

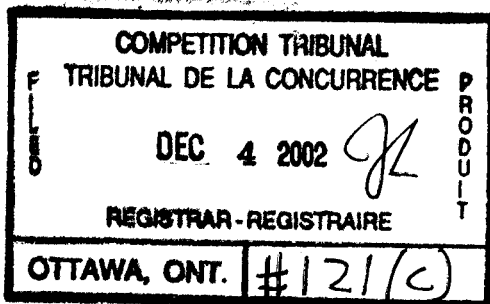
APPENDIX 1

AMENDED CONSENT AGREEMENT

BETWEEN:

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.

Respondents



- and -

The Commissioner of Competition

Applicant

WHEREAS the Competition Tribunal (the “Tribunal”) issued a Consent Order dated June 20, 1996 under sections 79 and 105 of the *Competition Act* (the “Act”), as varied on consent under sections 105 and 106(b) of the Act on March 25, 1998 and September 9, 2000 (the “Consent Order”);

AND WHEREAS the Tribunal issued a Consent Order under sections 105 and 106(1)(b) of the Act further varying the Consent Order and approving its restatement as an Amended Consent Agreement;

AND WHEREAS the parties have agreed to the terms of this Amended Consent Agreement;

NOW THEREFORE, the parties **AGREE** as follows:

Definitions

1. For the purposes of this Amended Consent Agreement, the following terms shall have the indicated meaning, except where the context otherwise requires:

"account" shall mean an account held by a financial institution from which funds are payable on instruction by a cardholder;

"acquirer" shall mean a member that obtains a request message from a cardholder for delivery to an issuer;

"affiliate" shall mean (a) in the case of a financial institution ("FI") other than the Confédération des caisses populaires et d'économie Desjardins du Québec ("Confédération") or the Credit Union Central of Canada ("CUCC"), an entity that is controlled by the FI or an entity that is controlled by the same person that controls the FI within the meaning of subsection 3(1) of the Bank Act, S.C. 1991, c. 46; (b) in the case of the Confédération or CUCC, an entity that is controlled by them; and (c) in the case of a non-financial institution, an affiliated body corporate within the meaning of subsections 2(2) and (3) of the Canada Business Corporations Act, R.S.C. 1985, c. C-44;

"Association rules" means the memorandum of association, the by-laws, the operating regulations and any policies adopted by the Interac board relating to the business and affairs of Interac;

"bilateral/multilateral service" shall mean a service that is certified by the senior management of Interac Inc. as meeting the eligibility criteria set out in paragraph 5(f) of this Amended Consent Agreement;

"board" shall mean the board of directors of Interac;

"by-laws" shall mean the by-laws of Interac;

"CANNET" shall mean network software, formerly known as the Visa Canada Authorization Network, for authorizing the use of certain credit cards and over which Interac shared cash dispensing service transactions are presently routed;

"card" shall mean any magnetically or otherwise encoded plastic financial service card;

"cardholder" shall mean a customer to whom a card has been issued by a financial institution;

"charter member" shall mean a financial institution which is directly connected to the Interac shared services, is a Canadian Payments Association ("CPA") member with the status of a direct clearer of the CPA and is a shareholder in Interac Inc. All the respondents other than Interac Inc. are the current charter members;

"Commissioner" shall mean the Commissioner of Competition appointed pursuant to section 7 of the Act;

"direct clearer" shall mean a Canadian Payments Association ("CPA") member that (a) meets the requirements of subsections 10.01 or 10.02 of the CPA Clearing By-law (No. 3); (b) settles for payment items drawn on or payable by it through a settlement

account at the Bank of Canada; and (c) is a participant at one or more of the regional settlement points prescribed by the CPA Clearing By-law (No. 3);

"direct connected financial institution" shall mean a financial institution which is directly connected to a shared service;

"direct connected non-financial institution" shall mean any commercial entity, other than a financial institution, which is directly connected to a shared service;

"direct connector" shall mean any commercial entity or financial institution using the inter-member network to communicate directly with other members for the purpose of accessing a shared service or a bilateral/multilateral service;

"financial institution" shall mean a corporation that is:

(a) carrying on, under the regulatory supervision of federal or provincial law, the business of providing financial services in Canada, including the receipt of deposits from the public that are transferable by items that are admissible for clearing by members of the Canadian Payments Association; or

(b) a central cooperative credit society or a federation of cooperative credit societies, as defined in the Canadian Payments Association Act, R.S.C. 1985, c. C-21;

"fundamental change" shall mean decisions of the board relating to security, minimum performance standards, use of the trademarks, Interac structure and membership criteria, board composition and voting rules, and fees (other than interchange fees as defined in the by-laws) that require the affirmative vote of two-thirds of the board's directors for enactment;

"indirect connector" shall mean any commercial entity or financial institution which must communicate with other members in an Interac shared service or bilateral/multilateral service through a direct connector;

"inter-member network" shall mean network software used to directly connect to the services (which includes the rights to use CANNET as long as the shared cash dispensing service uses CANNET);

"Interac" shall mean the Interac Association;

"issuer" shall mean any financial institution that issues cards that facilitate access to its accounts;

"member" shall mean a member of Interac;

"message" shall mean the electronic messages exchanged between members of a shared service, which are of two types:

- (a) the request message transmitted by an acquirer; and
- (b) the response message transmitted by an issuer;

"new shared service" shall mean a service that is certified by the senior management of Interac Inc. as meeting the eligibility criteria set out in paragraph 5(f) of this Amended Consent Agreement and that is adopted as a shared service by the board;

"operating regulations" shall mean the operating regulations of Interac;

"rebate" shall mean an amount paid to a cardholder by an acquirer in connection with the provision of a shared service;

"**service**" shall mean a shared service, a bilateral/multilateral service, or any combination of the two categories;

"**service access fee**" shall mean an entrance or initiation fee paid by prospective members for access to either of Interac's shared cash dispensing or direct payment services;

"**shared electronic financial services**" shall mean the shared services that allow cardholders on-line electronic access to accounts;

"**shared electronic network services**" shall mean the shared services required to enable network participants to provide cardholders with shared electronic financial services;

"**shared service**" shall mean the Interac shared cash dispensing service, the Interac direct payment service or any new shared service adopted by Interac;

"**shared service enhancement**" shall mean any improvement to the functionality, efficiency, or quality of service provided by one or more shared services;

"**surcharge**" shall mean a fee imposed by an acquirer on a cardholder for provision of a shared service;

"**switch fee**" shall mean an inter-member network ("IMN") user fee payable on a per message basis and calculated to recover the sum of:

- (a) the costs Interac incurs to deliver the services; and
- (b) the costs incurred by Interac Inc. in the development of the IMN, net of any service access fees collected to date ("IMN recoverable costs"). The IMN recoverable costs total \$16,859,000 and will be recovered over a ten-year amortization period;

"terminal" shall mean an automated banking machine, Interac direct payment terminal, or other device that, in conjunction with a card, provides a cardholder with access to a shared service; and

"trademarks" shall mean the Interac trademarks.

Application

2. The provisions of this Amended Consent Agreement shall apply to each of the respondents and to:

(a) each division in Canada, subsidiary in Canada, or other person in Canada controlled by any of them, and each officer, director, employee, agent or other person acting for or on behalf of any of them; and

(b) each of their successors and assigns, and all other persons in active concert or participation with any of them who have received actual notice of this Amended Consent Agreement.

Required Action -- Interac Charter Members

3. The charter members shall cause Interac to amend its memorandum of association and by-laws irrevocably to reflect the following:

Eligibility

(a) any requirement of the by-laws that a member must be a member of the Canadian Payments Association ("CPA") shall be revoked and replaced by a provision that Interac membership is open to all commercial entities, provided that the by-laws may continue to require an issuer to be a financial institution;

- (b) the board may adopt reasonable financial eligibility criteria, regulations and operating standards commensurate with the demonstrable risk associated with any member's participation in a service;
- (c) the board may adopt reasonable criteria and regulations governing set-up, establishment, testing and certification to directly connect to a service using the inter-member network ("IMN");
- (d) any requirement in the by-laws that a direct connector ("DC") to the Interac shared services must be a direct clearer in the CPA shall be revoked and replaced by a provision that any member may become a DC;
- (e) any requirement in the by-laws that eligibility for membership be conditional upon participation both as an issuer and an acquirer shall be revoked;

Membership/Governance

- (f) the by-laws shall be amended to establish three classes of members of the shared services: (i) direct connected financial institutions ("DCFI"); (ii) direct connected non-financial institutions ("DCNFI"); and (iii) indirect connectors in a shared service ("ICSS");
- (g) Interac shall be governed by the board which will be solely responsible for making all decisions relating to the administration and operation of the shared services;
- (h) members who participate in any bilateral/multilateral service shall be responsible for all material decisions regarding the governance and management of that service.

Participants in a bilateral/multilateral service may be required to be members and to abide by such by-laws and operating regulations as the board reasonably deems necessary to protect the security and technical operation of the IMN and the services utilizing it;

(i) the board shall be comprised of no fewer than 14 members, of whom no more than nine shall be appointed by DCFIs. At least two board members shall be appointed by DCNFIs and three shall be appointed by ICSSs. Notwithstanding the foregoing, the board's membership may be less than 14 during a transitional phase in which Interac membership is expected to expand. As a result, if during this phase there are fewer than two DCNFIs or three ICSSs, the required number of members of the board representing DCNFIs and ICSSs will be reduced accordingly;

(j) each class shall appoint its board representatives. The entitlement of each member of that class to appoint such a representative will be based on such member's annual volume of messages;

(k) no more than one board position may be filled by a representative of any one member or affiliate of that member. For the purpose of appointing directors, DCFIs and DCNFIs shall be treated as a single class, except for the appointment of nominees to the two board seats reserved for DCNFIs;

(l) the board shall decide all issues on the basis of one director - one vote. Decisions of the board regarding shared service enhancements, new shared services and interchange fees shall be subject to a simple majority vote. All other matters shall be decided as the board determines, except for matters involving a fundamental change, provided that no decision shall require more than a two-thirds majority;

Fees

(m) the provisions of the by-laws imposing service access fees shall be revoked.

Subject to paragraph 4, Interac's revenue shall be derived entirely from a switch fee.

Interac and the DC members of the shared services may recover any reasonable direct and identifiable administrative or certification costs incurred during the course of admitting a new member into the services;

(n) the switch fee may include a principal amount that represents, but shall not exceed, the current monetary value of the actual direct investment of the charter members in development of the IMN, net of any service access fees collected to date (the "IMN recoverable costs");

(o) the requirement of the by-laws prohibiting members from charging a surcharge to a cardholder of another member shall be revoked. Surcharging shall require express prior notification to the cardholder at the terminal. The board may determine what sort of express prior notification (e.g., signage, etc.) will be deemed acceptable;

Other

(p) no acquirer may impose surcharges for use of the shared services that discriminate among cardholders based on the identity of the issuer, except when the acquirer is also the issuer;

(q) no issuer may impose fees on cardholders for use of the shared services that discriminate based on the identity of the acquirer, except when the acquirer is also the issuer;

- (r) Interac shall deliver on request the information reasonably necessary to allow potential DCs to determine whether they are ready, willing and able to apply to Interac to become a DC member;
- (s) applicants that demonstrate that they are qualified for DC member status shall be provided with all necessary technical specifications and related information, upon execution of a commercially reasonable confidentiality agreement; and
- (t) the requirement of the by-laws which stipulates that "an account shall not be an Eligible Account if it permits, by way of so-called 'pass-through', 'sweep' or 'zero-balance' accounts or otherwise, access to accounts held by, or credit from, persons not Members in the Association", shall be revoked. Interac shall not impose any restriction or condition on access to the services based on a member financial institution's arrangements with its customers regarding the operation of accounts.

4. Notwithstanding section 3, the memorandum of association and by-laws of Interac may permit the development of policies which impose monetary penalties on members for non-compliance with the Association rules, provided that such policies:

- (a) do not discriminate among members; and
- (b) are rationally related to a legitimate business objective of Interac.

Required Action -- Interac Inc.

5. Interac Inc. and the respondent shareholders of Interac Inc. shall:

- (a) maintain Interac Inc. as a business corporation and continue to manage it on a not-for-profit basis. As a result, its board will be authorized to set any fees or charges

imposed for the use of the inter-member network ("IMN") in Canada for access to the services at an amount that only recovers Interac Inc.'s costs;

(b) subject to paragraph 5(f) of this Amended Consent Agreement, grant a commercially reasonable software license, without any license fee or royalty charge, authorizing members to be direct connectors and to allow them to connect indirect connectors through them for the provision of a service;

(c) amend the Interac Inc. shareholders' agreement to remove the provision that requires that, upon loss of charter member status, a shareholder must surrender its shares in Interac Inc. in exchange for C\$1.00;

(d) ensure that the IMN is fully capable of accommodating surcharges or rebates;

(e) provide a commercially reasonable trademark license without charge upon request to any member participating in the shared services that use the trademarks;

(f) direct the senior management of Interac Inc. to decide whether a proposed shared electronic financial service qualifies as either a bilateral/multilateral service or a new shared service. The proponents of a bilateral/multilateral service or of a new shared service must demonstrate, on the balance of the probabilities, to senior management that:

(i) the proposed service requires networked on-line electronic access to accounts for its commercial viability due to the lack of any reasonably competitive alternative means of access,

(ii) the proposed service is not a shared service offered by Interac at that time,
and

- (iii) adding the proposed service will not negatively impact in a material technical sense on any existing service which utilizes the IMN;
- (g) the decision of the senior management pursuant to paragraph 5(f) of this Amended Consent Agreement shall not be overturned by the board of Interac Inc. unless the board reasonably determines that senior management did not properly investigate the claims of the proposing commercial entity or entities. When the board makes this determination, it may only refer the matter back to senior management for further investigation and determination within a reasonably short period of time. The ultimate determination of Interac Inc.'s senior management may be the subject of arbitration as provided in the Arbitration Act, 1991, S.O. 1991, c. 17 (Ontario), with the loser of such arbitration required to pay all of the costs associated with the arbitration (including the cost of the arbitrator and the cost incurred by the winning side); and
- (h) require the providers of shared services and bilateral/multilateral services to become members of Interac and to pay all costs incurred by Interac Inc. to adapt the IMN to accommodate a new service.

General

6. The respondents, individually or acting in concert, shall not engage in any activity which has the purpose or effect of circumventing any provision of this Amended Consent Agreement either directly or indirectly.

7. The respondents shall cause Interac and Interac Inc. to provide the Commissioner on request on a timely basis with copies of material changes or amendments to the by-laws, operating regulations and material agreements of Interac and Interac Inc.

8. In the event of a dispute with respect to the interpretation and application of this Amended Consent Agreement, any party shall be at liberty to apply to the Competition Tribunal for an order interpreting any of the provisions of this Amended Consent Agreement.

9. When notice is required to be given pursuant to any of the terms of this Amended Consent Agreement, it shall be considered given if dispatched by registered letter to the persons listed in Schedule A appended to this Amended Consent Agreement.

SCHEDULE A

Commissioner of Competition

Competition Bureau

21st Floor

Place du Portage, Phase I

50 Victoria Street

Hull, Québec

K1A 0C9

Attn: Josephine A.L. Palumbo

Department of Justice

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Box 25, Commerce Court West

Toronto, Ontario

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Attention: Mark J. Nicholson

Bank of Montreal

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Attention: Senior Vice-President, Customer Service, Personal Commercial Financial Services

The Bank of Nova Scotia

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Toronto, Ontario

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Attention: Vice-President, Card Products & Marketing

Canada Trustco Mortgage Company

380 Wellington Street, 12th Floor

London, Ontario

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Attention: Assistant General Counsel

Canadian Imperial Bank of Commerce

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Commerce Court West, 4th Floor

Toronto, Ontario

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Attention: Vice-President - Personal & Commercial Bank

La Confédération des caisses populaires et d'économie Desjardins du Québec

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Attention: Vice-présidente, Gestion des produits et marchés

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Attention: Executive Vice-President, Electronic Services Development

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M5H 3A9

Attention: Assistant General Counsel, Legal Affairs

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Attention: Senior Vice President, Card Services

The Toronto-Dominion Bank

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Toronto Dominion Centre

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Attention: Senior Vice-President, Card and Direct Services

Interac Inc.

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Attention: President