

Competition Tribunal



Tribunal de la Concurrence

Reference: *The Commissioner of Competition v. Aviscar Inc.*, 2015 Comp. Trib. 23
File No.: CT-2015-001
Registry Document No.: 068

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

AND IN THE MATTER OF an application for orders pursuant to section 74.1 of the *Competition Act* for conduct reviewable pursuant to paragraph 74.01(1)(a) and sections 74.05 and 74.011 of the *Competition Act*.

B E T W E E N:

The Commissioner of Competition
(applicant)

and

**Aviscar Inc., Budgetcar Inc./Budgetauto Inc.,
Avis Budget Group, Inc. and Avis Budget Car Rental, LLC**
(respondents)



Date of hearing: 20151201
Before Judicial Member: Barnes J.
Date of Order: December 8, 2015

ORDER DISMISSING THE APPLICANT'S MOTION REQUIRING THE RESPONDENTS TO PROVIDE FURTHER AND BETTER RESPONSES TO REQUESTS TO ADMIT AND ORDERING THE RESPONDENTS TO PROVIDE SUBSTANTIVE INFORMATION IN SCHEDULE C TO THEIR AFFIDAVITS OF DOCUMENTS

[1] The Commissioner brings a motion seeking an order compelling the Respondents to deliver a “proper response” to certain questions posed in Requests to Admit delivered to the Respondents. The Respondents have each refused to make the requested admissions on the strength of reasons the Commissioner considers to be deficient. The Commissioner concedes that the Tribunal has no authority to order a party to make an admission.

[2] The questions in issue sought admissions as to whether each of the documents contained in the Affidavits of Documents of each Respondent are or have been in the possession of that Respondent. The Respondents each refused to make the requested admissions for the following reasons:

- (a) The request to admit dated October 20, 2015 does not seek admissions of the truth of facts or the authenticity of particular documents, but rather, seeks blanket legal and/or conclusory admissions in relation to all of the documents listed not only in [that Respondent’s] Affidavit of Documents, but also in the Affidavits of Documents of its co-respondents, without specifying particular documents subject to the request. In light of the number of productions listed in these Affidavits of Documents, [the Respondent] cannot practicably answer the request to admit;
- (b) further, the request to admit seeks, in part, the admission of facts already set out in [the Respondent’s] Affidavit of Documents such that it is unnecessarily duplicative; and
- (c) to the extent that the request to admit seeks information that is not already contained in [the Respondent’s] Affidavit of Documents, the information sought is not properly the subject of a request to admit.

[3] It is of some significance that the Respondents have admitted under oath that the documents listed in Schedule A to their Affidavits of Documents (almost 60,000) are relevant and are or were in that Respondent’s possession, control or power.

[4] The Commissioner seeks more than this so as to bring these documents within the ambit of section 69 of the *Competition Act*, RSC 1985, c C-34, as amended (the “Act”) and to thereby avoid potential difficulties proving their admissibility during pending discovery examinations.

[5] I am not persuaded that the reasons given for the refusal by the Respondents are deficient and require supplementation. There is merit to the Respondents’ position that, insofar as the admissions sought to cover every document produced, the burden of compliance is disproportionate to the efficiency the Commissioner hopes to achieve.

[6] Having regard to Rules 58 and 72, I am not convinced that the Commissioner’s counsel would, during discovery, need to expend much time or effort in attempting to establish a foundation for admissibility under section 69. Neither should it be presumed that the Respondents’ witnesses will be obstructionist in responding to appropriate questions.

[7] While it is likely true that many, if not most, of the Schedule A documents were in the possession of at least the Respondent producing them, for some others a Respondent may have a legitimate argument for refusing to make that admission. With discoveries commencing this week, these Requests to Admit are untimely and the work required to differentiate among the documents imposes a disproportionate burden on the Respondents and their counsel. I also question the value of an order that only compels the Respondent to offer better reasons for the refusals. To my eye, the reasons offered are sufficient to meet the requirements of Rule 57.

[8] The Commissioner's concerns about the sufficiency of the Respondents Schedule Cs do have merit. It is clear that certain documents possessed by some of the Respondents were likely, at one time, possessed by other Respondents. This could be of significance in establishing the degree of involvement of the Respondents in the conduct under review. To the extent that such documents are capable of being identified but have apparently been lost, those missing documents should be listed in the Schedule Cs for those Respondents no longer in possession. I will accordingly order the Respondents to make a good-faith effort to identify such documents and to include them in the appropriate schedules of their respective Affidavits of Documents.

THE TRIBUNAL ORDERS THAT:

[9] The motion to compel further and better responses to the Requests to Admit is dismissed.

[10] The Respondents are ordered to make good-faith efforts to identify documents missing from Schedule C of their Affidavits of Documents and to revise those Affidavits as appropriate.

[11] Costs of the motion will be costs in the cause.

DATED at Ottawa, this 8th day of December, 2015.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) R.L. Barnes

APPEARANCES:

For the applicant:

The Commissioner of Competition

Derek Leschinsky
Antonio Di Domenico

For the respondents:

Aviscar Inc.
Budgetcar Inc./Budgetauto Inc.
Avis Budget Group, Inc. and
Avis Budget Car Rental, LLC

D. Michael Brown
Christine Kilby