

Reference: *B-Filer Inc. et al. v. The Bank of Nova Scotia*, 2006 Comp. Trib. 36
File No.: CT-2005-006
Registry Document No.: 0149

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF an application by B-Filer Inc., B-Filer Inc. doing business as GPAY GuaranteedPayment and Npay Inc. for an order pursuant to section 75 of the *Competition Act*.

B E T W E E N :

B-Filer Inc.,
B-Filer Inc. doing business as GPAY GuaranteedPayment and
Npay Inc.
(applicants)

and

The Bank of Nova Scotia
(respondent)

Decided on the basis of the written record
Presiding Judicial Member: Dawson J.
Date of Order: September 26, 2006
Order signed by: Madam Justice E. Dawson

**ORDER REGARDING RESPONDENT'S MOTION TO AMEND ITS RESPONSE TO
THE AMENDED NOTICE OF APPLICATION**

- [1] FURTHER TO the amended notice of application filed by the Applicants pursuant to section 75 of the *Competition Act*, R.S.C. 1985, c. C-34;
- [2] AND FURTHER TO the written submissions of the Applicants asking the Tribunal to issue an order declaring that the affidavit of Mr. David Stewart is inadmissible on the basis that it is not relevant to an issue pleaded in the response filed by the Respondent;
- [3] AND FURTHER TO the motion of the Respondent to amend its response to the amended notice of application to plead (1) a breach of U.S. law by the Applicants and (2) that the Applicants are making an undisclosed profit on currency exchange;
- [4] AND FURTHER TO the discussion with counsel for the Applicants and the Respondent during which they indicated that they do not wish to make oral submissions on the motion;
- [5] AND UPON reading the written submissions filed on behalf of the Applicants and the Respondent and the affidavit of Ms. Patti Ground;
- [6] AND UPON determining, for reasons to be delivered with the final reasons, that the Respondent's motion to amend its response to the amended notice of application should be allowed;

THE TRIBUNAL ORDERS THAT :

- [7] The Respondent is granted leave to amend its response to the amended notice of application in two respects as set out in paragraphs 19 and 21 of the proposed amended response attached as Schedule A to the Respondent's notice of motion;
- [8] The evidence of Mr. David Stewart, as set out in his affidavit sworn on August 2, 2006, will therefore be relevant to an issue pleaded in the proposed amended response;
- [9] The decision as to costs is reserved until the Tribunal generally addresses the issue of costs.

DATED at Ottawa, this 26th day of September, 2006.

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

(s) Eleanor R. Dawson

COUNSEL:

For the applicants:

B-Filer Inc.,
B-Filer Inc. doing business as GPAY GuaranteedPayment
and Npay Inc.

Michael Osborne
Sharon Dalton
Jennifer Cantwell

For the respondent:

The Bank of Nova Scotia

F. Paul Morrison
Lisa M. Constantine