



A decision was issued today by the Competition Tribunal in *Commissioner of Competition v. Visa Canada Corporation and MasterCard International Incorporated* (CT-2010-10). The Tribunal panel was composed of the Honourable Justice Michael L. Phelan, Dr. Wiktor Askanas and Mr. Keith C. Montgomery.

Summary: The Competition Tribunal dismissed the Application filed by the Commissioner of Competition without costs. The Tribunal found that section 76 of the *Competition Act* requires a resale and that the Commissioner of Competition had not established that the Respondents' customers resell the Respondents' products. The Tribunal further held that the Commissioner's proposed interpretation of section 76 was not supported by the legislative history of the provision or other decisions.

However, in the event that the Tribunal was wrong with respect to the legal interpretation of section 76, it continued with its analysis. Under this alternative analysis, it assumed that each of the Respondents engaged in price maintenance (as the Commissioner had attempted to define the term) by implementing the no-surcharge rule, a rule which prohibits merchants from applying a surcharge for those customers paying with credit cards. The Tribunal found in that situation that there had been an adverse effect on competition.

However, the Tribunal found that even under this alternative analysis, it would have declined to issue an order and noted that the proper solution to the concerns raised by the Commissioner is a regulatory framework. In that regard, it noted that the experience in other jurisdictions showed that concerns would be raised by consumers regarding surcharging and that rather sooner than later, intervention would have to take place by way of regulation.

The Tribunal made no award of costs and noted that the Commissioner advanced a case which should have been brought, even if the Commissioner was not entirely successful.

The Tribunal's reasons are confidential at this time in order to protect properly confidential evidence. A public version of the decision will issue as soon as possible after a determination as to what information must remain confidential has been made.