



Reference: *Bank of Montreal et al. v. Commissioner of Competition*, 2005 Comp. Trib. 22

File no.: CT-1995-002

Registry document no.: 0132a

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

IN THE MATTER OF an application by the Commissioner of Competition under sections 79 and 105 of the *Competition Act*, R.S.C. 1985, c.C-34, as amended;

IN THE MATTER OF an abuse of dominant position in the supply of shared electronic network services for consumer-initiated shared electronic financial services;

IN THE MATTER OF a Consent Order granted by the Competition Tribunal dated June 20, 1996, varied on March 25, 1998, further varied on September 8, 2000 and varied and restated as a consent agreement on January 10, 2003.

AND IN THE MATTER OF an application by Bank of Montreal, *et al.*, under sections 105 and 106(1)(b) of the *Competition Act*, R.S.C. 1985, c.C-34, as amended, to vary on consent the Amended Consent Agreement made by the Competition Tribunal on January 10, 2003.

B E T W E E N:

Bank of Montreal
The Bank of Nova Scotia
Canada Trustco Mortgage Company
Canadian Imperial Bank of Commerce
La Confédération des caisses populaires et
d'économie Desjardins du Quebec
Credit Union Central of Canada
National Bank of Canada
Royal Bank of Canada
The Toronto-Dominion Bank
Interac Inc.
(applicants)

and

The Commissioner of Competition
(respondent)



Date of teleconference call: Monday, June 13, 2005

Members: Lemieux J., (presiding), Lucille Riedle and Lilla Csorgo

Date of Order: Thursday, June 16, 2005

Order signed by: Mr. Justice François Lemieux, Lucille Riedle and Lilla Csorgo

ORDER VARYING ON CONSENT THE JUNE 20, 1996 ORDER

[1] **FURTHER TO** the application of the Commissioner of Competition (the "Commissioner") pursuant to sections 79 and 105 of the *Competition Act*, R.S.C. 1985, c. C-34, (the "Act") and further to the notice of application dated December 14, 1995 for a consent order directing the respondents to cease engaging in certain anti-competitive acts associated with the supply of shared electronic services for shared electronic financial services and other remedies specified in the draft Amended Consent Agreement;

[2] **AND FURTHER TO** the application of the Bank of Montreal *et al.* pursuant to sections 105 and 106(b) of the Act for an order further varying the Consent Order granted by this Tribunal on June 20, 1996, initially varied on March 25, 1998, further varied on September 8, 2000 and further varied on January 10, 2003 and restated as an Amended Consent Agreement;

[3] **AND CONSIDERING** the notice of application, the statement of grounds and material facts, the affidavit of Kirkland Morris, and the consent of the parties filed herein;

[4] **AND ON CONSIDERING** the submissions of counsel:

THE TRIBUNAL ORDERS THAT:

[5] The Consent Order shall be further varied as follows:

1. The following definitions shall be added to paragraph 1 of the amended consent agreement:

"Annual Fee" means an annual fee described in paragraph 3(m.1).

"Incremental Costs" means the increase in Interac's ongoing costs that would result from providing the basic bundle of services required by an additional member in a Shared Service, irrespective of the volume of transactions processed by the member.

"Material Change" for the purposes of paragraph 3(m.1), means any change that requires certification, inter-member testing or other non-trivial administrative activity by the Association or other DCs.

2. Paragraph 3(m) of the amended consent agreement is revoked and the following substituted therefore:

(m) the provisions of the by-laws imposing service access fees shall be revoked. Subject to any other provision in this Amended Consent Agreement, Interac's revenue shall be derived entirely from switch fees except where non-switch fee revenue would have no material negative effect on any market. Interac shall provide the Commissioner with at least 30 days advanced notice of any new non-switch fee revenue. Interac and the DC members of the Shared Services may recover any direct and identifiable administrative or certification costs incurred during the course of admitting a new member into the services or when accommodating an existing member following a material change in a member's system.

3. The following paragraphs shall be added to the amended consent agreement as paragraphs 3(m.1) to (m.4):

3 (m.1) Interac may require a member to pay a reasonable Annual Fee that only recovers the Incremental Costs associated with the membership class to which the member belongs. For the purposes of this paragraph and notwithstanding paragraph 3(f), all direct connectors may be treated as a single class.

(m.2) Any switch fees paid by a member in the year covered by the Annual Fee must be applied against the Annual Fee. A Connection Service Provider shall be permitted to credit switch fees from every indirect connector that connects behind it towards the Annual Fee, but only for switch fees that exceed the value of the Annual Fee for the indirect connector.

(m.3) Any change in the Annual Fee is a fundamental change. In addition, any change in the Annual Fee that exceeds the cumulative change in the Consumer Price Index (measured from the last change in the Annual Fee) must be approved by a majority of the board representatives that are not appointed by the Respondents.

(m.4) Written notice shall be provided to the Commissioner of any increase to the Annual Fee within 30 days of its approval.

4. The following paragraph of the amended consent agreement shall be added as paragraph 7.1:

(7.1) The Respondents shall cause Interac and Interac Inc. to provide the Commissioner on request on a timely basis the current amount of the Annual Fee, a description of the underlying costs that factor into the Annual Fee, and supporting documentation explaining the estimation of those costs.

DATED at Ottawa, this 16th day of June, 2005.

SIGNED on behalf of the Tribunal by the members.

(s) François Lemieux

(s) Lucille Riedle

(s) Lilla Csorgo

APPEARANCES

For the applicants:

Bank of Montreal
The Bank of Nova Scotia
Canada Trustco Mortgage Company
Canadian Imperial Bank of Commerce
La Confédération des caisses populaires et
d'économie Desjardins du Québec
Credit Union Central of Canada
National Bank of Canada
Royal Bank of Canada
The Toronto-Dominion Bank
Interac Inc.

Mark J. Nicholson

For the respondent:

Commissioner of Competition

Josephine A.L. Palumbo