

Competition Tribunal



Tribunal de la Concurrence

Reference: *B-Filer Inc. v. The Bank of Nova Scotia*, 2006 Comp. Trib. 28
File No.: CT-2005-006
Registry Document No.: 0104

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

AND IN THE MATTER OF an application by B-Filer Inc., B-Filer Inc. doing business as GPAY GuaranteedPayment and Npay Inc. for an order pursuant to section 75 of the *Competition Act*.

B E T W E E N :

**B-Filer Inc., B-Filer Inc. doing business as
GPAY GuaranteedPayment and Npay Inc.**
(applicants)

and

The Bank of Nova Scotia
(respondent)



Hearing by Conference Call: 15062006
Judicial Member: Simpson J. (Chairperson)
Date of Order: June 16, 2006
Order signed by: Madam Justice Sandra J. Simpson

**SCHEDULING ORDER FOLLOWING A CASE MANAGEMENT
TELECONFERENCE HELD JUNE 15, 2006**

BACKGROUND

[1] The parties have agreed to divide the time allotted for the hearing as follows: of a total of 95 hours, 5 hours will be set aside for Tribunal interventions, and the remaining hours will be divided equally between the parties, giving each 45 hours.

[2] The Applicants have completed the discovery of the respondent, subject to refusals, further questions following the receipt of answers to undertakings, and the content of the Response. The Respondent will examine the Applicants' witness (Mr. Grace) on June 27 and 28, 2006.

[3] The parties have exchanged affidavits of documents and the Applicants expect to provide the Respondent with their complete set of documents by early in the week of June 19, 2006. The Applicants have all the Respondent's documents.

[4] Counsel for the Applicants indicated that three motions are anticipated: a) a motion to strike in connection with one of the Respondent's expert reports (the Challenged Report); b) a motion concerning the degree of confidentiality to be attached to certain documents; c) a motion concerning refusals on discovery.

[5] The parties agreed to stagger the service of the expert reports, and suggested the timeline for their exchange. The parties also agreed that with the exception of the Challenged Report, expert reports will be filed with the Tribunal when they are served, to enable the Tribunal to read them in advance of the hearing.

[6] Counsel undertook to consider the preparation of a statement of agreed facts dealing with matters such as:

- The opening of B-Filer accounts and the activity in those accounts.
- A description (i.e. the step-by-step procedures used) of B-Filer's bill paying services for Scotiabank customers and customers of other banks.
- A step-by-step description of Interac Online's bill paying services

The Tribunal will be asking counsel to address their progress on this topic at the motion on August 8, 2006.

[7] **ACCORDINGLY, WITH THE CONSENT OF COUNSEL FOR BOTH PARTIES, THE TRIBUNAL ORDERS THAT:**

Hearing Time

[i] Each party will have a total of 45 hours in which to present its evidence and submissions.

Expert Reports and Will-Say Statements

[ii] The Applicants shall serve their Expert Report(s) on economic matters and will-say statements which identify their lay witnesses on or before Monday, July 10, 2006, and shall file those Report(s) with the Tribunal on that date;

[iii] The Respondent shall serve its responding Expert Report(s) on economic matters and its Expert Report(s) on matters raised in defence, as well as will-say statements which identify its lay witnesses on or before Thursday, July 27, 2006, with the exception of the Challenged Report, those reports shall be filed with the Tribunal on that date;

[iv] The Applicants shall serve any reply Expert Report(s) on economic matters and any responding Expert Report(s) on the matters raised in defence, as well as any reply will-say statements, on or before Monday, August 14, 2006. Those reports shall also be filed with the Tribunal on that date;

[v] The Respondent shall serve any reply Expert Report(s) on the matters raised in defence by Wednesday, August 23, 2006 and file those reports with the Tribunal on that date.

Production and Discovery

[vi] The Applicants will complete their production of documents by Thursday, June 22, 2006.

[vii] Both parties will complete examinations for discovery including any re-attendances by Friday, July 28, 2006.

Confidentiality Order

[viii] The parties shall serve and file a revised draft confidentiality order on or before Friday, June 30, 2006.

Motions

[ix] The Tribunal will hear any motions arising from examinations for discovery on Monday, July 17, 2006. The Tribunal will decide at a later date whether this motion will be heard in person or by phone.

[x] The Tribunal will hear a motion concerning the admissibility of the Challenged Report and, if necessary, a motion concerning confidentiality on Tuesday, August 8, 2006, starting at 10 a.m., in the hearing room of the Competition Tribunal.

Pleadings

[xi] The Respondent shall serve and file its Response to the section 75 Application on or before Thursday, June 22, 2006.

[xii] The Applicants shall serve and file their Reply, if any, on or before Friday, June 30, 2006.

Documents for the Hearing

[xiii] Both parties shall provide to the Registry all documents to be relied on at the hearing, in electronic form, on or before August 22, 2006.

DATED at Ottawa, this 16th day of June, 2006.

SIGNED on behalf of the Tribunal by the Chairperson of the Tribunal.

(s) Sandra J. Simpson

APPEARANCES :

For the Applicants B-Filer Inc., B-Filer Inc. doing business as GPAY
GuaranteedPayment and Npay Inc.:

Mr. Michael Osborne
Ms. Sharon Dalton
Ms. Jennifer Cantwell

For the Respondent Bank of Nova Scotia:

Mr. F. Paul Morrison
Ms. Lisa M. Constantine
Mr. Glen G. MacArthur