

COMPETITION BUREAU CHALLENGES ALLEGED DRIP PRICING BY CINEPLEX

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Overview

On May 18, 2023, the Competition Bureau commenced a proceeding against Cineplex Inc. (“**Cineplex**”) before the Competition Tribunal for allegedly engaging in misleading advertising in the form of “drip pricing”.^[1] In particular, the Bureau alleges that Cineplex advertised a lower ticket price than the amount customers were required to pay.

The Complaint

The Bureau alleges that, starting in June 2022, Cineplex engaged in drip pricing by adding a mandatory \$1.50 online booking fee for customers purchasing tickets through Cineplex’s website or mobile app.^[2] The Bureau’s complaint asserts that the addition of this fixed, obligatory booking fee means that the ticket prices advertised by Cineplex on its app and website are unattainable, and therefore that the advertisement of such price is false or misleading in a material respect.

Cineplex’s online booking fees were introduced on June 15, 2022 to “contribute to Cineplex’s further investment in its digital infrastructure”.^[3] The company’s 2022 Annual Report indicates that booking fees generated \$17 million in revenue between June 23, 2022, and March 31, 2023.^[4]

The Bureau’s application argues that Cineplex’s pricing display process has a material impact on consumer behaviour. It asserts that consumers may never realize that an online booking fee has been added to the total price. The Bureau also alleges that Cineplex uses “urgency cues” through a countdown timer displayed on its digital platforms to increase pressure on customers to purchase tickets.^[5] The urgency cues are alleged to impede customers’ ability to notice the charge of the additional fee.

To address the alleged harms to consumers, the Bureau seeks, among other things, that Cineplex stop the challenged advertising, pay a penalty, and issue restitution to affected consumers who purchased tickets through Cineplex’s website or mobile app during the time period when such booking fees were applicable.

In its news release, Cineplex called the Bureau’s action meritless, contending that the additional booking fee “is

not misleading and fully complies with the spirit and the letter of the law.”^[6] The release notes that Cineplex had been engaging with the Bureau on its fee displays since late 2022. Cineplex contends that the online booking fee is optional as consumers can purchase tickets without the fees directly from venues, and the benefit of the fee is that it provides the convenience of seat selection.

The New Drip Pricing Provision

The Cineplex case is the first case to proceed after the drip pricing amendments to the *Competition Act*. In June 2022, amendments to the *Competition Act* explicitly recognized drip pricing as a misleading representation under sections 52 and 74.01 of the Act. The amendments provide that:

[f]or greater certainty, the making of a representation of a price that is not attainable due to fixed obligatory charges or fees constitutes a false or misleading representation, unless the obligatory charges or fees represent only an amount imposed by or under an Act of Parliament or the legislature of a province.^[7]

The amendments also increased the maximum penalty for deceptive marketing practices for corporations to the greater of:

- \$10 million for an initial violation and \$15 million for each subsequent violation; and
- Three times the value of the benefit derived from the conduct. If the benefit cannot be reasonably determined, three percent of annual global revenues.^[8]

Similar Enforcement Actions Commenced by the Bureau

The Bureau’s proceeding against Cineplex is not the first of its kind. Even before the *Competition Act* was amended to add the drip pricing provisions the Bureau had repeatedly alleged that partial pricing disclosures were false or misleading in a material respect. Moreover, the Bureau has for years signalled that drip pricing is a priority for enforcement efforts.

Thus far, the Bureau’s drip pricing enforcement efforts have focused, largely but not exclusively, on the car rental, event ticketing and travel industries. In particular, the Bureau has taken the following public enforcement actions:

- In 2011, Bell Canada agreed to pay a \$10 million administrative monetary penalty for advertising prices for home phone, internet, satellite TV and wireless. The Bureau found that the prices advertised were not obtainable due to the addition of mandatory fees (for items such as TouchTone, modem rental, digital televisions services, etc.).^[9]
- In 2016, Avis and Budget agreed to pay \$3 million in administrative monetary penalties as part of a

consent agreement reached with the Bureau for false or misleading advertising on car rentals. The Bureau found that customers were charged additional mandatory fees that were only disclosed at the end stages of making a reservation.^[10]

- In 2017, two additional car rental companies, Hertz and Dollar Thrifty, were required to pay \$1.25 million in administrative monetary penalties and change their advertising after the Bureau concluded their price representations were misleading.^[11]
- In 2018, the Bureau reached a consent agreement with Enterprise-Rent-A-Car to correct misleading advertisements.^[12] The agreement was reached after the Bureau found Enterprise had been charging customers higher prices than advertised through the addition of mandatory fees.
- Later in 2018, the Bureau reached a consent agreement with Discount Car & Truck Rentals Ltd. to address misleading prices that were unattainable due to the addition of mandatory fees revealed at later stages of the purchasing process.^[13]
- In 2018 and 2019, the Bureau reached consent agreements with two ticketing companies in connection with allegations that they presented ticket prices and then subsequently added mandatory fees.
- In 2021, FlightHub agreed to pay \$5 million and two of its directors agreed to pay \$400,000 each after the Bureau concluded a multiyear investigation finding that customers were charged hidden fees while booking travel. Read our bulletin about the Bureau's investigation [here](#).

Issues to Follow

The Cineplex case is interesting in part because it is the first contested matter relating to drip pricing since the 2022 amendments to the *Competition Act* which added the specific drip pricing provisions. As well, since the advertised prices are available for in-person purchasers, as well as for paying CineClub members, it is not clear to us that the advertised price is not in fact available to consumers. As the case plays out, this will be an important question to understand.

We will continue to monitor the Bureau's legal action for updates. For further information on marketing and advertising law, including questions relating to drip pricing, please contact a member of McMillan's Marketing & Advertising team or your usual McMillan contact.

[1] Competition Bureau Canada, "Competition Bureau sues Cineplex for allegedly advertising misleading ticket prices" (18 May 2022), see [online](#).

[2] The Bureau's application notes that members of Cineplex's "Scene" loyalty program pay a discounted online booking fee of \$1.00 per ticket, and paying members of Cineplex's "CineClub" program do not have to pay a booking fee at all. See Competition Tribunal, "Cineplex – Notice of Application Pursuant to s. 74.01" (18 May

2023) at paras 16-17, see [online](#).

[3] Cineplex Inc., 2022 Annual Report at page 13, see [online](#).

[4] *Ibid*.

[5] Competition Tribunal, “Cineplex – Notice of Application Pursuant to s. 74.01” (18 May 2023), see [online](#).

[6] Cineplex Inc., “Cineplex Responds to Meritless Competition Bureau News Release and Legal Action” (18 May 2023), see [online](#).

[7] *Competition Act* at s 52(1.3) and s 74.01(1.1).

[8] Competition Bureau Canada, “Guide to the 2022 amendments to the *Competition Act*” (24 June 2022), see [online](#).

[9] CBC News, “Bell Canada Pays \$10M over Misleading Ads” (28 June 2011), see [online](#).

[10] Competition Tribunal, “Aviscar Inc. et al. – Registered Consent Agreement” (2 June 2016), see [online](#).

[11] Competition Tribunal, “Hertz Canada Limited and Dollar Thrifty Automotive Group Canada Inc. - Registered Consent Agreement” (24 April 2017), see [online](#).

[12] Competition Tribunal, “Enterprise Rent-A-Car - Registered Consent Agreement” (22 February 2018), see [online](#).

[13] Competition Tribunal, “Discount Car & Truck Rentals Ltd. - Registered Consent Agreement” (11 October 2018), see [online](#).

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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