault LLP
Suite 5300, P.O. Box 48
Toronto-Dominion Bank Tower
Toronto ON M5K 1E6

Attention: F. Paul Morrison
Glen G. MacArthur
Christine Lonsdale

A. Statement of Facts

1. The Toronto-Dominion Bank ("TD") is a Schedule I bank incorporated under the *Bank Act* of Canada, having its head office in Toronto, Ontario. TD is one of Canada's largest banks, having as at October 31, 2010 total assets of approximately \$620 billion and total deposits of approximately \$430 billion. It services more than 19 million customers and clients through its various businesses.

2. TD is a significant provider of credit card services in Canada. It is unique in Canada in that it carries on business both as an Issuer of credit cards (serving cardholder customers) and an Acquirer of credit card transactions (servicing merchant customers). As such, it occupies a prominent position as a "Player" in two of the three categories of "Players" affecting the matters in issue in this proceeding, as identified on the website of the Competition Bureau (i.e., the Commissioner of Competition).

3. As an Issuer, TD has a significant percentage of the market for Issuers of credit cards in Canada. On a sales volume basis, TD's share of the Visa card market is approximately 12%. There are approximately 5 million TD Visa credit cards in circulation. TD Visa credit cardholders charge approximately \$33 billion annually to their credit cards.

4. TD also occupies a prominent position in the market for Acquirers of credit card transactions in Canada. As an Acquirer, TD's market share is estimated to be approximately 17% of merchant locations accepting Visa cards and 15% of merchant locations accepting MasterCard cards. TD has in excess of 100,000 merchant locations as customers of its Acquirer business. TD processes in excess of \$60 billion annually in payments as an Acquirer.

5. As an Issuer, TD seeks to gain market share by putting together attractive credit card packages which appeal to consumers and small businesses which motivate them to use their credit cards when shopping. There are many differentiated and substantial costs associated with the operation of TD's credit card business as an Issuer. TD relies upon fees that it receives as an Issuer to manage the costs of issuing credit cards, to service its cardholder customers and to offer consumers credit cards with features, services, rewards and protections which consumers need and desire.

6. As an Acquirer, TD provides payment processing services to its merchant customers. But it does much more than that for its merchant customers. Among many other things, TD provides training to merchants and their staff on issues related to the use of payment processing services. TD also guides merchants through the rules and regulations of the Visa and MasterCard networks to ensure they are compliant with each credit card network's processing requirements, and acts as the advocate for merchants in resolving charge backs and other cardholder issues with various payment card issuers and with the Respondents Visa and MasterCard.

7. In order to adjudicate upon the issues in this proceeding, the Tribunal must understand the roles and perspectives of all “players” in the credit card payment system. The Respondents, Visa and MasterCard, can provide only the perspective of the credit card payment system. They cannot provide the perspective, position and role of the Issuer, as they are not Issuers. Nor can they provide the perspective, position and role of the Acquirers, as they are not Acquirers. TD is in a unique position, in that it can provide the role, perspective and position of both an Issuer and an Acquirer. No other Issuer and no other provider of acquiring services can provide this unique, combined perspective.

8. TD is also in a unique position in that it can address the perspective of and potential effects of this proceeding upon both the cardholder population and the merchant population. In the course of its business, TD has direct dealings on a day-to-day basis with both cardholder customers and with merchant customers. Except on relatively rare occasions, the Respondents have direct dealings with neither cardholders nor merchants. As well, no other chartered bank can provide this dual perspective; no other chartered bank has direct dealings with both consumers and merchants with respect to credit card transactions on a day-to-day basis in the ordinary course of business.

9. TD seeks to develop its relationships with cardholder customers and with its merchant customers beyond simply the credit card relationship. TD seeks to have a full banking relationship with all such customers. It seeks to and in most cases does build a full business and/or personal banking relationship with its cardholder customers and its merchant customers, and provides to such customers many or all of their other banking needs. On the Issuer side, approximately ninety percent (90%) of TD’s cardholders and approximately 9 out of 10 of its merchant customers are provided with other TD banking products and services.

10. As such, TD must bring many more considerations to its interactions with its merchants than do other companies providing acquiring services. Likewise, TD brings many more considerations to its relationships with its cardholder customers. This means that the effect of this proceeding upon TD extends beyond merely its relationship with cardholder customers and/or with merchant customers. This proceeding stands to impact upon TD's multi-faceted banking and lending relationships with a large and important segment of its personal and business banking customers.

11. TD's direct, multi-pronged interactions with both sets of customers and the manner in which it manages in an integrated fashion the provision of services both on the Issuer and Acquirer side must be understood by the Tribunal. It goes directly to the allegations in the Commissioner's Application and is relevant to the remedies sought by the Commissioner.

12. TD brings an additional, important perspective. As one of Canada's largest chartered banks, TD occupies a prominent position in the overall payments system in Canada, of which the credit card network is only one part. The evidence of Messrs. Sallas and van Duynhoven is that the remedies sought by the Commissioner, if granted, would cause a migration of the use of credit cards to other forms of payment, such as cash, cheques, gift cards, private label cards or other payment cards. This would have an effect on the operation of Canada's entire payments system. Hence, the Commissioner's Application and its potential effect are not confined to the credit card network. As such, the Tribunal should have the evidence and perspective of those who operate in the entire payments system, to inform and advise the Tribunal with respect to the implications of the Commissioner's Application. TD is able to do precisely that and to provide valuable information, evidence and assistance to the Tribunal.

13. TD:

- is directly affected by the issues raised and the remedies sought in this proceeding;
- faces competitive consequences arising out of the remedies sought; and
- has a distinct, indeed unique position and perspective to bring to this proceeding.

B. Matters in Issue that Affect TD and Unique/Distinct Perspective of TD

14. TD is an Issuer and falls within the definition of Issuer in the Application. As an Issuer of Visa credit cards, TD's business constitutes approximately 12% of the Visa credit card market.

15. TD is also an Acquirer and falls within the definition of Acquirer in the Application. TD's business as an Acquirer constitutes approximately 17% (with respect to Visa card transactions) and 15% (with respect to MasterCard card transactions) of the Acquirer market in Canada.

16. On its website, the Commissioner (i.e., the Competition Bureau), identifies three "Players" in the matters which are the subject of this Application. Two of the "Players" are identified as Issuers and Acquirers. TD is both. The third "Player" identified by the Bureau is the "Credit Card Networks", of which Visa and MasterCard, the Respondents in this proceeding, are identified as the two largest in Canada.

17. In that it carries on business both as an Issuer and an Acquirer, TD is in a unique position in this Application. No other chartered bank in Canada carries on business directly as both an Issuer and an Acquirer. Hence, TD is distinct from any other chartered bank with respect to the issues raised by the Commissioner's Application.

18. TD is also distinct from any other provider of acquiring services. No other such provider (with the exception of Caisse Desjardins, whose market is primarily in Quebec) is also an

Issuer. Rather, all other acquirers are “monoline” businesses. As such, their focus is singular. They are primarily, if not solely, concerned with processing transactions.

19. Not only is TD the only Canadian chartered bank that both issues credit cards and directly provides acquiring services, but TD acquires transactions for both Respondents, Visa and MasterCard.

20. The following is noteworthy:

- (a) TD is in a singular position. As an Issuer as well as an Acquirer, TD’s focus is on both sides of the credit card transaction.
- (b) As an Acquirer, TD has direct contact on a daily basis with its merchant customers across Canada. As an Issuer, TD has direct contact on a daily basis with cardholder customers. Except in relatively rare instances, the Respondents do not have direct contact with either cardholders or merchants. Hence, TD bears the interests of, deals directly with and must respond to both its cardholder customers and merchant customers.
- (c) The Respondent Visa recognizes these very distinctions. For example, at paragraphs 6 and 11 of its Response, Visa states that it is different than Issuers and Acquirers and does not provide the products and/or services that Issuers and Acquirers provide.
- (d) In addition, TD’s relationships with its customers are much broader than simply with respect to credit cards. Approximately ninety percent (90%) of TD’s cardholder customers and 9 out of 10 of TD’s merchant customers have a much broader banking relationship with TD.

- (e) In that TD, unlike the Respondents, has direct contact on a daily basis with both its cardholder customers and its merchant customers, TD can inform and advise the Tribunal with respect to their perspectives and the impact of these proceedings upon them.
- (f) Further, because TD provides to the vast majority of those customers many of their other banking needs, both personal and business, TD can inform the Tribunal as to the effect of the issues in this proceeding upon the full range of economic interests and concerns of the card-using public and the business people/merchants, as well as upon TD itself.

21. As compared and contrasted with TD's ability to bring the combined perspective of both an Issuer and an Acquirer, as well as the perspectives of its cardholder customers and merchant customers to the issues in this proceeding:

- (a) The Respondents, Visa and MasterCard, have a singular focus as providers of network services, whose primary business goal is to maximize the number of transactions processed through their respective networks.
- (b) Other chartered banks, which carry on business directly only as issuers of credit cards, not as acquirers, are not able to provide TD's perspective as both an Issuer and Acquirer.
- (c) Other providers of acquiring services (excluding Caisse Desjardins), being "monoline" businesses, necessarily have a much narrower perspective as they do not have to balance what are at times competing interests within an integrated business operation.

C. Direct Effect Upon/Competitive Consequences to TD with Respect to the Matters in Issue

(i) *TD as Issuer and Acquirer*

22. The Commissioner's Application (in para. 39) contains a Figure showing the eight steps in a transaction whereby a cardholder pays for a purchase using a credit card. Of those eight steps, the Figure demonstrates that:

- (a) an Issuer is directly involved in three of the steps;
- (b) an Acquirer is directly involved in four of the steps.

Hence, TD as an Issuer and Acquirer is central to seven of the eight steps associated with the use of a credit card by a customer in a purchase transaction. It is readily apparent that the relief sought by the Commissioner, which seeks to alter the basis on which those transactions are conducted, will directly affect TD in its businesses.

23. The remedies sought by the Commissioner would change the terms on which credit cards would be honoured by merchants, which would alter the usage of credit cards by consumers and small businesses. These changes would be reflected directly in TD's business operations. To elaborate:

- (a) If the "honour all cards" rule is changed, or eliminated, cardholders will no longer be certain that their credit card will be accepted by a merchant. As a result, cardholders will lose confidence in the credit card network and may question the benefit and reliability of carrying a credit card.
- (b) If the "no surcharge rule" is eliminated, it would allow a merchant to selectively determine in its sole discretion when to impose a surcharge on some credit card

purchases and when not to. The final price paid by a consumer for his/her purchase at point-of-sale could be arbitrary and uncertain and likely higher than the price which the consumer thought he/she would be paying for the product.

- (c) The relief sought by the Commissioner would cause a serious disruption to the consumer's confidence in the credit card system.
- (d) This, in turn, would lead to a significant reduction in the utility and appeal of credit cards, and a shift from credit cards to other forms of payment.
- (e) Such shifts in credit card usage and forms of payment would directly impact TD in its relationships with its customers and in the operation of its businesses as Issuer and Acquirer.

24. Hence, a broad base of TD's customers, both cardholders and merchants, stand to be adversely impacted by the Commissioner's Application. As a result, TD itself stands to be adversely impacted. Its relationships with its customers, not only as cardholders and as merchants, but as customers receiving other financial and banking services from TD, would be affected.

(ii) TD as a Leading Canadian Bank

25. Credit cards are an integral component of the payments system in Canada. The relief sought in this proceeding, if granted, will fundamentally affect not only credit card networks, but indeed Canada's entire payments system, which is at the heart of Canada's banking system. As one of Canada's largest chartered banks, TD is vitally affected.

26. The no-surcharge rule was based on the concept that it should be as easy to use a credit card as it is to use cash in a purchase transaction. The relief sought, i.e., elimination of the no-surcharge rule would make credit cards harder to use and less reliable as a payment

method. The public would likely turn to other modes of payment, such as cash or cheques. This, in turn, would damage the growth of the electronic payment system, and would be seen as a “backward step”.

27. Over its more than 150 years as a Canadian chartered bank, TD has been involved in the progression of Canada’s payments system from the predominant use of cash and cheques to the ever-increasing use of credit cards, debit cards and other forms of payment. This is how the system has progressed. It is again being studied by the Task Force on the Canadian Payments System, recently created by the Federal Minister of Finance (the “Task Force”). TD can provide the Tribunal with an informed perspective and valuable information as to the consequences of such a “backward step” upon Canada’s payments system, and upon the work and likely influence of the Task Force.

28. In addition, the recent publication by the Federal Minister of Finance of the Voluntary Code of Conduct for the Credit Card and Debit Card Industry in Canada (the “Voluntary Code of Conduct”) is important. It is a significant development for merchants, as it addresses issues of non-transparent billing and marketing practices. It is too early to judge its success; its effect will only be recognized over time. This important development should be allowed to have its effect. The Commissioner’s Application is premature.

29. TD is one of the most significant operators in all sectors of Canada’s payments system. The Tribunal ought not to consider the issues in this proceeding without the more complete context of their role and overall effect on Canada’s payments system. Neither the Commissioner nor the Respondents can inform and advise the Tribunal drawing on direct experience in and with Canada’s entire payments system. TD can and will provide this fundamental and very important perspective.

(iii) *Allegations Against TD*

30. The Notice of Application issued by the Commissioner contains allegations directly against Acquirers (which, of course, includes TD) such as the following:

- para. 12 – that Acquirers “impose and enforce” the alleged Merchant Restraints upon merchants on behalf of Visa and MasterCard;
- para. 47 – that an Acquirer is required “to impose the same restrictions on competition with respect to Card Acceptance Fees as are prescribed” by Visa or MasterCard;
- para. 48 – that the alleged Merchant Restraints (as enforced by an Acquirer such as TD) significantly reduce or eliminate any incentive for Issuers to offer lower Interchange Fees;
- para. 58 – that an Acquirer’s agreements with its merchant customers prohibit those merchant customers “from taking any effective action that would foster competition with respect to Card Acceptance Fees”.

These are allegations of anti-competitive conduct. TD must be entitled to defend itself and respond to such allegations to protect its reputation as one of Canada’s leading Canadian chartered banks, and to protect its business interests.

31. Both the alleged “Merchant Restraints” and the Remedies sought by the Commissioner are vaguely defined and leave open the prospect that they will be altered, redefined, or added to as the matter proceeds. That is:

- (a) “Merchant Restraints” are defined in paragraph 3 of the Application as “agreements or arrangements imposing significant restrictions on the terms upon which credit card network services may be supplied to merchants ...”.

This is a vague definition. It is open-ended as to the terms of the agreements or arrangements complained of, the significant restrictions complained of, and the effect thereof;

- (b) even where particulars are provided with respect to the Merchant Restraints, as, for example, in paragraphs 53 – 56 of the Application, the definition remains non-exhaustive and leaves open the prospect of further complaints and additional allegations by the Commissioner;
- (c) similarly, the Remedies sought are broadly worded, with few particulars. In addition, a further order or orders is sought in the following terms:

“All other orders or remedies that may be required to give effect to the foregoing prohibitions, or to reflect the intent of the Tribunal and its disposition of this matter ...”. (para. 95(c))

32. Serious allegations of anticompetitive conduct in the operation of two of its significant lines of business are made against TD in this proceeding. While somewhat particularized, the allegations remain open-ended. The remedies sought are also open-ended and not completely identified. It is submitted that TD ought to be entitled to a hearing, to respond to the serious allegations made with respect to the conduct of its businesses, and to influence with its voice the remedies which the Commissioner seeks from the Tribunal.

(iv) *Section 76 of the Competition Act*

33. TD takes issue with the Commissioner’s reliance upon s. 76 of the *Competition Act*. TD submits that s. 76 of the *Competition Act* has no application and cannot form the legal basis for the remedies sought by the Commissioner, or for any other relief in this proceeding. For example:

- (a) TD does not resell to anyone any product or services from either Visa or MasterCard to TD's cardholders and merchant customers;
- (b) rather, TD as Issuer provides to its cardholder customers different products and services than TD as Acquirer provides to its merchant customers (and vice-versa). In either or both capacities, TD provides different products and services than are provided by Visa and/or MasterCard;
- (c) in any event, the Visa Rules (and the MasterCard Rules) do not influence upward or discourage the reduction of prices or fees paid to TD by its merchant customers;
- (d) in contrast, the relief requested by the Commissioner with respect to the no-surcharge rule will, by definition, lead to increases in prices to cardholders;
- (e) thus, the Visa Rules and the MasterCard Rules facilitate and promote the proper, efficient and effective operation of the credit card networks, to the advantage of both cardholders and merchants.

34. In sum, TD submits that s. 76 of the *Competition Act* has no application to this proceeding. Far from having an adverse effect on competition, the rules and protocols under which the credit card networks function are pro-competitive. TD supports the positions of Visa and MasterCard with respect to the inapplicability of s. 76.

D. Summary

35. This is a significant proceeding raising important issues with respect to the operation of Canada's credit card businesses and stands to impact the operation of Canada's entire payments system. Uniquely, (with the noted exception of Desjardins) TD carries on business directly within the credit card business as both an Issuer and an Acquirer. No other entity does

so. In those businesses, TD has direct, daily contact with cardholder customers and merchant customers, both of which groups will be immediately impacted by these proceedings. TD can provide information, evidence and advice not only from its dual perspective as an Issuer and Acquirer, but from the perspective of its cardholder customers and merchant customers.

36. TD is a leading Canadian operator of these businesses. The Tribunal needs and ought to have the information, evidence, advice and perspective of this significant operator within Canada's credit card industry and, equally important, within Canada's overall payments system. The Tribunal must fully understand how these businesses work, aided by direct input from one of the most important operators in the affected financial sectors.

37. TD requests that the Tribunal grant it leave to intervene in these proceedings accordingly.

E. Criteria for Intervention

38. TD satisfies all of the criteria for the granting of intervenor status. In particular:

- (a) The matters that affect TD are within the scope of the Tribunal's consideration of this matter and are relevant to the Tribunal's mandate to hear and determine the issues in this proceeding.
- (b) TD is directly affected by the issues raised in this proceeding and the remedies sought by the Commissioner.
- (c) The representations to be made by TD are relevant to the issues raised by the Commissioner in this proceeding.
- (d) TD brings to this proceeding a unique and distinct perspective that will assist the Tribunal in deciding the issues before it.

39. A request for Intervenor status is to be determined “in accordance with fairness and fundamental justice ...”. As expressed by Justice Iacobucci in the *American Airlines* case:

“Fairness is a relevant consideration because sub-section 9(2) of the *Competition Tribunal Act* expressly requires that proceedings before the Tribunal be dealt with as informally and expeditiously as the circumstances and fairness allow. ... If a wider role for intervenors does lead to longer or more complex proceedings before the Tribunal, surely that is a necessary price to pay in the interest of fairness, which is expressly required under sub-section 9(2).”¹

Fairness and fundamental justice to TD require that its Motion for Intervenor status be granted. Its role in the issues presented to the Tribunal by the Commissioner’s Application, its unique and distinct perspective thereon, and the direct effect and competitive consequences upon it if the remedies sought are granted, all compel the granting of Intervenor status.

F. Party Whose Position TD Intends to Support

40. Based on the limited material filed with the Tribunal to date, TD intends generally to support the position of the Respondents in this Application.

G. Official Language to be Used by TD

41. TD requests that the hearing of this Request for Leave to Intervene and, if leave be granted, the proceedings relating to this Application be in the English language.

H. Manner in Which TD Proposes to Participate in the Proceedings

42. TD requests leave to intervene to participate in the proceedings with respect to any issues that touch upon or relate to either or both of its status as an Issuer of credit cards and as an Acquirer of credit card transactions, and to participate with respect to any remedies sought that affect TD as an Issuer or as an Acquirer, on the following terms:

¹ *American Airlines Inc. v. Competition Tribunal*, [1989] 2 F.C. 88, at 99 (F.C.A.); Aff’d. (sub nom *Air Canada v. American Airlines Inc.*), [1989] 1 S.C.R. 236.

- (a) That TD be permitted access to and to review discovery transcripts and documentary productions, subject to any confidentiality orders.
- (b) That TD be permitted to call *viva voce* evidence with respect to any issues affecting it or remedies sought that may affect it.
- (c) That TD be permitted to cross-examine witnesses at the hearing of this Application to the extent not repetitive of the cross-examination of parties to the Application.
- (d) That TD be permitted to submit arguments at the hearing of the Application and at any pre-hearing motions or pre-hearing case conferences.
- (e) That TD be permitted to introduce expert evidence within the scope of its intervention;
- (f) and in such further and other manner as TD may request of the Tribunal and the Tribunal may grant.

43. If leave to intervene is granted, TD undertakes to conduct and coordinate its intervention so as not to be repetitive or duplicative of the representations of the parties to this proceeding or of other intervenors to whom leave may be granted.

44. If leave to intervene is granted, TD states that it would not seek costs, and requests that it not be made liable for the costs of any party or other intervenor.

45. TD undertakes to comply with the Rules of the Competition Tribunal and with any directions of the Tribunal with respect to the conduct of this proceeding.

46. TD reserves its right to request further terms with respect to its intervention as it may be advised and as the Tribunal may permit as the matter proceeds.

I. **Hearing Requested**

47. TD requests that a hearing be held to determine its Motion for Leave to Intervene.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

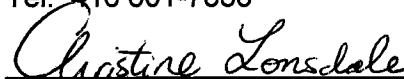
DATED at Toronto, Ontario, this 10th day of February, 2011.



F. Paul Morrison
Tel: 416 601-7887



Glen G. MacArthur
Tel: 416 601-7888



Christine Lonsdale
Tel: 416 601-8019

McCarthy Tétrault LLP
Suite 5300, P.O. Box 48
Toronto Dominion Bank Tower
Toronto-Dominion Centre
Toronto, ON M5K 1E6

Of Counsel for The Toronto-Dominion Bank

TO: Kent E. Thompson / Adam Fanaki
Davies Ward Phillips & Vineberg LLP
1 First Canadian Place, 44th Floor
Toronto ON M5X 1B1

Tel: 416 863-0900
Fax: 416 863-0871

Of Counsel for the Applicant the
Commissioner of Competition

AND TO: Jeffrey B. Simpson / David W. Kent /
James B. Musgrove
McMillan LLP
Brookfield Place, Suite 4400
181 Bay Street
Toronto ON M5J 2T3

Tel: 416 865-7000
Fax: 416 865-7048

Of Counsel for the Respondent
MasterCard International Incorporated

AND TO: Robert Kwinter / Randall Hofley /
Navin Joneja
Blake, Cassels & Graydon LLP
Box 25, Commerce Court West
199 Bay Street
Toronto ON M5L 1A9

Tel: 416 863-3283
Fax: 416 863-2653

Of Counsel for the Respondent Visa
Canada Corporation

AND TO: The Registrar
The Competition Tribunal
Thomas D'Arcy McGee Building
600 – 90 Sparks Street
Ottawa ON K1P 5B4

Tel: 613 957-7851
Fax: 613 952-1123

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.

B E T W E E N:**THE COMMISSIONER OF COMPETITION**

Applicant

**VISA CANADA CORPORATION AND
MASTERCARD INTERNATIONAL INCORPORATED**

Respondents

THE TORONTO-DOMINION BANK

Applicant for Leave to Intervene

**MOTION FOR LEAVE TO INTERVENE
OF THE TORONTO-DOMINION BANK**

McCarthy Tétrault LLP
Suite 5300, P.O. Box 48
Toronto Dominion Bank Tower
Toronto, ON M5K 1E6

F. Paul Morrison
Tel: 416 601-7887

Glen G. MacArthur
Tel: 416 601-7888

Christine Lonsdale
Tel: 416 601-8019

Of Counsel for The Toronto-Dominion Bank
#10039615