

CT-2016-

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 the Respondent under subsections 74.01(2) and 74.011(2) of the *Competition Act*.

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

AMAZON.COM.CA, INC.

Respondent

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE REGISTERED / ENREGISTRÉ FILED / PRODUIT CT-2017-001 January 11, 2017 Andrée Bernier for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 2

CONSENT AGREEMENT

WHEREAS the Commissioner of Competition (the “**Commissioner**”) is responsible for the administration and enforcement of the *Competition Act* (the “**Act**”);

AND WHEREAS Amazon.com, Inc. is a publicly traded Delaware corporation, which, among other things, operates as an electronic commerce company and online retailer;

AND WHEREAS the Respondent **Amazon.com.ca, Inc.**, a Delaware corporation with its principal place of business in Seattle, Washington, is a wholly owned subsidiary of Amazon.com, Inc. and is responsible for, among other things, the operation of www.amazon.ca;

AND WHEREAS products are sold through www.amazon.ca either by the Respondent on its own account (“**Amazon Retail**”) or by third-party sellers (the “**Third-Party Marketplace**”);

AND WHEREAS the Respondent made pricing representations to the public with respect to Amazon Retail on www.amazon.ca, on mobile applications, in electronic messages that it sent or caused to be sent, and in online advertisements, for the purpose of promoting products for sale on www.amazon.ca;

AND WHEREAS these pricing representations often compared the selling price of a product with a “List Price”, such as “List Price: ~~CDN\$ 39.99~~, Price: CDN\$ 29.99”, where the List Price was struck out, and were often accompanied by specific “You Save” claims that set out a dollar amount of savings and a percentage discount off the List Price, such as “You Save: CDN\$ 10.00 (25%)”, (collectively, the “**Savings Claim Representations**”);

AND WHEREAS the Commissioner concluded that the Savings Claim Representations made by the Respondent created the general impression that Amazon Retail products were available for purchase at prices below that of prevailing (or ordinary) market prices;

AND WHEREAS on August 10, 2015, the Commissioner commenced an inquiry pursuant to subparagraph 10(1)(b)(ii) of the Act to determine whether the Savings Claim Representations made by the Respondent in the promotion of Amazon Retail operations accurately reflected the savings available to consumers as compared to prevailing market prices (the “**Inquiry**”);

AND WHEREAS the Respondent fully cooperated with the Commissioner throughout the duration of the Inquiry, including voluntarily providing the Commissioner with written and oral information relevant to the Inquiry;

AND WHEREAS as part of the Inquiry, the Commissioner examined the promotion and sale of 12 Blu-Ray movies as set out in Appendix “A” (the “**Relevant Products**”);

AND WHEREAS the Commissioner has concluded that List Prices for Amazon Retail products were provided by the suppliers from whom the Respondent purchased the products, that the Respondent required suppliers to provide accurate information regarding List Prices, and that the Respondent relied honestly on the suppliers for purposes of setting these List Prices without independent verification or validation to determine whether the List Prices provided by the suppliers were set in good faith and actually reflected the prevailing market prices of the products;

AND WHEREAS the Commissioner has concluded that, from at least May 27, 2014 until May 1, 2016 (the “**Relevant Period**”), other suppliers generally had not sold the Relevant Products in substantial volumes at List Prices (or higher) within a reasonable period of time before or after the making of the Savings Claim Representations by the Respondent;

AND WHEREAS the Commissioner has concluded that, during the Relevant Period, other suppliers generally had not offered the Relevant Products for sale at List Prices (or higher) in good faith for a substantial period of time recently before or immediately after it made the Savings Claim Representations;

AND WHEREAS the Commissioner has therefore concluded that during the Relevant Period, the Respondent engaged in reviewable conduct contrary to subsections 74.01(2) and 74.011(2) of the Act;

AND WHEREAS the Commissioner has been advised by the Respondent that it took a number of voluntary and pro-active steps to address the conduct at issue, including:

- a) initiating changes to its Savings Claim Representations practices prior to becoming aware that the Commissioner had concerns with the Savings Claim Representations;
- b) suppressing the List Prices of certain products available on www.amazon.ca, on mobile applications, in electronic messages, and in online advertisements; and
- c) adopting and implementing policies and procedures to ensure compliance with the requirements of Part VII.1 of the Act, including the requirement that List Prices be set in good faith for all products offered for sale by the Respondent for Amazon Retail,

and the Commissioner has relied on these representations in entering into this Agreement;

AND WHEREAS the Commissioner has been advised by the Respondent that the adoption and implementation of these policies and procedures are likely to have, and are already having wide-spread effect, including impacting Savings Claim Representations as they appear in respect of products sold on www.amazon.com;

AND WHEREAS the Commissioner has been advised by the Respondent that it had in place a Corporate Compliance Program relating to marketing and competition matters prior to the initiation of the Inquiry, which has been complemented by the new policies and procedures referred to above;

AND WHEREAS the Commissioner has been advised by the Respondent that the Respondent is aware of and has read the Commissioner's Bulletin entitled "Corporate Compliance Programs", as published (as of the date of execution of the Agreement) on the Competition Bureau's website at www.competitionbureau.gc.ca;

AND WHEREAS for the purposes of this Agreement only, including execution, registration, enforcement, variation and rescission, the Respondent does not contest the Commissioner's conclusions, and 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 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 Respondent is committed to compliance with the Act generally, and the deceptive marketing practices provisions (Part VII.1) specifically;

AND WHEREAS the Commissioner has agreed to more favourable terms in this Agreement than would otherwise be the case because of the Respondent's full and timely cooperation with the Commissioner's Inquiry, including its voluntary efforts to address the Commissioner's concerns;

NOW THEREFORE in order to resolve the Commissioner's concerns, the Parties hereby agree as follows:

I. INTERPRETATION

1. For the purpose of the Agreement, the following definitions shall apply:

- a. **"Act"** means the *Competition Act*, R.S.C. 1985, c. C-34, as amended;
- b. **"Affiliate"** means an affiliated corporation, partnership or sole proprietorship within the meaning of subsection 2(2) of the Act;
- c. **"Agreement"** means this Consent Agreement entered into by the Parties pursuant to section 74.12 of the Act, including Appendix "A" hereto;
- d. **"Amazon.com.ca, Inc."** means a Delaware corporation incorporated in November 30, 2000, its directors, officers, employees, agents, representatives, successors and assigns, and all joint ventures, subsidiaries, divisions and Affiliates controlled by Amazon.com.ca, Inc. within the meaning of subsection 2(4) of the Act, and the respective directors, officers, employees, agents, representatives, successors and assigns of each;
- e. **"Commissioner"** means the Commissioner of Competition appointed pursuant to section 7 of the Act, and their authorized representatives;
- f. **"Electronic Messages"** means electronic messages within the meaning of subsection 2(1) of the Act;
- g. **"List Price"** means the Manufacturer's Suggested Retail Price or other undiscounted price provided to the Respondent by the Respondent's suppliers;
- h. **"Price"** means the price at which a product is offered for sale;

- i. **“Parties”** means the Commissioner and the Respondent collectively, and **“Party”** means any one of them;
- j. **“Person”** means any individual, corporation, partnership, firm, association, trust, unincorporated organization or other entity;
- k. **“Related Person”** means any Person controlled within the meaning of the Act directly or indirectly by the Respondent, including any subsidiary corporations;
- l. **“Relevant Period”** means May 27, 2014 to May 1, 2016;
- m. **“Relevant Product”** means the 12 Blu-Ray movies sold by the Respondent as identified in Appendix “A”;
- n. **“Respondent”** means Amazon.com.ca, Inc.;
- o. **“Respondent’s Personnel”** means all current and future employees of the Respondent and Respondent’s Senior Management who are materially involved in or responsible for the formulation or implementation of advertising, marketing or pricing policies for products Supplied in Canada;
- p. **“Respondent’s Senior Management”** means the current and future Chief Executive Officers, Chief Administrative Officer, Chief Financial Officer, Chief Accounting Officer, Controller, President, Vice Presidents, Secretary, any individual who performs their functions;
- q. **“Supply”** or **“Supplied”** means supply within the meaning of subsection 2(1) of the Act; and
- r. **“Tribunal”** means the Competition Tribunal established by the *Competition Tribunal Act*, R.S.C. 1985, c. 19 (2nd Supp.), as amended.

II. **COMPLIANCE WITH SUBSECTIONS 74.01(2) and 74.011(2) OF THE ACT**

- 2. The Respondent shall comply with:
 - a. the ordinary price provisions set out in subsection 74.01(2) of the Act ; and
 - b. the false or misleading representation contained in electronic messages provision set out in subsection 74.011(2) of the Act,

for any product Supplied by the Respondent in Canada, within 90 days after the execution date of the Agreement.

III. PAYMENTS

ADMINISTRATIVE MONETARY PENALTY

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

COSTS

4. The Respondent shall pay 100,000 dollars towards the costs incurred by the Commissioner during the course of his investigation into this matter.

FORM AND TIME OF PAYMENT

5. The payments referred to in paragraphs 3 and 4 shall be made forthwith by certified cheque or by wire transfer payable to the Receiver General for Canada.

IV. CORPORATE COMPLIANCE PROGRAM

6. The Respondent shall maintain its corporate compliance program, in order to promote the compliance of the Respondent with the Act and Part VII.1 generally, and subsections 74.01(2) and 74.011(2) specifically.
7. The Respondent's Senior Management shall fully support and enforce their compliance program and shall take an active and visible role in its maintenance.

V. COMPLIANCE REPORTING AND MONITORING

8. The Respondent shall provide the Commissioner or his authorized representative, written confirmation that all of the Respondent's Personnel have received a summary and explanation of the Respondent's obligations under the Agreement, as required by paragraph 10 below, within 30 days after registration of the Agreement.
9. The Respondent shall provide the Commissioner or his authorized representative, within 30 days following receipt of a written request from the Commissioner, such information, in such form as the Commissioner requests, for the purposes of monitoring compliance with the Agreement.

VI. GENERAL

10. During the term of the Agreement, (i) the Respondent shall provide a summary and explanation of the Respondent's obligations under the Agreement to all Respondent's Personnel within 30 days after date of registration of the Agreement, and (ii) all future

Respondent's Personnel will be provided with a copy of the Agreement within 30 days after their commencement of employment.

11. Notices, reports and other communications required or permitted pursuant to any of the terms of the 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 Canada
Place du Portage, 21st Floor
50 Victoria Street, Phase I
Gatineau QC 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
Place du Portage, 22nd Floor
50 Victoria Street, Phase I
Gatineau QC K1A 0C9
Facsimile: 819-953-9267

(b) The Respondent:

Office of General Counsel
Amazon.com, Inc.
2021 7th Avenue
Seattle, WA 98121

12. The Agreement shall be binding upon the Respondent for a period of 10 years following its registration.
13. The Parties consent to the immediate registration of the Agreement with the Tribunal.

14. 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 the Agreement.
15. The Commissioner may, with the consent of the Respondent, extend any of the time frames in Part VI of the Agreement except paragraph 12.
16. Nothing in this Agreement precludes the Respondent or the Commissioner from bringing an application under section 74.13 of the Act. The Respondent will not, for the purposes of the Agreement, including execution, registration, enforcement, variation or rescission, contest the Commissioner's conclusions set forth in this Agreement.
17. The Respondent shall not make any public statements that contradict the general terms of this Agreement.
18. The Respondent submits to the jurisdiction of the Tribunal for the purposes of the Agreement and any proceeding initiated by the Commissioner relating to the Agreement for variation or rescission.
19. In the event of a dispute as to the interpretation, implementation or application of the Agreement, any of the Parties shall be at liberty to apply to the Tribunal for an order or directions. The Parties agree that the Tribunal has jurisdiction to make such order as is required to give effect to the Agreement.
20. The 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 the Agreement, the English version shall prevail.
21. The computation of time periods contemplated by the Agreement shall be in accordance with the *Interpretation Act*, R.S.C. 1985, c. I-21. For the purpose of the Agreement, the definition of "holiday" in the *Interpretation Act* shall include Saturday. For the purposes of determining time periods, the date of the Agreement is the last date on which it is executed by a Party.

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

DATED at Seattle, in the State of Washington, this 21st day of December 2016.

Paul Ryder

Amazon.com.ca, Inc.

Paul Ryder

Vice President

I have authority to bind the corporation.

DATED at Gatineau, in the Province of Quebec, this Xth day of December 2016.

Commissioner of Competition

John Pecman

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

DATED at XXXX, in the State of XXXX, this Xth day of December 2016.

Amazon.com.ca, Inc.

I have authority to bind the corporation.

DATED at Gatineau, in the Province of Quebec, this 5th day of January 2017.

John Pecman

Commissioner of Competition

John Pecman

Appendix “A” – “Relevant Products”

	TITLE	ASIN
1	X-Men and The Wolverine Collection (X-Men / X2 / X-Men 3: The Last Stand / X-Men Origins: Wolverine / X-Men: First Class / The Wolverine) (Bilingual) [Blu-ray]	B00FL2F29G
2	Mad Max Trilogy (Bilingual) (Mad Max / The Road Warrior / Mad Max Beyond Thunderdome) [Blu-ray]	B00C33886K
3	Daniel Craig 007 Collection (Casino Royale / Quantum of Solace / Skyfall) [Blu-ray]	B00BQLEHY2
4	Frozen [Blu-ray + DVD + Digital Copy] (Bilingual)	B00G5G7K7O
5	The Wolverine / Le Wolverine [Blu-ray + DVD + Digital Copy] (Bilingual)	B00A7ZHRM2
6	Star Wars: The Complete Saga (Episode I – VI) Box Set [9-Disc Blu-ray] (Bilingual)	B004HZXORA
7	Game of Thrones: The Complete Third Season [Blu-ray + DVD + Digital Copy]	B00C8CQTJY
8	Blood and Ice Cream Trilogy (Shaun of the Dead / Hot Fuzz / The World’s End) [Blu-ray]	B00FA9634I
9	X-Men Trilogy – Trilogie X-Men [Blu-ray + Ultraviolet Copy]	B005EQER7W
10	Looney Tunes Platinum Collection: Volume Two [Blu-ray]	B008VPCL6M
11	Oblivion / L’Oubli (Bilingual) [Blu-ray + DVD + Digital Copy + Ultraviolet]	B00B4J2LZI
12	The Hobbit: The Desolation of Smaug / Le Hobbit: La desolation de Smaug (Bilingual) [Blu-ray + DVD + Ultraviolet]	B00IICJ5M6