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Chair

The Honourable Michael Chong

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• (1530)

[English]

The Vice-Chair (Mr. Anthony Rota (Nipissing—Timiskaming, Lib.)): Good afternoon. Welcome to the Standing Committee on Industry, Science and Technology, meeting number 44. Pursuant to Standing Order 108(2), we are studying credit card interchange fees and debit payment system in Canada.

We have two witnesses here today. From the Competition Bureau, I'd like to welcome Richard Taylor, deputy commissioner of competition, and Martine Dagenais, assistant deputy commissioner of competition.

You both have 10 minutes to make a presentation, and that will be followed by a number of questions. Who would like to start?

Mr. Taylor, please go ahead.

Mr. Richard Taylor (Deputy Commissioner of Competition, Civil Matters Branch, Competition Bureau): Thank you, Mr. Chairman and members of the committee, for inviting the Competition Bureau to take part in the committee's hearings on credit and debit card issues.

My name is Richard Taylor and I am deputy commissioner of civil matters branch at the Competition Bureau. Joining me today is Martine Dagenais, the assistant deputy commissioner of civil matters branch.

[Translation]

I would like to begin with a few words about the Competition Act and our role at the bureau.

Competition is a valuable and creative force in our economy. It can foster innovation and lower prices, it can increase efficiency and can allow for greater consumer choice. Through the Competition Act, Parliament has identified and prohibited a number of activities that undermine a competitive marketplace. The Competition Bureau is an independent law enforcement agency that is responsible for administering and enforcing the Competition Act.

[English]

Among other things, the act prohibits anti-competitive practices such as price fixing, abuse of dominance, and deceptive marketing practices that are likely to have a significant negative effect on competition. The act also gives the bureau the mandate to review mergers to determine whether they would result in a substantial lessening or prevention of competition and to take action if we conclude they do so.

As a statute of general application, the Competition Act does not regulate individual transactions between buyers and sellers. Rather, the act seeks to develop and maintain the conditions necessary for a competitive marketplace. It is important to note that under the act businesses are generally free to set their own prices at a level the market will bear. For the bureau, high prices or fees are a concern only when they are the result of a contravention of the act, such as price fixing or abuse of dominance. In the case of abuse of dominance, the courts have confined the law to prohibit only those anti-competitive acts by a dominant firm or firms that are designed to exclude competitors and lessen competition significantly in a given market.

[Translation]

I want to stress that the bureau takes very seriously the possibility of any contravention of the Competition Act. We do not hesitate to take action when warranted. Recently, we negotiated the divestiture of 104 retail gasoline stations in southern Ontario to resolve our concern that, in the absence of such a divestiture, the Suncor/PetroCan merger would have resulted in a substantial lessening of competition, meaning higher prices for consumers at the pump.

• (1535)

[English]

In a separate matter, there have been a number of guilty pleas and fines totalling nearly \$3 million to date in a major gasoline price-fixing case in Quebec that we investigated and referred to the Department of Public Prosecutions for prosecution. In another area of our work, in October a man was sentenced to three and a half years in jail for operating an employment opportunities scam involving counterfeit cheques. This was the result of an extensive investigation by the bureau in cooperation with a number of domestic and international enforcement partners. These and other examples show that we take seriously our role to enforce the act.

[Translation]

The bureau receives and reviews upwards of 15,000 complaints a year. Since the beginning of this year, courts have levied over \$19 million in fines resulting from bureau criminal investigations. These are some of the measurable results of the bureau's work.

[English]

Having said that, I would now like to turn to the issue at hand today.

The committee heard this past spring from a number of witnesses who are concerned about the current state and future of the credit card and debit card markets in Canada. These are very complex markets, with many stakeholders and few easy answers.

Let me first address the issue of credit cards. At this time, the bureau's investigation into the interchange fee is ongoing. This investigation is to determine whether there has been a breach of the act. During a spring appearance before the Senate banking, trade and commerce committee, I confirmed that the bureau was looking at possible contraventions of the act regarding credit card fees. Specifically, we are examining interchange fees and the rules applicable to merchants who accept credit cards and whether there may have been a contravention of the price maintenance or abuse of dominance provisions of the Competition Act. As I noted earlier, these are complex investigations involving significant amounts of data and detailed analysis by numerous bureau staff and outside economic and industry experts.

[Translation]

The price maintenance provision is contained in section 76. This section was recently amended by Bill C-10. Price maintenance may occur when a supplier by agreement, threat or promise, influences upwards or discourages a reduction in the price of a product or service. It may also occur when a supplier refuses to supply a customer or otherwise discriminates against him or her because of a low pricing policy.

[English]

Section 79 is the abuse of dominance provision of the act. This section prohibits dominant firms from engaging in the practice of anti-competitive acts that have in the past, present, or future the effect of substantially preventing or lessening competition in the market. That being said, the size of the business, even one that dominates a particular market, is not in itself a cause for concern under the Competition Act. As I mentioned, the courts have limited the definition of an abuse of dominance to those actions that are designed to exclude competitors and harm competition.

I would note that we are not alone in looking at the way interchange fees are set to determine whether there is a violation of competition laws. Of course, we are following developments in the credit card industry in Canada, but we are also monitoring private litigation in the United States and investigations by foreign competition and regulatory authorities around the world. We have followed the deliberations and proceedings in both the House and the Senate on this issue. It is quite apparent that there is a great deal of interest and concern in Canada and around the world on the issues the committee is studying. We are committed to deciding on a course of action with respect to the current inquiry in the coming weeks.

• (1540)

[Translation]

The second issue we have been asked to address today, namely the debit card market, has certainly been of general interest, particularly in light of the recent entry of Visa and MasterCard into the market.

[English]

The manner in which these developments engage the bureau is that Interac is seeking the bureau's consent before it files an

application with the Competition Tribunal to restructure from a not-for-profit association to a for-profit entity. The tribunal issued the consent order in 1996 that addressed concerns the bureau then had regarding the activities of the members of Interac, mostly the large banks, who, at the time, controlled the debit network. The consent order provided for several measures to increase competition in the market for debit products, including easier access to the network. The consent order prohibits Interac from operating on a for-profit basis.

[Translation]

The original order was not entered into lightly and amending a consent order is no small matter, it should only be done after carefully reviewing the available facts. I should add that it is incorrect to say that the bureau will decide this matter. We need to decide whether, having examined all the evidence, we would challenge an Interac application to the Competition Tribunal to change the terms of the Consent Order. In any event, whether or not the bureau challenges such an application, it is the Competition Tribunal that will ultimately decide whether Interac is allowed to restructure.

[English]

We anticipate making a decision in the coming weeks on whether to challenge Interac at the tribunal. We will make our decision public at that time. The bureau understands the importance of this very complex industry to every Canadian. We are acting prudently, with the tools we have, to ensure a pro-competitive outcome.

[Translation]

And with that, Mr. Chairman, I thank you and your fellow committee members for your time, and I welcome any questions committee members may have.

The Vice-Chair (Mr. Anthony Rota): Thank you very much, Mr. Taylor.

Ms. Dagenais, do you have a presentation to make?

Ms. Martine Dagenais (Assistant Deputy Commissioner of Competition, Civil Matters Branch, Competition Bureau): No thank you, Mr. Chairman.

The Vice-Chair (Mr. Anthony Rota): All right. Then we'll go to the question period. First we'll hear from Mr. McTeague, of the Liberal Party.

Hon. Dan McTeague (Pickering—Scarborough East, Lib.): Thank you, Mr. Chairman and all colleagues. I'm going to share the time allotted to me with Mr. Garneau.

[English]

Mr. Taylor, I'll try to do this as best I can with a bit of a broken voice.

I think for most of us here there is great concern that we may come to the point where we can't unscramble scrambled eggs and in fact put these things back together. One concern that has been raised, Mr. Taylor, is of course the dominant position of Visa and MasterCard on the credit side, which of course you're inquiring on from two perspectives: the price maintenance and the abuse of dominance provision. However, I am concerned that as we have these discussions here as a committee, and as your bureau continues its work in terms of making a determination on the Visa front, the debit card market is already changing, and changing rapidly.

Point of sale terminals are now being transferred, with priority routing going to either Visa or MasterCard. Interac cannot find itself in a position, without a change in the consent order, to be able to have a semblance of opportunity to compete, considering, of course, the structure of its mandate—who operates Interac.

I'm wondering, Mr. Taylor, from your perspective, if speed, if getting to this issue a lot more quickly, is not a priority. How do you proceed? How will you be able to ensure that there will be sufficient competition if in fact most of the details that we see now are already in place? Merchants, of course, will have already signed contracts if there is no formal regulation to prevent them.

Mr. Richard Taylor: Mr. Chair, I see a number of aspects to that question.

I would like to say that we are acting with all due speed, and we hope to have an answer for Interac in the coming weeks. I might add that Interac still has 99.99% of the point of sale debit market.

While MasterCard recently rolled out Maestro and has approached merchants, and while Visa will be rolling out their debit card shortly, it's not at all certain that they will end up with a dominant position. Of course, we are very concerned, and we don't want to unnecessarily unfetter Interac, but we also want to make sure that if the order that was signed in 1996 and has worked so effectively is changed, it is changed on the basis of valid facts.

• (1545)

Hon. Dan McTeague: Mr. Taylor, I guess we're not concerned about what happened in 1996. The reality is far different from it was then, and I appreciate the need to respond more quickly.

I wasn't only referring to the consent order, sir, but also to how we hope to see progress on the front of the determination of whether Visa and MasterCard, in the view of the Competition Act, do in fact have and exercise a dominant position, which naturally will eventually seep its way into the debit card market and change it irrevocably.

As well, is there any consideration being given by the bureau—if any complaints have come before the bureau—with respect to whether or not a below-cost selling strategy by one of the players to undermine the 99.99% that you've referred to has in fact been entertained, or even discussed, or even considered, and how long it will take to respond?

Mr. Richard Taylor: I would reiterate that we are very concerned. I can say that we are looking at all aspects of this matter.

You mentioned priority routing. You mentioned a number of aspects to these markets, but all I can say is that we are seized with

the matter and we are putting a lot of resources on the matter. We are aware of the matter. We are taking the matter very seriously. But beyond that, as I think you know, Mr. Chairman, I cannot give you details as to what we are or are not looking at, only because no law enforcement agency can divulge publicly what they're up to and hope to ever get anywhere.

Mr. Marc Garneau (Westmount—Ville-Marie, Lib.): Mr. Taylor, on the face of it, the current situation with respect to debit cards and the consent order that is in being with Interac seems to be a fairly good one in terms of costs, both for users of debit cards and for merchants. In your words, what would be the benefits of allowing greater competition? I mean, there can be two outcomes, in my opinion. Either costs will go up for consumers and/or merchants or they'll go down. If they go up, would that be something the Competition Bureau would weigh in on or is that not part of your responsibility?

Mr. Richard Taylor: As I said in my introductory remarks, Mr. Chairman, if costs and prices go up and there is a violation of the Competition Act, that would very much concern us. So if that hypothetical situation were to happen and it was due to an anti-competitive act that is covered by the Competition Act, we would certainly be concerned just given the sheer size of this market and its importance.

The one important thing to remember is that the cost competition is one element and it has to be looked at closely. We'd also have to look at actual facts, not just at what people are saying publicly. We don't just look at the public information that people are looking at. We use subpoenas and search warrants and we get to their actual strategic plans. We get their actual financials and we look at them. Our analysis is extremely detailed of all these matters that we have as priorities, and I would say credit cards and debit cards are very high on our priority list. The commissioner has made it very clear to me that we need to get to the bottom of this very quickly.

Mr. Marc Garneau: If I understand you, if it turns out that costs go up for either users of debit cards or merchants, or both, as long as there's no perceived violation of the Competition Act it's irrelevant to your organization.

Mr. Richard Taylor: Mr. Chairman, we can only enforce the act that Parliament has given us. They've made some amendments in Bill C-10 that improve our ability tremendously to deal with those things. Hypothetically, there are many reasons costs can go up. I can't speculate as to which section might be applicable. It very much depends on the practices that give rise to that cost, which is then a higher price for consumers.

If it's caused by an anti-competitive practice, then we can look at it. There are over 30 in the act, or perhaps more, and we would have to look at whether it fits into one of those. We're only the gatekeepers. Ultimately, the courts have to decide as to whether it does.

• (1550)

Mr. Marc Garneau: Thank you for that explanation.

This is a very specific one. Does the Competition Act prevent merchants from negotiating as a group for low-cost financial services in the debit card business? Is that something that would be looked upon as anti-competitive behaviour?

Mr. Richard Taylor: It depends. It can be. Again, based on circumstances, buying groups can raise issues if they represent a large proportion of all buyers in a market.

[Translation]

The Chair (Hon. Michael Chong (Wellington—Halton Hills, CPC)): Thank you.

Mr. Bouchard, go ahead please.

Mr. Robert Bouchard (Chicoutimi—Le Fjord, BQ): Thank you, Mr. Chairman.

Thanks to you as well, Mr. Taylor and Ms. Dagenais, for being here with us this afternoon to answer our questions.

My first question refers to a comment that you just made. You said that the bureau receives and reviews more than 15,000 complaints a year. First, how many of those complaints are investigated? Is it 1%, 5%?

I have another question in the same vein. Are those complaints categorized? For example, is there a percentage of complaints that comes from individuals and another from businesses? Are those complaints classified by category, depending whether they're related to thefts or other offences? I'd like to have some information on that subject.

Mr. Richard Taylor: First, we've received 15,000 complaints this year. That's an estimate, but I imagine that one percent of them will be investigated. However, to give you more details, I would like to ask my colleague Ms. Dagenais to answer your question.

Ms. Martine Dagenais: As my colleague Richard mentioned, quite a small percentage of complaints result in official investigations. However, that does not necessarily mean that we don't examine all complaints in detail. You've asked us how we classify the complaints when we receive them. The distribution is done by the nature of the complaint, and thus is based on the section of the act it concerns.

For example, if it concerns an abuse of dominant position, the complaint is forwarded to us. If it's a case of deceptive telemarketing or deceptive advertising, the complaint is sent to the Fair Business Practices Branch. If it concerns the acquisition of a player, the complaint is naturally forwarded to the Mergers Branch. The service standards of that branch are very clear. When a merger is involved, we determine whether it is not complex, complex or highly complex. We are able to determine whether there is a competition problem or concern. Then we apply service standards respecting mergers. Those standards are public and enable us to apply time criteria.

Mr. Robert Bouchard: That's very good. You seem to apply a rigorous treatment.

Mr. Richard Taylor: Mr. Chairman, I would simply like to add that the 15,000 complaints concern one subject, one sector. These aren't 15,000 individual complaints.

Mr. Robert Bouchard: Do all the complaints come from individuals or do businesses file complaints as well? Are those complaints allocated?

• (1555)

Ms. Martine Dagenais: Everyone can file a complaint with the bureau: a consumer—

Mr. Robert Bouchard: But are you able to determine, for example, that 60% of complaints come from individuals and 40% from businesses?

Ms. Martine Dagenais: I don't believe we do that kind of categorization. The objective is to determine whether the act has been violated. That's really how we classify our complaints at the bureau.

Mr. Robert Bouchard: That's good.

Mr. Richard Taylor: Mr. Chairman, if you wish, we can obtain a number of complaints by section of the Competition Act.

The Chair: Thank you, Mr. Taylor.

Mr. Bouchard.

Mr. Robert Bouchard: In your presentation, you also said that the Interac association might change status. It currently has the status of a not-for-profit association and is taking steps to obtain that of a for-profit entity.

Have you assessed the impact that that potential change may have on consumers? Are you able to say whether that change would be beneficial or disadvantageous for consumers?

Mr. Richard Taylor: We are currently examining that question. We haven't completed our examination, but we're going to be able to make our decision public next week.

Mr. Robert Bouchard: You say you aren't the only ones trying to determine whether interchange fees constitute a violation of the act. Do you exchange information with those who do the same work as you?

Mr. Richard Taylor: I'd like to ask my colleague to answer that question.

Ms. Martine Dagenais: When we know that international agencies are investigating a particular aspect or case that we are examining as well, we contact them. However, as Richard mentioned, there are confidentiality clauses that we have to comply with, and the same is true of our foreign colleagues. Confidential information has to remain confidential, of course, but we are generally aware of their efforts.

The Chair: Thank you, Ms. Dagenais.

Mr. Lake.

[English]

Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): Thank you, Mr. Chair.

My thanks to the witnesses for coming today. I understand it's complicated, because most of the questions that we would want to ask, you can't answer. So I'm going to focus on history and process.

You said in your opening statement that the tribunal issued a consent order in 1996 addressing the bureau's concerns. Can you talk about what those concerns were at the time.

Mr. Richard Taylor: In 1996, the bureau and Interac entered into a consent order that addressed concerns the bureau had regarding the activity of members of Interac, mostly the large banks, who controlled the network at that time. The consent order provided for several measures to increase competition in the market for debit products, including easier access to the network. The consent order embodies the settlement negotiated between the bureau and Interac to resolve the competition concerns.

The respondents were alleged to have engaged in a practice of anti-competitive acts contrary to the abuse of dominance provision. Among other things, they restricted membership in Interac to Canadian deposit-taking financial institutions that were members of the Canadian Payments Association, thereby prejudicing retailers, third party processors, and other banks from participating as members. It restricted certain network privileges to charter members who were the respondents of Interac and effectively closed access to other members. It established excessively high initiation fees and member fees for its services. It therefore discouraged participation in the debit network. It prohibited members from charging cardholders and other members for ABM use, and it imposed strict account eligibility criteria and limitations.

What it effectively meant was that membership was limited to the major banks and a few others that were members of the club. Since the order was issued, there are now 62 members, and we have a very competitive market.

• (1600)

Mr. Mike Lake: What can we expect from your reports? I know you can't say what's going to be in them, but what kinds of things are you going to tell us? We have two reports, it sounds like, coming out within the next few weeks. What types of things will we find out?

Mr. Richard Taylor: The Interac report will give our reasons for either not challenging or challenging the order. The issue is whether or not the order issued by the courts, which was so important to the development of the debit network in a competitive and not a monopoly fashion, is still needed. We are looking closely at that, and we're close to a determination.

On the credit card matter, we will decide within the coming weeks what our next steps will be. This includes looking at abuse of dominance under section 79, resale price of maintenance under section 76, how the interchange fee is set, and what restrictions are placed on merchants by the credit card networks.

Mr. Mike Lake: With respect to the process, Interac came to the bureau asking for your consent before it filed an application. Why would they do that?

Mr. Richard Taylor: I can't speak for Interac; I can only assume that they would like us not to intervene. If we were to intervene, they would feel that we'd done our homework and that we could be a significant factor before the tribunal. So they want to try to convince us that there will be no harm in making the changes they would like. If we don't intervene and oppose the transactions, the tribunal would likely decide in their favour.

Mr. Mike Lake: Regarding the process of amending the consent order, what does that process look like? Right now, they're just asking what you would think of it. But there's a process that involves going before the Competition Tribunal. What is that process?

Mr. Richard Taylor: They can apply at any time; they don't need our permission. It's up to the tribunal to decide.

Mr. Mike Lake: Can you tell us whether you've looked into the situation since 1996?

Mr. Richard Taylor: We've done this only in our current investigation.

Mr. Mike Lake: I think I'm good, thanks.

The Chair: Thank you, Mr. Taylor. That was valuable information about these upcoming decisions on debit and credit.

We will now go to Mr. Thibeault.

As a quick clarification, in some ways it's a lot like Canada Revenue Agency's advance tax rulings, where the corporation could seek to get the agency's decision or views on a tax matter before a company decides to effect that decision. In some ways it's a similar idea. Is that right?

Mr. Richard Taylor: It is, Mr. Chairman. It's a little different. We have a very good program called the advisory opinion program. Businesses can come in to us, as part of our compliance initiative, and tell us hypothetically what they want to do in the future, and we will tell them whether it's likely to run afoul of the law or not. It's similar to that.

But you're right. In a sense, it is similar.

The Chair: Thank you very much.

Mr. Thibeault.

Mr. Glenn Thibeault (Sudbury, NDP): Thank you, Mr. Chair.

Thank you for your presentation today.

You're right, trying to understand the debit market is a complex issue, when \$168 billion, I believe, is the number Interac is helping to look after right now. I believe you said it was 99.9% of that market, so that's a significant amount of money that seems to be working right now.

I know it will be difficult to answer some of the questions, so I'm trying to phrase them to get more of your opinion.

Would it be fair to say that if Interac doesn't get the consent it needs, they're then put into an unfair advantage because they're going to be competing with Visa and MasterCard, which are coming in as for-profit companies, and Interac will be not-for-profit?

Does that make competition fair? I'm looking for your opinion on that.

•(1605)

Mr. Richard Taylor: I don't know if it would give them an unfair advantage. I can't speak to the reasons Interac wants to make the change. But I don't think it's fair to say it gives them an unfair advantage. I think Interac believes quite the opposite.

That's indeed what we're currently looking at, whether or not the not-for-profit status that's been so important to keeping the debit network competitive since 1996 hinders them from competing because of various restrictions that not-for-profit corporations have on them by their very nature. That's indeed what we are currently looking at.

What we want to do is make sure the market goes forward in a competitive fashion and that there are no abuses of dominance and no abuses of market power, and that when new entrants come in they don't lever their existing market power in other areas to dominate another market. These are all things we are looking at that members of the committee have so astutely raised already here. These are exactly the things we're looking at.

But I don't think it's an unfair advantage that we're worried about. It's whether or not it will disadvantage them.

Mr. Glenn Thibeault: Okay, thank you.

In relation to priority routing, we are hearing that when they come into the debit market, one of the two credit card companies will be using priority routing as a way to have their customers or consumers use that choice without necessarily knowing it.

In your opinion, do you find that priority routing would give an unfair advantage if a consumer is not necessarily aware they're being brought to that type of system?

Mr. Richard Taylor: Routing in the debit card context is one of the issues on which the Senate banking committee made recommendations in its report. As you're aware, there has been a request for an official government response to the committee's report, and this is an ongoing process. We cannot make specific comments at this time as to what action the government should take.

What I can tell you is that routing is not a simple or straightforward issue; it's highly complex, involving a number of

actors in the market and an intricate web of interrelated issues. Routing in the debit context is a process by which a given network—Interac, Visa, MasterCard's Maestro—is selected to transmit the electronic message to authorize a debit transaction.

There are questions as to who should make that decision—the network, the issuer, the acquirer, the merchant, or the consumer. Depending on whose network the transaction is conducted on, the cost to the merchant may vary. We don't have a position on which one of those should be the one that chooses. I think there will be a government response to that.

Would you like to add anything, Martine?

Ms. Martine Dagenais: No.

Mr. Glenn Thibeault: I'm good. Thank you.

The Chair: Thank you, Mr. Thibeault.

Mr. Rota.

Mr. Anthony Rota: Thank you, Mr. Chair.

I have a very simple question. I know I have a list of questions here, but I'm not sure I can ask them.

Mr. Taylor, are you appearing before this committee meeting maybe a couple of weeks too early? Can I have your comments on that?

Mr. Richard Taylor: I'm appearing when I was called.

Some hon. members: Oh, oh!

Mr. Anthony Rota: I understand that.

Mr. Richard Taylor: I'd be happy to come back any time you'd like to have us back.

Mr. Anthony Rota: Very good.

I'll concentrate on the process, then, more than the actual facts in this actual situation.

Abuse of dominance comes up quite often. Is it the role of the Competition Bureau to react to existing situations, or is it part of the bureau's duty to police and investigate what's out there? How does that work? How do you determine when there's abuse of dominance within a market?

•(1610)

Mr. Richard Taylor: I should say that we don't just rely on complaints. In fact, some of our better cases have come from the newspapers. Say we read that some company has a large market share; we may proactively look into that. Sometimes a complainant, a small business, will come in and tell us about a big company that is beating them up, and that will start a complaint. So there are various ways. Sometimes parliamentarians raise issues on behalf of their constituents, and we will seriously look at those, though unfortunately not every complaint that comes in meets the definition under the act.

So those are the ways that we could intake complaints. So we have various ways. We're not restricted in any way.

On abuse of dominance, to get to your second question, we can act before the company becomes dominant, when the company is dominant, or after the company is dominant. The wording of the section says that we have that ability.

To the third part of your question, what is abuse, abuse is really three things. The wording is not very helpful in understanding what abuse is. It was a former monopolization provision that was amended by Parliament in 1986 to make it more effective, and there are really three elements. You have to be dominant, i.e., you have to have market power. Market power is a large share of the market and barriers to entry. You have to have a practice of anti-competitive acts, which can be anything that excludes or harms competitors. And finally, you have to show that in that market there's a substantial lessening of competition. So it's a three-part test.

Mr. Anthony Rota: Very good. Thank you.

Now, if I could follow on that just a little bit more, when we're looking at the investigation that's going on presently, it's a result of Interac actually wanting to go from non-profit to profit, and that's something you're investigating. Now suddenly we have two other players as well. We have Visa and MasterCard who come into play.

You mentioned undue leverage, or leverage from outside the country or from other sources. How would you measure that? Could you give us a little bit of an explanation of how you would measure whether they were going to use leverage from outside the country or not? Is that part of your decision-making process now, or do you wait until after that takes place?

Mr. Richard Taylor: Mr. Chairman, I think the concern was that they would leverage their position in Canada in the credit market to force merchants to accept their debit cards in the debit market, and we would measure that by talking to merchants to see whether it's actually happening. We would also investigate what they're doing internally to effect that, if that were indeed the case.

Mr. Anthony Rota: I'm fine.

The Chair: Thank you very much.

Mr. Bains.

Hon. Navdeep Bains (Mississauga—Brampton South, Lib.): I have just a quick question.

With respect to examples of other jurisdictions where you had the credit card companies enter the debit market, in terms of dominance and market share, do you have an example of how they've been able

to leverage their brand, their other features that they have with their company, and in charge of the credit cards, to be able to encourage a greater use of the debit service and then eventually start to increase rates? Are there examples of that in other jurisdictions?

Mr. Richard Taylor: I'll ask my colleague Martine to look at that. She has been charged specifically with looking at what's happening around the world.

Ms. Martine Dagenais: I don't have a specific example for you. I'll have to get back to you on that.

Hon. Navdeep Bains: In another jurisdiction where they've entered the debit market, how has their market share progressed or not progressed, and how is that correlated to the rates they charge?

Mr. Richard Taylor: I think one area we can comment on is what happened in the U.S. That's an economy that we often use as the closest example. Star Alliance was in the debit market and dominated that market. Along came Visa, and they ended up, between 2002 and 2006, not dominating that market but overtaking Star Alliance. There were allegations at that time that part of the reason they did that was that they were leveraging.

But we're not experts on those facts. We shall certainly try to get them for you, if we can.

•(1615)

Hon. Navdeep Bains: In our notes here, I think there is an example of a fee increase. In the one that you cite for the U.S., I think they had indicated that it increased from 0.08¢ to 0.19¢ for Visa in terms of their transactions with respect to interchange fees for PIN debit card transactions in the period from 1998 to 2003. So there is a comparable example. Do you think that's a fair example?

Mr. Richard Taylor: That may not be leveraging, and I would caution you that in the U.S. there are rewards on debit cards, which we have not heretofore had and we are starting to see now.

When you issue rewards—air miles, tow trucks, everything, and now 1% cash back—as those rewards increase, the fees tend to go up, because someone has to pay for them. That is part of the cycle. It's not the only part of the cycle, but it's an important consideration in looking at these markets, which makes them so complex.

The credit card companies want you to take their credit card and they issue you rewards, but some of those costs are passed on to the merchants.

The Chair: Thank you very much, Mr. Bains and Mr. Taylor.

Mr. Wallace.

Mr. Mike Wallace (Burlington, CPC): Thank you, Mr. Chair.

I want to thank our guests for coming today. Whether it's early or not in the process, I think it's important for us to understand the process, and I appreciate your coming.

I do have a few process questions for you, actually.

On page 9, you talk about your decision whether to challenge the Interac application to the Competition Tribunal on their consent order. I want to be clear that there is no relationship between the Competition Bureau and the Competition Tribunal. Is that correct?

Mr. Richard Taylor: We're totally at arm's length. In fact, they're totally independent of us.

Mr. Mike Wallace: Secondly, you are, for lack of a better word, a witness or a contributor to the Competition Tribunal's review of the situation. You could rule that it's bad for competition that they get their consent order, but it doesn't stop them from applying and still trying to get it. Is that correct?

Mr. Richard Taylor: That's absolutely correct. Anybody can apply to the Competition Tribunal during the hearing to make their views known—the CFIB, the Retail Council of Canada, or any other party. The test is whether they are affected or likely to be affected by a change.

Mr. Mike Wallace: I just don't know the history of it, to be perfectly honest, but have you as a bureau taken a position on any other Competition Tribunal application where you were opposite to what the application was and have lost?

Mr. Richard Taylor: Yes, we have. We've also won some. It's hard to say whether we've won more than we've lost. I don't have those numbers.

Mr. Mike Wallace: Okay, but it's a process that happens; it's ongoing. I appreciate that.

Do I understand from your submission that there are two reviews going on, one on the credit side and one on the debit side? Are you able to actually separate them out? I know there's the issue of merchant fees on the one, but are we concerned that what they can do on one side will affect whether they're able to be in the debit market and vice versa?

Can you answer that question for me?

Mr. Richard Taylor: Yes, there are two inquiries. This is something I have to say. It's under subsection 10(3) of the act. It's really important that you understand this, because we don't want to appear to be obfuscating, but section 29 and subsection 10(3) prevent us from disclosing anything when we're on inquiry. It's obvious why we wouldn't want to do that, but it is worth reiterating so you don't think I'm ducking all your questions. We don't want to let people know what we're up to, because we don't want the other side to know who we're talking to, etc.

To get back to your question, Mr. Chairman, they are two separate inquiries. They are quite different, but there is the possibility of this crosswalk, and that would be a third examination, if it happened.

• (1620)

Mr. Mike Wallace: It has been mentioned by our friends across the way about maybe having you back later, but let's use, for argument sake.... I'll use my own example.

Let's say I'm in favour of Interac getting the opportunity to compete in the marketplace and lose their not-for-profit status and be able to compete. Let's say your study agrees and it goes to consent, and they get it; I don't think we need to see you again. But if it doesn't, is all that information you have gleaned in your study made public? Can we have you back and talk to you about why you decided those things? I want to know how much is public and how much we can debate.

Mr. Richard Taylor: Mr. Chairman, I think the question is, if we oppose, how much of our material would be public? If we oppose and the tribunal goes to a hearing, all of it will be public except what the tribunal deems is commercially sensitive information, which will be expunged from the record by the court in the public transcript.

Mr. Mike Wallace: When is the tribunal scheduled to happen? Do you know?

Mr. Richard Taylor: They have not applied yet, so we don't know.

Mr. Mike Wallace: So we really couldn't see you and ask you why you're opposed until the tribunal is set, until that evidence is public. Is that correct?

Mr. Richard Taylor: Yes. If we did oppose it, I think we'd have great difficulty in providing other than some general comments, because we would want to be able to go to the tribunal with our case and the other side not knowing what our case is. If we signalled to them what our experts say, what our data and our econometrics and our analysis show, they could.... There is a process to disclose that evidence before the court in a certain timed fashion. You have to show your case, but how much of that gets published is up to the tribunal.

To answer your question, likely a lot of it would be made public. Some of it wouldn't, because I'm certain there'd be some very sensitive commercial data we would have that they would not want to share.

Mr. Mike Wallace: I have one final really quick question, in terms of timing. Regarding the two investigations that you're doing, do you expect them to be completed at approximately the same time?

Mr. Richard Taylor: No. The Interac one will be in the coming weeks. A decision will be made. As to the credit cards, I think I said that in the coming weeks we'll decide on a course of action.

The Chair: Thank you very much.

To clarify, there are two inquiries going on. One is with respect to Interac's wish to convert to a for-profit entity is more of a negotiation that has gone on about what they want to do and more of a situation where the bureau is going to come up with a position on a hypothetical situation if they were to convert, whereas the other inquiry is an actual investigation of whether or not there are anti-competitive behaviours going on in the credit card market.

Mr. Richard Taylor: Yes, Mr. Chairman, I think that's correct.

To add one thing, I think the Interac one is more about what will be the effects of changing the order and whether it will cause the order to be ineffective and lead to a concern on lessening of competition. So the order has worked; it has been in place and has worked effectively. We don't take these matters lightly and we don't change orders. In fact, we don't change orders, the courts do. A court order is a court order. If you violate it, then there's a section of the act that makes it a criminal offence. So the order has to be taken seriously. We have to do our work. We have to get into the facts. We have to know what we're doing. We cannot be swayed because there has been a bunch of things said in the press. We have to do our homework and get it right.

[*Translation*]

The Chair: Mr. Vincent.

• (1625)

Mr. Robert Vincent (Shefford, BQ): Thank you, Mr. Chairman.

I carefully listened to your speeches. Something surprises me. Your brief states that the rate is 1.9% in the United States. Let's suppose that all cards, MasterCard, Visa and debit cards, have the same 1.9% rate and that one year later there is a 2.5% increase for all three, and I call you to say that all three have taken advantage of their dominant position to increase their rates at the same time. According to the Competition Bureau, there must be a certain degree of competition, which means that they're playing with rates. However, if the rates are always equal, there's no competition.

In that kind of case, who am I to turn to? Who am I to talk to for there to be an investigation at the Competition Bureau so that there isn't always a systematic increase or a systematic decrease? What do I have to do to trigger an investigation?

Mr. Richard Taylor: You can call me at (819) 997-2209.

Mr. Robert Vincent: I like your answer, Mr. Taylor, because I did it in the case of gasoline. I telephoned the Competition Bureau to request an investigation. In response, I was asked whether I had any convincing, significant evidence so that the bureau could conduct an investigation. No. If I had significant evidence, I wouldn't go to the Competition Bureau. I would go to the police station, sir.

So I would like to know what actual power you have at the Competition Bureau to trigger an investigation. Do you need something decisive or can you simply conduct an investigation into a complaint?

In my riding, I asked about 10 constituents to phone the Competition Bureau to ask it to conduct an investigation into gasoline prices. However, the answers that I received from my constituents in response to those calls were that the bureau couldn't conduct an investigation because there wasn't any evidence.

Could you tell me how we can trigger an investigation if we don't have any evidence? As citizens, we think it's up to the Competition Bureau to conduct those investigations, not to us.

Mr. Richard Taylor: We conduct investigations all the time and we examine all complaints. However, under section 10 of the Competition Act, we have to have reasons to believe that, for example, prices are the same for gasoline.

In the area of gasoline, we're talking about an identical product. So if prices are the same in a market, that's not enough to allow us to get an authorization to conduct a search. However, in cases in which we have investigated, we have found testimony confirming that prices were the same and that price increases had been caused by a conspiracy.

The Chair: Thank you, Mr. Vincent.

[*English*]

Thank you very much, Mr. Taylor and Madame Dagenais, for your testimony today. We'll eagerly await the actions you'll take, both with respect to Interac and with credit cards in the next number of weeks. We thank you for taking the time to come in front of us today.

This meeting is adjourned.

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