

**SCHEDULE "C"**

**THE COMPETITION TRIBUNAL**

CT-95/02

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

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

**AND IN THE MATTER OF** a Consent Order granted by the Competition Tribunal dated June 20, 1996 and varied on March 25, 1998;

**AND IN THE MATTER OF** an application by Bank of Montreal, et al., under sections 105 and 106(b) of the *Competition Act*, R.S.C. 1985, c.C-34, as amended, to vary the Consent Order granted by the Competition Tribunal dated June 20, 1996 and varied on March 25, 1998.

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.**

Applicants

- and -

**The Commissioner of Competition**

Respondent

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**AFFIDAVIT OF FRED J. HARRIS**


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1. I am the Senior Vice-President, Service Delivery of the Interac Association (the “Association”) and as such have knowledge of the matters herein deposed, except where I indicate that matters are given on information and belief.


2. The Association continues to offer two Shared Services: Shared Cash Dispensing (“SCD”) and Interac Direct Payment (“IDP”).

3. SCD is a fairly mature service, with annual transaction volumes of approximately 364 million. Over the past four years, these volumes have grown at a modest but steady rate.


4. IDP is a relatively new service which has been experiencing phenomenal growth. In 1995, there were some 348.8 million IDP transactions in Canada. In 1999, the number was approximately 1.66 billion, and we forecast over 2 billion transactions in 2000. Thus, in five years the annual IDP transaction volume will have grown almost six fold.


5. I have attached the Association’s 1999 Annual Review as Appendix 1 to this affidavit. 

6. The business and affairs of the Association are managed by a 14 person board of directors (the “Board”). Eight directors are from institutions which were former Charter Members, 11 are Direct Connectors (8 DCFIs and 3 DCNFIs) and 3 are Indirect Connectors.

7. The Board operates under an Amended Memorandum of Association, (the “Memorandum”) made as of November 5, 1996, to which all Members are parties. The Memorandum confers the power on the Board to promulgate general by-laws, operating regulations and policies (collectively, “Association Rules”) in the best interests of the Association. A copy of the Memorandum is attached as Confidential Appendix 2. 

8. Under the Memorandum, all Members have agreed to comply with the Association Rules.

9. The Board has enacted a general by-law, entitled By-law Number 1, which establishes the broad framework for the operation of the Association. A copy of By-law Number 1 is attached as Confidential Appendix 3. 


10. The Board has also enacted the Operating Regulations, which contain detailed prescriptions for the operation of the Shared Services. A copy of the table of contents of the Operating Regulations is attached as Appendix 4. 

11. In addition, the Board has made a number of policies to deal with various issues that have emerged over time. Unless the policies are of a time-limited nature, they typically are incorporated into the Operating Regulations.


12. Although all Members are obligated under the Memorandum to comply with the Association Rules, the Board currently has limited tools to encourage compliance in a timely manner. The By-law simply provides that a non-complying Member may be disconnected from a Shared Service (see By-law, s. 2.5, 6.11).

13. It is my belief that disconnection (or even the threat of disconnection) is an extreme remedy which is justified only in extreme circumstances. Failure to comply with most of the Association Rules in a timely manner would not merit disconnection. Based on discussions at various Board meetings, I believe that the Board shares these views.

14. I believe that the Board requires the flexibility to impose monetary sanctions on Members for non-compliance with Association Rules, and that the limited experience in the Association with monetary sanctions supports my belief.

15. There is one area where the Board currently has the power to impose sanctions. Following the variation of the Consent Order on March 25, 1998, the Board gave effect to a Performance Sanctions Policy, which was subsequently incorporated in the Operating Regulations (a copy of the relevant portion of the Regulations is attached as Confidential Appendix 5). 

16. The Performance Sanctions Policy has had a significant positive impact on Member performance in the Shared Services, improving performance in IDP from excellent to truly outstanding. For example, in October 1998, the average issuer performance in IDP was 99.65%. By April 2000, this number had risen to 99.87%. In absolute numbers, this increase would amount annually to approximately 4.4 million more completed transactions. Effective October 1999, the policy was extended to SCD.

17. Association staff recently canvassed a number of major North American card networks to determine their practices with respect to monetary sanctions to enforce their rules. A summary of the results of this canvas is attached as Confidential Appendix 6. 

18. All of the networks contacted impose monetary sanctions for a broad range of prescribed activities.

19. On two occasions in the recent past, the Board has resorted to the threat of disconnection to promote timely compliance with required activities. Confidential Appendix 7 describes those two occasions. In each case, I believe that the imposition of monetary sanctions would have been more appropriate.

20. In the second instance, consideration was given to applying to the Tribunal for a specific variation similar in kind to the variation ordered on March 25, 1998. It was determined,

however, that the variation process was such that the issue would have been moot before the matter could have been determined.

21. At its meeting on February 15 , 2000, the Board unanimously resolved to instruct Association staff to take the necessary steps to secure the amendment requested in this Application. All but one of the DCNFI and IC board members were present at the meeting, and all those present voted in favour of the resolution. The IC board member that was not present at the meeting has not expressed any reservations about the adoption of the resolution.

22. As yet, neither the Board nor the Association management have given any consideration as to which Association Rules should attract monetary sanctions for non-compliance. A number of provisions spring readily to mind as possible candidates, including the following: security compliance and reporting, graphics standards violations, and compliance with service standards relating to branding or customer service.

23. I am informed and verily believe that the language of the Consent Order as currently drafted does not permit the Association to impose monetary sanctions. Sanctions paid by Members would constitute “revenue” for the Association, and under the Consent Order all Association “revenue” must be derived from a “switch fee”. “Switch Fee” is defined to mean actual delivery costs incurred by the Association plus historical development costs. The sanctions that would be imposed would be neither.

SWORN BEFORE ME at the City )  
of Toronto, in the Province of )  
Ontario, this day of )  
July, 2000. )

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Fred J. Harris

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A Commissioner, etc.

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Applicants

- and -

The Commissioner of Competition  
Respondent

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**AFFIDAVIT OF FRED J. HARRIS**  
**sworn July , 2000**

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