



CT-1995/002 – Doc #109a

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;

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 IN THE MATTER OF an application by Bank of Montreal et al. under section 105 and subsection 106(b) of the *Competition Act*, R.S.C. 1985, c. C-34, to vary the consent order dated June 20, 1996.

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 Québec
Credit Union Central of Canada
National Bank of Canada
Royal Bank of Canada
The Toronto-Dominion Bank
Interac Inc.

Applicants

- and -

The Director of Investigation and Research

Respondent



**ORDER VARYING ON CONSENT
THE JUNE 20, 1996 CONSENT ORDER**

Date of Hearing by Conference Call:

March 25, 1998

Members:

McKeown J. (presiding)
Noël J.
Mr. Lorne R. Bolton

Counsel 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
Marc-Andre Lacombe

Counsel for the Respondent:

Director of Investigation and Research

William J. Miller

COMPETITION TRIBUNAL
ORDER VARYING ON CONSENT
THE JUNE 20, 1996 CONSENT ORDER

Bank of Montreal et al.

v.

The Director of Investigation and Research

FURTHER TO the application of the Director of Investigation and Research ("Director") pursuant to sections 79 and 105 of the *Competition Act*¹ ("Act") and further to the consent order, dated June 20, 1996, directing the respondents to cease engaging in certain anti-competitive acts associated with the supply of shared electronic network services for shared electronic financial services and other remedies specified in the consent order;

AND FURTHER TO the application of the 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 and Interac Inc. (the "applicants") pursuant to section 105 and subsection 106(b) of the Act for an order varying the consent order dated June 20, 1996;

¹ R.S.C. 1985, c. C-34.

AND ON CONSIDERING the notice of application, the statement of grounds and material facts, the consent order impact statement, the affidavit of Fred J. Harris and the consent of the parties, filed;

AND ON CONSIDERING THAT the applicants and the Director have reached an agreement which is reflected in the draft consent order;

AND ON CONSIDERING the submissions of counsel;

THE TRIBUNAL ORDERS THAT:

1. The consent order dated June 20, 1996 shall be varied as follows:
 - (a) the following definitions shall be added to paragraph 1 of the consent order dated June 20, 1996:
 - (i) "failed transaction" shall mean a transaction which cannot be completed due to a technical fault on the part of the issuer;
 - (ii) "lost transaction" shall mean a transaction which cannot be completed due to a technical fault on the part of an acquirer;

(iii) "transaction" shall mean a series of messages passing between the issuer and the acquirer.

(b) paragraph 3(m) of the consent order dated June 20, 1996 shall be amended by adding the following underlined words:

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

...

(m) the provisions of the by-laws imposing service access fees shall be revoked. Subject to paragraph 3.1, 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;"

(c) a new paragraph 3.1 shall be added to the consent order dated June 20, 1996 and shall read as follows:

3.1. Notwithstanding paragraph 3, the memorandum of association and by-laws of Interac may permit the development of policies which impose monetary penalties on DC's with respect to failed or lost transactions, provided that such policies:

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

DATED at Toronto, this 25th day of March, 1998.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) W.P. McKeown
W.P. McKeown