

COMPETITION TRIBUNAL
 TRIBUNAL DE LA CONCURRENCE
 REGISTERED/ENREGISTRÉ
 FILED / PRODUIT
 Date: February 22, 2018
 CT-2018-006

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 REGISTRAR / REGISTRAIRE

CT-2017-

OTTAWA, ONT.

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THE COMPETITION TRIBUNAL

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

AND IN THE MATTER of a Consent Agreement pursuant to section 74.12 of the *Competition Act* with respect to certain deceptive marketing practices of Enterprise Rent-A-Car Canada Company under paragraph 74.01(1)(a) and sections 74.05 and 74.011 of the *Competition Act*.

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

ENTERPRISE RENT-A-CAR CANADA COMPANY

Respondent

CONSENT AGREEMENT

WHEREAS the Commissioner is responsible for the administration and enforcement of the *Competition Act*,

AND WHEREAS the Respondent Enterprise Rent-A-Car Canada Company, doing business as Enterprise Rent-A-Car, National Car Rental and Alamo Rent A Car, operates a car rental services business across Canada and also offers Related Products such as GPS systems, child safety seats, insurance products and roadside assistance services;

AND WHEREAS on August 10, 2017, the Commissioner commenced an inquiry into certain of the Respondent's marketing practices under subparagraph 10(1)(b)(ii) of the *Competition Act*,

AND WHEREAS the Respondent made Representations to the public about the price at which consumers could rent cars and Related Products and also about percentage-off discounts;

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AND WHEREAS the Respondent made these Representations to the public starting from at least 2009;

AND WHEREAS the Respondent made these representations across various media, including its Websites, Mobile Apps, and Emails;

AND WHEREAS the Respondent charged consumers Non-Optional Fees in addition to the daily rates initially advertised;

AND WHEREAS the Commissioner has concluded that the Respondent's Non-Optional Fees may increase the daily rate initially advertised by 6% to 48%, depending on the rental location and vehicle type;

AND WHEREAS the Commissioner has concluded that certain of the Respondent's price representations created the general impression that consumers could rent cars and Related Products at prices that were not in fact attainable, because consumers were required to pay these additional Non-Optional Fees;

AND WHEREAS the Commissioner has concluded that certain of the Respondent's discount representations created the general impression that consumers could save on the cost of a car rental and Related Products at discounts that were not in fact attainable, because consumers were required to pay these additional Non-Optional Fees, certain of which were not discounted;

AND WHEREAS the Commissioner has concluded that the Respondent made Representations to the public that were false or misleading in a material respect for the purpose of promoting the supply or use of its rental cars and Related Products, and its business interests more generally;

AND WHEREAS the Commissioner has concluded that the Respondent engaged in conduct reviewable pursuant to paragraph 74.01(1)(a) and section 74.011 of the Competition Act;

AND WHEREAS during the course of his inquiry, the Commissioner examined the wording and placement of disclosures used by the Respondent to describe the Non-Optional Fees, and based on the information gathered during his inquiry, the Commissioner has concluded that the Respondent's wording and placement of such disclosures did not create a general impression that they were taxes, surcharges and/or fees that governments and authorized agencies required rental car companies to collect from consumers;

AND WHEREAS the Respondent has taken a number of voluntary and proactive steps to address the conduct at issue;

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AND WHEREAS the Commissioner acknowledges that the Respondent informed consumers of the total estimated price for their rental once a consumer has selected the location of the rental for the purposes of securing a reservation, and before a car rental reservation was completed;

AND WHEREAS the Commissioner has been advised by the Respondent that it has a longstanding commitment to compliance with applicable laws and has an existing compliance program that is consistent with the principles set out in the Commissioner's bulletin titled "Corporate Compliance Programs" as published (as of the Execution Date of this Agreement) on the Competition Bureau's website at www.competitionbureau.gc.ca;

AND WHEREAS IT IS AGREED AND UNDERSTOOD that for the purposes of this Agreement only, including execution, registration, enforcement, variation or rescission of this Agreement, the Respondent does not contest the Commissioner's conclusions but nothing in this Agreement shall be taken as an admission or acceptance by the Respondent of any facts, wrongdoing, submissions, legal argument or conclusions for any other purpose nor shall it derogate from any rights or defences of the Respondent against third parties including any defences available under the *Competition Act*;

AND WHEREAS the Parties are satisfied that this matter can be resolved with the registration of this Agreement which, upon registration, shall have the same force and effect as an order of the Tribunal;

AND WHEREAS the Commissioner has agreed to more favorable terms in this Agreement than would otherwise be the case because of the Respondent's full and timely cooperation with the Commissioner's investigation;

NOW THEREFORE, in order to resolve the Commissioner's concerns and to support the Commissioner's overall objectives with regard to the rental car industry, the Parties hereby agree as follows:

I. INTERPRETATION

1. For the purpose of the Agreement, the following definitions shall apply:
 - a. "**Affiliate**" means an affiliated corporation, partnership or sole proprietorship within the meaning of subsection 2(2) of the *Competition Act*;
 - b. "**Agreement**" means this Consent Agreement entered into by the Parties pursuant to section 74.12 of the *Competition Act*, including Appendix "A" hereto;
 - c. "**Base Rate**" means the price for a rental car and/or a Related Product, exclusive of Non-Optional Fees and federal and provincial sales taxes;

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- d. “**Commissioner**” means the Commissioner of Competition appointed pursuant to section 7 of the *Competition Act*, and his or her authorized representatives;
- e. “**Competition Act**” means the *Competition Act*, R.S.C. 1985, c. C-34, as amended;
- f. “**Email**” means any electronic message sent by or on behalf of the Respondent to persons in Canada relating to car rental services or Related Products supplied directly by the Respondent;
- g. “**Enterprise Rent-A-Car Canada**” means Enterprise Rent-A-Car Canada Company, a corporation incorporated pursuant to the laws of Nova Scotia, its directors, officers, employees, agents, representatives, successors and assigns, and all joint ventures, subsidiaries, divisions and Affiliates controlled by it within the meaning of subsection 2(4) of the *Competition Act*, and the respective directors, officers, employees, agents, representatives, successors and assigns of each;
- h. “**Execution Date**” means the date on which the Agreement has been signed by both Parties;
- i. “**Interpretation Act**” means the *Interpretation Act*, R.S.C. 1985, c. I-21, as amended;
- j. “**Mobile Applications**” means any Enterprise Rent-A-Car, National Car Rental or Alamo Rent A Car branded mobile application that display prices for rental cars or Related Products that the Respondent supplies;
- k. “**Non-Optional Fees**” means any charges, surcharges, fees, or other amounts, excluding applicable provincial and federal sales taxes and other municipal or government levies, that are charged in addition to Base Rates and that consumers are required to pay to rent a car or Related Products. Non-Optional Fees include, but are not limited to, “Vehicle License Fee”, “Tire Recovery Fee” (in the province of Quebec), “Premium Location Charge” and “Concession Fee Recovery”;
- l. “**Parties**” means the Commissioner and the Respondent, and “**Party**” means any one of them;
- m. “**Person**” means any individual, corporation, partnership, firm, association, trust, unincorporated organization, or other entity;
- n. “**Related Products**” includes GPS systems, child safety seats, insurance products, and roadside assistance services;
- o. “**Representations**” means any and all representations made, caused to be made, or permitted to be made by or on behalf of the Respondent including

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any representation on the Websites, Mobile Applications, and any Email, flyer, television commercial, or newspaper advertisement;

- p. **“Respondent”** means Enterprise Rent-A-Car Canada Company;
- q. **“Respondent’s Marketing Personnel”** means all current and future Respondent’s employees and Respondent’s Senior Management who are materially involved in or responsible for the formulation or the implementation of advertising, marketing or pricing for products the Respondent supplies;
- r. **“Respondent’s Senior Management”** means the current and future Chief Executive Officer, Chief Operating Officer, Chief Administrative Officer, Chief Financial Officer, Chief Accounting Officer, President, Vice Presidents, Controller, General Manager, Managing Directors, if any, and any individual who performs their functions;
- s. **“Websites”** means www.enterpriserentacar.ca, www.enterprise.ca, www.enterprise.com, www.nationalrentacar.ca, www.nationalcar.ca, www.nationalcar.com, www.alamorentacar.ca www.alamo.ca and www.alamo.com as used by those who identify themselves as residents of Canada; and
- t. **“Tribunal”** means the Competition Tribunal established by subsection 3(1) of *Competition Tribunal Act*, R.S.C., 1985, c. 19 (2nd Supp.), as amended.

II. COMPLIANCE WITH THE DECEPTIVE MARKETING PRACTICES PROVISIONS OF THE COMPETITION ACT

- 2. Within 120 days of the Execution Date, the Respondent shall comply with Part VII.1 of the *Competition Act*.
- 3. Without limiting the generality of the foregoing, within 120 days of the Execution Date, the Respondent shall not make, cause to be made, or permit to be made on its behalf any representation to the public with respect to any product that creates a materially false or misleading general impression that consumers can rent cars and Related Products at prices or percentage-off discounts that are not in fact attainable because of the existence of additional Non-Optional Fees.
- 4. If the Respondent becomes aware that there has been a breach or possible breach of any terms of this Agreement, the Respondent shall, within ten (10) days after becoming aware of the breach or possible breach, notify the Commissioner thereof, and shall provide details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or possible breach, and the steps the Respondent has taken to correct the breach or possible breach.

III. PAYMENT

ADMINISTRATIVE MONETARY PENALTY

5. The Respondent shall pay an administrative monetary penalty in the amount of \$1,000,000 dollars.

FORM AND TIME OF PAYMENT

6. The payment referred to in paragraph 5 shall be made within 30 days after the Execution Date by certified cheque or by wire transfer payable to the Receiver General for Canada.

IV. CORPORATE COMPLIANCE PROGRAM

7. Within 120 days after the Execution Date, the Respondent shall supplement, and thereafter maintain, its corporate compliance program, the goal of which will be to promote the compliance of the Respondent with the *Competition Act* generally, and Part VII.1 of the *Competition Act* specifically.
8. The Respondent shall continue to promote compliance with the *Competition Act* by ensuring that its compliance program continues to be framed and implemented in a manner consistent with the principles of the Commissioner's bulletin titled "Corporate Compliance Programs", as published (as of the Execution Date of this Agreement) on the Competition Bureau's website at www.competitionbureau.gc.ca.
9. The Respondent's Senior Management shall continue to fully support and enforce the compliance program and shall take an active and visible role in its establishment and maintenance.
10. Within 21 days after supplementing its existing compliance program, each member of the Respondent's Senior Management shall acknowledge and certify his or her commitment to the Respondent's compliance program by signing and delivering to the Commissioner a commitment letter in the form set out in Appendix "A" of this Agreement. Any individual that becomes a member of the Respondent's Senior Management during the term of this Agreement, shall sign and deliver to the Commissioner a commitment letter in the form set out in Appendix "A" of this Agreement, within 21 days of becoming a member of the Respondent's Senior Management.

V. COMPLIANCE REPORTING AND MONITORING

11. The Respondent shall provide the Commissioner written confirmation that all Respondent's Marketing Personnel has received an electronic or hard copy of this Agreement, as required by paragraph 14, within 21 days after the registration of this Agreement.

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12. For the purposes of monitoring compliance with this Agreement, the Respondent shall provide to the Commissioner information relating to any matters referred to in Parts II, IV and V of this Agreement that the Commissioner requests, within 30 days following receipt of a written request from the Commissioner.
13. No later than 120 days after the Execution Date, the General Manager of the Respondent, or any individuals who perform similar functions, shall provide to the Commissioner a statement under oath or solemn affirmation that the compliance program required by Part IV of this Agreement has been supplemented and maintained.

VI. GENERAL

14. During the term of this Agreement, (i) the Respondent shall provide a copy of this Agreement to all Respondent's Marketing Personnel within 14 days after the date of registration of this Agreement, and (ii) all future Respondent's Marketing Personnel will be provided with a copy of this Agreement within 14 days after his or her commencement of employment. Within 14 days after being provided with a copy of this Agreement, the Respondent shall secure from each such person a signed and dated statement acknowledging that he or she read and understood this Agreement and Part VII.1 of the Act.
15. Notices, reports and other communications required or permitted pursuant to any of the terms of this Agreement shall be in writing and shall be considered to be given if dispatched by personal delivery, registered mail or facsimile transmission to the Parties at the following addresses:

(a) The Commissioner:

Commissioner of Competition
Competition Bureau

Place du Portage, 21st Floor
50 Victoria Street, Phase I
Gatineau, Quebec
K1A 0C9

Attention: Senior Deputy Commissioner of Competition, Cartels and
Deceptive Marketing Practices Branch
Facsimile: (819) 956-2836

With a copy to:

Executive Director and Senior General
Counsel Competition Bureau Legal Services
Department of Justice

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Place du Portage, 22nd Floor
50 Victoria Street, Phase I
Gatineau, Quebec
K1A 0C9

Facsimile: (819) 953-9267

(b) The Respondent:

Enterprise Rent-A-Car Canada Company
1969 Upper Water Street, Suite 1300
Halifax, Nova Scotia
B3J 2V1

Attention: Rick Short, President
Facsimile: (902) 425-6350

With a copy to:

Enterprise Holdings, Inc.
600 Corporate Park Drive
St. Louis, Missouri, 63105
U.S.A.

Attention: Office of the General Counsel
Facsimile: (314) 512-5823

And a copy to:

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario
M5X 1B8

Attention: Christopher P. Naudie and
Shuli Rodal
Facsimile: (416) 862-6666

16. This Agreement shall be binding upon the Respondent for a period of 10 years following its registration.
17. The Parties consent to the immediate filing of this Agreement for registration with the Tribunal pursuant to section 74.12 of the *Competition Act*.
18. The Commissioner may, in his sole discretion and after informing the Respondent in writing, extend any of the time frames in Parts IV and V of this Agreement.

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19. The Commissioner may, with the consent of the Respondent, extend any of the time frames in Part VI of this Agreement.
20. Nothing in this Agreement precludes the Respondent or the Commissioner from bringing an application under section 74.13 of the *Competition Act*. The Respondent does not accept or admit, but will not, for the purposes of this Agreement only, including execution, registration, enforcement, variation or rescission, contest the Commissioner's conclusions.
21. The Respondent shall not make any public statements that contradict the terms of this Agreement.
22. The Respondent attorns to the jurisdiction of the Tribunal for the purposes of this Agreement and any proceeding initiated by the Commissioner or the Respondent relating to this Agreement for variation or rescission.
23. In the event of a dispute regarding the interpretation, implementation or application of this Agreement, any of the Parties shall be at liberty to apply to the Tribunal for an order or directions. In no event shall any dispute suspend any time period under the Agreement. The Parties agree that the Tribunal has jurisdiction to make such order as is required to give effect to this Agreement.
24. This Agreement may be executed in two or more counterparts, each of which shall be an original instrument, and all of which taken together shall constitute one and the same instrument. In the event of any discrepancy between the English and French versions of this Agreement, the English version shall prevail.
25. The Agreement constitutes the entire and only agreement between the Parties and supersedes all previous negotiations, communications and other agreements, whether written or oral, unless they are incorporated by reference herein. There are no terms, covenants, representations, statements or conditions binding on the Parties other than those contained herein.
26. The computation of time periods contemplated by this Agreement shall be in accordance with the *Interpretation Act*. For the purpose of this Agreement, the definition of "holiday" in the *Interpretation Act* shall include Saturday. For the purposes of determining time periods, the date of this Agreement is the last date on which it is executed by a Party.
27. The Agreement shall be governed by and interpreted in accordance with the laws of Ontario and the laws of Canada applicable therein, without applying any otherwise applicable conflict of law rules.

[Remainder of page intentionally left blank; signature page to follow]

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The undersigned hereby agree to the filing of the Agreement with the Tribunal for registration.

DATED at St. Louis, Missouri this 12th day of February, 2018

for: Enterprise Rent-A-Car
Canada Company

“Original signed by Rick Short”

I have authority to bind the corporation.

Rick Short
President

DATED at Gatineau, in the Province of Quebec this 22nd day of February, 2018.

“Original signed by John Pecman”

John Pecman
Commissioner of Competition

“APPENDIX A”

ACKNOWLEDGEMENT BY SENIOR MANAGEMENT

[Corporate Company Letterhead]

[date], 2018

CONFIDENTIAL

Commissioner of Competition
Competition Bureau
Place du Portage, Phase 1
50 Victoria Street, 21st Floor
Gatineau (QC) K1A 0C9

RE: Commitment to Establishment and Maintenance of Compliance Program

Further to Paragraph 10 of the Consent Agreement between the Commissioner of Competition (the “Commissioner”) and Enterprise Rent-A-Car Canada Company (“Enterprise”), dated _____, 2018, I hereby commit to the successful maintenance of Enterprise’s corporate compliance program for the purpose of promoting compliance with the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the “Act”), including the deceptive marketing practices provisions in Part VII.1 of the Act. I will take an active and visible role in the maintenance of the corporate compliance program.

Sincerely,

(Name and title)

cc: Executive Director and Senior General Counsel, Competition Bureau Legal Services

Deputy Commissioner of Competition, Deceptive Marketing Practices Directorate,
Cartels and Deceptive Marketing Practices Branch