

INFORMATION NOTE*

B-Filer Inc., B-Filer doing business as GPAY Guaranteed Payment and Npay Inc. v. The Bank of Nova Scotia

January 22, 2007. The Competition Tribunal issued the public version of its reasons today in *B-Filer Inc. et al. v. The Bank of Nova Scotia*; the first private application heard by the Tribunal as a result of amendments to the Act made in 2002. The Tribunal panel was composed of Madam Justice Dawson (presiding judicial member), Mr. Lorne Bolton and Dr. Lilla Csorgo.

The applicants asserted that The Bank of Nova Scotia had engaged in reviewable conduct by terminating its banking relationship with the applicants. They therefore requested that the Tribunal issue an order pursuant to section 75 of the *Competition Act* requiring The Bank of Nova Scotia to supply them with two specific banking services: bill payee services and bank accounts for the deposit of e-mail money transfers.

The Tribunal found that the applicants had failed to meet the constituent elements of subsection 75(1) of the *Competition Act*. In particular, they had failed to establish that they were substantially affected in their business due to their inability to obtain adequate supplies of a product anywhere in a market on usual trade terms (paragraph 75(1)(a)). The Tribunal held that upon termination of the banking services by The Bank of Nova Scotia, the applicants had replaced these services with e-mail money transfers into deposit accounts such that they were not substantially affected in their business.

The Tribunal also found that the applicants had failed to establish that they were unable to obtain adequate supplies of the product because of insufficient competition among suppliers of the product in the market (paragraph 75(1)(b)). Rather, the termination of the banking services was the result of objectively justifiable business reasons related, in particular, to the fact that the applicants' business required disclosure of each customer's electronic signature and the fact that the applicants had not been compliant with their anti-money laundering obligations.

The Tribunal also found that the Bank's refusal to deal was not having, or was not likely to have, an adverse effect on competition in a market (paragraph 75(1)(e)).

The issue of costs was reserved.

This was the first proceeding in which the chess clock procedure with respect to hearing time management was employed by the Tribunal. The members were of the view that the procedure worked well.

* This is an unofficial summary prepared by the Registry of the Tribunal.