

SCHEDULE “D”

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 on consent the Consent Order granted by the Competition Tribunal on 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

CONSENT ORDER IMPACT STATEMENT

1. The basis for the original Consent Order was that the Applicants' actions had prevented or lessened competition substantially in two markets:

- (a) the market for the supply of shared electronic network services; and
- (b) the market for the provision of consumer-initiated shared electronic financial services.

2. The proposed amendment has no anti-competitive purpose or effect in either of these markets.

3. The proposed amendment is designated to allow the Board of the Interac Association to adopt objective, non-discriminatory policies which provide for monetary sanctions to be imposed on Members in circumstances where the Board wishes to provide incentives to promote desired and necessary conduct.

4. Under the Amended Memorandum of Association of the Interac Association (the "Memorandum"), Members have undertaken a contractual obligation to comply with the By-laws, Operating Regulations and policies of the Association (collectively, the "Association Rules"). The proposed amendment does not alter this obligation, and has no substantive effect on the Association Rules.

5. At present, the Memorandum gives the Board the power to disconnect Members for material non-compliance with the Association Rules. A disconnected Member cannot compete at all in the relevant markets. The proposed amendment permits the Board to adopt less draconian, more tailored measures which would be commensurate with the perceived harm flowing from non-compliance and which would not necessarily involve disconnection.

6. The language of the proposed amendment protects against the anti-competitive use of this power in a number of ways. First, the prohibition against discrimination means that no identifiable group of competitors can be targeted for disciplinary, punitive or exclusionary action by a majority of the Board.

7. Second, the requirement that the policy be rationally related to a legitimate business purpose of the Association means that a group of the Applicants could not jointly act in the interests of their own organizations, but would have to act in the best interests of the Association. Moreover, the Board would have to identify the business purpose which the policy furthered.

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CONSENT ORDER IMPACT STATEMENT

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