

THE COMPETITION TRIBUNAL

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

AND IN THE MATTER OF an application by the Commissioner of Competition for orders pursuant to section 74.1 of the *Competition Act* regarding conduct reviewable pursuant to paragraph 74.01(1)(a) and section 74.05 of the *Competition Act*;

BETWEEN:

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE FILED / PRODUIT Date: January 25, 2018 CT-2018-005 <small>Andrée Bernier for / pour REGISTRAR / REGISTRAIRE</small>	
OTTAWA, ONT.	# 2

COMMISSIONER OF COMPETITION

Applicant

– and –

**LIVE NATION ENTERTAINMENT, INC., LIVE NATION WORLDWIDE, INC.,
 TICKETMASTER CANADA HOLDINGS ULC, TICKETMASTER CANADA LP,
 TICKETMASTER L.L.C., THE V.I.P. TOUR COMPANY, TICKETSNOW.COM, INC., and
 TNOW ENTERTAINMENT GROUP, INC.**

Respondents

NOTICE OF APPLICATION

TAKE NOTICE that the Commissioner of Competition (the “**Commissioner**”) will make an application (the “**Application**”) to the Competition Tribunal (the “**Tribunal**”) for orders pursuant to section 74.1 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the “**Act**”), in respect of conduct reviewable pursuant to paragraph 74.01(1)(a) and section 74.05 of the Act.

AND TAKE NOTICE that the Commissioner relies on the following Statement of Grounds and Material Facts in support of this Application and on such further or other material as counsel may advise and the Tribunal may permit.

AND TAKE NOTICE that if you do not file a Response with the Registrar of the Tribunal within 45 days of the date upon which this Application is served upon you, the Tribunal may, upon

application by the Commissioner and without further notice, make such order or orders as it may consider just, including the orders sought in this Application.

THE ADDRESSES FOR SERVICE ARE:

For the Respondents:

McMillan LLP
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Toronto, Ontario
Canada M5J 2T3

Attention: Mark Opashinov
David Kent
Guy Pinsonnault
Joshua Chad

For the Commissioner of Competition:

Department of Justice Canada
Competition Bureau Legal Services
Place du Portage, Phase I
50 Victoria Street, 22nd Floor

Attention: Derek Leschinsky
Kenneth Jull
Ryan Caron

APPLICATION

1. The Commissioner makes this Application pursuant to section 74.1 of the Act for:
 - a. a declaration that each Respondent separately, jointly and/or in concert is engaging in or has engaged in reviewable conduct, contrary to paragraph 74.01(1)(a) and section 74.05 of the Act;
 - b. an order prohibiting each Respondent from engaging in the reviewable conduct or substantially similar reviewable conduct in Canada for a period of ten years from the date of such order;
 - c. an order requiring each Respondent to publish or otherwise disseminate notices of the determinations made herein pursuant to paragraph 74.1(1)(b) of the Act, in such manner and at such times as the Commissioner may advise and this Tribunal may permit;
 - d. an order requiring the Respondents to pay such administrative monetary penalties as the Tribunal deems appropriate;
 - e. an order requiring the Respondents to pay an amount, not exceeding the total amounts paid to the Respondents for the products in respect of which the reviewable conduct was engaged in, to be distributed among those persons to whom the products were sold, in an amount and manner to be assessed by the Tribunal;
 - f. costs; and
 - g. such further and other relief as the Commissioner may advise and this Tribunal may permit.

STATEMENT OF GROUNDS AND MATERIAL FACTS

I. OVERVIEW

2. The Respondents' parent company, Live Nation Entertainment, Inc. ("**Live Nation**") describes itself and the businesses it controls as the world's leading live entertainment ticketing sales and marketing company. Live Nation and its Respondent subsidiaries act and have acted separately, jointly and/or in concert with each other to make or permit representations and supply tickets to sports and entertainment events since Live Nation took control of the Respondents. The Respondents derive hundreds of millions of dollars in revenue a year from consumers in Canada pursuant to their marketing and supply of tickets.
3. The Respondents have engaged in, and continue to engage in, deceptive marketing practices by promoting the sale of tickets to the public at prices that are not in fact attainable (the "**Price Representations**") and then supplying tickets at prices above the advertised price. They have done so for a number of years and at least since the time they were under the control of Live Nation. The Respondents engage in the conduct that is subject to this Application for the purpose of promoting the tickets they or their affiliates sell and their business interests more generally. The Price Representations are made to and target the public in Canada on the websites accessible from "ticketmaster.ca", "ticketweb.ca", and "ticketsnow.com", as well as the Respondents' mobile applications.
4. The Respondents' Price Representations create the false or misleading general impression that consumers can buy tickets to sports and entertainment events for less than what the Respondents actually charge. As the Respondents know, consumers cannot buy tickets for the prices they represent, because the Respondents require consumers who respond to the Price Representations to pay additional non-optional fees (the "**Non-Optional Fees**"). While the amount of the Non-Optional Fees and the true cost of the tickets are known to the Respondents when the Price Representations are made, the Respondents only reveal the Non-Optional Fees and the true cost of the tickets once consumers select their tickets and navigate through certain steps in the

purchasing process. This disclosure is wholly inadequate to prevent the Price Representations from being false or misleading.

5. The Respondents' Non-Optional Fees often increase the cost of tickets to sports and entertainment events by over 20% and, in some cases, by over 65%.
6. The Respondents have made, and continue to make, representations to the public that are false or misleading in a material respect about the price consumers in Canada must pay to buy tickets, and the Respondents supply tickets at prices higher than the advertised price. The Respondents have made the Price Representations to the public in Canada countless times since Live Nation assumed control of the Respondents, examples of which are particularized below.
7. The Commissioner brings this Application to cease the Respondents' deceptive marketing practices and to obtain orders so as to ensure conformity with the deceptive marketing provisions of the Act.

II. THE PARTIES

8. The Commissioner is an officer appointed by the Governor in Council under section 7 of the Act and is responsible for the administration and enforcement of the Act.
9. The Respondents, set out below, work together and/or individually to make or permit the Price Representations and supply tickets to consumers in Canada.
10. The Respondent, Live Nation Entertainment, Inc. ("**Live Nation**"), is a company organized and existing under the laws of Delaware. Live Nation describes itself as the largest live entertainment company in the world and the world's leading live entertainment ticketing sales and marketing company. Live Nation's headquarters are in Beverly Hills, California. The Price Representations made to the public as accessed through ticketmaster.ca and ticketweb.ca come from a computer network under the control of Live Nation. Since approximately 2009/2010, a consumer must access Live Nation's computer network in order to view these representations and purchase tickets to events.

11. The Respondent, Live Nation Worldwide, Inc. ("**Live Nation Worldwide**"), is a subsidiary of Live Nation organized and existing under the laws of Delaware. Live Nation Worldwide's headquarters are co-located with those of Live Nation in Beverly Hills, California. Since approximately March 2013, Live Nation Worldwide has controlled the domain name ticketmaster.ca and the associated website.
12. The Respondent, Ticketmaster Canada Holdings ULC ("**Ticketmaster Canada Holdings**") is a subsidiary of Live Nation organized and existing under the laws of Nova Scotia. Ticketmaster Canada Holdings is the successor to Ticketmaster Canada Ltd. ("**TMLC**"). Ticketmaster Canada Holdings' headquarters is located in the Rogers Centre, a sports stadium in Toronto, Ontario (the "**Rogers Centre**"). Since at least 2009, Ticketmaster Canada Holdings and its predecessor controlled and continue to control the domain name ticketweb.ca and the associated website. Further, at certain times since 2010, websites accessed from ticketmaster.ca and ticketweb.ca identified TMLC as the company handling consumer transactions and collecting payments for events in Canada with respect to ticketmaster.ca and ticketweb.ca.
13. The Respondent, Ticketmaster Canada LP ("**Ticketmaster Canada**"), is a limited partnership organized and existing under the laws of Ontario. Ticketmaster Canada is a subsidiary of Live Nation and its general partner is Ticketmaster Canada ULC. Ticketmaster Canada's headquarters is located in the Rogers Centre. Since at least 2009, Ticketmaster Canada has provided services enabling tickets to be sold to consumers through ticketmaster.ca.
14. The Respondent, Ticketmaster L.L.C. ("**Ticketmaster LLC**"), is a limited liability corporation organized and existing under the laws of Virginia. Ticketmaster LLC is a subsidiary of Live Nation and its head office is in West Hollywood, California. Ticketmaster LLC is the successor to a company of the same name organized under the laws of Delaware and to Ticketmaster Corporation, which was also organized under the laws of Delaware. Since at least 2009 until approximately March 2013, Ticketmaster LLC controlled the domain name ticketmaster.ca and the associated website. Moreover, since approximately 2009/2010, the website accessed from the domain name ticketmaster.ca

identifies Ticketmaster LLC as the company handling consumer transactions and collecting payments for events in the United States with respect to ticketmaster.ca. Further, Ticketmaster LLC offers the mobile application to consumers in Canada for download and use.

15. The Respondent, The V.I.P. Tour Company ("**VIP Tour**"), is a company organized and existing under the laws of Delaware. VIP Tour is a subsidiary of Live Nation. VIP Tour's headquarters are in Beverly Hills, California. VIP Tour controls a computer network from which Price Representations are made. A consumer could access these Price Representations through ticketsnow.com. Since approximately 2009, a consumer must access VIP Tour's network in order to view these representations and purchase tickets to events.
16. The Respondent, TNOW Entertainment Group, Inc. ("**TNOW Entertainment**"), is a company organized and existing under the laws of Illinois. TNOW Entertainment is a subsidiary of Live Nation. TNOW Entertainment's headquarters are co-located with VIP Tour in Beverly Hills, California. Since April 2010, TNOW Entertainment controls the domain name ticketsnow.com and the associated website.
17. The Respondent, Ticketsnow.com, Inc. ("**Ticketsnow**"), is a corporation organized and existing under the laws of Illinois. Ticketsnow is a subsidiary of Live Nation. Ticketsnow's headquarters are in Beverly Hills, California. Ticketsnow provides services enabling tickets to be sold to consumers from the domain name ticketsnow.com and the associated website.
18. In addition, a number of officers and directors of the Respondents are officers, directors and/or employees of the other Respondents.
19. The Respondents work together and/or individually to make or permit each other to make the Price Representations that are the subject of this Application. The Commissioner pleads and relies on subsection 52(1.2) of the Act in this regard.

20. The Respondents work together and/or individually to supply or offer to supply tickets for the purpose of section 74.05 of the Act. The Commissioner pleads and relies on the definition of supply in subsection 2(1) of the Act.

III. THE RESPONDENTS' DECEPTIVE MARKETING PRACTICES

21. The Respondents offer primary tickets as well as resale tickets. Primary tickets refer to the Respondents' initial sale of tickets whereas resale tickets refer to the Respondents' resale of tickets on behalf of a holder who originally purchased them from a venue, promoter or other entity.
22. The Respondents make the Price Representations described in this Application to promote the tickets they sell to consumers for sports and entertainment events and their business interests more generally. The Respondents' business interests include their financial interests and their interests in promoting events and providing services to venues and/or other customers to enable the sale of tickets for sports and entertainment events.
23. The Respondents have promoted and continue to promote their products and business interests to the public by making false or misleading Price Representations that tickets are available for purchase at unattainable prices. The Respondents' representations create the general impression that consumers can buy tickets to sports and entertainment events for less than what the Respondents actually charge consumers when they supply the tickets.
24. Consumers cannot purchase tickets to sports and entertainment events from the Respondents at the prices that the Respondents represent, because the Respondents require consumers who respond to the Price Representations to pay additional Non-Optional Fees. While the amount and type of Non-Optional Fees the Respondents impose varies from ticket to ticket, the Respondents have chosen to charge consumers a variety of Non-Optional Fees, including the following:

English	French
Service Fee or Charge	Frais de service
Facility Charge	Frais de la sale / Frais d'établissement
Order Processing Fee	Frais de traitement de la commande
Resale Service Fee	Frais de service pour la revente
TM+ Resale Service Fee	—

25. The Respondents' Non-Optional Fees often increase substantially the cost of tickets to sports and entertainment events by over 20% and, in some cases, by over 65%. The Non-Optional Fees are known to the Respondents at the time they make their Price Representations to the public. The Respondents nevertheless exclude these Non-Optional Fees from the Price Representations when promoting the sale of tickets to the public.
26. The Respondents have structured their purchasing processes so that they only reveal the amount of their Non-Optional Fees and the true cost of the tickets they sell once consumers have selected their tickets and after consumers have invested time and effort to navigate through certain steps in the purchasing process. In many instances, this information is presented at different steps, so that consumers only learn the true and actual cost after they have entered their information and have navigated close to the end of the purchasing process, a marketing technique often referred to as drip pricing. Moreover, the Respondents' use, in certain instances, of a countdown clock increases pressure on consumers to complete a purchase.

27. Disclosing the true cost of the tickets *after* consumers rely on the Price Representations to price out, select their seats and decide to buy their selected tickets is wholly inadequate to prevent the Price Representations from being materially misleading: consumers have made their purchasing decision on the basis of the false or misleading Price Representations, and, among other things, often do not wish to 'lose their tickets' once they learn the truth. Moreover, dripping prices in this fashion tends to mislead consumers about the true cost of the tickets, because it results in consumers underestimating the total price. The Respondents are aware of the material effect such practices can have on consumer perception and behaviour.
28. While some of the Price Representations are accompanied by fine print disclaimers that allude to the existence of additional fees (but not the amount of those fees and not the true price of the tickets), other Price Representations are not. These fine print disclaimers, when present, do nothing to alter the false or misleading general impression created by the Price Representations that consumers can buy tickets for less than what the Respondents actually charge.
29. The exception in Canada is in Quebec, where provincial law mandates all-inclusive pricing. For events in Quebec, the Respondents in their Price Representations show consumers the "true" price of the tickets upfront, and disclose the Non-Optional Fees that are included in the cost of the tickets. This model demonstrates that the internet buying process can be structured in a way that is transparent and not misleading. However, the Respondents choose not to use this model in other parts of Canada.
30. The Respondents' false or misleading representations are material to consumers' decision-making, as price is an important factor that consumers consider when deciding whether to make a purchase and when deciding what to buy. The Respondents' deceptive marketing practices negatively affect consumer decision-making, resulting in consumer harm. Conversely, for the Respondents, these deceptive marketing practices result in an increase in sales and/or revenue.
31. The Respondents' deceptive marketing practices are reviewable pursuant to paragraph 74.01(1)(a) and section 74.05 of the Act.

32. The Respondents have made representations that are false or misleading in a material respect and sold their tickets at higher than prices advertised, as described above, at least since Live Nation took control of the Respondents. The exact dates, places and media in which the Respondents have engaged in this reviewable conduct in Canada are known to the Respondents.

IV. EXAMPLES OF THE RESPONDENTS' MATERIALLY FALSE OR MISLEADING REPRESENTATIONS AND SUPPLYING TICKETS ABOVE THE PRICE ADVERTISED

33. The Respondents' Price Representations reached the public in Canada countless times since Live Nation assumed control of the Respondents, examples of which are provided below. More specifically, examples of the Respondents' false or misleading Price Representations are set out below. The representations targeting consumers in Canada from the domains ticketmaster.ca, ticketweb.ca and ticketsnow.com, as well as on the Respondents' mobile applications, are substantially similar.

A. Example of the Reviewable Conduct Before September 2017

34. The Respondents have made Price Representations promoting prices that are not attainable. For example, the Respondents promoted a OneRepublic concert scheduled to take place on August 21, 2017 at Rogers Arena in Vancouver. Consumers interested in tickets at ticketmaster.ca were shown the following page on the website. Under the default "Buy on Map" tab, consumers could select the seats that interested them directly from the map. The website then popped up a message that made a Price Representation for the ticket selected, which in this instance was \$84.50. At the bottom of the page, the Price Representation is repeated, with a button inviting the consumer to "Buy Tickets".

Vancouver & Area Music Sports Arts & Theatre Family VIP Deals

All Tickets > Music Tickets > Rock & Pop > OneRepublic > Aug 21, 2017 07:00 PM

OneRepublic
★★★★☆ (105)
Rogers Arena, Vancouver, BC
Mon, Aug 21, 2017 07:00 PM
Details: OneRepublic, Fitz & the Tantrums
Event Info | Onsale Times | Price Range | Ticket Limits

Look for this symbol for more ways in with Fan-to-Fan Resale.

BUY ON MAP SEE RESALE ONLY FIND SEATS FOR ME OFFICIAL PLATINUM SEATS

\$ 20 \$ 240+ Resale ON Special Offers f Reset

Jump from section to section here!

Sec 116, Row 5, Seat 105
Alcohol Permitted Seat
Standard Ticket
CA \$84.50

VIP PACKAGES

Matches Your Search: Venue Seat, Accessible, Resale Seat
Outside Your Search: Venue Seat, Resale Seat

Selected Seats* (1) | Show Details ▲ SUBTOTAL: CA \$84.50 Buy Tickets


ROGERS ARENA
800 Griffiths Way, Vancouver, BC V6B 6G1
Directions | Parking | See All Events at this Venue

Additional fees are applied at Checkout. Per order delivery and/or processing fees are added when applicable. By clicking on the "Buy Tickets" button, or otherwise using this website, you agree to the Terms of Use. *Your seats aren't officially reserved until you click "Buy Tickets" and pass the security check!

35. The Respondents' Price Representations in this example create the general impression that consumers in Canada can buy the tickets selected for this event for less than what the Respondents actually charge for the tickets.


36. In fact, the price promoted in the Price Representation is unattainable and the general impression is false or misleading. Consumers who respond to the Price Representations such as those featured in this example are required to pay Non-Optional Fees. While the amount of the Non-Optional Fees and the true cost of the tickets in the example above were known to the Respondents when the above-referenced Price Representations were made, the Respondents only revealed the Non-Optional Fees and the "true" cost of the tickets later in the purchasing process and once consumers had selected their tickets and navigated through certain steps in the purchasing process.

ticketmaster®

OFFICIAL CARD OF **ticketmaster** 

REVIEW **DELIVERY** **SIGN IN** **PAYMENT**

Note: The timer at bottom right shows how long you have to complete this page before we release your tickets for others to buy.



OneRepublic
Details: OneRepublic, Fitz & the Tantrums
Rogers Arena, Vancouver, BC
Mon, Aug 21, 2017 07:00 PM

Section	116
Row	5
Seats	105 - 106
Description	NO AISLE BETWEEN SECTIONS-AISLE SEATS ARE 1 & 101
Price Level	3
Plaza Level	LOW
Alcohol Permitted Seat	
Seating Chart	



Type	Standard Ticket
Ticket Price	CA \$84.50 x 2
Facility Charge	CA \$3.00 x 2
Service Fee	CA \$16.90 x 2

SUBTOTAL CA \$208.80

Tickets/Items	CA \$208.80
Order Processing Fee	CA \$6.00
Delivery via: eTickets	Free!

TOTAL CHARGES CA \$214.80

Payment

Credit / Debit Card  

* Required Field

Credit / Debit Card

* Visa Debit also accepted

CREDIT / DEBIT CARD TYPE *

Select Card Type

CREDIT / DEBIT CARD NUMBER * SECURITY CODE *

Expires: MONTH * YEAR *

Billing Address

FIRST NAME * LAST NAME *

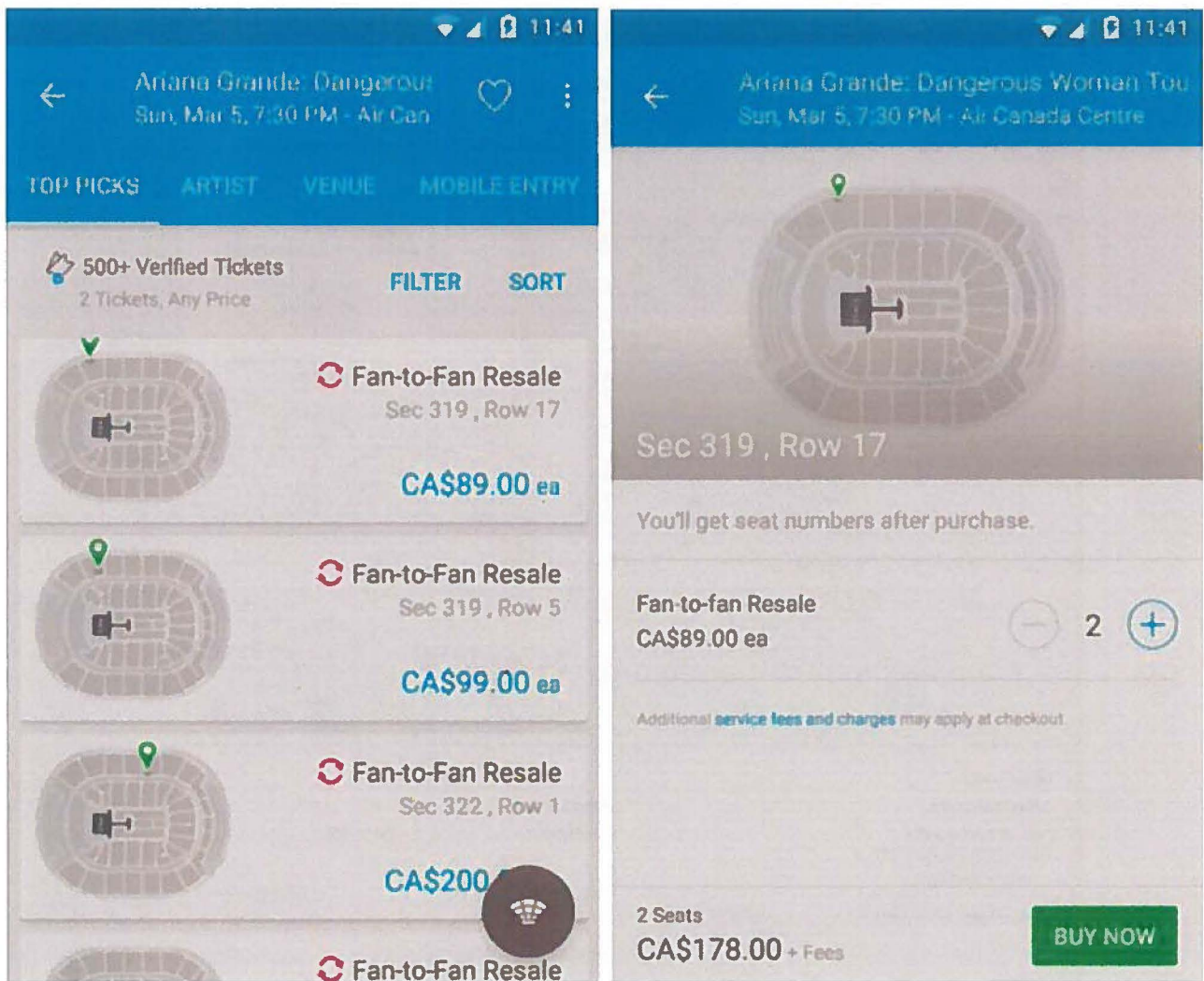
ADDRESS * UNIT # (OPTIONAL)

ADDRESS LINE 2 (OPTIONAL)

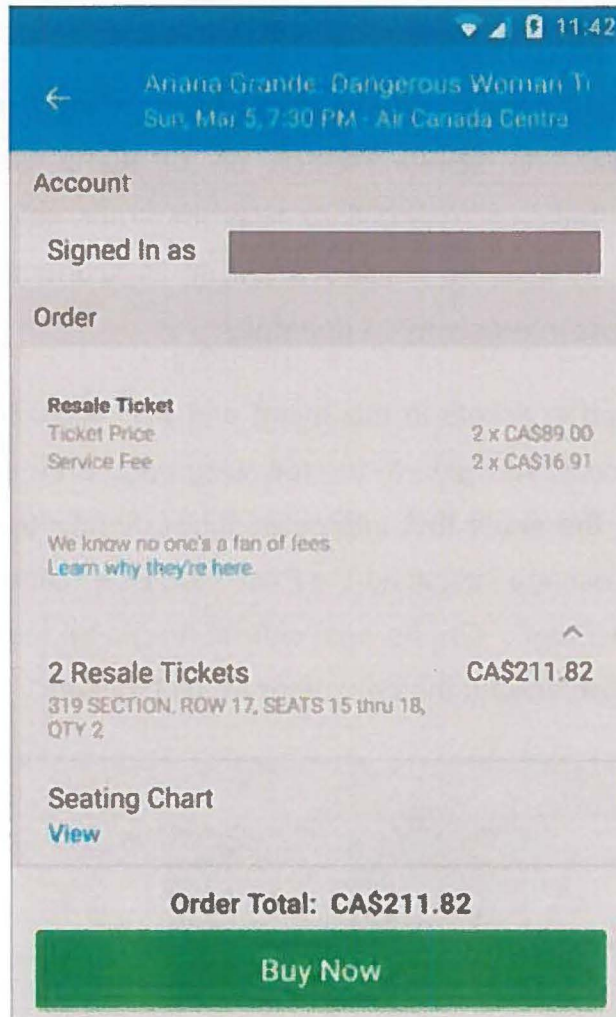
CITY *

Time left to complete page
09:36

37. As identified in the image above, the Non-Optional Fees in this example amount to \$45.80 in fees for the pair of tickets. The Non-Optional Fees therefore increased the original advertised price of the tickets by over 25%, which is significant.
38. The Respondents made similar Price Representations when consumers clicked on any of the other tabs from ticketmaster.ca in order to shop for event tickets.
39. Similar Price Representations were made on Ticketmaster's mobile application. For example, two tickets to an Ariana Grande concert on March 5, 2017 were shown to be available for \$89.00 each.



40. These prices, however, were unattainable as additional Non-Optional Fees in the amount of \$33.82 were added to the cost of tickets later in the purchasing process and after consumers clicked “Buy Now”. The Non-Optional Fees increased the original advertised price of these tickets by 19%, which is significant.

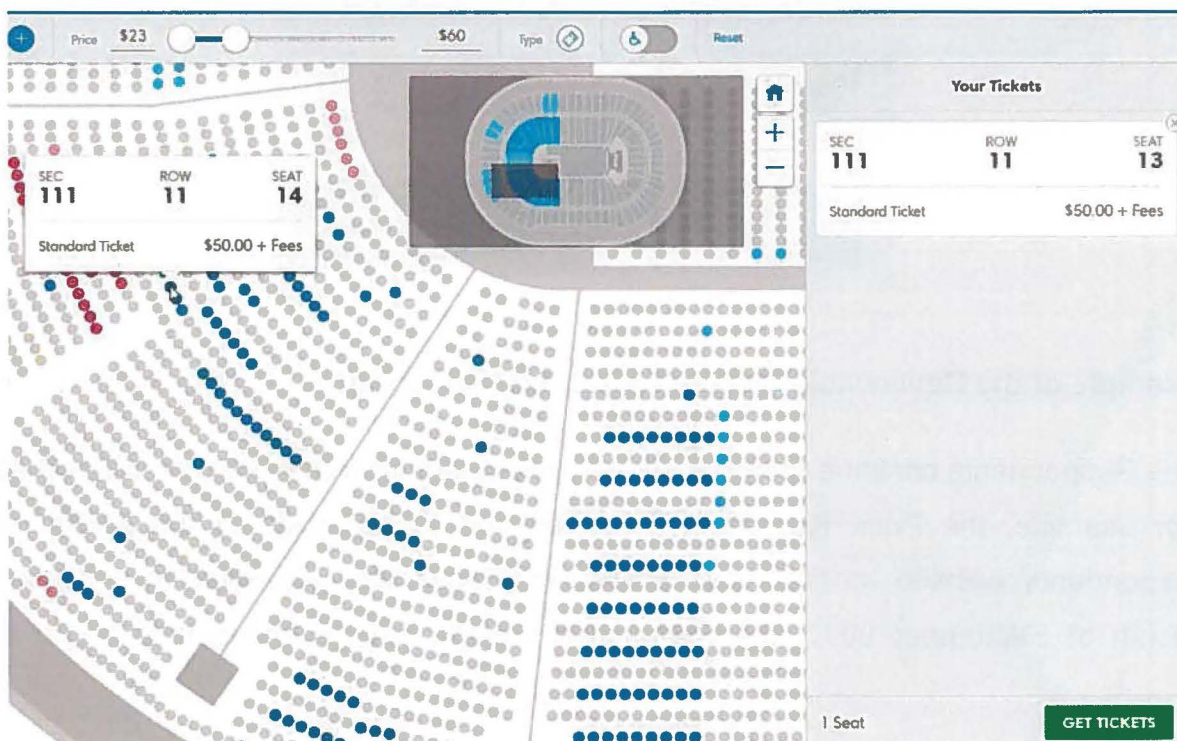


B. Example of the Reviewable Conduct After September 2017

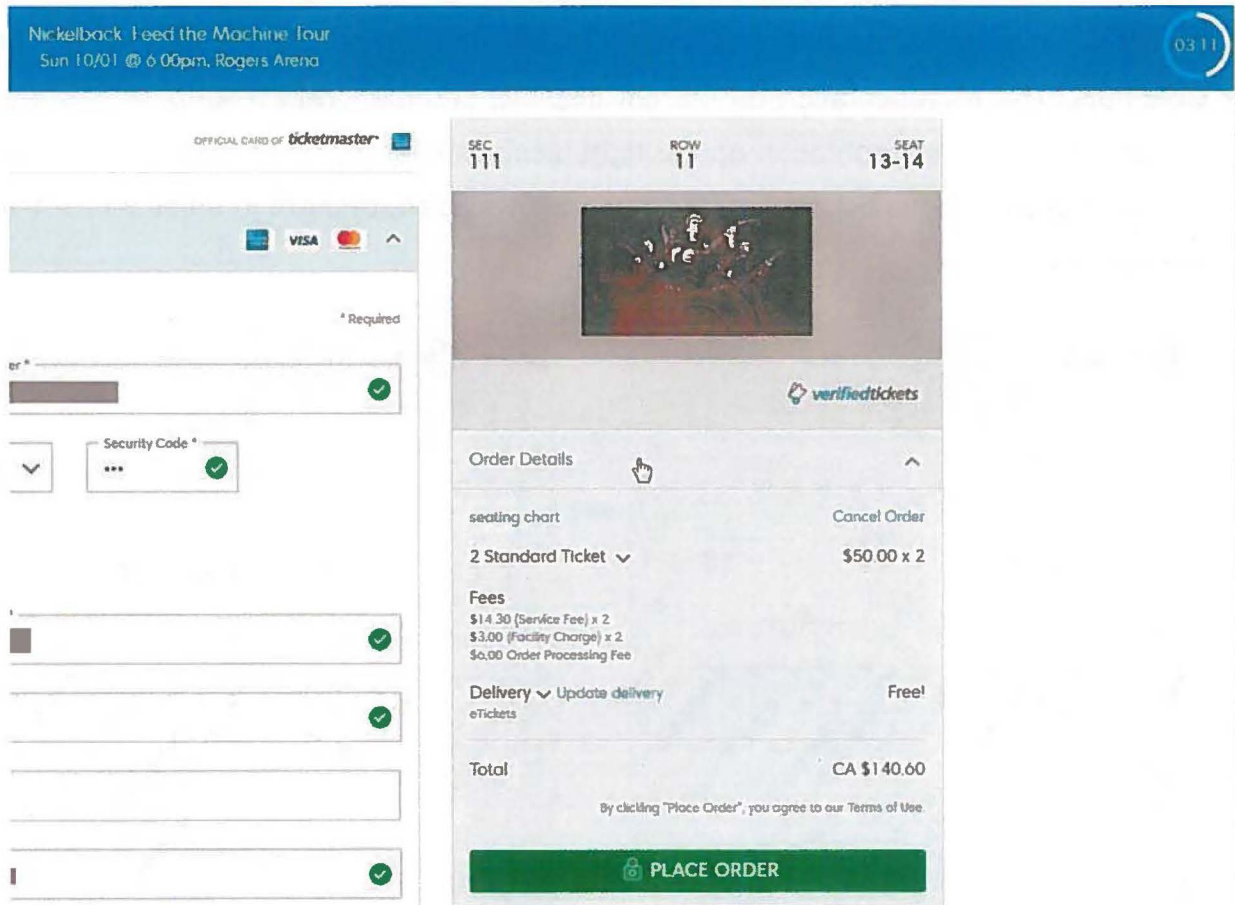
41. The Respondents continue to make Price Representations in the manner outlined above. For example, the Price Representations continue to be made to the public on the respondents' website via ticketweb.ca and ticketsnow.com. However, in or around the month of September 2017, the Respondents made certain changes to some of the

representations they made. Specifically, in some instances the Respondents have increased the prominence of the disclosure of the existence of the Non-Optional Fees to consumers. However, even where the disclosure of the existence of the fees has become more prominent, the Respondents continue to conceal the amount of the fees and the actual ticket price from consumers until after consumers have selected their tickets for purchase.

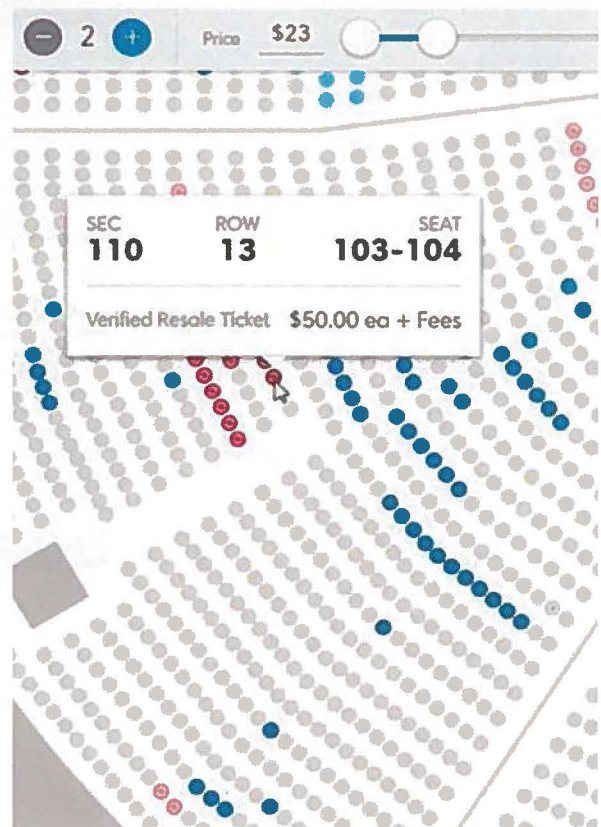
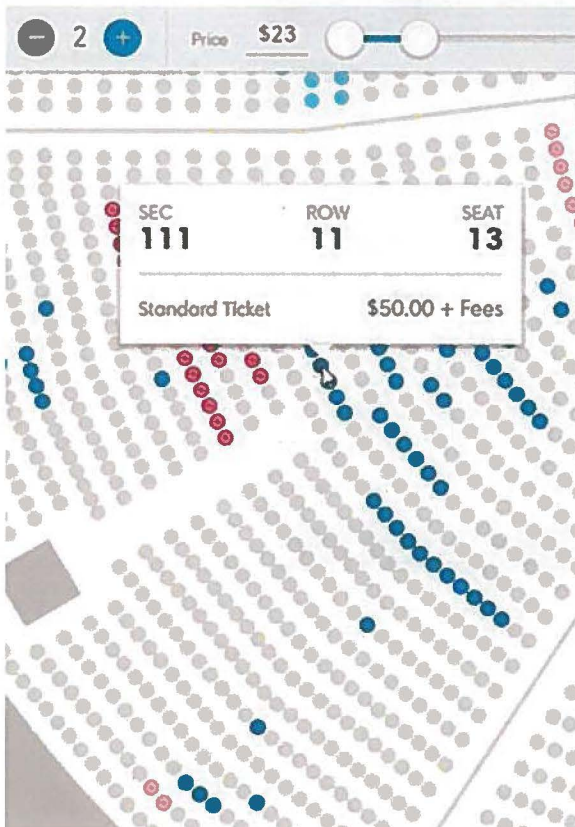
42. For example, the Price Representations identified in the images below were made on the Respondents' website via ticketmaster.ca on or about September 30, 2017. The Respondents made these representations to promote the sale of tickets to a Nickelback concert on October 1, 2017 at Rogers Arena in Vancouver, British Columbia, and to promote their business interests more generally.
43. Consumers interested in tickets to this event and who visited the Respondents' website via ticketmaster.ca could navigate to the following page on the website. Consumers had the option to select the seats that interested them directly from the map. The website then popped up a message indicating the Price Representation for the ticket, which in this instance was "\$50 + Fees". On the right side of the page, the Price Representation was repeated, with a button inviting the consumer to "Get Tickets".



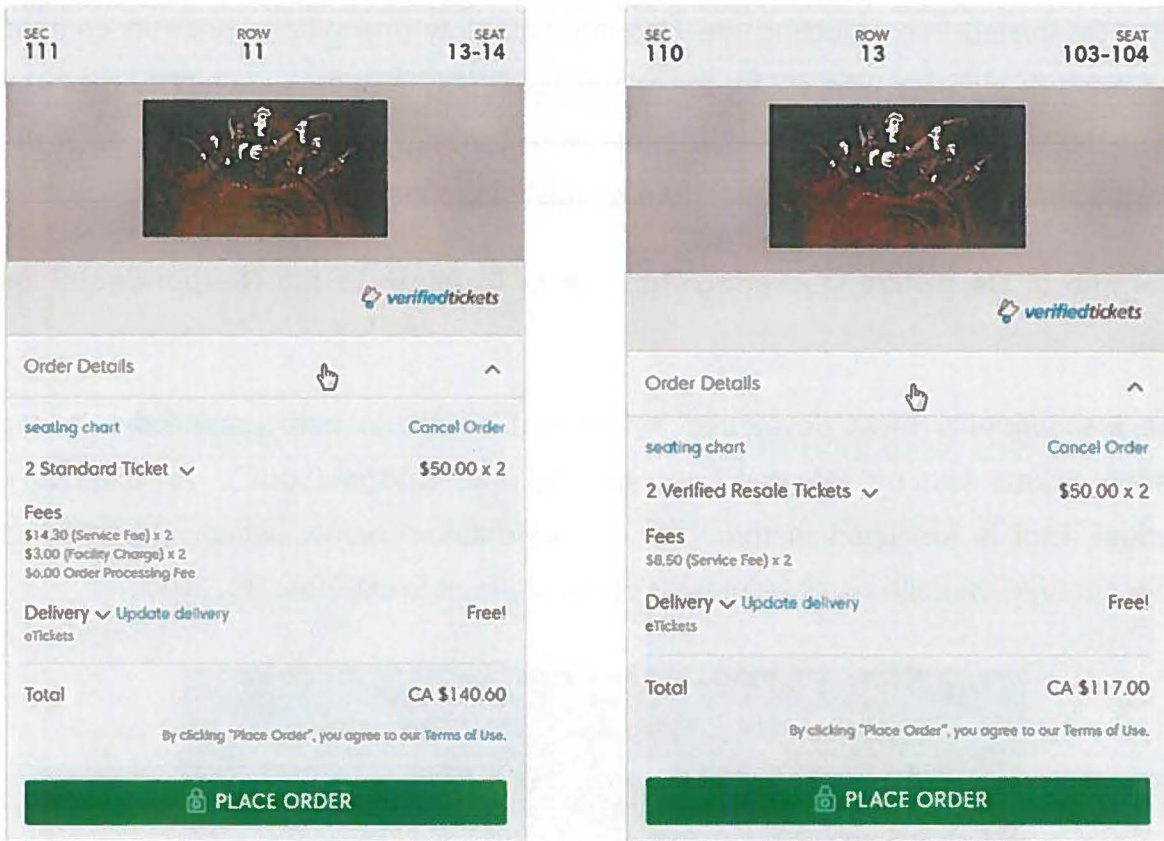
44. The Price Representation is unattainable and creates the false or misleading general impression that consumers can buy tickets for this event for less than what the Respondents actually charge. The only difference between the earlier example and this example is that the website now has the words "+ Fees" beside the Price Representation. Even though the amount of some or all of the fees are known to the Respondents prior to making the Price Representations to the public, the Respondents choose to only reveal the amount of their Non-Optional Fees and the "true" cost of the tickets once consumers select their tickets and take the time and effort to navigate through certain steps in the purchasing process. For the reasons outlined in paragraph 27 above, this disclosure is wholly inadequate to prevent this drip pricing practice from being misleading to consumers.



45. As identified in the image above, the Non-Optional Fees increased the price of two “Standard Tickets” from \$100 to \$140.60. The Non-Optional Fees therefore increased the advertised price of the “Standard Tickets” by over 40%, which is significant.
46. In addition, consumers in Canada choosing to select tickets from a list tool available on ticketmaster.ca are still presented with Price Representations substantially similar to those observed before September 2017. These Price Representations are false or misleading in a material respect, and amount to the supply of a product above an advertised price, for the same reasons identified in paragraphs 26 to 30 and 34 to 40.
47. The example below helps to underscore the misleading nature of the Price Representations as seen on the ticketmaster.ca website. The example involves representations identified in the images below that were made to promote the sale of tickets to Nickelback’s concert on October 1, 2017 at Rogers Arena in Vancouver, British Columbia. The representation on the left displays information in respect of a “Standard Ticket” while the representation on the right displays information in respect of a “Verified Resale Ticket”. These tickets are located two rows apart, and are in adjacent sections of the stadium.



48. In both cases, the Price Representations for the tickets are \$50. However, as can be seen below, the true cost for a pair of tickets on the left is \$140.60, while the true cost for a pair tickets on the right is \$117. The Non-Optional Fees increased the advertised price of the “Standard Tickets” by over 40%, but increased the advertised price of the “Verified Resale Tickets” by 17%.



49. If the Respondents disclosed the “true” cost of the tickets in the Price Representations, then consumers could easily make informed decisions on the basis of accurate information about the price of the different offerings, thereby avoiding the consumer deception caused by the use of unattainable prices. This dripping of costs negatively affects consumer decision-making, resulting in consumer harm.

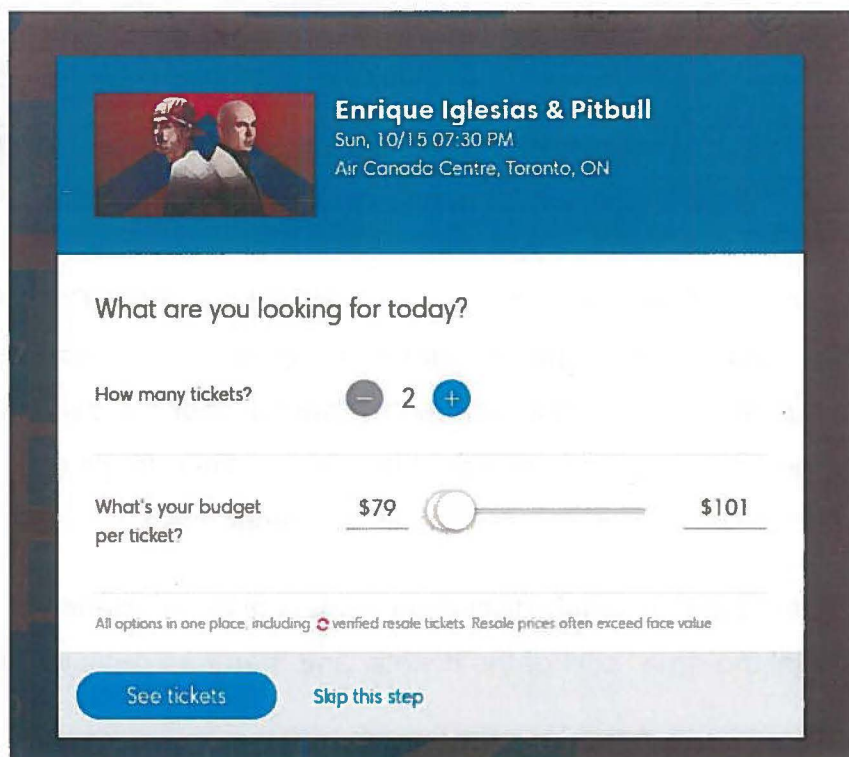
50. The example illustrates that simply disclosing the fact of the existence of fees does not, in and of itself reveal the “true” cost of the tickets, and therefore does not dispel the false or

misleading general impression created by the unattainable prices in the Price Representations. The example also illustrates that the “true” cost of the tickets varies widely and is unknowable for the consumer.

51. The foregoing is however only an illustration of a more general mechanism of deception. The exclusion of Non-Optional Fees from the Respondents’ Price Representations would create a similar misleading impression in any price comparison. That is, a consumer could be misled into selecting the Respondents’ low unavailable price in comparisons with another supplier who could, for example, display a seemingly higher (but in reality lower) all-inclusive price or impose lower Non-Optional Fees (should the other supplier adopt a similar dripped pricing structure as the Respondents).

C. Example of Deceptive Marketing Practice in Relation to the Respondents’ Budget Tool

52. The Respondents have developed a tool that claims to help prospective consumers identify tickets within a selected budget range (the “Budget Tool”). An example of the Budget Tool is identified in the Price Representation below, which appeared on the Respondents’ website via ticketmaster.ca on or about September 30, 2017.

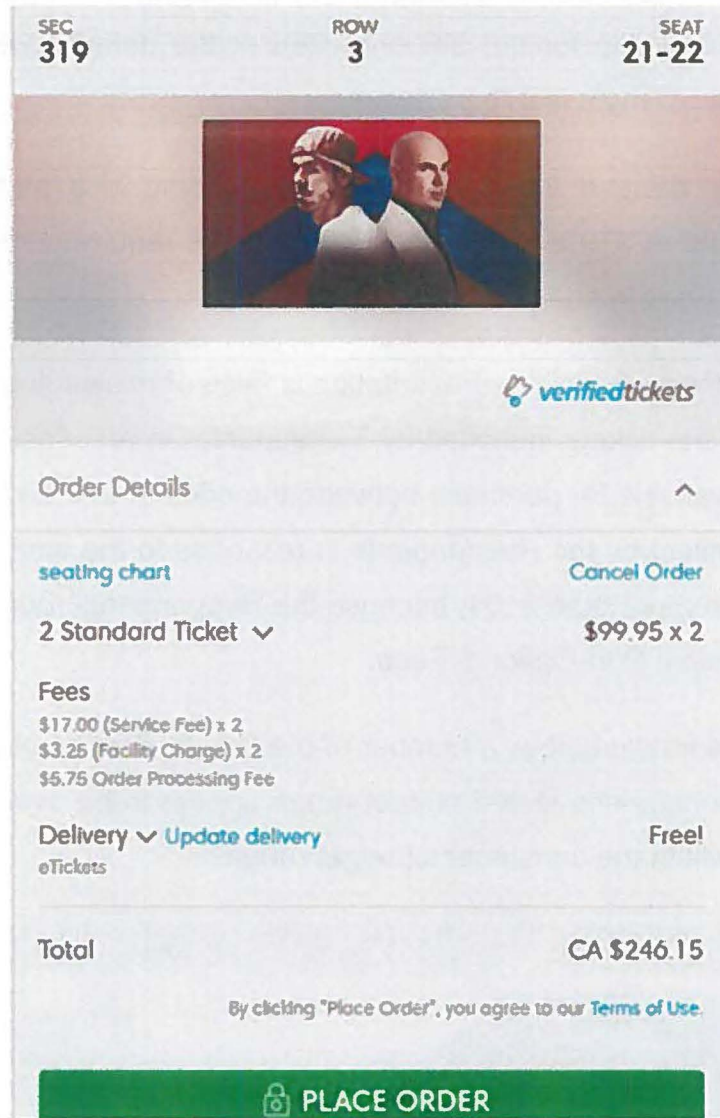


- 53. The Respondents' Budget Tool conveys the general impression that a consumer can use this tool to narrow the universe of available tickets to just those tickets that are available for purchase within the consumer's budget range, which in the above example is the range between \$79 and \$101. The Budget Tool also conveys the general impression that there are tickets available for the amount listed at the default low range of the scale, which in the above example is \$79.
- 54. The Respondents' representation is false or misleading in a material respect, as no tickets are available at \$79 because the Respondents require consumers in Canada to pay Non-Optional Fees in addition to the advertised price.
- 55. Furthermore, the Respondents' representation is false or misleading in a material respect because many of the tickets identified by Ticketmaster in response to this budget range are not actually available for purchase between the price of \$79 and \$101. Instead, many of the tickets identified by the Respondents in response to the consumer's stated budget range actually cost more than \$101, because the Respondents require consumers to pay undisclosed additional Non-Optional Fees.
- 56. As identified in the image below, a number of the tickets identified by the Respondents in response to the consumer's stated budget range appear to be available for purchase for \$99.95, which is within the consumer's budget range.

City 2 Price \$79 \$101 Type Reset

Lowest Price	Best Seats
Sec 319, Row 3 Standard Ticket	\$99.95.00
Sec 319, Row 5 Standard Ticket	Offer Price Per Seat \$99.95.00
Sec 319, Row 6 Standard Ticket	\$99.95.00
Sec 319, Row 7 Standard Ticket	\$99.95.00
Sec 319, Row 8 Standard Ticket	\$99.95.00
Sec 319, Row 9 Standard Ticket	\$99.95.00
Sec 319, Row 12 Standard Ticket	\$79.95.00
Sec 319, Row 13 Standard Ticket	\$79.95.00
Sec 319, Row 14 Standard Ticket	\$79.95.00
Sec 319, Row 15 Standard Ticket	\$79.95.00
Sec 319, Row 16 Standard Ticket	\$79.95.00
Sec 319, Row 10 Standard Ticket	\$79.95.00
Sec 319, Row 11 Standard Ticket	\$79.95.00

57. After accounting for Non-Optional Fees, a single \$99.95 ticket actually costs approximately \$123.07 (while two \$99.95 tickets cost \$246.15), which exceeds the consumer's budget range by more than 20%, which is significant.



V. AGGRAVATING FACTORS

58. The deceptive conduct described herein is aggravated by the factors referred to in subsection 74.1(5) of the Act, including the following:

- a. the Respondents are among the largest ticket vendors carrying on business in Canada;

- b. the Respondents earned gross revenue from sales affected by the conduct in excess of several hundred million dollars in a year in Canada;
- c. the Respondents enjoy substantial profits from their business activities in Canada;
- d. the Respondents engaged in the deceptive conduct frequently and over a long duration;
- e. the Respondents engaged in the deceptive conduct in numerous geographic markets;
- f. the Respondents' conduct has had a material impact on consumer purchasing behaviour – it increases both the likelihood that a consumer would purchase a ticket from the Respondents and the amount of money a consumer likely would spend; and
- g. the Respondents have studied the behavioural mechanisms identified in this Application and engaged in the deceptive practice of promoting its products with unattainable prices with full awareness and understanding of the effect such practices could have on consumer perception and behaviour.

VI. RELIEF SOUGHT

- 59. The Commissioner claims the relief set out in paragraph 1, above.

VII. PROCEDURAL MATTERS

- 60. The Commissioner requests that this proceeding be conducted in English.
- 61. The Commissioner requests that this application be heard in the City of Ottawa.

DATED AT Gatineau, this 25th day of January 2018.

**ORIGINAL SIGNED BY
MATTHEW F.J. BOSWELL**

for

John Pecman
Commissioner of Competition

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MATTHEW F.J. BOSWELL