

SCHEDULE "A"

THE COMPETITION TRIBUNAL

CT-95-02

IN THE MATTER OF an application by the Commissioner of Competition under section 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 or consent the Amended Consent Agreement made by the Competition Tribunal on January 10, 2003.

B E T W E E N :

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE FILED / PRODUIT May 18, 2005 CT-1995-002 Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 0128b

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.

Applicants

- and -

The Commissioner of Competition

Respondent

**STATEMENT OF GROUNDS AND
 MATERIAL FACTS**

I. STATEMENT OF GROUNDS

1. The requested variation has no negative effect on competition in any relevant market identified in the original Statement of Grounds and Material Facts filed December 14, 1995 and raises no competitive concerns in any other relevant market.

2. The requested variation avoids the inequities caused by cross-subsidization of certain members under the existing user pay fee structure, by implementing a minimum annual fee.

II. MATERIAL FACTS

3. The Applicants allege the following material facts of the basis for this application. The Commissioner of Competition (the "Commissioner") does not contest these facts for the purpose of this application and for any proceeding relating to the Amended Consent Agreement, as varied by this application.

A. THE PARTIES

4. The Commissioner is the authorized official appointed under section 7 of the *Competition Act* (the "Act") and is charged with administration of the Act.

5. The Respondents Bank of Montreal, having its head office at 129 St. Jacques Street, Montreal, Quebec, H2Y 1L6; The Bank of Nova Scotia, having its head office at 1709 Hollis Street, P.O. Box 2146, Halifax, Nova Scotia, B3J 1M1; Canadian Imperial Bank of Commerce, having its head office at Commerce Court, Toronto, Ontario M5L 1A2; National Bank of Canada, having its head office at 600 de la Gauchetière W., Montréal, Quebec, H3B 4L2; Royal Bank of Canada, having its head office at 1 Place Ville Marie, P.O. Box 6001, Montréal, Quebec, H3C 3A9; and

The Toronto-Dominion Bank, having its head office at Toronto-Dominion Centre, P.O. Box 1, Toronto, Ontario, M5K 1A2; are banks incorporated under and governed by the *Bank Act*, S.C. 1991, c. 46.

6. The Respondent, Canada Trustco Mortgage Company, having its head office at 275 Dundas Street, London, Ontario, M6B 3L1, is a loan company continued under the Loan Companies Act, R.S.C. 1985, c. L-12 and is subject to the provisions of the *Trust and Loan Companies Act*, S.C. 1991, c. 45.

7. La Fédération des caisses Desjardin du Québec ("Desjardins Group") is the successor to the Respondent, La Confédération des caisses populaires et d'économie Desjardins de Québec. Desjardin Group has its head office at 100 Ave des Commandeurs, Lévis, Québec, G6V 7N5 and is a cooperative continued under la Loi sur les caisses d'épargne et de credit, R.S.Q. c. C-4, 1;S.Q. 1988, c. 64.

8. The Respondent, Credit Union Central of Canada, formerly the Canadian Co-operative Credit Society Limited and having its head office at 300 The East Mall, Toronto, Ontario, M9B 6B7, is an association within the meaning of the *Cooperative Credit Associations Act*, S.C. 1991, c. 48.

9. The Respondent, Interac Inc., having its head office at 121 King Street West, Suite 1905, P.O. Box 109, Toronto, Ontario, M5H 3T9, is a corporation continued pursuant to the laws of Ontario.

10. Two versions of the IMN software are now owned by Acxsys Corporation ("Acxsys"), an affiliate of Interac Inc. Acxsys and Interac Inc. have common shareholders, which are the other Respondents. A third version of the IMN software

is owned by Oasis Technologies Ltd. ("Oasis"). Acxsys and Oasis have each granted Interac Inc. a master license for the IMN for shared electronic financial services in Canada. Interac Inc. in turn sub-licenses members of the Interac Association for use of the IMN in connection with any Service in the Association. Interac Inc. also owns the *Interac* trademarks used by the Interac Association in connection with the Shared Services, and licenses those trademarks on a royalty-free basis to the members of the Interac Association.

B. THE INTERAC ASSOCIATION

11. The Association is a dynamic enterprise. Since the Consent Order (now the Amended Consent Agreement) was entered into in June of 1996, there have been dramatic changes both in the membership of the Association and in the market place in which the members compete. Once comprised solely of large financial institutions, today the membership includes non-financial institutions as well as community-based credit unions. This diversity results in members taking part in the Association's shared services to varying degrees. However, the Association must provide a common bundle of core services to all members, regardless of transaction volumes.

12. The Amended Consent Agreement requires the Interac Association (the "Association") to recover its costs by charging per transaction switch fees.

13. Certain members are very small. These members have a small volume of transactions, such that the switch fees that they pay do not cover the common bundle of core services that they consume. Consequently, their membership in the Association is being subsidized by their competitors.

14. The Amended Consent Agreement also provides that the Association and its members may recover any direct administration and certification costs incurred by a new member to connect to the IMN. However, it does not permit recovery of the same kinds of costs from an existing member that fundamentally changes its system. Thus, these members are currently permitted to externalize these costs and be subsidized by their competitors.

15. See the Affidavit of Kirkland Morris to the Notice of Application, which is attached as Schedule "B" dated April 27, 2005, for further material facts on these points.

C. THE NEED FOR THE REQUESTED VARIATION

16. The material facts on these points are set out in the Affidavit of Kirkland Morris, which is attached as Schedule "B".

III RELIEF SOUGHT

17. The Applicants request that the Amended Consent Agreement be varied in accordance with the terms of the draft consent variation order, attached to the Notice of Application as Schedule "C".

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STATEMENT OF GROUNDS AND MATERIAL FACTS

Mark J. Nicholson

Cassels Brock & Blackwell LLP

2100 Scotia Plaza
40 King Street West
Toronto, Ontario M5H 3C2

Phone: 416.860.6513

Fax: 416.642.7168

Counsel for the Applicants