

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 Aviscar Inc. and Budgetcar Inc. under paragraph 74.01(1)(a) and sections 74.05 and 74.011 of the *Competition Act*.

BETWEEN:

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE REGISTERED / ENREGISTRÉ FILED / PRODUIT June 2, 2016 CT-2015-001 Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 82

THE COMMISSIONER OF COMPETITION

Applicant

- and -

AVISCAR INC. and BUDGETCAR INC. / BUDGETAUTO INC.

Respondents

CONSENT AGREEMENT

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

AND WHEREAS the Respondents Aviscar and Budgetcar operate a car rental services business across Canada and also offer Related Products such as GPS systems, child safety seats, insurance products and roadside assistance services;

AND WHEREAS the Respondents are indirect subsidiaries of ABC Rental and Avis Budget Group;

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

AND WHEREAS one or both of the Respondents made these Representations to the public starting from at least 2009 on their Websites, Mobile Apps, and Emails, as well as in certain of their newspaper advertisements, television commercials, and flyers;

AND WHEREAS the Respondents charged consumers Non-Optional Fees in addition to the prices initially advertised;

AND WHEREAS the Commissioner has concluded that the Respondents' Non-Optional Fees may increase the cost of a car rental by 5% to 20%, depending on the rental location and vehicle type;

AND WHEREAS the Commissioner has concluded that certain of the Respondents' initial 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 Respondents' 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 words chosen by the Respondents to describe certain of the Non-Optional Fees, where they were placed, and how they were combined with actual taxes, created the 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 Commissioner has concluded it was the Respondents who chose to impose Non-Optional Fees on consumers to recoup part of their own cost of doing business;

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

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

AND WHEREAS the Commissioner acknowledges that the Respondents undertook a number of voluntary and proactive steps at least as early as December 2014 to address the conduct at issue, including changing many of their representations regarding certain Non-Optional Fees and redesigning certain of their Canadian websites in July 2015 so that consumers are shown the total estimated price for a rental, inclusive of Non-Optional Fees, the first time they are shown a price;

AND WHEREAS the Commissioner acknowledges that, since at least 2009, the Respondents informed consumers of the total estimated price for their rental before a car rental reservation was completed;

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 Respondents do not contest the Commissioner's conclusions but nothing in this Agreement shall be taken as an admission or acceptance by the Respondents of any facts, wrongdoing, submissions, legal argument or conclusions for any other purpose nor shall it derogate from any rights or defences of the Respondents 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 IT IS AGREED AND UNDERSTOOD that upon registration of this Agreement, these proceedings shall be terminated as against the Respondents, ABC Rental and Avis Budget Group pursuant to subsection 74.12(4) of the *Competition Act*;

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. "**ABC Rental**" means Avis Budget Car Rental Services, LLC, a limited liability corporation incorporated pursuant to the laws of Delaware;
 - b. "**Affiliate**" means an affiliated corporation, partnership or sole proprietorship within the meaning of subsection 2(2) of the *Competition Act*;
 - c. "**Agreement**" means this Consent Agreement entered into by the Parties pursuant to section 74.12 of the *Competition Act*, including Appendix "A" hereto;
 - d. "**Avis Budget Group**" means Avis Budget Group, Inc., a corporation incorporated pursuant to the laws of Delaware;
 - e. "**Aviscar**" means Aviscar Inc., a corporation incorporated pursuant to the laws of Canada, 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;

- f. “**Base Rate**” means the price for a rental car and/or a Related Product for time and/or mileage only, exclusive of Non-Optional Fees and federal and provincial sales taxes;
- g. “**Budgetcar**” means Budgetcar Inc. / Budgetauto Inc., a corporation incorporated pursuant to the laws of Canada, 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. “**Commissioner**” means the Commissioner of Competition appointed pursuant to section 7 of the *Competition Act*, and his or her authorized representatives;
- i. “**Competition Act**” means the *Competition Act*, R.S.C. 1985, c. C-34, as amended;
- j. “**Email**” means any electronic message sent by or on behalf of the Respondents to persons in Canada relating to car rental services or Related Products supplied directly by the Respondents;
- k. “**Execution Date**” means the date on which the Agreement has been signed by both Parties;
- l. “**Interpretation Act**”, means the *Interpretation Act*, R.S.C. 1985, c. I-21, as amended;
- m. “**Mobile Applications**” means any Avis or Budget branded mobile application that display prices for rental cars or Related Products that the Respondents supply;
- n. “**Non-Optional Fees**” means any charges, surcharges, fees, or other amounts, excluding applicable provincial and federal sales taxes, 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, “Surtaxe Stationnement”, “Surtaxe Emplacement Prestige”, “Taxe de mise au rebut des pneumatiques”, “Taxe environnementale de l’Ontario”, “Taxe d’accise sur la climatisation”, “Car Tax”, “Vehicle License Fee/AC Excise Tax”, “Ontario Environmental Fee”, “Tire Management Fee”, “Energy

Recovery Fee”, “Parking Surcharge”, “Concession Recovery Fee”, “Premium Location Surcharge”, “Other Charges”, and “Fees”;

- o. “**Parties**” means the Commissioner and the Respondents collectively, and “**Party**” means any one of them;
- p. “**Person**” means any individual, corporation, partnership, firm, association, trust, unincorporated organization, or other entity;
- q. “**Related Products**” includes GPS systems, child safety seats, insurance products, and roadside assistance services;
- r. “**Representations**” means any and all representations made, caused to be made, or permitted to be made by or on behalf of the Respondents including any representation on the Websites, Mobile Applications, and any Email, flyer, television commercial, or newspaper advertisement;
- s. “**Respondents**” means Aviscar Inc., and/or Budgetcar Inc.;
- t. “**Respondents’ Marketing Personnel**” means all current and future Respondents’ employees and Respondents’ Senior Management who are materially involved in or responsible for the formulation or the implementation of advertising, marketing or pricing for products the Respondents supply;
- u. “**Respondents’ 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, Secretary, Controller, General Manager, Managing Directors, and any individual who performs their functions;
- v. “**Websites**” means Avis.ca, Avis.com, Budget.ca, and Budget.com, as used by those who identify themselves as residents of Canada; and
- w. “**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 90 days of the Execution Date, the Respondents shall comply with Part VII.1 of the *Competition Act*.
- 3. Without limiting the generality of the foregoing, within 90 days of the Execution Date, the Respondents shall not make, cause to be made, or permit to be made on their behalf any representation to the public with respect to any product that

creates a materially false or misleading general impression that:

- a. 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; or
 - b. any Non-Optional Fees are taxes, surcharges or fees that governments and authorized agencies require rental car companies to collect from consumers, unless that is in fact the case.
4. If the Respondents become aware that there has been a breach or possible breach of any terms of this Agreement, the Respondents 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 Respondents have taken to correct the breach or possible breach.

III. PAYMENTS

ADMINISTRATIVE MONETARY PENALTY

5. The Respondents shall pay an administrative monetary penalty in the amount of \$3,000,000 dollars.

COSTS

6. The Respondents shall pay \$250,000 dollars for costs incurred by the Commissioner during the course of his investigation into this matter.

FORM AND TIME OF PAYMENT

7. The payments referred to in paragraphs 5 and 6 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

8. Within 90 days after the Execution Date, the Respondents shall establish, and thereafter maintain, a corporate compliance program, the goal of which will be to promote the compliance of the Respondents with the *Competition Act* generally, and Part VII.1 of the *Competition Act* specifically. The compliance program shall be framed and implemented in a manner consistent with 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.ca.

9. The Respondents' Senior Management shall 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 the establishment of the compliance program, each member of Respondents' Senior Management shall acknowledge his or her commitment to the 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 Respondents' 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 Respondents' Senior Management.

V. COMPLIANCE REPORTING AND MONITORING

11. The Respondents shall provide the Commissioner written confirmation that all Respondents' Marketing Personnel has received a copy of this Agreement, as required by paragraph 14, within 21 days after the registration of this Agreement.
12. For the purposes of monitoring compliance with this Agreement, the Respondents 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 Vice President and General Manager of the Respondents 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 implemented.

VI. GENERAL

14. During the term of this Agreement, (i) the Respondents shall provide a copy of this Agreement to all Respondents' Marketing Personnel within 14 days after the date of registration of this Agreement, and (ii) all future Respondents' 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 Respondents 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
Place du Portage, 22nd Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9

Facsimile: (819) 953-9267

(b) The Respondents:

Aviscar Inc. and Budget Car Inc.
1 Convair Dr. E.
Etobicoke, ON M9W 6Z9
Attention: Vice President and General Manager

Facsimile: (416) 213-8505

With a copy to:

Kevin Ackhurst & D. Michael Brown
Norton Rose Fulbright Canada LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4

Facsimile: (416) 216-3930

16. This Agreement shall be binding upon the Respondents for a period of 10 years following its registration.
17. The Parties consent to the immediate registration of this Agreement with the Tribunal pursuant to section 74.12 of the *Competition Act*.
18. The Commissioner may, in his sole discretion and after informing the Respondents in writing, extend any of the time frames in Parts IV and V of this Agreement.
19. The Commissioner may, with the consent of the Respondents, extend any of the time frames in Part VI of this Agreement.
20. Nothing in this Agreement precludes a Respondent or the Commissioner from bringing an application under section 74.13 of the *Competition Act*. The Respondents will not, for the purposes of this Agreement only, including execution, registration, enforcement, variation or rescission, contest the Commissioner's conclusions as stated herein.
21. The Respondents shall not make any public statements that contradict the terms of this Agreement.
22. The Respondents attorn to the jurisdiction of the Tribunal for the purposes of this Agreement and any proceeding initiated by the Commissioner 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.

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

DATED at Buenos Aires, Argentina this 30th day of May, 2016.

for: Aviscar Inc. and
Budgetcar Inc. / Budgetauto Inc.

“William Boxberger”

William Boxberger
Vice President and General Manager
I have authority to bind the corporation.

DATED at Gatineau, in the Province of Quebec this 1st day of June, 2016.

“John Pecman”

John Pecman
Commissioner of Competition

“APPENDIX A”

ACKNOWLEDGEMENT BY SENIOR MANAGEMENT

[Corporate Company Letterhead]

[date], 2016

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 Aviscar Inc., Budgetcar Inc. / Budgetauto Inc. (“Avis/Budget”), dated May __, 2016, I hereby commit to the successful implementation of Avis/Budget’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 establishment and 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