

CT-2015-001

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 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*.

BETWEEN:

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	
FILED / PRODUIT	
November 23, 2015 CT-2015-001	
Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 59

THE COMMISSIONER OF COMPETITION

Applicant

- and -

AVISCAR INC., BUDGETCAR INC. / BUDGETAUTO INC.,
AVIS BUDGET GROUP, INC. and AVIS BUDGET CAR RENTAL, LLC

Respondents

AFFIDAVIT OF KRISTINE SPENCE

I, **KRISTINE SPENCE**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1 I am an associate at the law firm of Norton Rose Fulbright Canada LLP (**Norton Rose Fulbright**), lawyers for the Respondents, and as such have knowledge of the matters to which I hereinafter depose, except as otherwise noted. To the extent that I am informed by others, I verily believe such information to be true. I swear this affidavit in support of the Respondents' opposition to the applicant's motion as described herein.

Events Preceding the Application before the Competition Tribunal

2 On October 19, 2012, the Commissioner of Competition (**Commissioner**) commenced an inquiry under section 10 of the *Competition Act*, R.S.C. 1985, c. C-34 (**Act**) into the marketing practices of Aviscar Inc. and Budgetcar Inc./Budgetauto Inc. (collectively, the **Canadian Respondents**).

3 On September 20, 2013, the Commissioner filed an *ex parte* application in the Federal Court for an Order pursuant to paragraphs 11(1)(b), 11(1)(c) and subsection 11(2) of the *Act* requiring the Canadian Respondents to produce certain records, including the records of their U.S. affiliate, ABG, and to provide written returns of information; and such other orders as counsel may advise. Attached to my affidavit as **Exhibit "A"** is a copy of the Affidavit (without Exhibits) of the Commissioner's authorized representative, Sophie Beaulieu, sworn September 19, 2013 in support of the Commissioner's application.

4 On October 1, 2013 the Federal Court granted the Commissioner's application and issued the Order (the **Section 11 Order**).

5 In response to the Section 11 Order, the Respondents produced to the Commissioner in excess of 7,400 records totalling more than 20,000 pages, including records from a U.S. affiliate (the **Section 11 Productions**).

The Application Before the Competition Tribunal

6 On March 11, 2015, the Commissioner served a Notice of Application against each of the Canadian Respondents and ABG seeking, *inter alia*:

- (a) a declaration that each of the Respondents has engaged in reviewable conduct contrary to paragraph 74.01(1)(a), section 74.05, and subsections 74.011(1) and

(2) of the *Act*;

- (b) administrative monetary penalties in the amount of \$30,000,000; and
- (c) an Order requiring the Respondents to reimburse current and former customers of more than \$35,000,000 allegedly collected and retained in relation to the alleged reviewable conduct between 12 March 2009 and the date of the order.

7 On April 24, 2015, ABG advised the Commissioner that it is a holding company that owns subsidiaries that carry on the car rental business, and that it has and had no records that are responsive to the Section 11 Order. ABG advised that the Section 11 Productions belonged to the Canadian Respondents and Avis Budget Car Rental, LLC (**ABCR**), a U.S. company that is a wholly-owned indirect subsidiary of ABG and an indirect parent company of the Canadian Respondents.

8 On April 29, 2015, the Commissioner served an Amended Notice of Application adding ABCR as a respondent to the Application (the **Amended Application**).

9 The Respondents served a joint Response to the Commissioner's Amended Notice of Application on June 29, 2015 (the **Response**).

Application Timetable

10 On June 9, 2015, the Commissioner proposed a timetable providing for, *inter alia*, the delivery of affidavits of documents and productions by July 30, 2015, just over three weeks after the anticipated close of pleadings. A copy of the draft timetable and covering email from counsel for the Commissioner is attached as **Exhibit "B"** to my affidavit.

11 On June 12, 2015, we informed counsel for the Commissioner that the Commissioner's proposed timetable was unrealistic because it would not be feasible to complete

documentary production within the timeframe proposed. It was and is the Respondents' position that an application seeking over \$65 million in penalties and compensation in relation to alleged reviewable conduct of four different companies in two different countries over at least a six-year period could not possibly be completed within 24 days of the close of pleadings as the Commissioner had proposed.

- 12 As we further advised the Commissioner, the proposed schedule for documentary discovery was unprecedented for proceedings before the Competition Tribunal. Based on our review of the Commissioner's recent applications to the Competition Tribunal, the timelines averaged 5-6 months from the close of pleadings. Copies of the scheduling orders before the Competition Tribunal that we reviewed are included in Exhibit "D" to my affidavit, as described in paragraph 13 hereto. In closing, we invited counsel for the Commissioner to discuss a more reasonable timeline. Attached as **Exhibit "C"** to my affidavit is a copy of the email correspondence from Norton Rose Fulbright to counsel for the Commissioner.
- 13 In response to the Commissioner's proposed timetable, the Respondents proposed their own timetable providing for, *inter alia*, service of affidavits of documents and delivery of documents within 6 months of the close of pleadings and a hearing date in October 2016. Attached as **Exhibit "D"** to my affidavit is a copy of the Respondents' proposed timetable in this proceeding sent to the Competition Tribunal and copied to Commissioner's counsel on June 16, 2015.
- 14 Counsel for the parties attended a case conference before Chief Justice Crampton on June 16, 2015 to deal with various scheduling matters in relation to the Application. Chief Justice Crampton advised counsel that Justice Barnes would be the judicial member of the Tribunal presiding over the Application.

- 15 Chief Justice Crampton further advised that the Tribunal was concerned that recent proceedings before the Tribunal were being “dragged out” and that the Tribunal was endeavouring to have future proceedings before the Tribunal proceed more quickly to a hearing. Accordingly, Chief Justice Crampton directed that the hearing of the Application should commence on April 18, 2016, being the earliest date that Justice Barnes was available for a multi-week hearing in 2016.
- 16 Chief Justice Crampton further directed that the parties should attempt to reach an agreement on a timetable that would accommodate an April 2016 trial date and to take part in a case management conference before Justice Barnes following service of the Response to set a timetable for the conduct of the application. A copy of Chief Justice Crampton’s order made at the case management conference is attached as **Exhibit “E”** to my affidavit.
- 17 Pursuant to Chief Justice Crampton’s direction, following the delivery of the Response on June 29, 2015, counsel for the parties engaged in discussions on an appropriate timetable. These discussions were largely focused on the delivery date for the documentary productions and Affidavits of Documents.
- 18 The application hearing deadline imposed by Chief Justice Crampton put the Respondents in a difficult position. Although counsel for the Respondents believed that the required documentary collection, review and production could, in normal circumstances, reasonably take four months or longer to complete, the April 18, 2016 hearing date necessitated a faster production in order to provide sufficient time to complete the remaining steps before the application hearing.
- 19 After lengthy negotiations, counsel for the parties reached an agreement on a timetable consistent with Chief Justice Crampton’s direction, which provided for the delivery of

Affidavits of Documents and documentary production by September 25, 2015, less than two and a half months after the close of pleadings. I am advised by Michael Brown, Partner at Norton Rose Fulbright, that he advised counsel for the Commissioner that while the Respondents would make every effort to complete the production by September 25, 2015, he still had concerns about the Respondents' ability to meet such a tight deadline, particularly given that most of the document collection and review would have to be conducted over the peak summer vacation period.

20 On July 7, 2015, Justice Barnes approved the timetable agreed to by the parties and made a scheduling order (the **Scheduling Order**), which is attached as **Exhibit "F"** to my affidavit. The Scheduling Order provides for, *inter alia*:

- (a) the service of affidavits of documents and delivery of documents by all parties by September 25, 2015;
- (b) the deadline for filing any motions arising from affidavits of documents and/or productions and/or in respect of the scope of examinations for discovery as October 28, 2015;
- (c) the hearing of any motions arising from affidavits of documents and/or productions and/or in respect of the scope of examinations for discovery for a date to be set as needed on November 9 and 10, 2015;
- (d) the delivery of any additional productions resulting from any affidavits of documents/production motions by November 23, 2015;
- (e) examinations for discovery according to a schedule between November 30, 2015 and December 23, 2015; and

- (f) the deadline for delivering any requests for admissions on March 24, 2016.

The Scope of Document Review

- 21 The Norton Rose Fulbright litigation and support teams focused immediately on preparing for the collection, review and production of documents. At all times, our priority was to meet the milestones for delivery of the Respondents' affidavits of documents and production of documents, as provided for in the Scheduling Order.
- 22 Ultimately, the scope of documents to be reviewed was large. Approximately 1.95 million documents were collected and processed from the Respondents from 13 different document "custodians", all of whom are current or past employees of one or more of the Respondents. Of the documents collected, less than 1% were hard copy documents and the remaining 99% were electronic documents.
- 23 The vast majority of the electronic documents were collected from the email accounts of the 13 custodians. I am advised by Sam Sessler, Practice Support Manager at Norton Rose Fulbright US LLP and a member of Norton Rose Fulbright's litigation support team, that the Respondents' emails are hosted on server computers that are owned, operated and maintained by a third party service provider, IBM, on premises owned by IBM.
- 24 Given the large volume of documents, the Respondents elected to engage an e-discovery supplier to process the data and documents collected and administer review tools to expedite the data collection process. In addition, to ensure production would be completed on time, we retained lawyers employed by the Respondents' e-discovery support supplier to work with our litigation and support teams to complete an initial review of the Respondents' documents.
- 25 Following an initial filtering using de-duplication, electronic search terms and other

means consistent with standard e-discovery practice, approximately 255,800 of the 1.95 million documents collected and processed were individually reviewed by Norton Rose Fulbright lawyers and the lawyers provided by the Respondents' e-discovery support supplier.

- 26 The Respondents' production efforts resulted in a production of 59,567 documents. I am advised by Mr. Brown that the total cost to review and produce these documents cost the Respondents in excess of \$500,000. In my experience and the experience of my colleagues at Norton Rose Fulbright, the volume of documents reviewed and completion of a production of this magnitude in under three months from the close of pleadings is unprecedented.

The Parties Agree to Partial Production

- 27 On or around September 23, 2015, we discovered that, despite our best efforts, approximately 4,000 documents could not be produced without further review by Norton Rose Fulbright lawyers. Unfortunately, by the time we discovered these 4,000 documents, it was not possible to review and produce them by September 25, 2015. This is because the Respondents' e-discovery support supplier required us to provide advance notice so that it could meet the production deadline.
- 28 Accordingly, our options were either to delay the entire production or to produce an estimated 95% of the Respondents' documents on September 25, 2015, with the remaining documents to be produced at a later date. We spoke with counsel for the Commissioner on September 23, 2015, to advise them of the 4,000 documents that could not be produced and to assure them that:

- (a) approximately 95% of the Respondents' Schedule "A" productions would be unaffected by the delay, and we would produce as scheduled on September 25, 2015 (the **First Tranche**);
- (b) any productions resulting from our review of the outstanding 4,000 documents would be delivered no later than October 2, 2015 (the **Second Tranche**);
- (c) any productions to be included in the Respondents' Schedules "A" as a result of our ongoing review of potentially privileged documents would be delivered no later than October 9, 2015 (the **Third Tranche**);
- (d) each of the tranches would group all "document families", or all parts of a group of documents that are connected to each other for purposes of communication: *e.g.*, an email and its attachments, and, although the Second Tranche and Third Tranche would not be listed chronologically in the Schedule "A" delivered on September 25, 2015, each production would include bates numbers and all necessary metadata required for the Commissioner to sort by date; and
- (e) the Respondents' complete, sworn Affidavits of Documents including Schedules "B" would be delivered no later than October 9, 2015 once our privilege review was complete.

29 Counsel for the Commissioner consented to the Respondents' proposed delivery of their production in tranches, while suggesting that the Scheduling Order be amended to provide the parties with extra time to bring any necessary motions related to discovery. We agreed, but insisted that any changes to the motion dates not have a cascading effect on the remaining milestones under the Scheduling Order. As the Respondents had already incurred significant expenses in preparing discovery in accordance with the

Scheduling Order, it was the Respondents' intention that no further delays result.

30 Attached as **Exhibit "G"** to my affidavit is a copy of a letter dated September 25, 2015 sent to the Competition Tribunal from Norton Rose Fulbright on behalf of all parties, indicating consent to the delivery of the Respondents' productions and to slight revisions to the Scheduling Order, as indicated at paragraph 29 herein.

31 On October 9, 2015, Justice Barnes issued a direction to counsel, attached as **Exhibit "H"** to my affidavit, directing that:

- (a) the deadline for the filing of any motions arising from affidavits of documents and/or productions and/or in respect of the scope of examinations for discovery is November 12, 2015;
- (b) any responding motion materials are to be served and filed by Thursday, November 19, 2015;
- (c) any reply is to be served and filed by Tuesday, November 24, 2015; and
- (d) the hearing of any motions arising from affidavits of documents and/or productions and/or in respect of the scope of examinations for discovery shall take place in Ottawa, on December 1-2, 2015 (the **Amended Scheduling Order**).

Affidavits of Documents and Productions Exchanged

32 On September 25, 2015, each of the Respondents served an unsworn Affidavit of Documents, with a partial Schedule "A", as had been agreed to previously by the Commissioner. A total of 57,088 documents, comprised of 169,483 pages of documents were produced by the Respondents, accounting for 96% of the Respondents'

productions.

33 On September 25, 2015, the Commissioner served its Affidavit of Documents, sworn by Sophie Beaulieu, including the following:

(a) Schedule "A", containing 9,717 records; and

(b) Schedule "B", containing 378 documents.

34 Approximately 7,300 of the documents listed in Schedule "A" of the Commissioner's Affidavit of Documents are documents produced by the Respondents to the Commissioner in 2013-2014 in response to the Section 11 Order. Accordingly, fewer than 2,500 of the Commissioner's productions are new documents.

35 On October 2, 2015, as agreed with counsel for the Commissioner, the Respondents served the Second Tranche of productions, consisting of 1,785 documents from the approximately 4,000 documents which had been identified for further review.

36 On October 9, 2015, following the completion of our privilege review, we finalized the Third Tranche of productions (694 documents). On the same date, as agreed with counsel for the Commissioner, the Respondents served sworn Affidavits of Documents on the Commissioner, with Schedules. We prepared each Affidavit of Documents to comply with the form prescribed by the *Federal Courts Rules* and to mirror the format used by the Commissioner.

37 The joint Affidavit of Documents for Avis and Budget that was sworn by William Boxberger, Vice President and General Manager of Avis and Budget included a Schedule "A" (listing 58,446 documents), Schedule "B" (listing 1,106 documents) and

Schedule "C". Attached as **Exhibit "I"** is a copy of Avis and Budget's sworn affidavit of documents, excluding Schedules "A" and "B".

38 The Affidavit of Documents for ABG was sworn by Ted Kushner, a paralegal in the legal department of ABG, and included a Schedule "A" (listing 117 documents), Schedule "B" (listing 0 documents) and Schedule "C". Attached as **Exhibit "J"** is a copy of ABG's sworn affidavit of documents, excluding Schedules "A" and "B".

39 The Affidavit of Documents for ABCR was sworn by Ted Kushner, a paralegal in the legal department of ABG, and included a Schedule "A" (listing 162 documents), Schedule "B" (listing 1,556 documents) and Schedule "C". Attached as **Exhibit "K"** is a copy of ABCR's sworn affidavit of documents, excluding Schedules "A" and "B".

The Production Quality

40 Our goal was to ensure that a workable production was delivered on time. In advance of production, we made efforts to understand the Commissioner's production specifications and provided a sample of the production prior to production so that we could ensure the production would be workable for the Commissioner. Mr. Sessler advised me that the litigation support team properly tested and validated the Respondents' total document universe and ultimate production. Mr. Sessler further advised me that the Respondents' productions met the Commissioner's technical specifications, and complied with any production format modifications detailed in correspondence. Attached as **Exhibits "L"**, **"M"**, **"N"** and **"O"** are copies of the correspondence between Norton Rose Fulbright and counsel for the Commissioner related to the specifications of production.

41 On October 22, 2015, we notified counsel for the Commissioner that there were discrepancies with the Commissioner's productions which resulted in the Respondents

being unable to validate the production set. In response, counsel for the Commissioner provided further data so that Norton Rose Fulbright could attempt to repair the Commissioner's productions. Attached as **Exhibits "P"** and **"Q"** to my affidavit are copies of email correspondence (without attachments) between us and the Commissioner's counsel regarding production issues.

- 42 Unfortunately, some issues with the Commissioner's production set continue to persist. Mr. Sessler advises me that this is because the production does not comply with industry specification standards. We continue to work with the Commissioner's production support team to resolve these issues so that the proceeding can continue in accordance with the Amended Scheduling Order.

The Result of the Respondents' Production Efforts

- 43 To summarize the Respondents' production efforts, approximately 255,800 documents were reviewed. Of the documents reviewed, a total of 59,567 were produced as part of the Respondents' Schedules "A" and 1,547 documents were identified in the Respondents' Schedules "B". In total, approximately 3,487 of the documents produced were redacted.

No Concern Raised by The Commissioner

- 44 Between September 25, 2015 and the service of this motion on November 12, 2015, no communication from the Commissioner or his counsel was ever received regarding any issues with either the form or scope of the Respondents' productions or the Affidavits of Documents.

The Redacted Productions

- 45 At the beginning of the document review, we instructed all reviewers to redact any information that would qualify as (i) a trade secret; (ii) personally identifying information; or (iii) privileged communications. At the time, although we anticipated that the parties would agree to a confidentiality order in the normal course, no such order had yet been negotiated or ordered.
- 46 The parties eventually agreed to a form of confidentiality order and on October 14, 2015, Justice Barnes issued a confidentiality order based on the draft confidentiality order filed on consent by the Commissioner and the Respondents (**Confidentiality Order**). A copy of the Confidentiality Order is attached as **Exhibit “R”** to my affidavit.
- 47 The Confidentiality Order provides for, *inter alia*, the protection of the Respondents’ trade secrets and confidential business information, and thereby obviates the need for any redaction of this information. Unfortunately, through inadvertence, the Respondents’ productions included approximately 130 documents that had already been redacted for the purposes of trade secrets prior to the issuance of the Confidentiality Order .
- 48 Also on October 14, 2015, Justice Barnes issued a direction to counsel, indicating that, *inter alia*, the definition in the draft confidentiality order of “Personal Information” and all references to “Personal Information” had been removed because the Competition Tribunal would deal with issues relating to documents containing “Personal Information” on a case-by-case basis. A copy of Justice Barnes’ direction to counsel is attached as **Exhibit “S”** to my affidavit.
- 49 Through searches we conducted, it appears as though approximately 3,027 of the redacted documents were redacted for containing personal information of Avis’ and

Budget' consumers residing in various provinces across Canada. The types of personal information that were redacted include personally identifying information such as consumer names, addresses, telephone numbers, email addresses, and other contact information.

50 In addition, my search also revealed that approximately 339 of the Respondents' Schedule "A" productions were redacted for privilege.

51 Throughout the document review process, each of the documents that was redacted was coded by members of the review team to indicate the reason for the redaction. It was always the Respondents' intention to provide that coding to the Commissioner with their productions.

52 Unfortunately, through inadvertence, the coding indicating the reason for the redactions was not included with the Respondents' productions. The Respondents did not become aware of this oversight until we received the Commissioner's motion record on November 12, 2011. Indeed, the Commissioner never communicated to us any issues regarding the redacted productions prior to bringing this motion.

The Respondents' Schedules "C"

53 The Respondents have suffered one or more computer failures in the past which resulted in the loss of email and other electronic documents that had not otherwise been backed up. I am advised by Mr. Sessler that these failures include a computer failure at ABCR in or about 2013 that resulted in the loss of much of the past email correspondence of Patric Sinsicalchi, who was one of the ABCR custodians from whom documents were collected as part of the Respondents' production efforts.

54 I have been advised by Bruno Scurto, IT Manager for Avis and Budget, and Matthew Coyle, E-discovery Specialist IV in ABG's legal department, that the Canadian Respondents and ABCR do not have records of the specific emails and electronic documents that were lost as a result of these computer failures. However, given the possibility that some of the email and other electronic documents that were lost as a result of these computer failures may have been relevant documents that would otherwise have been included in Schedule "A" of the Respondents' Affidavits of Documents, the Canadian Respondents and ABCR provided the following description of such documents in Schedule "C" to their respective Affidavits of Documents:

"Communications including correspondence, e-mails, notes, reports and/or other documentation sent and received by me [sic] that were lost, destroyed and/or not archived, if any."

2010 Merger Review Documents

55 I am advised by Kevin Ackhurst, Partner at Norton Rose Fulbright, that on or around July 23, 2010, ABG filed a pre-merger notification under Part IX of the *Act* with the Commissioner in respect of its proposed acquisition of Dollar Thrifty Automotive Group Inc. (the **Proposed Acquisition**). I am similarly advised that, pursuant to section 114(2) of the *Act*, the Respondents received a supplementary information request from the Competition Bureau in relation to the Proposed Acquisition (the **SIR**).

56 Norton Rose Fulbright did not represent ABG and its affiliates in the Proposed Acquisition and was not involved in the collection of documents to respond to the SIR. I am advised by Mr. Ackhurst that ABG responded to the SIR but that ultimately the Proposed Acquisition did not proceed as Dollar Thrifty Automotive Group Inc. agreed to be acquired by Hertz Global Holdings Inc. in August 2012. I am further advised that because the Proposed Acquisition did not proceed, neither ABG nor its outside counsel

on that matter maintained copies of the SIR responses and, as such, that collection of documents are no longer in their possession.

The Requests to Admit

57 The Commissioner served a request to admit on each of the Respondents on October 20, 2015. The Requests to Admit are attached as **Exhibit "T"** to my affidavit. The Requests to Admit were identical in substance, requesting each of the Respondents to admit the truth of the following:

- (a) that the particular Respondent, or its agent (meaning "agent of a participant" as defined in section 69(1) of the *Competition Act*), has or had in their "possession" each of the documents listed in the Affidavit of Documents sworn by the affiant of that particular Respondent;
- (b) each of the documents listed in that particular Respondent's Affidavit of Documents are or have been "on premises" used or occupied by that particular Respondent;
- (c) that particular Respondent or its agent (meaning "agent of a participant" as defined in section 69(1) of the *Competition Act*), has or had in their "possession" each of the documents listed in the other Respondents' Affidavits of Documents;
and
- (d) each of the documents listed in the other Respondents' Affidavits of Documents are or have been "on premises" used or occupied by that particular Respondent.

58 Each of the Respondents delivered a Response to the Commissioner's Requests to Admit on November 6, 2015, which are attached as **Exhibit "U"** to my affidavit.

The Commissioner's Motion

59 On November 12, 2015, the Commissioner served his motion record and memorandum of argument on the Respondents. Prior to serving the motion, the Commissioner had never communicated any issues to Norton Rose Fulbright in relation to any of the issues raised in his Memorandum of Fact and Law.

60 Norton Rose Fulbright responded to the Commissioner's motion by way of a letter the following day, setting out the following:

- (a) as already sworn in the Affidavits of Documents served on the Commissioner, each of the Respondents admits that each document listed in its own Affidavit of Documents is or was in the power, possession or control of the Respondent on whose behalf the Affidavit of Documents was sworn;
- (b) the Affidavits of Documents served on the Commissioner comply with the form prescribed by the Federal Court and mirror the format used by the Commissioner;
- (c) the Respondents always intended to provide the Commissioner with reasons for each redaction and only inadvertently neglected to provide such information. Norton Rose Fulbright notified the Commissioner that it would produce a schedule of redactions, which has now been delivered to the Commissioner as detailed further below;
- (d) we proposed a schedule for discovery examinations of Mr. Boxberger on behalf of Avis and Budget (pursuant to the Commissioner's request);
- (e) we would not produce Patric Siniscalchi as a discovery witness on behalf of ABG

or ABCR because Mr. Siniscalchi retired from the company in 2014;

- (f) we proposed a schedule for discovery examinations of Andre Meesschaert, Senior Vice-President Operations Canada, South America and Local Market Car and Truck, on behalf of ABCR (as detailed further below);
- (g) on behalf of ABG, we proposed a schedule for discovery examinations of Bryon Koepke, Senior Vice-President, Chief Securities Counsel, on behalf of ABG (as detailed further below); and
- (h) we reminded the Commissioner's counsel that the Commissioner's productions were not delivered in conformance with the standards applied to the Respondents' productions, which resulted in significant additional time and expense suffered by the Respondents.

A copy of the letter is attached as **Exhibit "V"** to my affidavit.

Redaction Issues Corrected

61 As I noted above, the Respondents had intended to provide the Commissioner with reasons for each redaction. It was not until we received the Commissioner's motion materials on November 12, 2015 that we became aware that we had inadvertently neglected to include reasons for redactions at the time the Respondents' productions were delivered.

62 As soon as we were aware of the issue, we identified the redacted documents and the reasons for the redactions. As a result of the searches I performed, I confirmed that out of the approximately 3,487 documents that were produced in redacted form:

- (a) Approximately 339 were redacted for reasons of privilege;

- (b) Approximately 3,027 were redacted for containing personally identifying information; and
- (c) Approximately 130 were redacted for containing trade secrets.

63 We delivered a schedule to the Commissioner which identifies the reasons for redaction for each redacted document. Each document in the schedule includes metadata (including the bates number, document date, subject, document type, and author/sender and recipient information) so that the Commissioner can easily identify the redacted document.

64 Further, we delivered unredacted versions of the 130 documents which were redacted for trade secret purposes to the Commissioner.

The Proposed Witnesses for Discovering ABCR and ABG

65 As described more fully above, we are unable to accommodate the Commissioner's request to produce Mr. Siniscalchi as a discovery witness for ABCR and ABG, as Mr. Siniscalchi has retired from ABCR. A copy of the press release announcing his retirement is attached as **Exhibit "W"** to my affidavit.

66 We spoke with counsel for the Commissioner on November 17, 2015 with respect to the proposed witnesses for discovery. We advised counsel for the Commissioner that since ABG is a holding company that does not have any employees, the most appropriate witness would be Bryon Koepke, who is an officer of ABG.

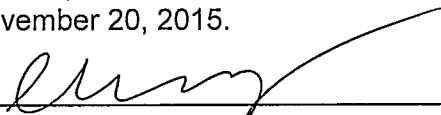
67 I am advised by Mr. Koepke that he is the Senior Vice President, Chief Securities Counsel for ABG. He further advised me that he has occupied his role since October 24, 2011. Attached as **Exhibit "X"** is a list of each position that Mr. Koepke has held

with ABG and/or its subsidiaries.

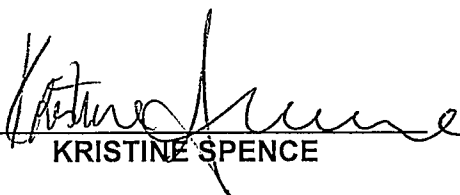
68 During the same discussion with counsel for the Commissioner on November 17, 2015, we advised that our proposed witness for ABCR was Andre Meesschaert. I am advised by Mr. Meesschaert that he is the Senior Vice President Operations Canada, South America and Local Market Car and Truck of Avis Budget Group. He further advised me that he has occupied this role since January 2015 and that he has worked for ABG-related entities since 1998, serving in a number of management roles in both Canada and the United States. Prior to assuming his current role in January 2015, he was based in New York for three years and served as Area Vice President for North East Operations.

69 I swear this affidavit in support of the Respondents' opposition to the Commissioner's motion and for no other or improper purpose.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, on November 20, 2015.



Commissioner for Taking Affidavits
Christine M. Kilby


KRISTINE SPENCE

TAB A

Court File No.

FEDERAL COURT

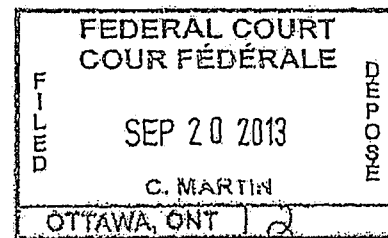
IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF an inquiry under section 10 of the *Competition Act* relating to marketing practices of Aviscar Inc., Budgetcar Inc., and Avis Budget Group, Inc.;

AND IN THE MATTER OF an *ex parte* application by the Commissioner of Competition for an Order requiring Aviscar Inc. and Budgetcar Inc. to produce records pursuant to paragraph 11(1)(b) and subsection 11(2) of the *Competition Act* and to make and deliver written returns of information pursuant to paragraph 11(1)(c) of the *Competition Act*.

BETWEEN:

THE COMMISSIONER OF COMPETITION



Applicant

- and -

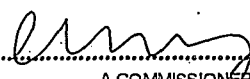
AVISCAR INC. AND BUDGETCAR INC.

Respondents

AFFIDAVIT OF SOPHIE BEAULIEU

sworn 19 September 2013

This is Exhibit.....^{"A"}.....referred to in the
affidavit of.....Kristine Spence.....
sworn before me, this.....20th.....
day of.....November.....2013.....


.....
A COMMISSIONER FOR TAKING AFFIDAVITS
Christine M. Kilby

- 2 -

I, Sophie Beaulieu, a Competition Law Officer with the Competition Bureau (the "**Bureau**"), of the Town of Mount Royal in the Province of Québec, **SWEAR THAT:**

1. I make this affidavit in support of an *ex parte* application for an Order pursuant to section 11 of the *Competition Act*, R.S.C., 1985, c. C-34 (the "**Act**").
2. I am an authorized representative of the Commissioner of Competition (the "**Commissioner**") for the purpose of this application.
3. I have been employed by the Bureau as a Competition Law Officer for the past five years. During this time I have investigated whether companies and individuals are complying with the deceptive marketing practices provisions under Part VII.1 of the Act. During the course of these investigations I have reviewed representations made to promote various products and reviewed records and information pertaining to investigations and inquiries under Part VII.1 of the Act.
4. I am also part of a team of Competition Law Officers working on an inquiry under Part VII.1 of the Act into certain marketing practices of Aviscar Inc., Budgetcar Inc., and Avis Budget Group, Inc. (collectively, "**Avis/Budget**"). I therefore have personal knowledge of the matters to which I depose. Where I do not have personal knowledge of the matters to which I depose, I have set out the grounds for my belief.

I. THE COMMISSIONER HAS COMMENCED AN INQUIRY

5. The Commissioner is an officer appointed by the Governor in Council under section 7 of the Act and is responsible for the administration and

- 3 -

enforcement of the Act.

6. On 19 October 2012 the Commissioner commenced an inquiry under subparagraph 10(1)(b)(ii) of the Act on the basis that he has reason to believe that grounds exist for the making of an order under Part VII.1 of the Act, specifically pursuant to paragraph 74.01(1)(a) and subsection 74.05(1), and with respect to certain marketing practices of Avis/Budget.

II. CIRCUMSTANCES OF THE INQUIRY

7. Based on his preliminary investigation (the "**Commissioner's Preliminary Investigation**"), the Commissioner has reason to believe that for the purpose of promoting, directly or indirectly, the supply or use of and its business interests in rental passenger cars in Canada, Avis/Budget is making representations to the public that are false or misleading in a material respect, contrary to paragraph 74.01(1)(a) of the Act.
8. Amongst other things, the Commissioner has reason to believe that:
 - a. Avis/Budget has made or is making representations to the public that create the general impression that the price a consumer needs to pay to rent a passenger car is the price that Avis/Budget initially represents to consumers. The Commissioner has reason to believe that this general impression is false or misleading because Avis/Budget charges consumers additional fees during the rental process that it does not adequately disclose ("**Non-Optional Fees**"); and therefore, consumers cannot rent the passenger car for the price that Avis/Budget initially represents:
 - i. Attached hereto as Exhibits A and B are two examples of such representations made on Avis/Budget's branded

- 4 -

websites. In these two examples, consumers are required to pay, respectively, 34 and 27 percent more than the initial price that Avis/Budget represents that consumers need to pay to rent the passenger car; and

- ii. Attached hereto as Exhibit C is an example of a representation where Non-Optional Fees are added both to the initial price represented to consumers to rent a passenger car (as in Exhibits A and B) and to the price of customized rental products and services that customers may rent or acquire when renting a passenger car (the **"Customized Rental Products"**). In this example, because of Non-Optional Fees that are added to the price of the GPS navigation unit, consumers renting a GPS navigation unit are required to pay 14.61 percent more to rent the GPS navigation unit than the initial price that Avis/Budget represents that consumers need to pay for same.
 - b. Avis/Budget is describing and presenting certain of the Non-Optional Fees in a manner that gives the false or misleading general impression that these fees are mandatory fees that are imposed directly on consumers by a third party, such as a government authority, rather than fees that Avis/Budget charges consumers at its discretion. The "Car Tax" and the "Ontario Environmental Fee" are examples of such representations. They may be found at page 6 of Exhibit A and page 7 of Exhibit B.
9. Based on the foregoing, the Commissioner also has reason to believe that Avis/Budget has supplied and is supplying passenger cars and Customized Rental Products at prices that are higher than the prices it advertised for

- 5 -

same, contrary to subsection 74.05(1) of the Act.

10. Based on my review of the websites, www.avis.ca and www.budget.ca, I believe that between February and March 2013 Avis/Budget changed the manner in which it discloses Non-Optional Fees for Customized Rental Products on these websites. Despite these changes, however, it remains that consumers cannot acquire or rent the Customized Rental Products at the initial price that Avis/Budget represents to consumers. Further, based on the case team's review of Avis/Budget's branded mobile applications, I believe that Avis/Budget has not changed the way in which it discloses Non-Optional Fees for Customized Rental Products supplied through these mobile applications.

III. AVISCAR AND BUDGETCAR HAVE, OR ARE LIKELY TO HAVE, INFORMATION THAT IS RELEVANT TO THE INQUIRY

11. Aviscar and Budgetcar (which is also doing business as Budgetauto Inc.) are private corporations incorporated pursuant to the laws of Canada that provide passenger cars for rent in Canada. Their registered office is located at 1 Convair Drive E, Etobicoke, ON, M9W 6Z9. One of their executive officers is located at 6 Sylvan Way, Parsippany, New Jersey, 07054, USA. Attached hereto as Exhibits D and E are copies of searches from Corporations Canada showing the corporate registrations for Aviscar and Budgetcar, respectively.
12. I believe that Aviscar and Budgetcar have, or are likely to have, information that is relevant to the Inquiry. As noted above, Aviscar and Budgetcar are engaged in the business of renting passenger cars in Canada. My belief is also based on my review of other publicly available information and records and information Avis/Budget previously provided to the Bureau in an unrelated investigation that the Bureau treats as confidential and that was

- 6 -

made under a different section of the Act (the "Other Matter").

IV. AVIS BUDGET GROUP HAS RECORDS THAT ARE RELEVANT TO THE INQUIRY

13. Avis Budget Group is a publicly-traded holding company, incorporated pursuant to the laws of Delaware, that is headquartered at 6 Sylvan Way, Parsippany, New Jersey, 07054, USA, and whose subsidiaries operate a vehicle rental services business throughout the world under the Avis and Budget brands. Attached hereto as Exhibit F is Part I, item 1, of the Annual Report Avis Budget Group filed with the U.S. Securities and Exchange Commission for the year ended 2012, in which Avis Budget Group describes its car rental business.
14. Aviscar and Budgetcar are subsidiaries of Avis Budget Group. Attached hereto as Exhibit G is Exhibit 21 of the Annual Report Avis Budget Group filed with the U.S. Securities and Exchange Commission for the year ended 2012, in which Avis Budget Group lists Aviscar and Budgetcar as its subsidiaries.
15. Further, based on my review of records and information Avis Budget Group previously provided to the Bureau in the Other Matter, I believe that Avis Budget Group wholly and indirectly owns Aviscar and Budgetcar. I therefore believe Avis Budget Group is an affiliate of Aviscar and Budgetcar.
16. Based on my review of publicly available information and records and information Avis/Budget previously provided to the Bureau in the Other Matter, I believe that Avis Budget Group has records that are relevant to the Inquiry.
17. For example, I reviewed an e-mail dated 3 September 2010 that Avis

- 7 -

Budget Group provided to the Bureau in the course of the Other Matter in which it informed the Bureau that certain of its employees possess high-level strategic documents relating to Canada and records relating to pricing for passenger car rental services in Canada. I also reviewed records Avis Budget Group provided to the Bureau between 2010 and 2011 in the Other Matter that relate to (i) pricing decisions for Non-Optional Fees and rental passenger cars in Canada; (ii) marketing and advertising decisions relating to Non-Optional Fees and rental passenger cars in Canada; (iii) strategic decisions about Avis/Budget's branded websites and mobile applications; and (iv) general customer service templates. I have not attached the e-mail and records identified above as the Bureau treats this information as confidential. The Commissioner is, however, prepared to disclose these materials for the purpose of this application if the court so orders.

18. Accordingly, I believe that Avis Budget Group has records that are relevant to the Inquiry.

V. THE ORDER SOUGHT

19. The records and written returns of information that the Commissioner seeks from Aviscar and Budgetcar are set out in Schedules I and II of the Draft Order.
20. Based on my review of records and information that the Bureau has gathered to date, I believe that Avis/Budget has engaged in the marketing practices described in paragraphs 7-9 since at least 2009 and in some cases since at least 2008. Accordingly, the Commissioner seeks records created or modified during, or that concern, the period from 1 January 2009 to the date of issuance of this Order, and written returns for the same period. In the case of Specifications 5 and 6 of Schedule I and

- 8 -

Specifications 7 and 21 of Schedule II, the Commissioner seeks records created or modified during, or that concern, the period from 1 January 2008 to the date of the issuance of this Order and written returns for the same period.

21. The Commissioner seeks records and written returns of information that relate to matters including the following:
 - a. Avis/Budget's business interests in rental passenger cars in Canada promoted through representations it makes on various media;
 - b. The representations Avis/Budget has made and is making on various media for the purpose of promoting rental passenger cars in Canada;
 - c. The nature and frequency of the representations made to the public;
 - d. Whether the representations are false or misleading in a material respect; and
 - e. Whether a product was supplied for rent in a market at a price higher than the price advertised for that product during the time of the advertisement.
22. The Commissioner seeks these records and written returns of information with the view of determining the facts about Avis/Budget's marketing practices that are the subject of the Commissioner's Inquiry.

VI. INFORMATION IN THE COMMISSIONER'S POSSESSION

23. I have conducted a review of the Bureau's files to determine whether the Commissioner has records or information that are responsive to the Draft Order. I spoke with representatives of the Bureau's enforcement branches to determine if there were investigations or inquiries pursuant to which the Bureau received information that is responsive to the Draft Order. I then used the Bureau's Information Management System to search for investigations and inquiries pursuant to which the Bureau may have collected responsive records or information. Except as described below, I concluded that the Bureau has not received records or information that are responsive to the Draft Order.
24. In 2011, during the course of the Other Matter, Avis Budget Group informed the Bureau that further to that investigation it provided approximately 80,000 records to the Bureau. Based on my analysis of these records, I have concluded that some of the records and information Avis/Budget previously provided further to the Other Matter are partially responsive to the Order sought. The majority of the information that is partially responsive is financial information. Further to the Other Matter, Avis/Budget also provided a limited number of concession agreements and records, mainly e-mails, relating to Non-Optional Fees and Avis/Budget's branded websites that are also partially responsive to the Draft Order.
25. I believe that the aforementioned records and written returns of information are insufficient to determine the facts with respect to the Commissioner's Inquiry under Part VII.1 of the Act. This information was provided further to a different investigation made under a different section of the Act. The Commissioner cannot in certain instances determine whether the information relates to the rental of passenger cars, as the term is defined in

the Draft Order. Additionally, the information does not cover the relevant period of the Draft Order or all the geographic areas where Aviscar and Budgetcar operate in Canada. Finally, the Commissioner cannot determine whether the information previously provided is complete and includes the most current records and information.

26. If Avis/Budget previously provided records to the Commissioner that are responsive to the Draft Order, paragraph 11 of the Draft Order allows the Commissioner to waive further production of these records. Paragraph 11 provides:

THIS COURT FURTHER ORDERS that where a Respondent previously produced a record to the Commissioner the Respondent is not required to produce an additional copy of the record or thing provided that the Respondent: (1) identifies the previously produced record or thing to the Commissioner's satisfaction; (2) makes and delivers a written return of information in which it agrees and confirms that the record was either in the possession of the Respondent, on premises used or occupied by the Respondent or was in the possession of an officer, agent, servant, employee or representative of the Respondent; and where this is not the case, the Respondent shall make and deliver a written return of information explaining the factual circumstances about the possession, power, control and location of such record; and (3) receives confirmation from the Commissioner that such records or things need not be produced. Where the Respondents' affiliate, as identified in Schedule I, previously produced a record or thing to the Commissioner, the Respondent is not required to produce an additional copy of the record, provided that the Respondent complies with the three conditions above.

VII. COMMUNICATIONS WITH AVISCAR AND BUDGETCAR

27. On 31 July 2013 counsel for the Commissioner advised Mr. Robert Muhs, Vice President of Government Affairs, Corporate Compliance and Business

- 11 -

Ethics at Avis Budget Group, by phone, that the Commissioner has commenced the Inquiry into certain of Aviscar and Budgetcar's marketing practices.

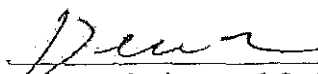
28. By letter dated 31 July 2013, the Deputy Commissioner of Competition, Fair Business Practices Branch, also advised Mr. Muhs and Mr. Jon Zuber, Controller, Aviscar and Budgetcar, of same. Attached hereto as Exhibit H is this letter.
29. On 12 September 2013 counsel for the Commissioner sent a letter to Mr. Muhs and Mr. Zuber advising that the Commissioner would be seeking an Order to require Aviscar and Budgetcar to produce certain records, including the records of Avis Budget Group, and to make and deliver written returns of information pursuant to section 11 of the Act; advising that the Commissioner also commenced the Inquiry into certain of Avis Budget Group's marketing practices; and attaching an earlier draft of the specifications of the Draft Order without the form of Order. Attached hereto as Exhibit I is this letter.
30. On 19 September 2013 counsel for the Commissioner, members of the case team, and I had a conference call with Mr. Muhs and Mr. Zuber. Mr. Muhs and Mr. Zuber were not represented by counsel on the conference call and stated that the Respondents were in the process of retaining Canadian counsel.
31. During the conference call, Mr. Muhs and Mr. Zuber raised the following issues: for Specification 1, Schedule I, they did not know whether Avis/Budget kept copies of the Specified Online Price Offers and would need to confirm whether this was the case. Avis/Budget asked whether the Bureau could obtain information about foreign websites, as in, for example,

- 12 -

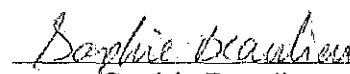
Specification 4, Schedule I. They also raised as a general concern that it may be difficult for the Respondents to comply with a 60-day time period for the production of records and the delivery of written returns of information given the scope and breadth of records and information requested.

32. Counsel for the Commissioner discussed these matters with Mr. Muhs and Mr. Zuber. Mr. Muhs and Mr. Zuber confirmed that any inability of the Respondents to produce records and deliver written returns within the time period was hypothetical at this point. Counsel for the Commissioner explained that Specification 4, Schedule 1 sought records that related to foreign websites only insofar as those records also related to the various ways in which Avis/Budget displayed or presented the overall costs to rent passenger cars in Canada on the Relevant Websites, as the term is defined in the Draft Order.
33. Mr. Muhs and Mr. Zuber asked about the timing for the filing of the application. Counsel for the Commissioner advised that the application for the Order would be filed as soon as possible.

SWORN BEFORE ME at the City of Gatineau in the Province of Québec
this 19th day of September 2013.



Commissioner of Oaths
LSUC: 48095T



Sophie Beaulieu

TAB B

Spence, Kristine

From: DiDomenico, Antonio: CB-BC (NCR-RCN) <Antonio.DiDomenico@bc-cb.gc.ca>
Sent: June-09-15 2:24 PM
To: Brown, Michael (Toronto); Ackhurst, Kevin
Cc: Leschinsky, Derek: CB-BC
Subject: CT-2015-001 - Commissioner of Competition v Avsicar Inc. et al.
Attachments: Draft Timetable - Scheduling Order.docx

Michael/Kevin:

We write further our call on June 5, 2015.

During the call, you advised that the Respondents are abandoning their motion returnable July 14-15. As a result, the motions arising from that motion (i.e. the Respondents' motion for directions and the Commissioner's motion to strike) are unnecessary.

During the call, we also discussed the upcoming case conference before Justice Crampton on June 16, 2015 at 2pm and using that case conference as an opportunity to finalize a timetable for the disposition of the application. As you know, the Competition Tribunal Rules provide that the parties should consult regarding the timetable before the disposition of the application. If a timetable is agreed upon, the parties are to jointly file with the Competition Tribunal a proposed timetable for the disposition of the application, including a suggested start date, duration and place for the hearing. If the parties cannot agree on a timetable, each party is to serve and file a proposed timetable with the Competition Tribunal.

In this regard, we attach the Commissioner's proposed timetable for the disposition of the application, which is hereby served upon you. We are available to discuss the proposed timetable with you today, June 10 or June 11. We are hopeful that can agree on the timetable, and after which jointly file it with the Competition Tribunal by no later than June 12. We can then discuss that jointly filed timetable with Justice Crampton during the June 16 case conference. If we do not hear from you, or if we cannot agree on the timetable by June 12, we will file the Commissioner's proposed timetable on June 12 and make submissions regarding the timetable during the June 16 case conference. ^{B'}

We look forward to hearing from you.

Tony

Antonio Di Domenico
Conseiller juridique | Counsel
Services juridiques du Bureau de la concurrence | Competition Bureau Legal Services
Ministère de la Justice | Department of Justice
Gouvernement du Canada | Government of Canada
50 rue Victoria, Gatineau, Québec K1A 0C9 Place du Portage I, 22e étage | 22nd floor
Tel: (819) 997-2837 | Mobile: (613) 608-5271 | Fax: (819) 953-9267
Email: antonio.didomenico@cb-bc.gc.ca

This is Exhibit.....referred to in the
affidavit of... *Kristine Spence*.....
sworn before me, this... *20th*.....
day of... *November*.....20.15
[Signature]
A COMMISSIONER FOR TAKING AFFIDAVITS
Christine A. Kelly



Bureau de la concurrence | Competition Bureau
Canada | Canada



- [1] **FURTHER TO** the application filed by the Commissioner of Competition pursuant to sections 74.01(1)(a), 74.05 and 74.011(1) and (2) of the *Competition Act*, R.S.C. 1985, c. C-34, alleging that the respondents Aviscar Inc., Budgetcar Inc./Budgetauto Inc. and Avis Budget Group, Inc. are engaging in deceptive marketing practices;
- [2] **AND WHEREAS** counsel for the parties advised the Tribunal on *[DATE]*, that they had reached an agreement on a timetable for the disposition of the application;
- [3] **AND WHEREAS** the Tribunal has examined the proposed timetable and is of the view that it is appropriate and respects the principles found in subsection 9(2) of the *Competition Tribunal Act*, R.S.C. 1985, c. 19 (2nd Supp.);

THE TRIBUNAL ORDERS THAT:

- [4] The schedule for the pre-hearing steps shall be as follows:

March 11, 2015 (done)	Service of Notice of Application
April 29, 2015 (done)	Service of Amended Notice of Application
May 29, 2015 (done)	Service of Particulars upon the Respondents
June 22, 2015	Deadline for service of Response
July 6, 2015	Deadline for service of Reply, if any
July 30, 2015	Service of affidavits of documents and delivery of documents by all parties
August 28, 2015	Deadline for the filing of any motions arising from affidavits of documents and/or productions and/or in respect of the scope of examinations for discovery
Date to be set as needed, during the week of September 7, 2015	Hearing of any motions arising from affidavits of documents and/or productions and/or in respect of the scope of examinations for discovery
September 21, 2015	Deadline for delivery of any additional productions resulting from any affidavits of documents/production motions
October 5, 2015 – November 5, 2015	Examinations for discovery according to a schedule to be settled between counsel
November 27, 2015	Deadline for fulfilling answers to discovery undertakings
December 7, 2015	Deadline for filing motions arising from answers to undertakings and refusals

Week of December 14, 2015	Hearing of motions arising from answers to undertakings and refusals
December 23, 2015	Last day for follow-up examinations for discovery
February 4, 2016	Applicant to serve documents relied upon, witness statements, and serve and file expert reports
February 19, 2015	Applicant to serve list of documents proposed to be admitted without further proof
March 5, 2016	Respondent to serve documents relied upon, witness statements, and serve and file expert reports
March 7, 2016	Deadline for delivering any requests for admissions
March 21, 2016	Applicant to serve list of reply documents, witness statements, and serve and file reply expert reports
March 28, 2016	Deadline for the hearing of any motions for summary disposition and/or any motions related to the evidence
March 28, 2016	Deadline to provide documents to the Competition Tribunal for use at the hearing (e.g., briefs of authorities, witness statements, and agreed books of documents)

[6] The hearing of the application will commence at 10:00 am on April 4, 2016 for 25 days in the Hearing Room of the Competition Tribunal located at 600-90 Sparks Street, Ottawa.

DATED at Ottawa, this *[DATE]* day of *[DATE]*

SIGNED on behalf of the Tribunal by the Chairperson.

TAB C

Spence, Kristine

From: Brown, Michael (Toronto)
Sent: June-12-15 8:02 AM
To: DiDomenico, Antonio: CB-BC (NCR-RCN)
Cc: Ackhurst, Kevin; Leschinsky, Derek: CB-BC; Kilby, Christine
Subject: Re: CT-2015-001 - Commissioner of Competition v Avsicar Inc. et al.
Attachments: ATT00001.gif

Derek and Tony,

I am writing in response to your proposed timetable. As you know, the *Competition Tribunal Rules* contemplate that the parties will discuss a proposed timetable for the application within 14 days after the expiry of the time for the delivery of a Response. As we advised on the phone on Friday, the Commissioner's delivery of particulars constitutes an amendment to the Notice of Application and the Rules provide that our clients' Response is due 45 days from that amendment, on July 13, 2015. Further, in our view, it makes little sense to discuss a timetable before the Response has been delivered, because until then the issues have not yet been fully framed and the full scope of the proceeding is not yet known. We do not believe it is possible for the parties or the Tribunal to make an informed decision on a timetable prior to the delivery of a Response.

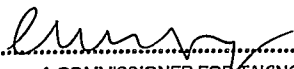
In any event, regardless of how the issues are eventually framed, in our view the Commissioner's proposed timetable is simply unreasonable, particularly as it relates to documentary production. As a practical reality, it is inconceivable that our clients could complete their documentary production within 24 days of the close of pleadings as the timetable suggests. This proposal is a marked departure from recent Tribunal practice. A review of the timetables from recent applications brought by the Commissioner before the Tribunal suggests that the average time from the close of pleadings to the service of an Affidavit of Documents is in the 5-6 month range. In our view, the Commissioner's proposal that full documentary production be completed in under a month is so far outside the bounds of reasonableness that it does not provide a basis for meaningful discussions. If the Commissioner is prepared to entertain a timeline that is in line with recent practice before the Tribunal, we would be pleased to discuss that.

Best regards,

Michael

D. Michael Brown
Partner

This is Exhibit.....^{"C"}.....referred to in the
affidavit of.....Kristine Spence
sworn before me, this.....20th
day of.....November.....2015..

.....
A COMMISSIONER FOR TAKING AFFIDAVITS
Christine M. Kilby

On Jun 9, 2015, at 2:24 PM, DiDomenico, Antonio: CB-BC (NCR-RCN) <Antonio.DiDomenico@bc-cb.gc.ca> wrote:

Michael/Kevin:

We write further our call on June 5, 2015.

During the call, you advised that the Respondents are abandoning their motion returnable July 14-15. As a result, the motions arising from that motion (i.e. the Respondents' motion for directions and the Commissioner's motion to strike) are unnecessary.

During the call, we also discussed the upcoming case conference before Justice Crampton on June 16, 2015 at 2pm and using that case conference as an opportunity to finalize a timetable for the disposition of the application. As you know, the Competition Tribunal Rules provide that the parties should consult regarding the timetable before the disposition of the application. If a timetable is agreed upon, the parties are to jointly file with the Competition Tribunal a proposed timetable for the disposition of the application, including a suggested start date, duration and place for the hearing. If the parties cannot agree on a timetable, each party is to serve and file a proposed timetable with the Competition Tribunal.

In this regard, we attach the Commissioner's proposed timetable for the disposition of the application, which is hereby served upon you. We are available to discuss the proposed timetable with you today, June 10 or June 11. We are hopeful that you can agree on the timetable, and after which jointly file it with the Competition Tribunal by no later than June 12. We can then discuss that jointly filed timetable with Justice Crampton during the June 16 case conference. If we do not hear from you, or if we cannot agree on the timetable by June 12, we will file the Commissioner's proposed timetable on June 12 and make submissions regarding the timetable during the June 16 case conference.

We look forward to hearing from you.

Tony

Antonio Di Domenico
Conseiller juridique | Counsel
Services juridiques du Bureau de la concurrence | Competition Bureau Legal Services
Ministère de la Justice | Department of Justice
Gouvernement du Canada | Government of Canada
50 rue Victoria, Gatineau, Québec K1A 0C9 Place du Portage I, 22e étage | 22nd floor
Tel: (819) 997-2837 | Mobile: (613) 608-5271 | Fax: (819) 953-9267
Email: antonio.didomenico@cb-bc.gc.ca



Bureau de la concurrence
Canada

Competition Bureau
Canada

Canada

<Draft Timetable - Scheduling Order.docx>

TAB D



Barristers & Solicitors / Patent & Trade-mark Agents

Norton Rose Fulbright Canada LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4 CANADA

F: +1 416.216.3930
nortonrosefulbright.com

D. Michael Brown
416.216.3962
michael.brown@nortonrosefulbright.com

Our reference
01012106-0047

June 16, 2015

Sent By E-Mail

The Honourable Chief Justice Crampton
Competition Tribunal
Thomas D'Arcy McGee Building "D"
90 Sparks Avenue
Suite 600
Ottawa, Ontario K1P 5B4
This is Exhibit.....referred to in the
affidavit of Kristine Spence
sworn before me, this 20th
day of November 2015

A COMMISSIONER FOR TAKING AFFIDAVITS
Christine M. Kilby

Dear Chief Justice Crampton:

The Commissioner of Competition v. Aviscar Inc. et al., CT-2015-001

We act for the Respondents in the above-referenced proceeding. We are writing in response to the letter from counsel to the Commissioner to Your Honour, received on June 15, 2015 (the **Commissioner's Letter**). In summary, for the reasons that follow, it is the position of the Respondents that:

- (a) the deadline for the delivery of the Respondents' Response to the Amended Notice of Application (including the Commissioner's Particulars) should be July 13, 2015;
- (b) no timetable for the conduct of the application should be ordered at this time;
- (c) the parties should consult with each other on a timetable for the disposition of the application within 14 days after the delivery of the Response and if the parties cannot agree, the timetable should be determined at that time in accordance with the *Competition Tribunal Rules*; and
- (d) in the alternative to (b) and (c), that the Respondents' proposed timetable, attached hereto at Tab A, is reasonable and should be ordered for the conduct of the application.

BACKGROUND

Notice of Application

On March 11, 2015, the Commissioner served a Notice of Application against Aviscar Inc. (**Avis Canada**) and Budgetcar Inc. (**Budget Canada**) (the **Canadian Respondents**) and their indirect U.S. parent company, Avis Budget Group Inc. (**ABG Inc.**), seeking a total of \$30 million in administrative monetary penalties and over \$35 million in consumer restitution in relation to alleged deceptive marketing practices. The Notice of Application did not allege any specific conduct on the part of ABG Inc. Instead, the Notice of Application aggregated ABG Inc. with each of the Canadian Respondents by defining "Avis" as the combination of Avis Canada and ABG Inc. and "Budget" as the combination of Budget Canada and ABG Inc. The only claim made specifically against ABG Inc. in the Notice of Application was that, in its capacity as parent company of the Canadian Respondents, it "planned and directed and was ultimately essential to" the alleged misrepresentations made by the Canadian Respondents.

DOCSTOR: 5213076

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The Honourable Chief Justice Crampton
June 16, 2015



Amended Notice of Application

As indicated in the Commissioner's Letter, this application follows an Inquiry by the Commissioner pursuant to which the Commissioner obtained an order under section 11 of the *Competition Act* granted by Your Honour in the Federal Court on October 1, 2013 (the **Section 11 Order**). The Section 11 Order required the Canadian Respondents and ABG Inc. to produce certain documents. ABG Inc. is, in fact, a holding company that is not directly involved in the operation of the rental car business. This was known to the Commissioner at the time of the Section 11 Order. The Commissioner filed an affidavit in support of the Section 11 Order that described ABG Inc. as a "holding company" ... "whose subsidiaries operate a vehicle rental services business throughout the world ..."¹

As a holding company, ABG Inc. had no documents or records that were responsive to the Section 11 Order. As a result, the documents and information relating to the Respondents' US operations that were produced by the Respondents in response to the Section 11 Order came from the records of ABG Inc.'s US operating subsidiary, Avis Budget Car Rental, LLC (**ABCRL**) and not from ABG Inc. In this respect, the Respondents went beyond what was required of them by producing documents of a US affiliate that was not subject to the Section 11 Order. Unfortunately, through inadvertence, the fact that documents and information produced in response to the Section 11 Order were documents and information of ABCRL and not ABG Inc. was not disclosed to the Commissioner during the Commissioner's Inquiry. This fact was not discovered by counsel for the Respondents until April 23, 2015, in the course of preparing to respond to this application. Counsel for the Respondents advised counsel for the Commissioner of this fact by telephone the next morning on April 24, 2015, followed by confirmation in writing later that day (together with updated responses to the Section 11 Order) (see Tab E to the Commissioner's Letter).

In response to this clarification as to the source of certain of the Section 11 Order documents, the Commissioner amended the Notice of Application to add ABCRL as a Respondent to the application, in addition to ABG Inc. (see Tab F to the Commissioner's Letter). Other than the addition of ABCRL as a Respondent, the amendments to the Notice of Application were non-substantive and clerical in nature. The Commissioner merely defined ABG Inc. and ABCRL collectively as "Parent Companies" and replaced the references to ABG Inc. in the pleading with "the Parent Companies". As before, the only specific allegation with respect to the conduct of the Parent Companies was the assertion in paragraph 11 of the Amended Notice of Application that the Parent Companies "planned and directed" the conduct in question.

Motion to Strike or for Particulars

On May 6, 2015, the Respondents delivered a motion seeking to strike out the Commissioner's Amended Notice of Application as against the US Respondents (i.e. the Parent Companies) or, in the alternative, for further and better particulars in respect of the allegation in paragraph 11 of the Amended Notice of Application that the US Respondents "planned and directed" the conduct in question (the **Respondents' Motion**). The Respondents further argued that the delivery of such a bald pleading as against the US Respondents, in circumstances in which the Commissioner had the benefit of the production under the Section 11 Order, constituted an abuse of process. In support of the motion, the Respondents filed the Affidavit of Sojourner King, an employee of Norton Rose Fulbright Canada LLP, attaching a copy of the Section 11 Order and related documents from the Section 11 Order proceedings.

The Commissioner delivered a response to the Respondent's Motion on May 13, 2015, opposing all of the relief requested in the Respondents' Motion, including the request for particulars. The Commissioner took the position that particulars were not required because the relevant facts were all within the knowledge of the Respondents. In furtherance of this position, counsel for the Commissioner conducted a cross-examination of Ms. King seeking to introduce through her, as exhibits, certain documents that counsel asserted were documents of the

¹ Affidavit of Sophie Beaulieu, sworn September 19, 2013, at para. 13, Exhibit "A" to the Affidavit of Sojourner King, sworn May 6, 2015, Respondents' Motion Record, Tab 2A

The Honourable Chief Justice Crampton
June 16, 2015



Respondents, including documents purportedly obtained by the Commissioner in a 2010 merger review process involving the Respondents and other documents that appeared to be obtained from the Internet. It was clear to all present at the cross-examination that Ms. King had no knowledge of the documents being put to her by counsel for the Commissioner, and certainly no knowledge of their contents. In accordance with the rules of evidence, because those documents could not be identified or authenticated by the witness, counsel for the Respondents objected to their introduction as exhibits to the cross-examination. When counsel for the Commissioner persisted in attempting to mark these documents as exhibits despite these objections, counsel for the Respondents adjourned the cross-examination for the purpose of seeking directions of the Tribunal pursuant to Rule 96(1) of the *Federal Courts Rules*. Following an unsuccessful attempt by the parties to resolve the issues relating to Ms. King's cross-examination, on May 27, 2015, counsel for the Respondents delivered a motion for directions pursuant to the informal motions procedure under Rule 81 of the *Competition Tribunal Rules*.

Particulars Delivered

On May 29, 2015, despite having actively opposed the request for particulars over the previous three weeks, the Commissioner delivered particulars of the allegations as against the US Respondents in accordance with the relief sought on the Respondents' Motion. The particulars delivered consisted of 14 sub-paragraphs, each making a specific factual allegation relating to the US Respondents' participation in the alleged deceptive marketing practices. As a result of this delivery of particulars in satisfaction of the alternative relief requested on the Respondents' Motion, the Respondents decided that they would no longer proceed with the Respondents' Motion and advised counsel for the Commissioner of their intention to withdraw the Respondents' Motion on June 5, 2015.

Delay Caused by the Commissioner

The Respondents maintain the position that the original pleading as against the US Respondents was a bald pleading, completely lacking in particularity, and that the Respondents' Motion was reasonable in the circumstances. Having acceded to the relief requested on the Respondents' Motion, the Commissioner cannot now reasonably take the position that the Respondents' Motion was unfounded or that it has unnecessarily delayed the proceedings. In fact, most, if not all, of the delay the Commissioner now complains of could have been avoided if the Commissioner had delivered a properly particularized Notice of Application in the first place. The Commissioner had a further opportunity to deliver such particulars upon initial service of the Respondents' Motion, but instead decided to vigorously oppose the motion, including the request for particulars, and to conduct a cross-examination of the Respondents' affiant on that very point. For this reason, the Commissioner's assertion that the Respondents ought to have delivered a demand for particulars before filing their motion should be given a little weight. It is clear from the Commissioner's initial response to the Respondents' Motion, that no particulars would have been delivered by the Commissioner in response to such a demand for particulars and that such a demand would only have served to delay matters further as the Respondents would still have been required to bring their motion in any event.

RESPONSE TIMING

Delivery of Respondents' Response by July 13 is Reasonable and Consistent with the Rules

The Particulars delivered by the Commissioner are incorporated by reference into the Amended Notice of Application and form part of the pleading to which the Respondents must now respond. For all practical purposes, the Particulars constitute an amendment to the Commissioner's Notice of Application. Federal Courts Rule 78 provides:

Effect of amendment

78. Unless the Court orders otherwise, where these Rules provide for doing an act or taking a step in a proceeding within a prescribed period after the service or filing of a document and that document is

The Honourable Chief Justice Crampton
June 16, 2015



subsequently amended in accordance with these Rules, the period shall be calculated from the day of service or filing of the amended document, as the case may be.

In this case, the Commissioner's Particulars were delivered on May 29, 2015. Accordingly, the Respondents' Response is properly due 45 days later on July 13, 2015.

The application of Rule 78 is reasonable in the circumstances. Prior to the delivery of Particulars, the Respondents were actively pursuing the Respondents' Motion and the associated motion for directions, the ultimate outcome of which was unknown at the time. It was reasonable for the Respondents to wait until the form of the Commissioner's pleading and the identity of the Respondents was finally resolved before working on their Response. For the Respondents to have prepared a Response while these issues were in flux, as implied in the Commissioner's letter, would have been a highly inefficient and potentially wasteful use of legal resources. Now that the form of the Commissioner's pleading and the identity of the Respondents is finally settled, the Respondents should have the full 45 days contemplated by the Rules to deliver a Response. The Commissioner is seeking over \$65 million in administrative monetary penalties and consumer restitution. These are very serious allegations of wrongdoing brought by a government authority to which the Respondents ought to have a full opportunity to respond. The Commissioner has provided no basis for curtailing the Respondents' response time and has given no reason why the delivery of a Response by July 13, three weeks after the date proposed in the Commissioner's Letter, would cause any material prejudice to the Commissioner.

TIMETABLE

The Commissioner's Proposed Timetable is Premature

The Respondents take the position that it is premature at this stage of the proceeding to set a timetable at all. Procedurally, the only step that has been completed in this application is the delivery of the Commissioner's Notice of Application, modified twice since it was first served. The full scope of this proceeding can only be determined with reference to the pleadings, including the Respondents' Response and the Commissioner's Reply, if any. Indeed, the applicable procedural rules contemplate the setting of a timetable after the pleadings have closed. Rule 40 of the *Competition Tribunal Rules* specifies that the parties should consult about a proposed timetable within 14 days after the expiry of the period for filing a response. Rule 60 contemplates the time for serving affidavits of documents being set at a case management conference, which Rule 135 provides is to take place "as soon as is practicable after the end of the period for filing a reply". The Competition Tribunal Rules clearly set out when it is appropriate to set a timetable for a contested application, and that is after the pleadings close.

The Commissioner's Proposed Timetable is not Feasible

As set out above, the Respondents take the position that a timetable cannot be set until after the close of pleadings, when the full scope of issues has been determined. Nevertheless, it is the Respondents' position that the Commissioner's proposed timetable is unattainable for a case of this magnitude. The Commissioner's proposal that documentary production be completed within 24 days of the delivery of the Commissioner's Reply is particularly unreasonable. Contrary to the assertion in the Commissioner's Letter, the Respondents did advise counsel for the Commissioner that the Respondents could not practically complete documentary discovery in the timeframe proposed by the Commissioner. Contrary to the Commissioner's position, the proposed timeline does not afford the parties adequate time to conduct the necessary interlocutory steps in advance of the hearing, nor does it apply considerations of fairness as required by section 9(2) of the *Competition Tribunal Act*. As in any case, the production of documents and completion of an affidavit of documents in this case will involve a sequence of multiple different steps and processes, any one of which on its own can take several weeks to complete. These include, at minimum:

- Identifying document custodians and conducting custodian interviews, which would likely take place over the summer and will necessarily be constrained by vacation schedules;

The Honourable Chief Justice Crampton
June 16, 2015



- Liaising with each respondent to arrange for document collection, which will likely take place over the summer and will be similarly be constrained by vacation schedules;
- Engage an outside vendor to process the documents;
- Document collection (minimum of 4-6 weeks);
- Processing the documents into a format which can be reviewed (2-3 weeks);
- Coding, de-duplication, and quality control;
- Preparation of review protocols and assembling teams;
- First level review, during which we expect new relevant people will appear, leading us to restart the collection and processing for those newly-identified persons (6-8 weeks);
- Second level review and privilege review (4-6 weeks);
- Redaction of any confidential information and possibly seeking confidentiality protection over documents to be produced; and
- Production of Affidavits and documents (1 week)

Even pursuing these steps aggressively, the Respondents do not anticipate that documentary production could be completed in less than five months. This would be consistent with the timetables established in recent applications by the Commissioner before the Tribunal. A review of the timetables from previous applications brought by the Commissioner before the Tribunal² indicates the following average timelines for the relevant steps in the proceeding:

Event	Average Number of Days For Each Step	
	From Response	From Notice of Application
Response	N/A	140 (between 45-235 days)
Complete Affidavit of Documents	155 (between 81-228 days)	295 (between 126-463 days)
Delivery of 1 st Tranche	138 (between 88-188 days)	184 (between 134-234 days)
Delivery of final tranche	207 (between 196-217 days)	253 (between 242-263 days)
Examinations for Discovery (completion)	244 (between 141-347 days)	384 (between 186-582 days)

² Cases reviewed: *The Commissioner of Competition v. Brent Marshall et al.*, *The Commissioner of Competition v. CCS Corporation et al.*, *The Commissioner of Competition v. Air Canada et al.*, *The Commissioner of Competition v Visa Canada Corporation and MasterCard International Incorporated et al.*, *The Commissioner of Competition v Reliance Comfort Limited Partnership*, and *The Commissioner of Competition v The Canadian Real Estate Association*; copies of scheduling orders from these cases are attached at Tab B.

The Honourable Chief Justice Crampton
June 16, 2015



Event	Average Number of Days For Each Step	
	From Response	From Notice of Application
Answers to Undertakings	269 (between 141-396 days)	409 (between 186-631 days)
Applicant's Service of Documents Relied Upon	317 (between 188-445 days)	457 (between 233-680 days)
Respondent's Service of Documents Relied Upon	345 (between 212-477 days)	488 (between 263-712 days)
Requests for Admissions	468 (between 441-494 days)	608 (between 487-729 days)
Hearing Date	378 (between 237-518 days)	525 (between 296-753 days)

Attached at Tab B are copies of the scheduling orders issued in the cases used to create the above table.

Section 11 Productions are Distinct

Counsel for the Commissioner has taken the position that a truncated deadline is reasonable in light of the productions made under the Section 11 Order. However, this argument fails to consider the differences in scope between the Section 11 Order and this proceeding. For example, the Section 11 Order:

- was not made against ABCRL, although certain of that entity's documents were in fact produced;
- related to the period from January 1, 2009 to October 1, 2013, whereas the application relates to conduct up to the present day;
- focused on "specified price offers" only. In fact, the Respondents offered very few of these promotions during the relevant period. This proceeding encompasses other marketing activities including "percentage off price" offers, which were a more significant component of the Canadian Respondents' marketing efforts, and which will likely generate considerable additional records;
- did not pertain to the corporate relationships among the Respondents, which are directly at issue in this proceeding; and
- requests production of records relating to the development of additional fees and surcharges from January 1, 2008 to October 1, 2013, which is narrower than the scope of this proceeding on those issues.

Moreover, the persons identified as relevant to the issues in the Section 11 Order may not include all the relevant personnel for each entity affected by this proceeding.

In prior proceedings against Air Canada, Reliance Comfort, and the Canadian Real Estate Association, a Section 11 order preceded the Commissioner's application, however, in those cases, affidavits of documents were not delivered for an average of 220 days from the date of the Response.

The Honourable Chief Justice Crampton
June 16, 2015



Moreover, and contrary to the Commissioner's letter, the collection of documents and preparation of an affidavit of documents cannot meaningfully commence until the scope of the proceeding has been established through the pleadings. The modifications to the original Notice of Application made by the Commissioner affect the scope of this proceeding in a material way. The scope of discovery will be further defined by the Respondents' Response and the Commissioner's Reply, if any. In light of the four different corporations named in this proceeding, the two jurisdictions in which they operate, and the number of issues raised, it is unreasonable to suggest that the Respondents, all large sophisticated corporations, ought to conduct a rolling document gathering process during the pleadings stage, which may or may not be subject to revision as the pleadings develop.

The Respondents' Proposed Timetable

The Respondents have not refused to engage in a dialogue with the Commissioner's counsel regarding a timetable in this proceeding. We have suggested that the establishment of a timetable should logically follow the delivery of a Response, as the Rules clearly contemplate, but that should the Commissioner be willing to entertain a timetable in keeping with recent precedent, we would be pleased to discuss it. To the extent that Your Honour is inclined to set the timetable now, we have prepared a proposed timetable which we believe is more realistic and consistent with past practice and the relevant rules of procedure. A copy is attached at Tab A for Your Honour's consideration.

Yours very truly,

A handwritten signature in black ink, appearing to read 'D. Michael Brown', written in a cursive style.

D. Michael Brown

DMB/ck

Enclosure

Copies to: Derek Leschinsky / Antonio Di Domenico, *Department of Justice Canada*, counsel for the Commissioner
Kevin Ackhurst / Christine Kilby, *Norton Rose Fulbright Canada LLP*

TAB A

[1] **FURTHER TO** the application filed by the Commissioner of Competition pursuant to sections 74.01(1)(a), 74.05 and 74.011(1) and (2) of the *Competition Act*, R.S.C. 1985, c. C-34, alleging that the respondents Aviscar Inc., Budgetcar Inc./Budgetauto Inc., Avis Budget Group, Inc. and Avis Budget Car Rental, LLC are engaging in deceptive marketing practices;

[2] **AND WHEREAS** counsel for the parties advised the Tribunal on **[DATE]**, that they had reached an agreement on a timetable for the disposition of the application;

[3] **AND WHEREAS** the Tribunal has examined the proposed timetable and is of the view that it is appropriate and respects the principles found in subsection 9(2) of the *Competition Tribunal Act*, R.S.C. 1985, c. 19 (2nd Supp.);

THE TRIBUNAL ORDERS THAT:

[4] The schedule for the pre-hearing steps shall be as follows:

March 11, 2015 (done)	Service of Notice of Application
April 29, 2015 (done)	Service of Amended Notice of Application
May 29, 2015 (done)	Service of Particulars upon the Respondents
July 13, 2015	Deadline for service of Response In accordance with rules 34(1) and 38, <i>Competition Tribunal Rules</i> , SOR/2008-141 (CTR), and rule 78, <i>Federal Courts Rules</i> , SOR/98-106 (FCR)
July 27, 2015	Deadline for service of Reply, if any In accordance with rule 39(1), CTR
December 18, 2015	Service of affidavits of documents and delivery of documents by all parties. Documents are to be delivered in tranches accordance to the following timelines: <ul style="list-style-type: none"> • October 30, 2015 – 1st Tranche of documents • December 18, 2015 – 2nd Tranche of documents
January 8, 2016	Deadline for the filing of any motions arising from affidavits of documents and/or productions and/or in respect of the scope of examinations for discovery
Date to be set as needed, during the week of January 25, 2016	Hearing of any motions arising from affidavits of documents and/or productions and/or in respect of the scope of examinations for discovery
February 8, 2016 – March 11, 2016	Examinations for discovery according to a schedule to be settled between counsel
April 25, 2016	Deadline for fulfilling answers to discovery undertakings

May 9, 2016	Deadline for filing motions arising from answers to undertakings and refusals
Week of May 30, 2016	Hearing of motions arising from answers to undertakings and refusals
June 30, 2016	Last day for follow-up examinations for discovery
July 30, 2016	Deadline for filing of any motions for summary disposition
August 15, 2016	Applicant to serve documents relied upon, witness statements, and serve and file expert reports In accordance with rule 68(1), CTR
August 30, 2016	Applicant to serve list of documents proposed to be admitted without further proof In accordance with rule 72, CTR
September 16, 2016	Respondent to serve documents relied upon, witness statements, and serve and file expert reports In accordance with rule 69(1), CTR
September 23, 2016	Deadline for delivering any requests for admissions In accordance with rule 56, CTR
September 30, 2016	Applicant to serve list of reply documents, witness statements, and serve and file reply expert reports In accordance with rule 70, CTR
October 7, 2016	Deadline to provide documents to the Competition Tribunal for use at the hearing (e.g. briefs of authorities, agreed books of documents) In accordance with rule 268, FCR and rule 34(1), CTR

[5] The hearing of the application will commence at 10:00 am on October 17, 2016 for 30 days in the Hearing Room of the Competition Tribunal located at 600-90 Sparks Street, Ottawa.

DATED at Ottawa, this 16th day of June, 2015.

SIGNED on behalf of the Tribunal by the
Chairperson

TAB B

Competition Tribunal



Tribunal de la Concurrence

Reference: *The Commissioner of Competition v. Air Canada et al.*, 2012 Comp. Trib. 9

File No.: CT-2011-004

Registry Document No.: 91

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

AND IN THE MATTER OF the proposed transborder joint venture between Air Canada and United Continental Holdings, Inc.;

AND IN THE MATTER OF the “Marketing Cooperation Agreement” between Air Canada and United Air Lines, Inc.;

AND IN THE MATTER OF the “Alliance Expansion Agreement” between Air Canada and United Air Lines, Inc.;

AND IN THE MATTER OF the “Air Canada/Continental Alliance Agreement” between Air Canada and Continental Airlines Inc.;

AND IN THE MATTER OF an Application by the Commissioner of Competition for one or more Orders pursuant to sections 90.1 and 92 of the *Competition Act*;

B E T W E E N:

The Commissioner of Competition
(applicant)

and

**Air Canada, United Continental Holdings, Inc.,
United Air Lines, Inc., and Continental Airlines Inc.**
(respondents)

and

WestJet (an Alberta Partnership)
(intervenor)

Date of case management conference: 20120228

Before Judicial Member: Simpson J. (Chairperson)

Date of Order: March 6, 2012

Order signed by: Madam Justice Sandra J. Simpson



SCHEDULING ORDER

[1] FURTHER TO the application filed by the Commissioner of Competition (the “Applicant”) pursuant to sections 90.1 and 92 of the Competition Act, R.S.C., c. C-34, against the respondents Air Canada and United Continental Holdings, Inc., United Air Lines, Inc., and Continental Airlines, Inc. (collectively, the “Respondents”) (the “Application”);

[2] AND FURTHER TO the Tribunal’s Notice of Hearing dated February 23, 2012;

[3] AND FURTHER TO the discussion held with counsel for all parties, during the case management teleconference on February 28, 2012, about a timetable for the disposition of the Application;

THE TRIBUNAL ORDERS THAT:

[4] The schedule for the pre-hearing steps shall be as follows:

Friday, March 2, 2012	Service of Affidavits of Documents and delivery of documents by all parties and the intervenor
Friday, March 30, 2012	Last day for the filing of motions arising from Affidavits of Documents and/or productions and/or in respect of the scope of examinations for discovery
Monday, April 9, 2012	Deadline for delivery of any additional productions resulting from any Affidavits of Documents/production motions
Thursday, April 5, 2012	Deadline for Intervenor to identify documents related to WestJet Topics (as that term is defined in the Tribunal’s Order dated October 20, 2011 (the “Intervenor Order”), pursuant to which WestJet was granted leave to intervene in this proceeding)
Monday, May 7, 2012	Last day for Respondents and Applicant to give notice to Intervenor if they do not agree with the assessment of documents related to WestJet Topics
Friday, May 11, 2012	Last day for the filing of motions arising from the determination of whether documents are related to WestJet Topics
Wednesday, June 13, 2012 – Tuesday, July 10, 2012	Examinations for discovery according to a schedule to be settled between counsel
Monday, July 30, 2012	Deadline for fulfilling answers to discovery undertakings

Wednesday, August 1, 2012	Subject to the Intervenor Order, Intervenor to give notice to the Applicant if, and on what issues, the Intervenor proposes to file expert evidence
Friday, August 3, 2012	Subject to the Intervenor Order, Applicant to notify Intervenor whether it consents to the Intervenor filing expert evidence
Wednesday, August 15, 2012	Hearing of motion, if any, arising from Intervenor's proposed expert evidence
Friday, August 17, 2012	Last day for the filing of motions arising from answers to undertakings and refusals
Friday, August 31, 2012	Last day for follow-up examinations for discovery
Wednesday, September 12, 2012	Applicant and Intervenor to serve documents relied upon and witness statements Applicant to serve and file expert reports, if any, on all matters Subject to determination of Intervenor's ability to file expert evidence, Intervenor to serve and file expert reports, if any
Thursday, September 27, 2012	Applicant to serve list of documents proposed to be admitted without further proof
Friday, October 12, 2012	Respondents to serve documents relied upon and witness statements Respondents to serve and file expert reports, if any, in response to the Applicant's and Intervenor's expert reports
Monday, October 15, 2012	Deadline for delivering any Requests for Admissions
Thursday, October 25, 2012	Deadline for the filing of motions related to evidence except evidence to be filed on October 26, 2012
Friday, October 26, 2012	Applicant and Intervenor may serve list of reply documents and witness statements Applicant and Intervenor to serve and file any reply expert reports

Thursday, November 1, 2012

Deadline for responding to any Requests for Admissions

Deadline to provide documents to the Tribunal for use at the hearing (e.g., Briefs of Authorities, witness statements and Agreed Books of Documents)

Deadline for dividing up the hearing time – see paragraph 6 below

Deadline for the filing of any motions for Summary Disposition and/or any motions related to the evidence filed on October 26, 2012

[5] The hearing of the Application will commence at 10:00 am on Tuesday, November 13, 2012, in the Hearing Room of the Competition Tribunal located at 600-90 Sparks Street, Ottawa, Ontario. The schedule for the hearing shall be as follows:

Tuesday, November 13, 2012 – Friday, November 16, 2012	First week of hearing (4 days)
Monday, November 19, 2012 – Thursday, November 22, 2012	Second week of hearing (4 days)
Monday, November 26, 2012 – Thursday, November 29, 2012	Third week of hearing (4 days)
Monday, December 3, 2012 – Thursday, December 6, 2012	Fourth week of hearing (4 days)
Monday, December 10, 2012 – Thursday, December 13, 2012	Fifth week of hearing (4 days)
Monday, January 21, 2013 – Thursday, January 24, 2013	Argument (4 days)

[6] The hearing will be electronic (see Tribunal's Practice Direction regarding Electronic Hearings dated March 2011) and will proceed using chess clock timing. The parties and intervenor will advise the Tribunal Registry, on or before Thursday, November 1, 2012, of their agreement about the division of the total hearing time between them for the purposes of the chess clock proceeding. The total time is 4.5 hours per day x 24 days = 108 hours.

DATED at Ottawa, this 6th day of March, 2012.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Sandra J. Simpson

COUNSEL:

For the Applicant:

The Commissioner of Competition

David R. Wingfield
Jonathan Hood
Nicholas J. Cartel
Tara DiBenedetto

For the Respondents:

Air Canada

Katherine L. Kay
Eliot N. Kolers
Mark E. Walli

United Continental, Inc., United Air Lines, Inc., Continental Airlines, Inc.

Ryder Gilliland
Jason Gudofsky
Randall Hofley
Micah Wood

For the Intervenor:

WestJet (an Alberta Partnership)

D.J. MacDonald
Alicia Quesnel

Competition Tribunal



Tribunal de la Concurrence

Reference: *The Commissioner of Competition v. Air Canada*, 2012 Comp. Trib. 22

File No.: CT-2011-004

Registry Document No.: 149

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

AND IN THE MATTER OF the proposed transborder joint venture between Air Canada and United Continental Holdings, Inc.;

AND IN THE MATTER OF the “Marketing Cooperation Agreement” between Air Canada and United Air Lines, Inc.;

AND IN THE MATTER OF the “Alliance Expansion Agreement” between Air Canada and United Air Lines, Inc.;

AND IN THE MATTER OF the “Air Canada/Continental Alliance Agreement” between Air Canada and Continental Airlines Inc.;

AND IN THE MATTER OF an Application by the Commissioner of Competition for one or more Orders pursuant to sections 90.1 and 92 of the *Competition Act*;

B E T W E E N:

The Commissioner of Competition
(applicant)

and

**Air Canada, United Continental Holdings, Inc.,
United Air Lines, Inc., and Continental Airlines Inc.**
(respondents)

and

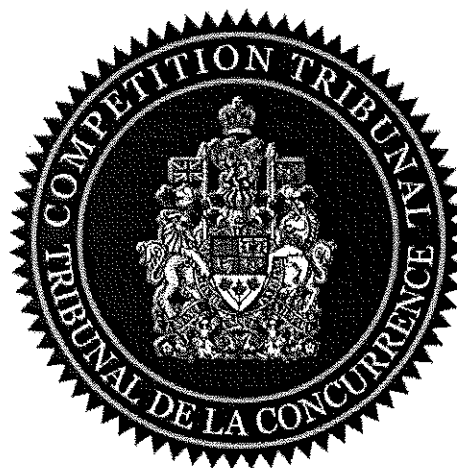
WestJet (an Alberta Partnership)
(intervenor)

Date of hearing: 20120907

Before Judicial Member: Rennie J. (Chairperson)

Date of order: September 14, 2012

Order signed by: Mr. Justice D. Rennie (Chairperson)



AMENDED SCHEDULING ORDER

[1] FURTHER to the Scheduling Order of March 6, 2012;

[2] AND FURTHER to the discussion with counsel for the Commissioner and the Respondents on September 7, 2012, and the Tribunal Direction issued that same day;

THE TRIBUNAL ORDERS THAT:

[3] The Scheduling Order is amended as follows:

- | | |
|-------------------------------|---|
| Wednesday, September 19, 2012 | Applicant and Intervenor to serve documents relied upon and witness statements |
| | Applicant to serve and file expert reports, if any, on all matters |
| | Subject to determination of Intervenor's ability to file expert evidence, Intervenor to serve and file expert reports, if any |
| Thursday, September 27, 2012 | Applicant to serve list of documents proposed to be admitted without further proof |
| Friday, October 19, 2012 | Respondents to serve documents relied upon and witness statements |
| | Respondents to serve and file expert reports, if any, in response to the Applicant's and Intervenor's expert reports |
| Monday, October 22, 2012 | Deadline for delivering any Requests for Admissions |
| Friday, November 2, 2012 | Deadline for the filing of motions related to evidence except evidence to be filed on November 2, 2012 |
| | Applicant and Intervenor may serve list of reply documents and witness statements |
| | Applicant and Intervenor to serve and file any reply expert reports |

Monday, November 5, 2012

Deadline for responding to any Requests for Admissions

Deadline to provide documents to the Tribunal for use at the hearing (e.g., Briefs of Authorities, witness statements and Agreed Books of Documents)

Deadline for dividing up the hearing time

Deadline for the filing of any motions for Summary Disposition and/or any motions related to the evidence filed on November 2, 2012

[4] The hearing of the Application will commence at 10:00 am on Tuesday, November 13, 2012, in the Hearing Room of the Competition Tribunal located at 600-90 Sparks Street, Ottawa, Ontario. The schedule for the hearing shall be as follows:

Tuesday, November 13, 2012 –
Friday, November 16, 2012

First week of hearing (4 days)

Monday, November 19, 2012 –
Thursday, November 22, 2012

Second week of hearing (4 days)

Monday, November 26, 2012 –
Thursday, November 29, 2012

Third week of hearing (4 days)

Monday, December 3, 2012 –
Thursday, December 6, 2012

Fourth week of hearing (4 days)

Monday, December 10, 2012 –
Thursday, December 13, 2012

Fifth week of hearing (4 days)

Monday, January 21, 2013 –
Thursday, January 24, 2013

Argument (4 days)

DATED at Montreal, this 14th day of September, 2012.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Donald J. Rennie

APPEARANCES:

For the Applicant:

The Commissioner of Competition

Jonathan Hood
Nicholas Cartel

For the Respondents:

Air Canada

Eliot N. Kolers
Mark E. Walli
James Wilson

United Continental, Inc., United Air Lines, Inc., Continental Airlines, Inc.

Randall Hofley

Competition Tribunal



Tribunal de la Concurrence

Reference: *The Commissioner of Competition v. Reliance Comfort Limited Partnership*, 2013
Comp. Trib. 18
File No.: CT-2012-002
Registry Document No.: 072

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 pursuant to section 79 of the *Competition Act*;

AND IN THE MATTER of certain policies and procedures of Reliance Comfort Limited Partnership

B E T W E E N:

The Commissioner of Competition
(applicant)

and

Reliance Comfort Limited Partnership
(respondent)

and

National Energy Corporation
(intervener)

Date of teleconference: 20131121
Before Judicial Member: Rennie J. (Chairperson)
Date of Order: November 27, 2013
Order signed by: Justice Donald J. Rennie



SCHEDULING ORDER

[1] On December 20, 2012, the Commissioner of Competition (the “Commissioner”) filed separate Notices of Application pursuant to section 79 of the *Competition Act*, R.S.C. 1985, c. C-34, against the respondent Reliance Comfort Limited Partnership (“Reliance”) and Direct Energy Marketing Limited. These reasons and this Order governing pre-hearing scheduling apply in respect of each application.

[2] By way of background, interlocutory proceedings with respect to the adequacy of the Commissioner’s Notice of Application concluded with the dismissal by the Supreme Court of Canada of an application for leave to appeal from a decision of the Federal Court of Appeal on October 31, 2013. The intervention of National Energy Corporation (“National”) was contested, in part, and on November 6, 2013 National was granted leave to intervene. Contemporaneous with the Order granting National leave, the parties were asked to agree on a timetable for the disposition of the Commissioner’s applications.

[3] The parties could not agree on a schedule for the steps necessary to bring these matters to a final hearing on the merits, necessitating a case management conference on November 21, 2013. The main point of contention concerned when a motion for summary disposition, as proposed by Reliance, would be heard. The parties advanced various, inconsistent schedules. Reliance urged that a motion for summary disposition be heard before the production of documents, examinations for discovery and preparation of expert reports commenced. Other parties expressed the view that the motion would be more effectively heard after discovery, and the Commissioner said that it was simply not an appropriate motion.

[4] Subsection 9(2) of the *Competition Tribunal Act*, R.S.C. 1985, c. 19, requires that proceedings before the Tribunal “shall be dealt with as informally and expeditiously as the circumstances and considerations of fairness permit.” The delays proposed in some of the schedules are inconsistent with this objective, as is the suggestion that proceedings be stayed while Reliance prepared a motion for summary disposition. On one of the schedules proposed, a

final hearing on the merits would take place over 32 months after commencement of the proceedings.

[5] I note that at this stage, the motion for summary disposition is but a proposal. The nature of the question that it would raise and how the answer to that question would effectively dispose of all or some of the case, remain undefined. To the extent that the proposed motion has been defined, the issue to which it would relate, the question of market dominance, requires an extensive factual record which, as of yet, does not exist. The motion for summary disposition, as described, would require affidavit evidence, both factual and expert, on an issue that is usually addressed in the context of a hearing on the merits. Counsel correctly in my view, foreshadowed cross-examinations and challenges to the adequacy of the factual record on which the motion would be based, necessitating further delay.

[6] Given these considerations, the overall efficient and fair conduct of these proceedings is furthered by directing that this proposed motion, should it materialize, be heard after discovery on an appropriate record. Should Reliance bring a motion, and is successful, it can make an application to be compensated in costs for the additional legal expenses it has occurred. Scheduling the motion to follow discoveries ensures that the proceedings are not brought to a standstill in the interim. It also avoids the prospect that, should the motion fail, considerable time would have been lost. Hearing the motion after discoveries is also consistent with the purpose of the rule providing for summary disposition of cases. If successful, the motion could eliminate or abbreviate the need for a lengthy hearing. In making these observations, I do not constrain the discretion of a judicial member of the Tribunal in considering the hearing, merits and disposition of any motion for summary disposition.

[7] A second issue at this case management teleconference concerned whether the Commissioner had an obligation to produce documents in its possession that were obtained from the intervener, National, following the execution of a search warrant. It was contended that National is subject to the obligation to produce an affidavit of relevant documents in accordance

with the Tribunal's Order granting it leave (*The Commissioner of Competition v. Reliance Comfort Limited Partnership*, 2013 Comp. Trib. 17) and the *Competition Tribunal Rules*, SOR/2008-141. In consequence, to require production by the Commissioner would serve no useful purpose.

[8] It is sufficient, at this stage, to note that the issues on which National has been granted leave do not overlap completely with the issues raised by the Commissioner. To defer production of National's documents to National alone could, in theory, result in lack of disclosure. The Tribunal is hopeful that the parties will agree to avoid unnecessary duplication of documents. The Tribunal also notes the reference made by counsel to terabytes of information, including audio-files of conversations with customers, which need to be transcribed and produced. Without expressing a view, one way or another on the relevancy of such information, the Tribunal reminds counsel of the principle of proportionality, which informs the relevancy inquiry.

[9] The parties have indicated that, with the Tribunal's guidance, they may reach consensus on the timing of various pre-hearing steps. The Tribunal will therefore order that they file a timetable, on consent, by no later than Thursday, December 5, 2013. The timetable shall comply with the following:

- 1) The service of affidavits of documents and delivery of documents by all parties shall be scheduled for March 28, 2014.
- 2) The hearings of the applications shall be scheduled to commence on February 23, 2015.

[10] If the parties cannot agree on a timetable, each party shall serve and file a proposed timetable on Friday, December 6, 2013. The Tribunal expects that the parties and intervener will

continue preparation of their respective affidavits of documents while attempting to reach an agreement on the timetable.

THE TRIBUNAL ORDERS THAT the parties will file a timetable, on consent, by no later than Thursday, December 5, 2013, failing which, the Tribunal will fix a schedule after having the parties' respective schedules by Friday, December 6, 2013. The timetable shall comply with the following:

- 1) The service of affidavits of documents and delivery of documents by all parties shall be completed by March 28, 2014.
- 2) The hearing of these applications shall commence on February 23, 2015.

DATED at Ottawa, this 27th day of November, 2013.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Donald J. Rennie

APPEARANCES:

For the applicant:

The Commissioner of Competition

Jonathan Hood
Parul Shah

For the respondents:

Reliance Comfort Limited Partnership

Robert S. Russell
Brendan Wong

Direct Energy Marketing Limited

Donald Houston

For the intervener:

National Energy Corporation

Adam Fanaki
Derek D. Ricci

Competition Tribunal



Tribunal de la Concurrence

Reference: *The Commissioner of Competition v. Reliance Comfort Limited Partnership*, 2013
Comp. Trib. 20
File No.: CT-2012-002
Registry Document No.: 075

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 pursuant to section 79 of the *Competition Act*;

AND IN THE MATTER of certain policies and procedures of Reliance Comfort Limited Partnership

B E T W E E N:

The Commissioner of Competition
(applicant)

and

Reliance Comfort Limited Partnership
(respondent)

and

National Energy Corporation
(intervener)

Decided on the basis of the written record
Before Judicial Member: Rennie J. (Chairperson)
Date of Order: December 9, 2013
Order signed by: Justice Donald J. Rennie



AMENDED SCHEDULING ORDER

[1] FURTHER TO the notice of application filed by the Commissioner of Competition (“Commissioner”) pursuant to section 79 of the *Competition Act*, R.S.C. 1985, c. C-34, against the respondent Reliance Comfort Limited Partnership and the notice of application filed by the Commissioner pursuant to section 79 of the *Competition Act* against the respondent Direct Energy Marketing Limited (CT-2012-003);

[2] AND FURTHER TO the Tribunal’s Scheduling Order of November 27, 2013, and recent correspondence from counsel;

[3] AND WHEREAS, in fixing the hearing date of these matters to begin January 12, 2015, the Tribunal notes two factors, raised by the parties in their correspondence and not previously discussed; the possible length of time of the hearings, and the possibility that they might be heard consecutively, rather than concurrently;

[4] AND HAVING regard to the scheduling implications of these factors for the Tribunal and reserving for future submissions and consideration the length and place of hearings and whether the hearings will be concurrent or consecutive, the Tribunal has amended and fixed the start date accordingly;

THE TRIBUNALS ORDERS THAT:

[5] The schedule for the pre-hearing steps shall be as follows:

Friday, March 28, 2014	Service of Affidavits of Documents and delivery of documents by all Parties
Wednesday, April 30, 2014	Deadline for the filing of any motions arising from Affidavits of Documents and/or productions and/or in respect of the scope of examinations for discovery
Date to be set as needed, during week of May 26, 2014	Hearing of any motions arising from Affidavits of Documents and/or productions and/or in respect of the scope of examinations for discovery

Friday, June 6, 2014	Deadline for delivery of any additional productions resulting from any Affidavits of Documents/production motions
Monday, June 16, 2014 – Friday, July 25, 2014	Examinations for discovery according to a schedule to be settled between counsel.
Friday, September 12, 2014	Deadline for fulfilling answers to discovery undertakings
Friday, September 19, 2014	Deadline for filing motions arising from answers to undertakings and refusals
Week of September 29, 2014	Hearing of motions arising from answers to undertakings and refusals
Friday, October 17, 2014	Last day for follow-up examinations for discovery
Friday, October 31, 2014	Applicant and Intervenor to serve documents relied upon, witness statements, and serve and file expert reports
Friday, November 14, 2014	Applicant to serve list of documents proposed to be admitted without further proof
Tuesday, December 2, 2014	Respondent to serve documents relied upon, witness statements, and serve and file expert reports

Friday, December 19, 2014	Deadline for delivering any Requests for Admissions
Friday, December 19, 2014	Applicant and Intervenor to serve list of reply documents, witness statements, and serve and file reply expert reports
Tuesday, December 30, 2014	Deadline for the hearing of any motions for Summary Disposition and/or any motions related to the evidence
Tuesday, December 30, 2014	Deadline to provide documents to the Tribunal for use at the hearing (e.g., Briefs of Authorities, witness statements, and Agreed Books of Documents)

[6] The hearing of the applications will commence at 10:00 am on Monday, January 12, 2015.

[7] This Order governing pre-hearing scheduling shall apply in respect of the application filed by the Commissioner against Direct Energy Marketing Limited (CT-2012-003).

DATED at Ottawa, this 9th day of December, 2013.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Donald J. Rennie

COUNSEL:

For the applicant:

The Commissioner of Competition

Jonathan Hood
Parul Shah

For the respondents:

Reliance Comfort Limited Partnership

Robert S. Russell
Brendan Wong

Direct Energy Marketing Limited

Donald Houston

For the intervener:

National Energy Corporation

Adam Fanaki
Derek D. Ricci

Competition Tribunal



Tribunal de la Concurrence

Reference: *The Commissioner of Competition v. Brent Marsall et al.*, 2010 Comp. Trib. 18
File No.: CT-2010-006
Registry Document No.: 0025

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

AND IN THE MATTER OF an inquiry pursuant to subparagraph 10(1)(b)(ii) of the *Competition Act* relating to the marketing practices of Brent Marsall (also known as Brent Marshall), also doing business in Alberta as Dynasty Spas and Games Room, Rochelle Marsall (also known as Rochelle Marshall), Dynasty Spas Inc., also doing business as EcoSmart Spas, and 1232466 Alberta Ltd., also doing business as Dynasty Spas;

AND IN THE MATTER OF an Application by the Commissioner of Competition for an order pursuant to section 74.1 of the *Competition Act*.

B E T W E E N:

The Commissioner of Competition
(applicant)

and

**Brent Marsall (also known as Brent Marshall),
also doing business in Alberta as Dynasty Spas
and Games Room, Rochelle Marsall
(also known as Rochelle Marshall),
Dynasty Spas Inc., also doing business as EcoSmart Spas,
and 1232466 Alberta Ltd., also doing business as Dynasty Spas**
(respondents)



Date of case management conference: 20101215
Before Judicial Member: Simpson J. (Chairperson)
Date of Order: December 20, 2010
Order signed by: Madam Justice S. J. Simpson

SCHEDULING ORDER

[1] **FURTHER TO** the application filed by the Commissioner of Competition (the "Commissioner") pursuant to section 74.1 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

[2] **AND FURTHER TO** the Tribunal's Direction Regarding a Case Management Teleconference dated December 8, 2010;

[3] **AND FURTHER TO** the discussion held with counsel for the Commissioner and for the Respondents, during the case management teleconference on December 15, 2010, about a timetable for the disposition of the application;

THE TRIBUNAL ORDERS THAT:

[4] The schedule for pre-hearing procedures shall be as follows:

- (a) Affidavits of documents together with copies of the documents shall be served by all parties on or before Friday, January 28, 2011.
- (b) Counsel for the Commissioner shall have a maximum of three days to conduct oral examinations for discovery of Brent and Rochelle Marsall; the examinations are to take place in one session.
- (c) A representative of the Commissioner shall be examined for a maximum of three days by counsel for the Respondents. They may divide the time as they see fit. The examination is to take place in one session.
- (d) All examinations for discovery shall be completed on or before Friday, March 11, 2011.
- (e) The parties are to advise the Tribunal Registry of the dates set aside for the examinations for discovery.
- (f) Any undertakings shall be answered on or before Friday, March 25, 2011.
- (g) No follow-up examination for discovery will be permitted. Any questions arising from answers to undertakings will be posed in writing on or before Friday, April 1, 2011. The questions are to be answered in writing on or before Friday, April 8, 2011.
- (h) On or before Tuesday, March 15, 2011, the Respondents are to inform the Commissioner in writing about whether they have retained any experts and, if so, the issues the experts are working on.
- (i) Expert reports, if any, will be served and provided to the Tribunal on or before Friday, April 15, 2011.
- (j) Responding expert reports, if any, will be served and provided to the Tribunal on or before Friday, April 29, 2011.

- (k) Reply experts reports, if any, will be served and provided to the Tribunal on or before Friday, May 6, 2011.
- (l) The expert reports are to include a signed copy of the "Acknowledgement of Expert Witness" form (copy attached).
- (m) The Commissioner's lay witness statements and the list of documents she intends to rely on at the hearing will be served and provided to the Tribunal on or before Friday, April 15, 2011.
- (n) The Respondents' lay witness statements and the list of documents they intend to rely on at the hearing will be served and provided to the Tribunal on or before Friday, April 29, 2011.
- (o) The Commissioner's reply lay witness statements and the list of additional reply documents she intends to rely on at the hearing will be served and provided to the Tribunal on or before Friday, May 6, 2011.

[5] The evidentiary portion of the hearing which is to include evidence about administrative monetary penalties, will be held as follows:

Tuesday, May 24, - Friday, May 27, 2011	First week of hearing (4 days)
Monday, May 30- Thursday, June 2, 2011	Second week of hearing (4 days)
Monday, June 13 – Thursday, June 16, 2011	Third week of hearing (4 days)

[6] Oral argument will be made in the week of June 20, 2011.

[7] The hearing will proceed as an electronic hearing.

[8] The hearing will proceed using chess clock timing (see the Tribunal's website for a description of the procedure). The parties will advise the Tribunal Registry, on or before Friday, May 13, 2011, of their agreement about the division of the total hearing time between them for the purposes of the chess clock proceeding.

DATED at Ottawa, this 20th day of December, 2010.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Sandra J. Simpson

[9] Schedule: Acknowledgement of Expert Witness Form

ACKNOWLEDGEMENT OF EXPERT WITNESS

I, *(name of expert)*, acknowledge that I will comply with the Competition Tribunal's code of conduct for expert witnesses which is described below:

1. An expert witness who provides a report for use as evidence has a duty to assist the Tribunal impartially on matters relevant to his or her area of expertise.
2. This duty overrides any duty to a party to the proceeding, including the person retaining the expert witness. An expert is to be independent and objective. An expert is not an advocate for a party.

(Date)

(Signature of expert witness)

COUNSEL:

For the applicant

The Commissioner of Competition

Nikiforos Iatrou

For the respondents

Brent Marsall (also known as Brent Marshall), also doing business in Alberta as Dynasty Spas and Games Room
Dynasty Spas Inc., also doing business as EcoSmart Spas, and
1232466 Alberta Ltd., also doing business as Dynasty Spas

Mark Morrison
Michael A. Dixon

Rochelle Marsall (also known as Rochelle Marshall)

Craig Steele

Competition Tribunal



Tribunal de la Concurrence

Reference: *The Commissioner of Competition v. Visa Canada Corporation and MasterCard International Incorporated*, 2011 Comp. Trib. 3

File No.: CT-2010-10

Registry Document No.: 52

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 pursuant to section 76 of the *Competition Act*.

B E T W E E N:

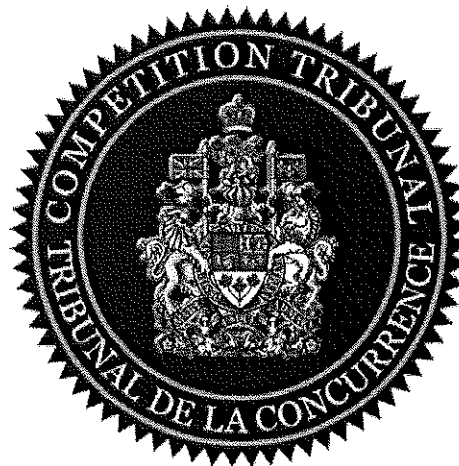
The Commissioner of Competition
(applicant)

and

Visa Canada Corporation
MasterCard International Incorporated
(respondents)

and

The Toronto-Dominion Bank
The Canadian Bankers Association
(intervenor)



Decided on the basis of the written record
Before Judicial Member: Simpson J. (Chairperson)
Date of Order: April 7, 2011
Order signed by: Madam Justice Sandra J. Simpson

SCHEDULING ORDER

[1] **FURTHER TO** the application filed by the Commissioner of Competition pursuant to section 76 of the *Competition Act*, R.S.C. 1985, c. C-34, alleging that the respondents Visa Canada Corporation and MasterCard International Incorporated are engaging in price maintenance;

[2] **AND WHEREAS** counsel for the parties advised the Tribunal on March 29, 2011, that they had reached an agreement on a timetable for the disposition of the application;

[3] **AND WHEREAS** the Tribunal has examined the proposed timetable and is of the view that it is appropriate and respects the principles found in subsection 9(2) of the *Competition Tribunal Act*, R.S.C. 1985, c. 19 (2nd Supp.);

THE TRIBUNAL ORDERS THAT:

[4] The schedule for the pre-hearing steps shall be as follows:

Friday April 29, 2011	Deadline for production of first tranche of the parties' respective documents
Tuesday, May 31, 2011	Deadline for production of second tranche of the parties' respective documents, constituting, together with the first tranche, at least 50% of each party's total documents
Thursday, June 30, 2011	Deadline for production of third tranche of the parties' respective documents, constituting together with the first and second tranches, at least 75% of each party's total documents
Monday, August 15, 2011	Deadline for production of all remaining documents and for delivery of the parties' and intervenors' respective Affidavits of Documents
Monday, August 29, 2011	Deadline for serving and filing any motions arising from Affidavits of Documents and/or productions and any motions regarding the scope of examinations for discovery
Date to be set, if needed	Hearing of any motions arising from Affidavits of Documents and/or productions and/or in respect of the scope of examinations for discovery
Monday, September 26, 2011	Deadline for delivery of any additional productions resulting from any Affidavits of Documents/productions motions

Monday, October 17 – Friday, November 25, 2011	Examinations for discovery according to a schedule to be settled between counsel
Monday, December 12, 2011	Deadline for fulfilling answers to discovery undertakings
Friday, January 13, 2012	Last day for the hearing of motions arising out of examinations for discovery
Friday, January 27, 2012	Last day for follow-up examinations for discovery
Wednesday, February 22, 2012	Applicant to serve documents relied upon and witness statements Applicant to serve and file any expert reports
Friday, March 9, 2012	Applicant to serve list of documents proposed to be admitted without further proof
Friday, March 23, 2012	Respondents and intervenors to serve documents relied upon and witness statements Respondents and intervenors to serve and file any expert reports
Wednesday, March 28, 2012	Deadline for delivering any Requests for Admissions
Wednesday, April 4, 2012	Deadline for responding to any Requests for Admissions
Thursday, April 5, 2012	Applicant may serve reply documents and witness statements Applicant to serve and file any reply expert reports
Friday, April 13, 2012	Deadline for providing documents to the Tribunal for use at the hearing (e.g., Briefs of Authorities, witness statements and Agreed Books of Documents) Deadline for dividing up the hearing time – see paragraph 6 below
Date to be set, if needed	Hearing of any pre-hearing motions not described above

[5] The hearing of the section 76 application will commence at 10:00 am on Monday, April 23, 2012, in the Hearing Room of the Competition Tribunal located at 600-90 Sparks Street, Ottawa. The schedule for the hearing shall be as follows:

Monday, April 23, 2012 - Thursday, April 26, 2012	First week of hearing (4 days)
Monday, April 30, 2012 - Thursday, May 3, 2012	Second week of hearing (4 days)
Monday, May 7, 2012- Thursday, May 10, 2012	Third week of hearing (4 days)
Monday, May 14, 2012 - Thursday, May 17, 2012	Fourth week of hearing (4 days)
Tuesday, May 22, 2012 - Friday, May 25, 2012	Fifth week of hearing (4 days)
Monday, June 4, 2012 - Thursday, June 7, 2012	Argument (4 days)

[6] The hearing will proceed using chess clock timing. The parties and intervenors will advise the Tribunal Registry, on or before Friday, April 13, 2012, of their agreement about the division of the total hearing time between them for the purposes of the chess clock proceeding. The total time is 4.5 hours per day x 24 days = 108 hours.

DATED at Ottawa, this 7th day of April, 2011.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Sandra J. Simpson

COUNSEL:

For the applicant:

The Commissioner of Competition

Kent E. Thomson
Adam Fanaki
William J. Miller
Davit D. Akman

For the respondents:

MasterCard International Incorporated

Jeffrey B. Simpson
David W. Kent
James B. Musgrove

Visa Canada Corporation

Robert Kwinter
Randall Hofley
Navin Joneja

Competition Tribunal



Tribunal de la Concurrence

Reference: *The Commissioner of Competition v. Visa Canada Corporation and MasterCard International Incorporated*, 2011 Comp. Trib. 8

File No.: CT-2010-10

Registry Document No.: 56

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 pursuant to section 76 of the *Competition Act*;

AND IN THE MATTER of certain agreements or arrangements implemented or enforced by Visa Canada Corporation and MasterCard International Incorporated.

B E T W E E N:

The Commissioner of Competition
(applicant)

and

Visa Canada Corporation
MasterCard International Incorporated
(respondents)

and

The Canadian Bankers Association
The Toronto-Dominion Bank
(intervenors)



Decided on the basis of the written record
Before Judicial Member: Simpson J. (Chairperson)
Date of Order: August 26, 2011
Order signed by: Madam Justice Sandra J. Simpson

ORDER CREATING A REVISED SCHEDULING ORDER

[1] FURTHER TO the application filed by the Commissioner of Competition pursuant to section 76 of the *Competition Act*, R.S.C. 1985, c. C-34, alleging that the respondents Visa Canada Corporation and MasterCard International Incorporated are engaging in price maintenance;

[2] AND FURTHER TO the Scheduling Order issued on April 7, 2011;

[3] AND FURTHER TO the letter from counsel for the Commissioner filed on August 18, 2011, in which he seeks to make amendments to the Scheduling Order because the respondent Visa Canada Corporation produced substantially more documents than it had anticipated;

[4] AND WHEREAS all parties consent to the proposed amendments to the Scheduling Order and the amendments preserve the hearing dates;

THE TRIBUNAL ORDERS THAT:

[5] The Scheduling Order is amended as follows:

Monday, September 19, 2011	Deadline for serving and filing any motions arising from Affidavits of Documents and/or productions and any motions regarding the scope of examinations for discovery
Date to be set, if needed	Hearing of any motions arising from Affidavits of Documents and/or productions and/or in respect of the scope of examinations for discovery
Monday, October 17, 2011	Deadline for delivery of any additional productions resulting from any Affidavits of Documents/productions motions
Monday, November 7 – Friday, December 9, 2011	Examinations for discovery according to a schedule to be settled between counsel
Tuesday, January 3, 2012	Deadline for fulfilling answers to discovery undertakings
Friday, January 13, 2012	Last day for the hearing of motions arising out of examinations for discovery
Friday, January 27, 2012	Last day for follow-up examinations for discovery
Wednesday, February 22, 2012	Applicant to serve documents relied upon and witness statements

	Applicant to serve and file any expert reports
Friday, March 9, 2012	Applicant to serve list of documents proposed to be admitted without further proof
Friday, March 23, 2012	Respondents and intervenors to serve documents relied upon and witness statements Respondents and intervenors to serve and file any expert reports
Wednesday, March 28, 2012	Deadline for delivering any Requests for Admissions
Wednesday, April 4, 2012	Deadline for responding to any Requests for Admissions
Thursday, April 5, 2012	Applicant may serve reply documents and witness statements Applicant to serve and file any reply expert reports
Friday, April 13, 2012	Deadline for providing documents to the Tribunal for use at the hearing (e.g., Briefs of Authorities, witness statements and Agreed Books of Documents) Deadline for dividing up the hearing time
Date to be set, if needed	Hearing of any pre-hearing motions not described above

[6] The hearing of the section 76 application will commence at 10:00 am on Monday, April 23, 2012, in the Hearing Room of the Competition Tribunal located at 600-90 Sparks Street, Ottawa. The schedule for the hearing shall be as follows:

Monday, April 23, 2012 - Thursday, April 26, 2012	First week of hearing (4 days)
Monday, April 30, 2012 – Thursday, May 3, 2012	Second week of hearing (4 days)
Monday, May 7, 2012- Thursday, May 10, 2012	Third week of hearing (4 days)
Monday, May 14, 2012 - Thursday, May 17, 2012	Fourth week of hearing (4 days)
Tuesday, May 22, 2012 -	Fifth week of hearing (4 days)

Friday, May 25, 2012

Monday, June 4, 2012 -
Thursday, June 7, 2012

Argument (4 days)

DATED at Ottawa, this 26th day of August, 2011.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Sandra J. Simpson

COUNSEL:

For the applicant:

The Commissioner of Competition

Adam Fanaki

For the respondents:

MasterCard International Incorporated

Jeffrey B. Simpson

Visa Canada Corporation

Robert Kwinter

For the intervenors:

The Canadian Bankers Association

Mahmud Jamal

The Toronto-Dominion Bank

Paul Morrison

Competition Tribunal



Tribunal de la Concurrence

Reference: *The Commissioner of Competition v. Visa Canada Corporation and MasterCard International Incorporated*, 2012 Comp. Trib. 5

File No.: CT-2010-10

Registry Document No.: 159

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 pursuant to section 76 of the *Competition Act*;

AND IN THE MATTER OF certain agreements or arrangements implemented or enforced by Visa Canada Corporation and MasterCard International Incorporated.

B E T W E E N:

The Commissioner of Competition
(applicant)

and

Visa Canada Corporation
MasterCard International Incorporated
(respondents)

and

The Toronto-Dominion Bank
The Canadian Bankers Association
(intervenors)



Decided on the basis of the written record
Before Judicial Member: Simpson J.
Date of Order: January 24, 2012
Order signed by: Madam Justice Sandra J. Simpson

ORDER CREATING A RE-REVISED SCHEDULING ORDER

[1] **FURTHER** to the motion filed by the Commissioner of Competition (the "Commissioner") on January 10, 2012, regarding, among other things, undertakings and questions refused or taken under advisement during the examinations for discovery of MasterCard International Incorporated ("MasterCard") and Visa Canada Corporation ("Visa");

[2] ~~**AND FURTHER** to the motions filed by MasterCard and Visa, respectively, on January 10, 2012, regarding, among other things, undertakings and questions refused or taken under advisement during the examination for discovery of the Commissioner;~~

[3] **AND UPON** being advised that the motions have been settled by the parties and that they have respectively agreed to provide answers to certain undertakings and/or certain questions that were refused or taken under advisement during the examinations for discovery of their respective representatives;

[4] **AND FURTHER** to the request of Justice Phelan during the hearing of January 16, 2012 that the parties provide the Tribunal with a draft order setting out the schedule of their agreement as regards to the motions;

[5] **AND UPON** receiving a draft order on consent from the parties setting out their agreement in respect of the motions which includes an amendment to the Tribunal's Order Creating a Revised Scheduling Order, dated August 26, 2011 ("Revised Scheduling Order"), to extend the date for follow-up examinations from January 27, 2012 to February 6, 2012;

[6] **AND WHEREAS** the judicial member responsible for the case management of the proceedings should review any proposed modifications to the Revised Scheduling Order;

[7] **AND WHEREAS** all parties consent to the amendment to the Revised Scheduling Order and the amendment preserves the hearing dates.

THE TRIBUNAL ORDERS THAT

[8] The Revised Scheduling Order is amended as follows:

Monday, February 6, 2012	Last day for follow-up examinations for discovery
Wednesday, February 22, 2012	Applicant to serve documents relied upon and witness statements Applicant to serve and file any expert reports
Friday, March 9, 2012	Applicant to serve list of documents proposed to be admitted without further proof
Friday, March 23, 2012	Respondents and intervenors to serve documents relied upon and witness statements Respondents and intervenors to serve and file any expert reports

Wednesday, March 28, 2012	Deadline for delivering any Requests for Admissions
Wednesday, April 4, 2012	Deadline for responding to any Requests for Admissions
Thursday, April 5, 2012	Applicant may serve reply documents and witness statements Applicant to serve and file any reply expert reports
Friday, April 13, 2012	Deadline for providing documents to the Tribunal for use at the hearing (e.g., Briefs of Authorities, witness statements and Agreed Books of Documents) Deadline for dividing up the hearing time
Date to be set, if needed	Hearing of any pre-hearing motions not described above

[9] The hearing of the section 76 application will commence at 10:00 am on Monday, April 23, 2012, in the Hearing Room of the Competition Tribunal located at 600-90 Sparks Street, Ottawa. The schedule for the hearing shall be as follows:

Monday, April 23, 2012 - Thursday, April 26, 2012	First week of hearing (4 days)
Monday, April 30, 2012 – Thursday, May 3, 2012	Second week of hearing (4 days)
Monday, May 7, 2012- Thursday, May 10, 2012	Third week of hearing (4 days)
Monday, May 14, 2012 - Thursday, May 17, 2012	Fourth week of hearing (4 days)
Tuesday, May 22, 2012 - Friday, May 25, 2012	Fifth week of hearing (4 days)

Monday, June 4, 2012 -
Thursday, June 7, 2012

Argument (4 days)

DATED at Ottawa, this 24th day of January, 2012.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Sandra J. Simpson

COUNSEL:

For the applicant:

The Commissioner of Competition

Adam Fanaki

For the respondents:

MasterCard International Incorporated

Adam Chisholm

Visa Canada Corporation

Randall Hofley

Competition Tribunal



Tribunal de la Concurrence

Reference: *The Commissioner of Competition v. Visa Canada Corporation and MasterCard International Incorporated*, 2012 Comp. Trib. 07

File No.: CT-2010-10

Registry Document No.: 164

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 pursuant to section 76 of the *Competition Act*;

AND IN THE MATTER OF certain agreements or arrangements implemented or enforced by Visa Canada Corporation and MasterCard International Incorporated.

B E T W E E N:

The Commissioner of Competition
(applicant)

and

Visa Canada Corporation
MasterCard International Incorporated
(respondents)

and

The Toronto-Dominion Bank
The Canadian Bankers Association
(intervenors)



Decided on the basis of the written record.

Before Judicial Member: Simpson J.

Date of Order: February 8, 2012

Order signed by: Madam Justice Sandra J. Simpson

ORDER CREATING AN AMENDED SCHEDULING ORDER

[1] **FURTHER TO** the application filed by the Commissioner of Competition pursuant to section 76 of the *Competition Act*, R.S.C. 1985, c. C-34, alleging that the respondents Visa Canada Corporation and MasterCard International Incorporated are engaging in price maintenance;

[2] ~~**AND FURTHER TO**~~ the Tribunal's revised scheduling order dated January 24, 2012 (the "Revised Scheduling Order");

[3] **AND FURTHER TO** the Tribunal's Direction dated January 25, 2012, advising the parties that due to unforeseen circumstances at the Federal Court the hearing of this matter would have to be delayed by two weeks (the "Direction");

[4] **AND WHEREAS** counsel for the parties advised the Tribunal on February 7, 2012 that the revised hearing dates set out in the Direction are acceptable;

[5] **AND FURTHER TO** the request by all parties that the schedule for interim steps as set out in the Revised Scheduling Order be adjusted by two weeks to reflect the revised hearing dates.

THE TRIBUNAL ORDERS THAT

[6] The Revised Scheduling Order is amended as follows:

Wednesday, March 7, 2012	Applicant to serve documents relied upon and witness statements Applicant to serve and file any expert reports
Friday, March 23, 2012	Applicant to serve list of documents proposed to be admitted without further proof
Friday, April 6, 2012	Respondents and intervenors to serve documents relied upon and witness statements Respondents and intervenors to serve and file any expert reports
Wednesday, April 11, 2012	Deadline for delivering any Requests for Admissions
Wednesday, April 18, 2012	Deadline for responding to any Requests for Admissions
Thursday, April 19, 2012	Applicant may serve reply documents and witness statements Applicant to serve and file any reply expert reports

Friday, April 27, 2012
Deadline for providing documents to the Tribunal for use at the hearing (e.g., Briefs of Authorities, witness statements and Agreed Books of Documents)
Deadline for dividing up the hearing time

Date to be set, if needed
Hearing of any pre-hearing motions not described above

[7] The hearing of the section 76 application will commence at 10:00 am on Tuesday, May 8, 2012, in the Hearing Room of the Competition Tribunal located at 600-90 Sparks Street, Ottawa. The schedule for the hearing shall be as follows:

Tuesday, May 8, 2012 – Thursday, May 10, 2012	First week of hearing (3 days)
Monday, May 14, 2012 – Thursday, May 17, 2012	Second week of hearing (4 days)
Tuesday, May 22, 2012 – Friday, May 25, 2012	Third week of hearing (4 days)
Monday, May 28, 2012 – Friday, June 1, 2012	Fourth week of hearing (5 days)
Monday, June 4, 2012 Thursday, June 7, 2012	Fifth week of hearing (4 days)
Monday, June 11, 2012 - Friday, June 15, 2012	Break week
Monday, June 18, 2012 - Thursday, June 21, 2012	Argument (4 days)

DATED at Ottawa, this 8th day of February, 2012.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Sandra J. Simpson

COUNSEL:

For the applicant:

The Commissioner of Competition

Kent E. Thomson
Adam Fanaki
William J. Miller
Davit D. Akman

For the respondents:

MasterCard International Incorporated

Jeffrey B. Simpson
David W. Kent
James B. Musgrove

Visa Canada Corporation

Robert Kwinter
Randall Hofley
Navin Joneja

For the intervenors

Canadian Bankers Association

Mahmud Jamal
Michelle Lally
Jason MacLean

Toronto-Dominion Bank

F. Paul Morrison
Glen G. MacArthur
Christine Lonsdale

Competition Tribunal



Tribunal de la Concurrence

Reference: *The Commissioner of Competition v. Visa Canada Corporation and MasterCard International Incorporated*, 2012 Comp. Trib. 10

File No.: CT-2010-10

Registry Document No.: 167

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 pursuant to section 76 of the *Competition Act*;

AND IN THE MATTER OF certain agreements or arrangements implemented or enforced by Visa Canada Corporation and MasterCard International Incorporated.

B E T W E E N:

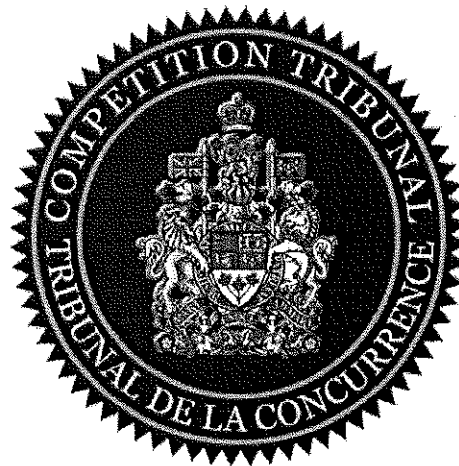
The Commissioner of Competition
(applicant)

and

Visa Canada Corporation
MasterCard International Incorporated
(respondents)

and

The Toronto-Dominion Bank
The Canadian Bankers Association
(intervenors)



Decided on the basis of the written record.

Before Judicial Member: Simpson J.

Date of Order: March 7, 2012

Order signed by: Madam Justice Sandra J. Simpson

ORDER CREATING AN AMENDED SCHEDULING ORDER

[1] **FURTHER TO** the application filed by the Commissioner of Competition pursuant to section 76 of the *Competition Act*, R.S.C. 1985, c. C-34, alleging that the respondents Visa Canada Corporation and MasterCard International Incorporated are engaging in price maintenance;

[2] ~~**AND FURTHER TO**~~ the Tribunal's amended scheduling order dated February 8, 2012 ("Scheduling Order");

[3] **AND FURTHER TO** the letter from counsel for the Commissioner filed on March 6, 2012 in which he seeks to make amendments to the Tribunal's Scheduling Order as a result of certain scheduling issues that have arisen between the parties;

[4] **AND WHEREAS** all parties consent to the proposed amendments to the Scheduling Order and the amendments preserve the hearing dates.

THE TRIBUNAL ORDERS THAT

[5] The Scheduling Order is amended as follows:

Wednesday, March 14, 2012	Applicant to serve documents relied upon and witness statements Applicant to serve and file any expert reports
Friday, March 30, 2012	Applicant to serve list of documents proposed to be admitted without further proof
Tuesday, April 10, 2012	Respondents and intervenors to serve documents relied upon and witness statements Respondents and intervenors to serve and file any expert reports
Monday, April 16, 2012	Deadline for delivering any Requests for Admissions
Monday, April 23, 2012	Deadline for responding to any Requests for Admissions
Monday, April 23, 2012	Applicant may serve reply documents and witness statements Applicant to serve and file any reply expert reports
Friday, April 27, 2012	Deadline for providing documents to the Tribunal for use at the hearing (e.g., Briefs of Authorities, witness statements and Agreed Books of Documents) Deadline for dividing up the hearing time

Date to be set, if needed	Hearing of any pre-hearing motions not described above
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[6] The hearing of the section 76 application will commence at 10:00 am on Tuesday, May 8, 2012, in the Hearing Room of the Competition Tribunal located at 600-90 Sparks Street, Ottawa. The schedule for the hearing shall be as follows:

Tuesday, May 8, 2012 – Thursday, May 10, 2012	First week of hearing (3 days)
Monday, May 14, 2012 – Thursday, May 17, 2012	Second week of hearing (4 days)
Tuesday, May 22, 2012 – Friday, May 25, 2012	Third week of hearing (4 days)
Monday, May 28, 2012 – Friday, June 1, 2012	Fourth week of hearing (5 days)
Monday, June 4, 2012 Thursday, June 7, 2012	Fifth week of hearing (4 days)
Monday, June 11, 2012 - Friday, June 15, 2012	Break week
Monday, June 18, 2012 - Thursday, June 21, 2012	Argument (4 days)

DATED at Ottawa, this 7th day of March, 2012.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Sandra J. Simpson

COUNSEL:

For the applicant:

The Commissioner of Competition

Kent E. Thomson
Adam Fanaki
William J. Miller
Davit D. Akman

For the respondents:

MasterCard International Incorporated

Jeffrey B. Simpson
David W. Kent
James B. Musgrove

Visa Canada Corporation

Robert Kwinter
Randall Hofley
Navin Joneja

For the intervenors

Canadian Bankers Association

Mahmud Jamal
Michelle Lally
Jason MacLean

Toronto-Dominion Bank

F. Paul Morrison
Glen G. MacArthur
Christine Lonsdale

Competition Tribunal



Tribunal de la Concurrence

Reference: *The Commissioner of Competition v. CCS Corporation et al.*, 2011 Comp. Trib. 4
File No.: CT-2011-002
Registry Document No.: 39

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 an Order pursuant to section 92 of the *Competition Act*;

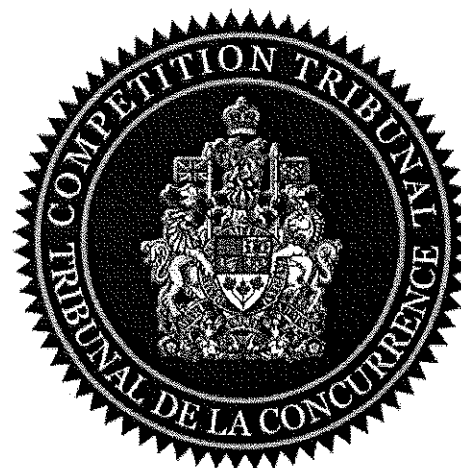
AND IN THE MATTER OF the acquisition by CCS Corporation of Complete Environmental Inc.

B E T W E E N:

The Commissioner of Competition
(applicant)

and

**CCS Corporation, Complete Environmental Inc.,
Babkirk Land Services Inc., Karen Louise Baker,
Ronald John Baker, Kenneth Scott Watson,
Randy John Wolsey, and Thomas Craig Wolsey**
(respondents)



Date of case management conference: 20110407
Before Judicial Member: Simpson J. (Chairperson)
Date of Order: May 2, 2011
Order signed by: Madam Justice Sandra J. Simpson

SCHEDULING ORDER

[1] **FURTHER TO** the application filed by the Commissioner of Competition pursuant to section 92 of the *Competition Act*, R.S.C. 1985, c. C-34, against the corporate respondents CCS Corporation, Complete Environmental Inc., and Babkirk Land Services Inc. (collectively, the “Corporate Respondents”), and Karen Louise Baker, Ronald John Baker, Kenneth Scott Watson, Randy John Wolsey and Thomas Craig Wolsey (collectively, the “Vendor Respondents”);

[2] **AND FURTHER TO** the Tribunal’s direction dated April 5, 2011;

[3] **AND FURTHER TO** the discussion held with counsel for all parties during the case management teleconference on April 7, 2011, about a timetable for the disposition of the application;

THE TRIBUNAL ORDERS THAT:

[4] The schedule for the pre-hearing steps shall be as follows:

Monday, May 30, 2011	Service of affidavits of documents by all parties and delivery of documents
Friday, July 29, 2011	Examinations for discovery completed and undertakings answered Counsel for the Commissioner shall have a maximum of 4 days to conduct oral examination for discovery of a representative of the Corporate Respondents Counsel for the Commissioner shall have a maximum of 2 days to conduct oral examination for discovery of two representatives of the Vendor Respondents Counsel for the Respondents shall have collectively 3 days to conduct oral examination for discovery of a representative of the Commissioner.
Wednesday, September 14, 2011	Production and service of Book of Authorities and witness statements to be relied upon by Commissioner Commissioner to serve expert reports and provide them to the Tribunal on all matters but efficiencies
Friday, October 7, 2011	Corporate Respondents to serve expert reports, if any, on efficiencies and provide them to the Tribunal
Friday, October 14, 2011	Production and service of Book of Authorities and witness statements to be relied upon by the Respondents

Respondents to serve expert reports and response, if any, to Commissioner's expert reports and provide them to the Tribunal

Friday, October 28, 2011

Commissioner may serve additional reply documents or new reply witness statements

Commissioner to serve reply to Respondents' expert reports and response to the Corporate Respondents' report on efficiencies, if any, and provide them to the Tribunal

Friday, November 4, 2011

Deadline for the hearing of motions related to the hearing

Deadline for providing documents to the Tribunal for use at the hearing (e.g. Briefs of Authorities, witness statements and Agreed Books of Documents)

Deadline for dividing up the hearing time – see paragraph 7 below

[5] The evidentiary portion of the hearing of this application shall commence on November 16, 2011, in Vancouver, British Columbia. The schedule shall be as follows:

Wednesday, November 16, 2011-
Friday, November 18, 2011

First week of hearing (3 days)

Tuesday, November 22, 2011
Friday, November 25, 2011

Second week of hearing (4 days)

Tuesday, November 29, 2011
Friday, December 2, 2011

Third week of hearing (4 days)

[6] The Tribunal will hear oral argument on Tuesday, December 13 and Wednesday, December 14, 2011, in Ottawa.

[7] The hearing will proceed using chess clock timing. The parties will advise the Tribunal Registry, on or before Friday, November 4, 2011, of their agreement about the division of the total hearing time between them for the purposes of the chess clock proceeding. The total time is 4.5 hours per day x 13 days = 58.5 hours.

DATED at Ottawa, this 2nd day of May, 2011.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Sandra J. Simpson

COUNSEL:

For the applicant:

The Commissioner of Competition

William J. Miller
Nikiforos Iatrou
Jonathan Hood

For the respondents:

CCS Corporation, Complete Environmental Inc. and
Babkirk Land Services Inc.

Linda M. Plumpton
R. Jay Holsten

Karen Louise Baker, Ronald John Baker,
Kenneth Scott Watson, Randy John Wolsey and
Thomas Craig Wolsey

J. Kevin Wright

Competition Tribunal



Tribunal de la Concurrence

Reference: *The Commissioner of Competition v. The Canadian Real Estate Association*, 2010
Comp. Trib. 13
File No.: CT-2010-002
Registry Document No.: 0066

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 pursuant to
section 79 of the *Competition Act*;

AND IN THE MATTER OF certain rules, regulations and policies of the Canadian Real Estate
Association.

B E T W E E N:

The Commissioner of Competition
(applicant)

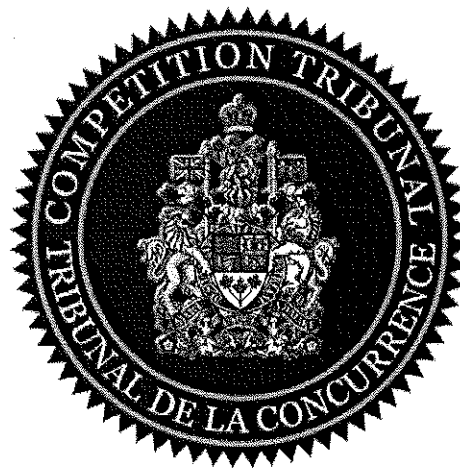
and

The Canadian Real Estate Association
(respondent)

and

National FSBO Network Inc.
(intervenor)

Date of case management conference: 20100714
Before Judicial Member: Simpson J. (Chairperson)
Date of Order: July 16, 2010
Order signed by: Madam Justice S. J. Simpson



**SCHEDULING ORDER SETTING A DATE FOR THE HEARING OF THE MAIN
APPLICATION**

[1] **FURTHER TO** the application filed by the Commissioner of Competition (the “Commissioner”) pursuant to section 79 of the *Competition Act*, R.S.C. 1985, c. C-34;

[2] **AND FURTHER TO** the discussion held with counsel for the Commissioner and for the respondent, the Canadian Real Estate Association (“CREA”), during the case management conference in Toronto on July 14, 2010, about the timetable for the disposition of the application;

[3] **AND FURTHER TO** the request made by counsel for more time to reach an agreement on the timing of certain pre-hearing steps including the deadlines for the hearing of motions;

[4] **AND WHEREAS** CREA has requested additional time to prepare its affidavit of documents;

[5] **AND WHEREAS** CREA’s request should be granted given, in particular, the number of relevant documents in CREA’s possession, the Commissioner’s request that CREA provide a detailed description of the subcategories of CREA’s privileged documents, and the discussion during the case management conference about the duration of the case to be met;

NOW THEREFORE THE TRIBUNAL ORDERS THAT:

[6] The hearing of the section 79 application will commence at 10:00 a.m. on Tuesday, April 26, 2011, in the Hearing Room of the Competition Tribunal located at 600-90 Sparks Street, Ottawa. These hearing dates are firm.

[7] The schedule for this hearing shall be as follows:

Tuesday, April 26, 2011 - Friday, April 29, 2011	First week of hearing (4 days)
Monday, May 2, 2011- Thursday, May 5, 2011	Second week of hearing (4 days)
Monday, May 9, 2011- Thursday, May 12, 2011	Third week of hearing (4 days)
Monday, May 16, 2011- Thursday, May 19, 2011	Fourth week of hearing (4 days)
Tuesday, May 24, 2011- Friday, May 27, 2011	Fifth week of hearing (4 days)
Monday, May 30, 2011- Thursday, June 2, 2011	Sixth week of hearing (4 days)

Monday, June 13, 2011-
Thursday, June 16, 2011

Argument (4 days)

[8] The schedule for the pre-hearing steps shall be as follows:

Thursday, September 30, 2010

CREA shall provide partial production by serving some of its documents on the Commissioner

Friday, October 29, 2010

CREA shall serve on the Commissioner its affidavit of documents and the balance of its productions

The Commissioner shall serve on CREA her affidavit of documents and productions

[9] The Commissioner and CREA shall attempt to agree on the timing of the other pre-hearing steps and shall notify the Tribunal Registry when an agreement is reached. If no agreement can be reached, the Tribunal will schedule a case management conference, as it will more particularly direct.

DATED at Ottawa, this 16th day of July, 2010.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Sandra J. Simpson

APPEARANCES

For the applicant:

The Commissioner of Competition

John F. Rook
Jonathan Bell
Roger Nassrallah

For the respondent:

The Canadian Real Estate Association

Katherine L. Kay
Danielle K. Royal

TAB E

Competition Tribunal



Tribunal de la Concurrence

Reference: *The Commissioner of Competition v. Aviscar Inc.*, 2015 Comp. Trib. 6
File No.: CT-2015-001
Registry Document No.:022

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

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 case conference: 20150616
Before Judicial Member: Crampton C.J.
Date of Order: June 19, 2015

ORDER FOLLOWING CASE CONFERENCE

This is Exhibit..... " E "referred to in the
affidavit of..... Kristine Spence
sworn before me, this.....
day of..... November20¹⁵.....

.....
A COMMISSIONER FOR TAKING AFFIDAVITS
Christine M. Kilby

[1] **FURTHER TO** the Notice of Application filed by the Commissioner of Competition (the "Commissioner") pursuant to section 74.1 of the *Competition Act*, R.S.C. 1985, c. C-34, on March 11, 2015;

[2] **AND FURTHER TO** the Amended Notice of Application filed by the Commissioner on April 29, 2015;

[3] **AND FURTHER TO** correspondence of counsel for the Respondents, dated June 8, 2015, advising the Tribunal that they will not proceed with their Motion to Strike, given the particulars provided by the Commissioner, but requesting that the Tribunal rule on the outstanding issues of the timing of the response and the costs of the Motion to Strike;

[4] **AND FURTHER TO** the correspondence received from counsel for the Commissioner on June 15, 2015, and from counsel for the Respondents on June 16, 2015;

[5] **AND FURTHER TO** the discussion with counsel at the case conference of June 16, 2015;

THE TRIBUNAL ORDERS AS FOLLOWS :

[6] The Respondents shall serve and file their response on or before June 29, 2015.

[7] I will deal with the issue of costs on the Motion to Strike after hearing from counsel.

[8] A case management conference, to discuss scheduling as outlined by the Tribunal during the case conference of June 16, 2015, shall take place the week of June 29, 2015.

DATED at Ottawa, this 19th day of June, 2015.

SIGNED on behalf of the Tribunal by the presiding judicial member

(s) Paul S. Crampton

APPEARANCES

For the applicant:

The Commissioner of Competition

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

TAB F

Competition Tribunal



Tribunal de la Concurrence

Reference: *The Commissioner of Competition v. Aviscar Inc.*, 2015 Comp. Trib. 7

File No.: CT-2015-001

Registry Document No.: 030

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

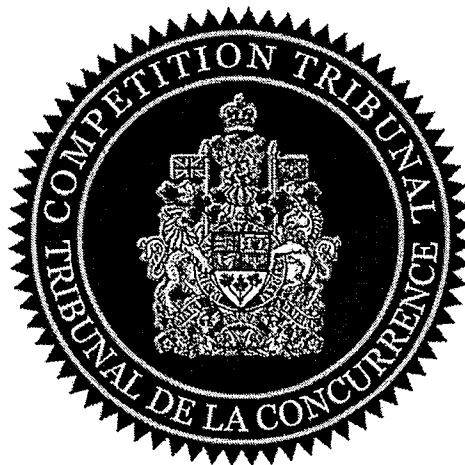
AND IN THE MATTER OF an application for orders pursuant to section 74.1 of the *Competition Act* for conduct reviewable pursuant to paragraph 74.01(1)(a) and sections 74.05 and 74.011 of the *Competition Act*.

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 case management conference: 20150630

Before Judicial Member: Barnes J.

Date of Order: July 7, 2015

SCHEDULING ORDER

This is Exhibit....."F".....referred to in the
affidavit of.....Kristine Spence.....
sworn before me, this.....20th.....
day of.....November.....2015.....

.....
A COMMISSIONER FOR TAKING AFFIDAVITS
Christine M. Kilby

[1] **FURTHER TO** the application filed by the Commissioner of Competition pursuant to sections 74.01(1)(a), 74.05 and 74.011(1) and (2) of the *Competition Act*, R.S.C. 1985, c. C-34, alleging that the respondents Aviscar Inc., Budgetcar Inc./Budgetauto Inc. and Avis Budget Group, Inc. are engaging in deceptive marketing practices;

[2] **AND WHEREAS** counsel for the parties advised the Tribunal on June 29, 2015 that they had reached an agreement on a timetable for the disposition of the application;

[3] **AND WHEREAS** the Tribunal has examined the proposed timetable and is of the view that it is appropriate and respects the principles found in subsection 9(2) of the *Competition Tribunal Act*, R.S.C. 1985, c. 19 (2nd Supp.);

[4] **AND FURTHER TO** the discussion with counsel at the case management conference of June 30, 2015;

THE TRIBUNAL ORDERS AS FOLLOWS:

[5] The schedule for the pre-hearing steps shall be as follows:

March 11, 2015 (done)	Service of Notice of Application
April 29, 2015 (done)	Service of Amended Notice of Application
May 29, 2015 (done)	Service of Particulars upon the Respondents
June 29, 2015 (done)	Deadline for service of Response
July 13, 2015	Deadline for service and filing of Reply, if any
September 25, 2015	Service of affidavits of documents and delivery of documents by all parties
October 28, 2015	Deadline for the filing of any motions arising from affidavits of documents and/or productions and/or in respect of the scope of examinations for discovery
Date to be set as needed, on November 9 and 10, 2015	Hearing of any motions arising from affidavits of documents and/or productions and/or in respect of the scope of examinations for discovery
November 23, 2015	Deadline for delivery of any additional productions resulting from any affidavits of documents/production motions
November 30, 2015 – December 23, 2015	Examinations for discovery according to a schedule to be settled between counsel

January 15, 2016	Deadline for fulfilling answers to discovery undertakings
January 22, 2016	Deadline for filing motions arising from answers to undertakings and refusals
January 28-29, 2016	Hearing of motions arising from answers to undertakings and refusals
February 5, 2016	Last day for follow-up examinations for discovery
February 18, 2016	Applicant to serve documents relied upon, witness statements, and serve and file expert reports
March 4, 2016	Applicant to serve list of documents proposed to be admitted without further proof
March 18, 2016	Respondent to serve documents relied upon, witness statements, and serve and file expert reports
March 24, 2016	Deadline for delivering any requests for admissions
April 4, 2016	Applicant to serve list of reply documents, witness statements, and serve and file reply expert reports
April 11, 2016	Deadline for the hearing of any motions for summary disposition and/or any motions related to the evidence
April 11, 2016	Deadline to provide documents to the Competition Tribunal for use at the hearing (e.g., briefs of authorities, witness statements, and agreed books of documents)

[6] The hearing of the application will commence at 10:00 am on April 18, 2016, for not more than 30 days, in the Hearing Room of the Competition Tribunal located at 600-90 Sparks Street, Ottawa.

DATED at Ottawa, this 7th day of July, 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
Kevin Aekhurst
Christine Kilby
Christine Spence

TAB G



Barristers & Solicitors / Patent & Trade-mark Agents

Norton Rose Fulbright Canada LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4 CANADA

F: +1 416.216.3930
nortonrosefulbright.com

D. Michael Brown
416.216.3962
michael.brown@nortonrosefulbright.com

This is Exhibit.....*G*.....referred to in the
Our reference affidavit of.....*Kristine Spence*.....
01012106-0047 sworn before me, this.....*20th*.....
day of.....*November*.....20.*15*.....

September 25, 2015

Sent by E-mail

The Honourable Mr. Justice Robert L. Barnes
Competition Tribunal
Thomas D'Arcy McGee Building
Suite 600
90 Sparks Street
Ottawa, Ontario K1P 5B4

Your Honour:

**Aviscar Inc. et al. ats The Commissioner of Competition
File #CT-2015-001 - Timetable**

A COMMISSIONER FOR TAKING AFFIDAVITS
Christine M. Kilby

We write on behalf of the parties to provide Your Honour with an update in respect to the progress of the application.

Pursuant to the timetable in the above-captioned application, the parties are scheduled to exchange their affidavits of documents and the productions attached thereto today. The Commissioner has served his affidavit of documents and the productions attached thereto. The Respondents have served approximately 57,000 of their documents and the schedule "A" arising from those documents. The Respondents have not yet served schedule "B" to the Respondents' affidavit of documents nor further relevant documents (and the schedule "A" arising from those further relevant documents), as described more fully below.

In a teleconference on September 23, 2015, we advised counsel to the Commissioner that we very recently identified approximately 4,000 documents which require further review before they can be produced. As a result, there will be a further production delivered to the Commissioner by no later than October 2. We also advised counsel to the Commissioner that we would serve a complete affidavit of documents (including a schedule "B") by no later than October 9 once the privilege review can be resumed and completed. The majority of the Respondents' productions (we estimate approximately 95%) are unaffected by this delay and were delivered as planned today.

The Commissioner does not oppose the foregoing adjustments to the timetable so long as certain subsequent deadlines in the timetable, listed below, are adjusted as well. The Respondents do not oppose these adjustments to the timetable.

- The October 28, 2015 deadline for the filing of any motions arising from affidavits of documents and/or productions and/or in respect of the scope of examinations for discovery will be changed to November 12, 2015;
- The November 9 and 10 motion dates will be rescheduled to two dates later in November based on Your Honour's availability; and

DOCSTOR: 5305112

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The Honourable Mr. Justice Robert L. Barnes
September 25, 2015

 NORTON ROSE FULBRIGHT

- The November 23, 2015 deadline for delivery of any additional productions resulting from any affidavits of documents/production motions will be adjusted based on the new motion dates.

We are confident that the parties can continue to work together to advance the application and agree upon any necessary changes. However, should Your Honour have any concerns regarding the foregoing, please do not hesitate to contact us.

Yours very truly,



D. Michael Brown

DMB/cd

Copies to: Derek Leschinsky / Antonio Di Domenico (*Department of Justice Canada*)
Christine Kilby (*Norton Rose Fulbright Canada LLP*)

TAB H

Competition Tribunal



Tribunal de la Concurrence

Date: October 9, 2015

Subject: CT-2015-001 - *The Commissioner of Competition v. Aviscar Inc., Budgetcar Inc. / Budgetauto Inc., Avis Budget Group, Inc. and Avis Budget Car Rental, LLC*


Direction to Counsel (from Justice Barnes)

Further to the correspondence of counsel, dated September 25, 2015, in which counsel seeks to adjust, on consent, certain deadlines set out in the Scheduling Order of July 7, 2015, the Tribunal hereby grants the request made and directs the following :

- The deadline for the filing of any motions arising from affidavits of documents and/or productions and/or in respect of the scope of examinations for discovery is November 12, 2015.
- Any responding motion materials are to be served and filed by Thursday, November 19, 2015.
- Any reply is to be served and filed by Tuesday, November 24, 2015.
- The hearing of any motions arising from affidavits of documents and/or productions and/or in respect of the scope of examinations for discovery shall take place in Ottawa, on December 1-2, 2015.

Joseph (Jos) LaRose
Deputy Registrar / Registraire adjoint
Competition Tribunal / Tribunal de la concurrence
600-90 Sparks, Ottawa ON K1P 5B4
Tel.: 613-954-0857 Fax: 613-952-1123

This is Exhibit " H " referred to in the
affidavit of Kristine Soence
sworn before me, this 20th
day of November 20¹⁵


A COMMISSIONER FOR TAKING AFFIDAVITS
Christine M. Kilay

TAB I

CT-2015-001

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 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*.

BETWEEN: " I "

This is Exhibit.....referred to in the

affidavit of.....*Kristine Spence*.....THE COMMISSIONER OF COMPETITION

sworn before me, this.....*20th*.....

day of.....*November*.....20*15*.....

Applicant

.....*[Signature]*.....
A COMMISSIONER FOR TAKING AFFIDAVITS

- and -

Christine M. Kilby

AVISCAR INC., BUDGETCAR INC. / BUDGETAUTO INC.,
AVIS BUDGET GROUP, INC. and AVIS BUDGET CAR RENTAL, LLC

Respondents

AFFIDAVIT OF DOCUMENTS
(sworn October 9, 2015)

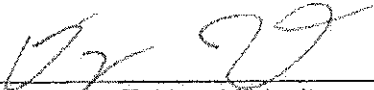
I, William Boxberger of the City of Barrie, Province of Ontario, MAKE OATH AND SAY:

1. I am the Vice President and General Manager of Aviscar Inc. and Budgetcar Inc. / Budgetauto Inc., which is a corporation.
2. I have participated in and overseen a review of the corporation's potentially relevant documents and have made appropriate inquiries of others to inform myself in order to make this affidavit.
3. I have listed in Schedule A to my affidavit the relevant documents that are or were in the corporation's possession, control or power for which no privilege is claimed.
4. I have listed in Schedule B to my affidavit the relevant documents that are or were in the corporation's possession, control or power for which privilege is claimed by the corporation, including the grounds for each such claim.
5. I have listed in Schedule C to my affidavit the relevant documents that were in the corporation's possession, control or power and which are no longer in its possession, control or power.

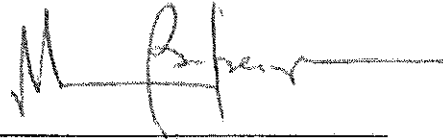
Communications including correspondence, e-mails, notes, reports and/or other documentation sent and received by me that were lost, destroyed and/or not archived, if any.

6. I am not aware of any other relevant documents that are or were in the corporation's possession, power or control other than those listed or described in this affidavit.

SWORN BEFORE ME at the City of
Toronto, on October 9, 2015.



Commissioner for Taking Affidavits



William Boxberger

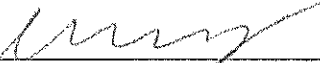
Danny James Urquhart, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires April 15, 2017.

LAWYER'S CERTIFICATE

I CERTIFY that I have explained to the deponent,

- (a) the necessity of making full disclosure of all documents relevant to any matter in issue in the action;
- (b) what kinds of documents are likely to be relevant to the allegations made in the pleadings.

October 9, 2015



Signature of lawyer

SCHEDULE C

Communications including correspondence, e-mails, notes, reports and/or other documentation sent and received by me that were lost, destroyed and/or not archived, if any.

Court File No. CT-2015-001

THE COMPETITION TRIBUNAL

THE COMMISSIONER OF COMPETITION

Applicant

- and -

AVISCAR INC. et al.

Respondents

AFFIDAVIT OF DOCUMENTS
(sworn October 9, 2015)

NORTON ROSE FULBRIGHT CANADA LLP
Royal Bank Plaza, South Tower
Suite 3800, 200 Bay Street
P.O. Box 84
Toronto, Ontario M5J 2Z4

D. Michael Brown LSUC #: 38985U
Tel: 416.216.3962
Kevin Ackhurst LSUC#:41806E
Tel: 416.216.3993
Christine Kilby LSUC #:54323C
Tel: 416.216.1921
Fax: 416.216.3930

Lawyers for the Respondents

TAB J

CT-2015-001

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 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*.

BETWEEN:

This is Exhibit ^{"J"}.....referred to in the
affidavit of.....*Kristine Spence*.....
sworn before me, this.....*20th*.....
day of.....*November*.....*2015*.....

THE COMMISSIONER OF COMPETITION

Applicant

.....
A COMMISSIONER FOR TAKING AFFIDAVITS

- and -

Christine M. Kilby

AVISCAR INC., BUDGETCAR INC. / BUDGETAUTO INC.,
AVIS BUDGET GROUP, INC. and AVIS BUDGET CAR RENTAL, LLC

Respondents

AFFIDAVIT OF DOCUMENTS
(sworn October 9, 2015)

I, Ted Kushner of the City of Summit, in the State of New Jersey, MAKE OATH AND SAY:

1. I am the Paralegal, in the Legal Department of Avis Budget Group, Inc., which is a corporation.
2. I have participated in and overseen a review of the corporation's potentially relevant documents and have made appropriate inquiries of others to inform myself in order to make this affidavit.
3. I have listed in Schedule A to my affidavit the relevant documents that are or were in the corporation's possession, control or power for which no privilege is claimed.
4. I have listed in Schedule B to my affidavit the relevant documents that are or were in the corporation's possession, control or power for which privilege is claimed by the corporation, including the grounds for each such claim.
5. I have listed in Schedule C to my affidavit the relevant documents that were in the corporation's possession, control or power and which are no longer in its possession, control or power.

6. I am not aware of any other relevant documents that are or were in the corporation's possession, power or control other than those listed or described in this affidavit.

SWORN BEFORE ME at the City of Parsonage
the State of New Jersey, on October 9th,
2015.

Aida Aviles
Commissioner for Taking Affidavits

Ted M Kushner
Ted Kushner

AIDAAVILES
NOTARY PUBLIC
STATE OF NEW JERSEY
MY COMMISSION EXPIRES APRIL 5, 2020

LAWYER'S CERTIFICATE

I CERTIFY that I have explained to the deponent,

- (a) the necessity of making full disclosure of all documents relevant to any matter in issue in the action;
- (b) what kinds of documents are likely to be relevant to the allegations made in the pleadings.

October 9, 2015



Signature of lawyer

SCHEDULE C

None

Court File No. CT-2015-001

THE COMPETITION TRIBUNAL

THE COMMISSIONER OF COMPETITION

Applicant

- and -

AVISCAR INC. et al.

Respondents

AFFIDAVIT OF DOCUMENTS
(sworn October 9, 2015)

NORTON ROSE FULBRIGHT CANADA LLP

Royal Bank Plaza, South Tower
Suite 3800, 200 Bay Street
P.O. Box 84
Toronto, Ontario M5J 2Z4

D. Michael Brown LSUC #: 38985U

Tel: 416.216.3962

Kevin Ackhurst LSUC#:41806E

Tel: 416.216.3993

Christine Kilby LSUC #:54323C

Tel: 416.216.1921

Fax: 416.216.3930

Lawyers for the Respondents

TAB K

CT-2015-001

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 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*.

BETWEEN :

This is Exhibit..... "K".....referred to in the
affidavit of..... Kristine Spence..... THE COMMISSIONER OF COMPETITION
sworn before me, this..... 20th.....
day of..... November..... 20.15.....

Applicant

- and -

.....
A COMMISSIONER FOR TAKING AFFIDAVITS
Christine M. Kilby

AVISCAR INC., BUDGETCAR INC. / BUDGETAUTO INC.,
AVIS BUDGET GROUP, INC. and AVIS BUDGET CAR RENTAL, LLC

Respondents

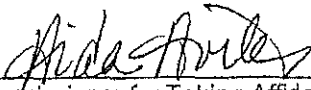
**AFFIDAVIT OF DOCUMENTS
(sworn October 9, 2015)**

I, Ted Kushner of the City of Summit, in the State of New Jersey, MAKE OATH AND SAY:

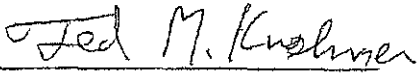
1. I am the Paralegal, in the Legal Department of Avis Budget Car Rental LLC, which is a corporation.
2. I have participated in and overseen a review of the corporation's potentially relevant documents and have made appropriate inquiries of others to inform myself in order to make this affidavit.
3. I have listed in Schedule A to my affidavit the relevant documents that are or were in the corporation's possession, control or power for which no privilege is claimed.
4. I have listed in Schedule B to my affidavit the relevant documents that are or were in the corporation's possession, control or power for which privilege is claimed by the corporation, including the grounds for each such claim.
5. I have listed in Schedule C to my affidavit the relevant documents that were in the corporation's possession, control or power and which are no longer in its possession, control or power.

6. I am not aware of any other relevant documents that are or were in the corporation's possession, power or control other than those listed or described in this affidavit.

SWORN BEFORE ME at the City of Parsippany
in the State of New Jersey, on
October 9th, 2015.



Commissioner for Taking Affidavits
ATTA AVILES



Ted Kushner

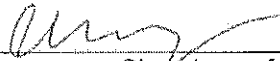
NOTARY PUBLIC
STATE OF NEW JERSEY
MY COMMISSION EXPIRES APRIL 5, 2020

LAWYER'S CERTIFICATE

I CERTIFY that I have explained to the deponent,

- (a) the necessity of making full disclosure of all documents relevant to any matter in issue in the action;
- (b) what kinds of documents are likely to be relevant to the allegations made in the pleadings.

October 9, 2015



Signature of lawyer

SCHEDULE C

Communications including correspondence, e-mails, notes, reports and/or other documentation sent and received by me that were lost, destroyed and/or not archived, if any.

Court File No. CT-2015-001

THE COMPETITION TRIBUNAL

THE COMMISSIONER OF COMPETITION

Applicant

- and -

AVISCAR INC. et al.

Respondents

AFFIDAVIT OF DOCUMENTS
(sworn October 9, 2015)

NORTON ROSE FULBRIGHT CANADA LLP

Royal Bank Plaza, South Tower
Suite 3800, 200 Bay Street
P.O. Box 84
Toronto, Ontario M5J 2Z4

D. Michael Brown LSUC #: 38985U

Tel: 416.216.3962

Kevin Ackhurst LSUC#:41806E

Tel: 416.216.3993

Christine Kilby LSUC #:54323C

Tel: 416.216.1921

Fax: 416.216.3930

Lawyers for the Respondents

TAB L

Spence, Kristine

From: King, Sojourner
Sent: September-16-15 5:05 PM
To: JeanRoch.Lemay@bc-cb.gc.ca; francois.brabant@bc-cb.gc.ca
Cc: Leschinsky, Derek: CB-BC; Brown, Michael (Toronto); Ackhurst, Kevin; Spence, Kristine; Sessler, Sam
Subject: AVIS/BUDGET : Sample Production

Francois/JeanRoch:

Please see below for our proposed production specifications. Please review the below and confirm same. Once we receive your confirmation, we will move forward with providing the sample documents to you.

Metadata

a. Load File:

- Delimited Text File - (DAT File) containing the fields listed in [Metadata Fields] will be provided. The delimiters for the file should be Concordance defaults:
 - Comma – ASCII character 20 (,)
 - Quote – ASCII character 254 (")
 - Newline – ASCII character 174 (¶)
- Semicolon for text delimiting (multi-value fields)
- Concordance delimiters for field delimiting for delimiting metadata fields

b. Metadata Fields:

- FIRSTBATES
- LASTBATES
- SEC11FIRSTBATES – Adding these fields for cross reference per your request
- SEC11LASTBATES – Adding these fields for cross reference per your request
- BEGATTACH
- ENDATTACH
- ATTACHRANGE
- PARENT_BATES
- CHILD_BATES
- DATE_CREATED
- FILE_EXTEN
- CUSTODIAN
- PGCOUNT
- ORIGINAL_FILE_NAME
- SUBJECT
- DATE_SENT
- DATE_RECEIVED
- AUTHOR
- FROM
- TO
- CC

"L"

This is Exhibit.....referred to in the
 affidavit of.....*Kristine Spence*.....
 sworn before me, this.....*20th*.....
 day of.....*November*.....20*15*.....

.....
 A COMMISSIONER FOR TAKING AFFIDAVITS
Christine M. Kilby

- SUBJECT
- FILE_SIZE
- NATIVE_LINK
- TEXT LINK
- MD5HASH

II. Images

a. Format

- Group IV single page TIFF images, 300 DPI, named the same as their beginning Bates number.
- Tiff Images will be provided in black and white format. If there are specific documents that need to be reproduced in color, we will confer.
- If a document is more than one page, the unitization of the document and any attachment shall be maintained as they originally existed.

b. Load/Cross-Reference Files:

- The Opticon (OPT) cross-reference file is a comma-delimited file consisting of six fields per line and is the preferred format.
- There must be a line in the cross-reference file for every image in the database.
- The format for the file is as follows: ImageID,VolumeLabel,ImageFilePath,DocumentBreak,FolderBreak,BoxBreak,PageCount:

- ImageID: The unique designation that Concordance and Opticon use to identify an image. This should be the Bates Number of the Document.
- VolumeLabel: The name of the volume.
- ImageFilePath: The full path to the image file.
- DocumentBreak: If this field contains the letter "Y," then this is the first page of a Document. If this field is blank, then this page is not the first page of a Document.
- FolderBreak: Leave empty.
- BoxBreak: Leave empty.
- PageCount: Number of pages in the Document
- Sample Data:

```
PROD00000001,VOL001,E:\100\ PROD00000001.TIF,Y,,2  
PROD00000002, VOL001,E:\100\ MT00000002.TIF,,,,  
PROD00000003, VOL001,E:\100\ MT00000003.TIF,Y,,,4  
PROD00000004, VOL001,E:\100\ MT00000004.TIF,,,,  
PROD00000005, VOL001,E:\100\ MT00000005.TIF,,,,
```

- NRF will also provide a DII and LFP file in addition to an OPT file for flexibility.

III. Searchable Text:

- Extracted Text taken from native files will be provided at a Document level.
- There will be one text file per Document, named the same as the beginning Bates number (Document ID) of the Document.
- The text file associated with any redacted Document will exclude redacted text (i.e., the producing Party can OCR the redacted image of the unstructured ESI and replace the original Extracted Text).
- OCR text will be provided for hardcopy documents as well as documents that failed to extract text from the native file.

Please let me know if you have any questions.

Best,

Sojourner

Sojourner King

E-Discovery Counsel

Admitted to practice in New York: LSUC Admission Pending

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada
T: +1 416.216.2327 | F: +1 416.216.3930
sojourner.king@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

TAB M

Spence, Kristine

From: Brabant, François: CB-BC <Francois.Brabant@bc-cb.gc.ca>
Sent: September-17-15 3:07 PM
To: King, Sojourner; Lemay, Jean-Roch: CB-BC (NCR-RCN)
Cc: Leschinsky, Derek: CB-BC; Brown, Michael (Toronto); Ackhurst, Kevin; Spence, Kristine; Sessler, Sam
Subject: Re: AVIS/BUDGET : Sample Production

Good afternoon,

I can confirm that we can receive as you state in your email. However, I am waiting of some information that will allow me to confirm that we'll send same.

We are still expecting to receive the sample on Monday, at which point our import expert, Kim Dickinson, will be back from holidays.

If you have any questions, please feel free to contact me. I'm out of the office for the rest of the week but will answer to emails when I can.

Thank you,

François

From: King, Sojourner [mailto:sojourner.king@nortonrosefulbright.com]
Sent: Wednesday, September 16, 2015 05:04 PM
To: Lemay, Jean-Roch: CB-BC (NCR-RCN); Brabant, François: CB-BC
Cc: Leschinsky, Derek: CB-BC; Brown, Michael (Toronto) <michael.brown@nortonrosefulbright.com>; Ackhurst, Kevin <kevin.ackhurst@nortonrosefulbright.com>; Spence, Kristine <kristine.spence@nortonrosefulbright.com>; Sessler, Sam <sam.sessler@nortonrosefulbright.com>
Subject: AVIS/BUDGET : Sample Production

Francois/JeanRoch:

Please see below for our proposed production specifications. Please review the below and confirm same. Once we receive your confirmation, we will move forward with providing the sample documents to you.

Metadata

a. Load File:

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 - Comma – ASCII character 20 ()
 - Quote – ASCII character 254 (b)
 - Newline – ASCII character 174 (®)
- Semicolon for text delimiting (multi-value fields)
- Concordance delimiters for field delimiting for delimiting metadata fields

b. Metadata Fields:

This is Exhibit.....^{"M"}.....referred to in the
affidavit of.....Kristine Spence.....
sworn before me, this.....20th.....
day of.....November.....2015.....

.....
A COMMISSIONER FOR TAKING AFFIDAVITS
Christine M. Kelly

- FIRSTBATES
- LASTBATES
- SEC11FIRSTBATES – Adding these fields for cross reference per your request
- SEC11LASTBATES– Adding these fields for cross reference per your request
- BEGATTACH
- ENDATTACH
- ATTACHRANGE
- PARENT_BATES
- CHILD_BATES
- DATE_CREATED
- FILE_EXTEN
- CUSTODIAN
- PGCOUNT
- ORIGINAL_FILE_NAME
- SUBJECT
- DATE_SENT
- DATE_RECEIVED
- AUTHOR
- FROM
- TO
- CC
- SUBJECT
- FILE_SIZE
- NATIVE_LINK
- TEXT LINK
- MD5HASH

II. Images

a. Format

- Group IV single page TIFF images, 300 DPI, named the same as their beginning Bates number.
- Tiff Images will be provided in black and white format. If there are specific documents that need to be reproduced in color, we will confer.
- If a document is more than one page, the unitization of the document and any attachment shall be maintained as they originally existed.

b. Load/Cross-Reference Files:

- The Opticon (OPT) cross-reference file is a comma-delimited file consisting of six fields per line and is the preferred format.
- There must be a line in the cross-reference file for every image in the database.
- The format for the file is as follows: ImageID,VolumeLabel,ImageFilePath,DocumentBreak,FolderBreak,BoxBreak,PageCount:
 - ImageID: The unique designation that Concordance and Opticon use to identify an image. This should be the Bates Number of the Document.
 - VolumeLabel: The name of the volume.
 - ImageFilePath: The full path to the image file.
 - DocumentBreak: If this field contains the letter "Y," then this is the first page of a Document. If this field is blank, then this page is not the first page of a Document.
 - FolderBreak: Leave empty.

- o BoxBreak: Leave empty.
- o PageCount: Number of pages in the Document
- o Sample Data:

PROD00000001,VOL001,E:\100\ PROD00000001.TIF,Y,,2
PROD00000002, VOL001,E:\100\ MT00000002.TIF,,,,
PROD00000003, VOL001,E:\100\ MT00000003.TIF,Y,,,4
PROD00000004, VOL001,E:\100\ MT00000004.TIF,,,,
PROD00000005, VOL001,E:\100\ MT00000005.TIF,,,,

- NRF will also provide a DII and LFP file in addition to an OPT file for flexibility.

III. Searchable Text:

- Extracted Text taken from native files will be provided at a Document level.
- There will be one text file per Document, named the same as the beginning Bates number (Document ID) of the Document.
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- OCR text will be provided for hardcopy documents as well as documents that failed to extract text from the native file.

Please let me know if you have any questions.

Best,

Sojourner

Sojourner King

E-Discovery Counsel

Admitted to practice in New York: LSUC Admission Pending

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada
T: +1 416.216.2327 | F: +1 416.216.3930
sojourner.king@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

Law around the world
nortonrosefulbright.com

Norton Rose Fulbright is ranked number one in the client-driven Acritas' Canadian Law Firm Brand Index 2015.

CONFIDENTIALITY NOTICE: This email is confidential and may be privileged. If you are not the intended recipient please notify the sender immediately, and please delete it; you should not copy it or use it for any purpose or disclose its contents to any other person. Norton Rose Fulbright Canada LLP is a limited liability partnership established in Canada. Norton Rose Fulbright Canada LLP, Norton Rose Fulbright LLP, Norton Rose Fulbright Australia, Norton Rose Fulbright South Africa Inc and Norton Rose Fulbright US LLP are separate legal entities and all of them are members of Norton Rose Fulbright Verein, a Swiss verein. Norton Rose Fulbright Verein helps coordinate the activities of the members but does not itself provide legal services to clients. Details of each entity, with certain regulatory information, are available at nortonrosefulbright.com.

TAB N

Spence, Kristine

From: King, Sojourner
Sent: September-17-15 4:17 PM
To: Brabant, François: CB-BC; Lemay, Jean-Roch: CB-BC (NCR-RCN)
Cc: Leschinsky, Derek: CB-BC; Brown, Michael (Toronto); Ackhurst, Kevin; Spence, Kristine; Sessler, Sam
Subject: RE: AVIS/BUDGET : Sample Production

Francois,

With apologies, it appears that I inadvertently excluded that we will be producing on electronic media and that we will be delivering Excels and other non-TIFFABLE documents natively. Please see below and let me know if you have any concerns/questions.

I. Natives

- Native Excels and other non-TIFFable file types (MDB; audio/video, etc.) will be provided with a tiff placeholder image and will be provided with a native file link in the dat file.
- Other natives do NOT need to be provided (Word, Powerpoint, email messages, etc.).
- File types that require redaction will not be provided natively.
- If certain documents need to be provided natively, we will confer.

II. Data Delivery

- Delivered on electronic media and will be encrypted with Truecrypt

Best,

Sojourner

Sojourner King
E-Discovery Counsel
Admitted to practice in New York: LSUC Admission Pending

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada
T: +1 416.216.2327 | F: +1 416.216.3930
sojourner.king@nortonrosefulbright.com

This is Exhibit....."N".....referred to in the
affidavit of.....Kristine Spence.....
sworn before me, this.....20th.....
day of.....November.....2015.....

.....
A COMMISSIONER FOR TAKING AFFIDAVITS
christine m. kilby

NORTON ROSE FULBRIGHT

From: Brabant, François: CB-BC [mailto:Francois.Brabant@bc-cb.gc.ca]
Sent: September-17-15 3:07 PM
To: King, Sojourner; Lemay, Jean-Roch: CB-BC (NCR-RCN)
Cc: Leschinsky, Derek: CB-BC; Brown, Michael (Toronto); Ackhurst, Kevin; Spence, Kristine; Sessler, Sam
Subject: Re: AVIS/BUDGET : Sample Production

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If you have any questions, please feel free to contact me. I'm out of the office for the rest of the week but will answer to emails when I can.

Thank you,

François

From: King, Sojourner [mailto:sojourner.king@nortonrosefulbright.com]
Sent: Wednesday, September 16, 2015 05:04 PM
To: Lemay, Jean-Roch: CB-BC (NCR-RCN); Brabant, François: CB-BC
Cc: Leschinsky, Derek: CB-BC; Brown, Michael (Toronto) <michael.brown@nortonrosefulbright.com>; Ackhurst, Kevin <kevin.ackhurst@nortonrosefulbright.com>; Spence, Kristine <kristine.spence@nortonrosefulbright.com>; Sessler, Sam <sam.seessler@nortonrosefulbright.com>
Subject: AVIS/BUDGET : Sample Production

Francois/JeanRoch:

Please see below for our proposed production specifications. Please review the below and confirm same. Once we receive your confirmation, we will move forward with providing the sample documents to you.

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 - Quote – ASCII character 254 (")
 - Newline – ASCII character 174 (¶)
- Semicolon for text delimiting (multi-value fields)
- Concordance delimiters for field delimiting for delimiting metadata fields

b. Metadata Fields:

- FIRSTBATES
- LASTBATES
- SEC11FISTBATES – Adding these fields for cross reference per your request
- SEC11LASTBATES – Adding these fields for cross reference per your request
- BEGATTACH
- ENDATTACH
- ATTACHRANGE
- PARENT_BATES
- CHILD_BATES
- DATE_CREATED
- FILE_EXTEN
- CUSTODIAN
- PGCOUNT
- ORIGINAL_FILE_NAME

- SUBJECT
- DATE_SENT
- DATE_RECEIVED
- AUTHOR
- FROM
- TO
- CC
- SUBJECT
- FILE_SIZE
- NATIVE_LINK
- TEXT LINK
- MD5HASH

II. Images

a. Format

- Group IV single page TIFF images, 300 DPI, named the same as their beginning Bates number.
- Tiff Images will be provided in black and white format. If there are specific documents that need to be reproduced in color, we will confer.
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b. Load/Cross-Reference Files:

- The Opticon (OPT) cross-reference file is a comma-delimited file consisting of six fields per line and is the preferred format.
- There must be a line in the cross-reference file for every image in the database.
- The format for the file is as follows: ImageID,VolumeLabel,ImageFilePath,DocumentBreak,FolderBreak,BoxBreak,PageCount:
 - ImageID: The unique designation that Concordance and Opticon use to identify an image. This should be the Bates Number of the Document.
 - VolumeLabel: The name of the volume.
 - ImageFilePath: The full path to the image file.
 - DocumentBreak: If this field contains the letter "Y," then this is the first page of a Document. If this field is blank, then this page is not the first page of a Document.
 - FolderBreak: Leave empty.
 - BoxBreak: Leave empty.
 - PageCount: Number of pages in the Document
 - Sample Data:

```
PROD00000001,VOL001,E:\100\ PROD00000001.TIF,Y,,2  
PROD00000002, VOL001,E:\100\ MT00000002.TIF,,,,  
PROD00000003, VOL001,E:\100\ MT00000003.TIF,Y,,,4  
PROD00000004, VOL001,E:\100\ MT00000004.TIF,,,,  
PROD00000005, VOL001,E:\100\ MT00000005.TIF,,,,
```

- NRF will also provide a DII and LFP file in addition to an OPT file for flexibility.

III. Searchable Text:

- Extracted Text taken from native files will be provided at a Document level.

- There will be one text file per Document, named the same as the beginning Bates number (Document ID) of the Document.
- The text file associated with any redacted Document will exclude redacted text (i.e., the producing Party can OCR the redacted image of the unstructured ESI and replace the original Extracted Text).
- OCR text will be provided for hardcopy documents as well as documents that failed to extract text from the native file.

Please let me know if you have any questions.

Best,

Sojourner

Sojourner King

E-Discovery Counsel

Admitted to practice in New York: LSUC Admission Pending

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TAB O

Spence, Kristine

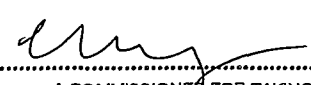
From: King, Sojourner
Sent: September-21-15 9:54 AM
To: Brabant, François: CB-BC
Cc: Beaulieu, Sophie: CB-BC; Leschinsky, Derek: CB-BC
Subject: RE: Avis Productions

Thanks, Francois. We will proceed with this format for the upcoming production.

Best,
Sojourner

Sojourner King
E-Discovery Counsel
Admitted to practice in New York: LSUC Admission Pending

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sojourner.king@nortonrosefulbright.com

This is Exhibit "D" referred to in the
affidavit of Kristine Spence
sworn before me, this 20th
day of November 2015

A COMMISSIONER FOR TAKING AFFIDAVITS
Christine M. Kilby

NORTON ROSE FULBRIGHT

From: Brabant, François: CB-BC [<mailto:Francois.Brabant@bc-cb.gc.ca>]
Sent: September-21-15 9:51 AM
To: King, Sojourner
Cc: Beaulieu, Sophie: CB-BC; Leschinsky, Derek: CB-BC
Subject: RE: Avis Productions

Hi Sojourner,

Sample looks good.

François

From: Leschinsky, Derek: CB-BC
Sent: September-21-15 7:48 AM
To: Brabant, François: CB-BC
Cc: Beaulieu, Sophie: CB-BC
Subject: Avis Productions

From: sam.sessler@nortonrosefulbright.com [<mailto:sam.sessler@nortonrosefulbright.com>]
Sent: Monday, September 21, 2015 01:29 AM
To: sam.sessler@nortonrosefulbright.com <sam.sessler@nortonrosefulbright.com>; Lemay, Jean-Roch: CB-BC (NCR-RCN); Leschinsky, Derek: CB-BC; Sojourner.King@nortonrosefulbright.com <Sojourner.King@nortonrosefulbright.com>
Subject: Message from Secure Workspace: Avis Budget Productions

sam.sessler@nortonrosefulbright.com has sent you a Workspace message.

Secure Workspace: Avis Budget Productions

Francois,

The sample production has posted for you to evaluate. Please advise if you have any issues with this format. Thank you!

Details are as follows:

Production: SAMPLE_PROD.TC
Vol: SAMPLE_PROD
Docs: 137
Pages: 282
Natives: 9
Redaction: 0
Size: 51.8 MB
Bates range: SAMPLE00000001 - SAMPLE00000282
Password: 4eva7ru4aYEVapheHAsu

Secured by Accellion

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TAB P

Spence, Kristine

From: Kilby, Christine
Sent: October-22-15 11:07 AM
To: DiDomenico, Antonio (IC/IC) (antonio.didomenico@canada.ca); Derek Leschinsky; Rydel, Katherine (Katherine.Rydel@bc-cb.gc.ca)
Cc: Sessler, Sam; Brown, Michael (Toronto); Ackhurst, Kevin; Spence, Kristine
Subject: Validation Issues with your Production [OR-EDRMS.FID6247239]
Attachments: missing-OCR-by-ID.txt; Extraneous-Natives-by-filename.txt; missing-images-by-ID.txt

Dear Tony, Derek, and Katherine,

In the process of loading your productions, we have found that there are various discrepancies with the material such that we are unable to validate the production set. The specific details of the discrepancies are set out below and in the attached.

We would be grateful for your immediate attention to this issue so that we may continue to prepare for examinations for discovery and indeed, so that we may be in a position to assess whether any motions may be required in accordance with the revised schedule. We expect that to maximize efficiency, it may be necessary for you to reproduce your productions in their entirety.

We look forward to hearing from you,
Christine

Missing OCR files - 1,073 files - (list attached)

It is unclear if the missing text files which would make these documents searchable were due to the fact that no text could be extracted from these documents or if they were excluded by error.

Missing images by ID – 1,487 images - (list attached)

The attached list of documents are missing images.

Extraneous Natives - 306 files - (list attached)

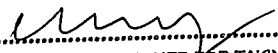
There is not metadata that links these native files to any record produced. Further clarification on what these natives represent and if they should be linked back to a record or not.

Christine Kilby
Associate

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T: +1 416.216.1921 | F: +1 416.216.3930
christine.kilby@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

This is Exhibit "P" referred to in the
affidavit of Kristine Spence
sworn before me, this 20th
day of November, 2015


A COMMISSIONER FOR TAKING AFFIDAVITS
Christine M. Kilby

TAB Q

Spence, Kristine

From: DiDomenico, Antonio (IC/IC) <antonio.didomenico@canada.ca>
Sent: October-23-15 3:21 PM
To: Kilby, Christine; Leschinsky, Derek (IC/IC); Rydel, Katherine (Katherine.Rydel@bc-cb.gc.ca)
Cc: Sessler, Sam; Brown, Michael (Toronto); Ackhurst, Kevin; Spence, Kristine
Subject: RE: Validation Issues with your Production [OR-EDRMS.FID6247239]
Attachments: MKFF0007_00000048.txt; MKFF0007_00000012.txt; MKFF0007_00000300.txt; MKFF0007_00000015.txt; MKFF0007_00000299.txt; MKFF0007_00000014.txt; AVIS00001421.txt; MKFF0007_00000296.txt; MKFF0007_00000013.txt; MKFF0007_00000294.txt; Generated from the Missing-OCR-by-ID.txt list.xlsx; Generated from the Missing-Images-by-ID.txt list.xlsx; Generated from the Extraneous-Natives-by-filename.txt.xlsx

Christine:

We have looked into the issues identified in your email to us yesterday. Our comments regarding each issue are below.

OCR Files (1,073 files)

All but 10 of the 1,073 files you have identified are either Excel, AVI or MP4 files. Excel files, as native files, are already searchable and accordingly need not be OCRed. AVI and MP4 files are videos and accordingly cannot be OCRed.

With respect to the 10 files (9 imaged PDFs and 1 Word document), these were produced in their native format. Our IT Team has extracted the OCR text from these 10 documents, a copy of which we attach.

The 1,073 files you have identified are listed in the attached excel spreadsheet (the document types for each of the 1,073 files are also specified in the excel spreadsheet). For your reference, the excel spreadsheet includes a filter that should assist your IT Team to search for the different file types it contains.

Images (1,487 images)

The 1,487 images you have identified are not missing from the Commissioner's production. They are contained in the file system and in the load file provided (we note that these documents are mostly Excel files, video files (AVI and MP4) and images with the file extension .PNG). Attached is a cross-referenced list of the files provided and their document ID (generated from the Missing-Images-by-ID.txt list.xlsx). This should assist your IT team in locating these images.


Extraneous Natives (306 files)

The 306 files identified in your email are individual pages contained within a document (for example, the first item in your list below, MKFF0002_00000830, is the second page of a document MKFF0002_00000829; MKFF0002_00000831 is the third page of the document MKFF0002_00000829). Metadata is attached to each document and not individual pages.

The 306 pages are listed in the load file (3107303 Disclosure Round 1.DII) and are accordingly not extraneous. For example, with respect to MKFF0002_00000829, the entry in the load file is as follows:

; Record 8106
@T MKFF0002_00000829
@C ENDDOC# MKFF0002_00000835

This is Exhibit "Q" referred to in the
affidavit of Kristine Spence
sworn before me, this 20th
day of November, 2015


A COMMISSIONER FOR TAKING AFFIDAVITS
Christine M. Kilby

@C PGCount 7
@C DOCID MKFF0002_00000829
@D @I\Bureau_Files\MKFF\MKFF0002\
MKFF0002_00000829.png
MKFF0002_00000830.png
MKFF0002_00000831.png
MKFF0002_00000832.png
MKFF0002_00000833.png
MKFF0002_00000834.png
MKFF0002_00000835.png

As the above example demonstrates, all pages are defined and all files were verified to be in the file system. In any event, we attach a spreadsheet that lists the 306 pages and identifies the Document ID to which each page belongs.

We trust this email addresses your concerns. If your IT Team would like to speak with ours, please let us know and we will arrange a call.

Thanks,
Tony

Antonio Di Domenico

Conseiller juridique | Counsel

Services juridiques du Bureau de la concurrence | Competition Bureau Legal Services

Ministère de la Justice | Department of Justice Gouvernement du Canada | Government of Canada

50 rue Victoria, Gatineau, Québec K1A 0C9 Place du Portage I, 22e étage | 22nd floor

Tel: (819) 997-2837 | Mobile: (613) 608-5271 | Fax: (819) 953-9267

Email: antonio.didomenico@cb-bc.gc.ca

From: Kilby, Christine [mailto:christine.kilby@nortonrosefulbright.com]

Sent: October-22-15 11:07 AM

To: DiDomenico, Antonio (IC/IC); Leschinsky, Derek (IC/IC); Rydel, Katherine (Katherine.Rydel@bc-cb.gc.ca)

Cc: Sessler, Sam; Brown, Michael (Toronto); Ackhurst, Kevin; Spence, Kristine

Subject: Validation Issues with your Production [OR-EDRMS.FID6247239]

Dear Tony, Derek, and Katherine,

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We look forward to hearing from you,
Christine

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The attached list of documents are missing images.

Extraneous Natives - 306 files - (list attached)

There is not metadata that links these native files to any record produced. Further clarification on what these natives represent and if they should be linked back to a record or not.

Christine Kilby
Associate

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TAB R

Competition Tribunal



Tribunal de la Concurrence

Reference: *The Commissioner of Competition v. Aviscar Inc.*, 2015 Comp. Trib. 12
File No.: CT-2015-001
Registry Document No.: 044

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

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*.

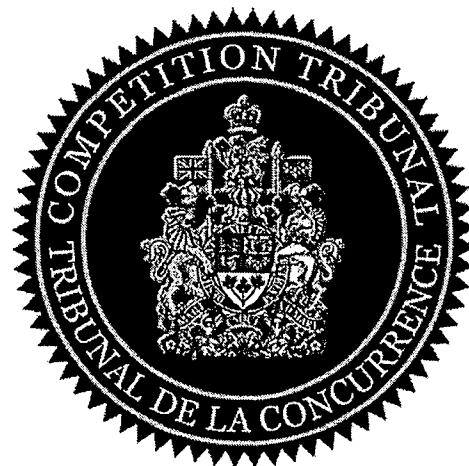
AND IN THE MATTER OF an application filed by the Commissioner of Competition against the Respondents for orders pursuant to section 74.1 of the *Competition Act* for conduct reviewable pursuant to paragraph 74.01(1)(a) and sections 74.05 and 74.011 of the Act

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)



Decided on the basis of the written record.
Before Judicial Member: Barnes J.
Date of Order: October 14, 2015

CONFIDENTIALITY ORDER

This is Exhibit "R" referred to in the
affidavit of Kristine Spence
sworn before me, this 20th
day of November 2015

A COMMISSIONER FOR TAKING AFFIDAVITS
Christine M. Kilby

[1] **FURTHER TO** the application filed by the Commissioner of Competition (the “Commissioner”) against the Respondents for orders pursuant to section 74.1 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the “Act”) for conduct reviewable pursuant to paragraph 74.01(1)(a) and sections 74.05 and 74.011 of the Act;

[2] **AND FURTHER** to the draft confidentiality order filed on consent by the Commissioner and the Respondents;

THE TRIBUNAL ORDERS THAT:

[3] For the purposes of this Order:

(a) **“Affiliate”** means, in respect of a Person, any other Person controlling, controlled by or under common control with such first Person, whether directly or indirectly, and “control” means directly or indirectly hold securities or other interests in a Person (i) to which are attached more than 50% of the votes that may be cast to elect directors or persons exercising similar functions or (ii) entitling the holder to receive more than 50% of the profits of the Person or more than 50% of its assets on dissolution;

(b) **“Commissioner”** means the Commissioner of Competition appointed pursuant to section 7 of the Act or any person designated by the Commissioner to act on his behalf;

(c) **“Designated Representatives”** means up to two in-house counsel and up to two additional individuals designated by the Respondents as their representatives who will be permitted access to Documents designated as Level B Protected Documents in accordance with the terms of this Order, which designations shall be made by written notice to the Tribunal, with a copy sent concomitantly to the Commissioner. The Commissioner may make a motion to the Tribunal objecting to such designations;

(d) **“Document”** means any document whatsoever, whether in physical or electronic form, including “Records”;

(e) **“Document Review Vendor”** means a professional service provider retained by a Party with respect to the Proceeding to facilitate the review of documents, both digital and paper, by legal professionals and who has executed a confidentiality agreement in the form attached as Schedule A hereto;

(f) **“Independent Expert”** means an expert retained by a Party with respect to the Proceeding who (i) is not a current employee of the Respondents; (ii) has not been an employee of the Respondents within 2 years prior to the date of this Order, (iii) is not a

current employee of a competitor of the Respondents; (iv) has not been an employee of a competitor of the Respondents within 2 years prior to the date of this Order; and (v) has executed a confidentiality agreement in the form attached as Schedule A hereto;

(g) **“Parties”** means the Commissioner and Respondents collectively and **“Party”** means any one of them;

(h) **“Person”** means any individual or corporation or partnership, sole proprietorship, trust or other unincorporated organization capable of conducting business, and any Affiliates thereof;

(i) **“Proceeding”** means the application filed by the Commissioner against the Respondents (File Number CT-2015-001);

(j) **“Protected Document”** means any Document (including the information such Document contains) that is produced in the Proceeding, including documents listed in affidavits of documents, excerpts from transcripts of examinations for discovery, answers to undertakings, documents produced with answers to undertakings, expert reports, lay witness statements, pleadings, affidavits or submissions that:

- (i) the Party producing the Document claims is confidential pursuant to Section 2 of this Order; or
- (ii) the Tribunal has determined is confidential;

(k) **“Record”** has the same meaning as in subsection 2(1) of the Act and, for greater certainty, includes any email or other correspondence, memorandum, pictorial or graphic work, spreadsheet or other machine readable record and any other documentary material, regardless of physical form or characteristics;

(l) **“Respondents”** means Aviscar Inc., Budgetcar Inc./Budgetauto Inc., Avis Budget Group, Inc., and Avis Budget Car Rental, LLC collectively,; and

(m) **“Third Party”** means any Person other than the Commissioner or Respondents.

[4] Disclosure of Documents containing any of the following types of information could cause specific and direct harm, and such Documents may be designated as Protected Documents:

- (a) Non-public information relating to pricing, pricing methods and pricing strategies;
- (b) Sales figures of the Respondents that are otherwise not public;

- (c) Confidential contractual arrangements between the Respondents and their licensees, partners, customers airport authorities, and others from whom space for the Respondents' locations are rented;
- (d) Operational information that is commercially sensitive;
- (e) Financial data and reports that are not otherwise public;
- (f) Non-public business plans, strategic plans, budgets, forecasts, and other similar information;
- (g) Internal investigative and related documents belonging to the Commissioner;
- (h) Internal market studies and analyses of customers and sales; and
- (i) Other documents containing competitively sensitive and/or proprietary information.

[5] If information from a Protected Document is incorporated into any other Document, that Document shall be a Protected Document. Any Protected Document shall cease to be a Protected Document if: (a) it or the protected information contained therein becomes publicly available (except if it becomes publicly available through a breach of this Order); or (b) if the Parties agree that the Document shall cease to be a Protected Document.

[6] Protected Documents will be identified in the following manner for the purpose of this Proceeding:

- (a) A person who claims confidentiality over a Document shall, at the time of production of a Protected Document, mark it with the name of the entity producing the Document and with "Confidential – Level A" or "Confidential – Level B" on the face of each Document and/or on each page that is claimed as confidential;
- (b) Subject to Section 5 of this Order, all Documents designated as Protected Documents shall be treated as a Protected Document, save for determination otherwise by the Tribunal or re-designation pursuant to Section 10 below;
- (c) If a Document originates with or from more than one Party and is designated by at least one Party as a Protected Document, the highest level of confidentiality shall universally attach to that Document, subject to the resolution of any challenge to that claim of confidentiality;
- (d) At any point in the Proceeding, a Party may challenge a claim of confidentiality or level of confidentiality made by another Party. The Parties shall use their best efforts to agree as to whether the Documents (or portions thereof) are to be treated as Protected Documents; and
- (e) If agreement cannot be reached, the Parties may apply to the Tribunal under Rule 81(1) of the *Competition Tribunal Rules*, SOR/2008-141 to determine whether the Document or a portion thereof, is a Protected Document.

[7] Subject to a further order of the Tribunal, the consent of the Party or Parties that produced and claimed confidentiality over the Protected Document, or as required by law, Protected Documents marked “Confidential – Level A” (“Level A Protected Documents”) may be disclosed only to:

- (a) the Commissioner, counsel to the Commissioner, and the Commissioner’s staff who are directly involved in the Proceeding;
- (b) outside counsel to the Respondents and outside counsel’s staff who are directly involved in the Proceeding;
- (c) Independent Experts and their staff who are directly involved in the Proceeding; and;
- (d) Document Review Vendors.

[8] Subject to a further Order of the Tribunal, the consent of the Parties that produced and claimed confidentiality over the Protected Document, or as required by law, Protected Documents marked “Confidential – Level B” (“Level B Protected Documents”) may be disclosed only to:

- (a) the individuals described in Section 7 above; and
- (b) Designated Representatives of the Respondents who have executed a confidentiality agreement in the form attached as Schedule A.

[9] Notwithstanding any provision of this Order, the Commissioner may disclose any Level A Protected Documents or Level B Protected Documents that he has so designated, and that have not been produced in this Proceeding by the Respondents or otherwise originated from the Respondents, to any Person for the purpose of preparing for the hearing of this Proceeding, subject to the limits prescribed by section 29 of the Act.

[10] A Party may at any time and with prior reasonable notice to the other Parties re-designate any of its own Level A Protected Documents as Level B Protected Documents or public documents, and/or may re-designate any of its own Level B Protected Documents as public documents. Where another Party disputes the re-designation, the Tribunal shall determine the proper designation. Documents re-designated as public shall cease to be Protected Documents and shall form part of the public record if introduced into evidence at the hearing of the Proceeding, unless the Parties agree otherwise or the Tribunal so orders. If a Party changes the designation of a Document to confidential, a prior disclosure of it shall not constitute a breach of this Order.

[11] If a Party is required by law to disclose a Protected Document, or if a Party receives written notice from a Person who has signed a confidentiality agreement pursuant to this Order that they are required by law to disclose a Protected Document, that Party shall give prompt written notice to the Party that claimed confidentiality over the Protected Document so that a protective order or other appropriate remedy may be sought.

[12] Outside counsel to a Party and his or her staff, counsel to the Commissioner, the Commissioner and his staff, and Independent Experts and their staff, may make copies of any Protected Document as they require in connection with the Proceeding.

[13] Nothing in this Order prevents a Party from having full access to Protected Documents that originated from that Party.

[14] For greater certainty, in accordance with Rule 62 of the *Competition Tribunal Rules*, all Persons who obtain access to Documents and information through documentary, written and oral discovery through this Proceeding are subject to an implied undertaking to keep the Documents and information confidential and to use the Documents and information solely for the purposes of this Proceeding (including any application or proceedings to enforce any order made by the Tribunal in connection with this Proceeding) and any related appeals.

[15] At the hearing of the Proceeding:

(a) Protected Documents tendered as evidence at the hearing of the Proceeding shall be identified and clearly marked as such, in accordance with paragraph 6(a), above;

(b) The Tribunal may determine whether the Document should be treated as a Protected Document;

(c) Protected Documents shall not form part of the public record unless the Party or Parties claiming confidentiality waive the claim, or the Tribunal determines that the Document is not a Protected Document;

(d) Documents over which no privilege or confidentiality claim has been asserted shall, unless otherwise determined by the Tribunal at the hearing, form part of the public record in this Proceeding if introduced into evidence or otherwise placed on the record. Public Documents shall be marked "Public" on the face of the document;

(e) Nothing in this Order shall abrogate or derogate any legal burden or requirement applicable to a sealing order or abrogate or derogate in any way from the rights of the Parties to assert confidentiality claims during the course of the hearing. In particular but without limitation, no Party shall rely on the terms of this Order to assert that another Party has waived or abandoned rights it may otherwise have to assert or dispute that a Document or information in a Document should be sealed in accordance with the law applicable to sealing orders.

[16] The Parties shall provide the Tribunal with redacted versions of Protected Documents at the time any such Documents are introduced into evidence or otherwise placed on the record, which redacted versions shall be marked "Public" on the face of the document and shall form part of the public record in this Proceeding. Each Protected Document shall identify the portions of the document which have been redacted from the "Public" version, by highlighting such portions in the Protected Document.

[17] The termination of the Proceeding shall not relieve any person to whom Protected Documents were disclosed pursuant to this Order from the obligation of maintaining the confidentiality of such Protected Documents in accordance with the provisions of this Order and any confidentiality agreement, subject to any further order of the Tribunal.

[18] Upon completion or final disposition of the Proceeding and any related appeals, all Protected Documents and any copies of Protected Documents, with the exception of Protected Documents in the possession of the Commissioner and his staff, shall be destroyed or returned to the Party that produced them unless the Party that produced the Protected Documents states, in writing, that they may be disposed of in some other manner, provided that outside counsel to the Parties and counsel to the Commissioner may keep copies of Protected Documents in their files and that any copies of Protected Documents as may exist in the Parties' automatic electronic backup and archival systems may be kept provided that deletion is not reasonably practical and the copies are retained in confidence and not used for any purpose other than backup and archival purposes.

[19] The Parties shall bear their own costs associated with the request for and issuance of this Order.

[20] Nothing in this Order prevents or affects the ability of a Party from applying to the Tribunal for further order or directions with respect to the use or disclosure of Documents or information produced by another Party.

[21] The Tribunal shall retain jurisdiction to deal with any issues relating to this Order, including, without limitation, the enforcement of this Order and any undertakings executed pursuant to this Order. This Order shall be subject to further direction of the Tribunal and may be varied by order of the Tribunal.

DATED at Ottawa, this 14th day of October, 2015.

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

(s) R. L. Barnes

[22] Schedule "A" - Confidentiality Agreement

IN CONSIDERATION of being provided with information or documentation in connection with this Proceeding which have been designated as confidential (the "Protected Documents"), I _____, of the City of _____, in the Province/State of _____, hereby agree to maintain the confidentiality of the Protected Documents so obtained.

I will not copy or disclose the Protected Documents so obtained to any other person, except (a) my staff who are directly involved in this matter; (b) counsel for the party on whose behalf I have been retained, members of counsel's firm who are directly involved in this Proceeding and, in the case of the Commissioner, the Commissioner's staff involved in the Proceeding; (c) other experts retained by or on behalf of the Party on whose behalf I have been retained and who have signed a similar confidentiality agreement with the Parties to this Proceeding; and (d) persons permitted by order of the Competition Tribunal. Nor will I use the Protected Documents so obtained for any purpose other than in connection with this Proceeding and any related appeals.

Upon completion of this Proceeding and any related appeals, I agree that the Protected Documents, and any copies of same, shall be dealt with in accordance with instructions from counsel for the Party I am retained by or as prescribed by the Order of the Competition Tribunal. I agree that the confidentiality of the information contained in the Protected Documents shall be maintained regardless of the completion of this Proceeding.

I acknowledge that I am aware of the Order granted by the Competition Tribunal on _____, in this regard, a copy of which is attached to this agreement and agree to be bound by same. I acknowledge that any breach of this agreement by me will be considered to be a breach of the said Order of the Competition Tribunal. I further acknowledge and agree that any Party shall be entitled to injunctive relief to prevent breaches of this agreement and to specifically enforce the terms and provisions hereof, in addition to any other remedy to which they may be entitled in law or in equity.

In the event that I am required by law to disclose any of the Protected Documents, I will provide the Parties to this Proceeding with prompt written notice so that the Party that claimed confidentiality over such Protected Documents may seek a protective order or other appropriate remedy. In any event, I will furnish only that portion of the Protected Documents that is legally required and I will exercise my best efforts to obtain reliable assurances that confidential treatment will be accorded to the Protected Documents.

I will promptly, upon the request of the person providing the Protected Documents, advise where such material is kept. At the conclusion of my involvement, I will, upon the request and direction of the person providing the Protected Documents, destroy, return or otherwise dispose of all Protected Documents received or made by me having been duly authorized and directed to do so.

I hereby attorn to the jurisdiction of the Competition Tribunal to resolve any disputes arising under this agreement.

DATED this ____ day of _____, 2015.

SIGNED, SEALED & DELIVERED
in the presence of:

Witness

Name (seal)

COUNSEL

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
Kevin Ackhurst
Christine Kilby
Christine Spence

TAB S

Competition Tribunal



Tribunal de la Concurrence

Date: October 14, 2015

Subject: CT-2015-001 - *The Commissioner of Competition v. Aviscar Inc., Budgetcar Inc./ Budgetauto Inc., Avis Budget Group, Inc. and Avis Budget Car Rental, LLC*

Direction to Counsel (from Justice Barnes)

The Tribunal has made changes to the draft Confidentiality Order filed by the parties on consent. The definition of “Personal Information” as well as the references to the terms “Personal Information” (found in paragraphs 1(i) and 17 of the draft Confidentiality Order) have been removed. The Tribunal will deal with issues relating to documents containing “Personal Information” on a case-by-case basis.

The reference to the “Federal Court” in the last paragraph of the Confidentiality Agreement, found at Schedule A to the draft Confidentiality Order, has been also removed.

Clarifications have been added to paragraph 16 (paragraph 14 of the draft Confidentiality Order) so as to provide that a “Protected Document” shall identify the portions that have been deleted from the “Public” version, by highlighting such portions.

Further explanations regarding these changes shall be provided by the Tribunal at a case management conference. If counsel have any concerns about the above changes, they can raise them at such a case management conference.

Joseph (Jos) LaRose
Deputy Registrar / Registraire adjoint
Competition Tribunal / Tribunal de la concurrence
600-90 Sparks, Ottawa ON K1P 5B4
Tel.: 613-954-0857 Fax: 613-952-1123

This is Exhibit.....“S”.....referred to in the
affidavit of...Kristine Spence.....
sworn before me, this.....20th.....
day of.....November.....20...15

.....
A COMMISSIONER FOR TAKING AFFIDAVITS
Christine M. Kilby

TAB T

File No. CT-2015-001

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 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*;

AND IN THE MATTER OF an application filed by the Commissioner of Competition (the "Commissioner") against the Respondents for orders pursuant to section 74.1 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the "Act") for conduct reviewable pursuant to paragraphs 74.01(1)(a) and sections 74.05 and 74.011 of the 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

REQUEST TO ADMIT

This is Exhibit ⁷.....referred to in the
affidavit of.....*Kristine Spence*.....
sworn before me, this.....*20th*.....
day of.....*November*.....20*15*.....

To: Aviscar Inc.

.....
A COMMISSIONER FOR TAKING AFFIDAVITS
Christine M. Kilby

YOU ARE REQUESTED TO ADMIT, for the purposes of this proceeding only, the truth of the following facts:

1. Aviscar Inc., or an agent¹ of Aviscar Inc., has or had in their possession each of the documents listed in the Affidavit of Documents sworn by William Boxberger on October 9, 2015.

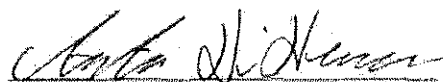
¹ For greater certainty, agent means "agent of a participant" as defined in section 69(1) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended.

2. Each of the documents listed in the Affidavit of Documents sworn by William Boxberger on October 9, 2015 are or have been on premises used or occupied by Aviscar Inc.
3. Aviscar Inc., or an agent² of Aviscar Inc., has or had in their possession each of the documents listed in the two Affidavits of Documents sworn by Ted Kushner on October 9, 2015.
4. Each of the documents listed in the two Affidavits of Documents sworn by Ted Kushner on October 9, 2015 are or have been on premises used or occupied by Aviscar Inc.

These documents are not attached as counsel for Aviscar Inc. has copies of each in its possession.

YOU MUST RESPOND TO THIS REQUEST by serving a response to request to admit in Form 256 prescribed by the *Federal Courts Rules* WITHIN 20 DAYS after this request is served on you. If you fail to do so, you will be deemed to admit, for the purposes of this proceeding only, the truth of the facts and the authenticity of the documents set out above.

October 20, 2015



DEPARTMENT OF JUSTICE
Competition Bureau Legal Services
50 Victoria Street
Gatineau, QC K1A 0C9

Antonio Di Domenico (LSUC# 52508V)
Tel: (819) 997-2837
Fax: (819) 953-9267

² For greater certainty, agent means "agent of a participant" as defined in section 69(1) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended.

File No. CT-2015-001

THE COMPETITION TRIBUNAL**THE COMMISSIONER OF COMPETITION**

Applicant

- and -

**AVISCAR INC., BUDGETCAR INC./BUDGETAUTO INC.,
AVIS BUDGET GROUP, INC.,
AND AVIS BUDGET CAR RENTAL, LLC**

Respondent

REQUEST TO ADMIT

**Department of Justice
Competition Bureau Legal Services
50 Victoria Street
Gatineau, QC K1A 0C9**

Derek Leschinsky (LSUC# 48095T)
Tel: (819) 956-2842
Fax: (819) 953-9267

Antonio Di Domenico (LSUC# 52508V)
Tel: (819) 997-2837
Fax: (819) 953-9267

Counsel for the Applicant

File No. CT-2015-001

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 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*;

AND IN THE MATTER OF an application filed by the Commissioner of Competition (the "Commissioner") against the Respondents for orders pursuant to section 74.1 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the "Act") for conduct reviewable pursuant to paragraphs 74.01(1)(a) and sections 74.05 and 74.011 of the 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

REQUEST TO ADMIT

To: Avis Budget Group, Inc.

YOU ARE REQUESTED TO ADMIT, for the purposes of this proceeding only, the truth of the following facts:

1. Avis Budget Group, Inc., or an agent¹ of Avis Budget Group, Inc., has or had in their possession each of the documents listed in the Affidavit of Documents sworn by William Boxberger on October 9, 2015.

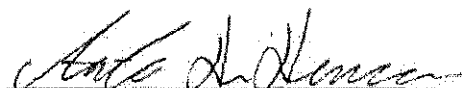
¹ For greater certainty, agent means "agent of a participant" as defined in section 69(1) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended.

2. Each of the documents listed in the Affidavit of Documents sworn by William Boxberger on October 9, 2015 are or have been on premises used or occupied by Avis Budget Group, Inc.
3. Avis Budget Group, Inc., or an agent² of Avis Budget Group, Inc., has or had in their possession each of the documents listed in the two Affidavits of Documents sworn by Ted Kushner on October 9, 2015.
4. Each of the documents listed in the two Affidavits of Documents sworn by Ted Kushner on October 9, 2015 are or have been on premises used or occupied by Avis Budget Group, Inc.

These documents are not attached as counsel for Avis Budget Group, Inc. has copies of each in its possession.

YOU MUST RESPOND TO THIS REQUEST by serving a response to request to admit in Form 256 prescribed by the *Federal Courts Rules* WITHIN 20 DAYS after this request is served on you. If you fail to do so, you will be deemed to admit, for the purposes of this proceeding only, the truth of the facts and the authenticity of the documents set out above.

October 20, 2015



DEPARTMENT OF JUSTICE
Competition Bureau Legal Services
50 Victoria Street
Gatineau, QC K1A 0C9

Antonio Di Domenico (LSUC# 52508V)
Tel: (819) 997-2837
Fax: (819) 953-9267

² For greater certainty, agent means "agent of a participant" as defined in section 69(1) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended.

File No. CT-2015-001

THE COMPETITION TRIBUNAL**THE COMMISSIONER OF COMPETITION**

Applicant

- and -

**AVISCAR INC., BUDGETCAR INC./BUDGETAUTO INC.,
AVIS BUDGET GROUP, INC.,
AND AVIS BUDGET CAR RENTAL, LLC**

Respondent

REQUEST TO ADMIT

**Department of Justice
Competition Bureau Legal Services
50 Victoria Street
Gatineau, QC K1A 0C9**

Derek Leschinsky (LSUC# 48095T)
Tel: (819) 956-2842
Fax: (819) 953-9267

Antonio Di Domenico (LSUC# 52508V)
Tel: (819) 997-2837
Fax: (819) 953-9267

Counsel for the Applicant

File No. CT-2015-001

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 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*;

AND IN THE MATTER OF an application filed by the Commissioner of Competition (the "Commissioner") against the Respondents for orders pursuant to section 74.1 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the "Act") for conduct reviewable pursuant to paragraphs 74.01(1)(a) and sections 74.05 and 74.011 of the 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

REQUEST TO ADMIT

To: Budgetcar Inc./Budgetauto Inc.

YOU ARE REQUESTED TO ADMIT, for the purposes of this proceeding only, the truth of the following facts:

1. Budgetcar Inc. / Budgetauto Inc., or an agent¹ of Budgetcar Inc. / Budgetauto Inc., has or had in their possession each of the documents listed in the Affidavit of Documents sworn by William Boxberger on October 9, 2015.


¹ For greater certainty, agent means "agent of a participant" as defined in section 69(1) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended.

2. Each of the documents listed in the Affidavit of Documents sworn by William Boxberger on October 9, 2015 are or have been on premises used or occupied by Budgetcar Inc. / Budgetauto Inc.
3. Budgetcar Inc. / Budgetauto Inc., or an agent² of Budgetcar Inc. / Budgetauto Inc., has or had in their possession each of the documents listed in the two Affidavits of Documents sworn by Ted Kushner on October 9, 2015.
4. Each of the documents listed in the two Affidavits of Documents sworn by Ted Kushner on October 9, 2015 are or have been on premises used or occupied by Budgetcar Inc. / Budgetauto Inc.

These documents are not attached as counsel for Budgetcar Inc./Budgetauto Inc. has copies of each in its possession.

YOU MUST RESPOND TO THIS REQUEST by serving a response to request to admit in Form 256 prescribed by the *Federal Courts Rules* WITHIN 20 DAYS after this request is served on you. If you fail to do so, you will be deemed to admit, for the purposes of this proceeding only, the truth of the facts and the authenticity of the documents set out above.

October 20, 2015



DEPARTMENT OF JUSTICE
Competition Bureau Legal Services
50 Victoria Street
Gatineau, QC K1A 0C9

Antonio Di Domenico (LSUC# 52508V)
Tel: (819) 997-2837
Fax: (819) 953-9267

² For greater certainty, agent means "agent of a participant" as defined in section 69(1) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended.

File No. CT-2015-001
THE COMPETITION TRIBUNAL
THE COMMISSIONER OF COMPETITION Applicant - and - AVISCAR INC., BUDGETCAR INC./BUDGETAUTO INC., AVIS BUDGET GROUP, INC., AND AVIS BUDGET CAR RENTAL, LLC Respondent
REQUEST TO ADMIT
Department of Justice Competition Bureau Legal Services 50 Victoria Street Gatineau, QC K1A 0C9 Derek Leschinsky (LSUC# 48095T) Tel: (819) 956-2842 Fax: (819) 953-9267 Antonio Di Domenico (LSUC# 52508V) Tel: (819) 997-2837 Fax: (819) 953-9267 Counsel for the Applicant

File No. CT-2015-001

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 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*;

AND IN THE MATTER OF an application filed by the Commissioner of Competition (the "Commissioner") against the Respondents for orders pursuant to section 74.1 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the "Act") for conduct reviewable pursuant to paragraphs 74.01(1)(a) and sections 74.05 and 74.011 of the 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

REQUEST TO ADMIT

To: Avis Budget Car Rental, LLC

YOU ARE REQUESTED TO ADMIT, for the purposes of this proceeding only, the truth of the following facts:

1. Avis Budget Car Rental, LLC, or an agent¹ of Avis Budget Car Rental, LLC, has or had in their possession each of the documents listed in the Affidavit of Documents sworn by William Boxberger on October 9, 2015.

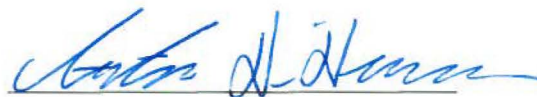
¹ For greater certainty, agent means "agent of a participant" as defined in section 69(1) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended.

2. Each of the documents listed in the Affidavit of Documents sworn by William Boxberger on October 9, 2015 are or have been on premises used or occupied by Avis Budget Car Rental, LLC.
3. Avis Budget Car Rental, LLC, or an agent² of Avis Budget Car Rental, LLC, has or had in their possession each of the documents listed in the two Affidavits of Documents sworn by Ted Kushner on October 9, 2015.
4. Each of the documents listed in the two Affidavits of Documents sworn by Ted Kushner on October 9, 2015 are or have been on premises used or occupied by Avis Budget Car Rental, LLC.

These documents are not attached as counsel for Avis Budget Car Rental, LLC has copies of each in its possession.

YOU MUST RESPOND TO THIS REQUEST by serving a response to request to admit in Form 256 prescribed by the *Federal Courts Rules* WITHIN 20 DAYS after this request is served on you. If you fail to do so, you will be deemed to admit, for the purposes of this proceeding only, the truth of the facts and the authenticity of the documents set out above.

October 20, 2015



DEPARTMENT OF JUSTICE
Competition Bureau Legal Services
50 Victoria Street
Gatineau, QC K1A 0C9

Antonio Di Domenico (LSUC# 52508V)
Tel: (819) 997-2837
Fax: (819) 953-9267

² For greater certainty, agent means “agent of a participant” as defined in section 69(1) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended.

File No. CT-2015-001

THE COMPETITION TRIBUNAL**THE COMMISSIONER OF COMPETITION**

Applicant

- and -

**AVISCAR INC., BUDGETCAR INC./BUDGETAUTO INC.,
AVIS BUDGET GROUP, INC.,
AND AVIS BUDGET CAR RENTAL, LLC**

Respondent

REQUEST TO ADMIT

Department of Justice
Competition Bureau Legal Services
50 Victoria Street
Gatineau, QC K1A 0C9

Derek Leschinsky (LSUC# 48095T)
Tel: (819) 956-2842
Fax: (819) 953-9267

Antonio Di Domenico (LSUC# 52508V)
Tel: (819) 997-2837
Fax: (819) 953-9267

Counsel for the Applicant

TAB U

CT-2015-001

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 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*; and

AND IN THE MATTER OF an application filed by the Commissioner of Competition (the "Commissioner") against the Respondents for orders pursuant to section 74.1 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the "Act") for conduct reviewable pursuant to paragraphs 74.01(1)(a) and sections 74.05 and 74.011 of the Act

BETWEEN:

This is Exhibit..... "U".....referred to in the
affidavit of..... Kristine Spence THE COMMISSIONER OF COMPETITION
sworn before me, this..... 20th.....
day of..... November..... 20.15.....

Applicant

- and -

.....
A COMMISSIONER FOR TAKING AFFIDAVITS
Christine M. Kilby

AVISCAR INC., BUDGETCAR INC. / BUDGETAUTO INC.,
AVIS BUDGET GROUP, INC. and AVIS BUDGET CAR RENTAL, LLC

Respondents

RESPONSE TO REQUEST TO ADMIT

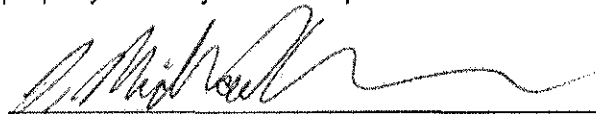
In response to your request to admit dated October 20, 2015, the Respondent Aviscar Inc.:

1. Refuses to admit the truth of facts numbered: 1-4 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 Aviscar

Inc.'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, Aviscar Inc. cannot practicably answer the request to admit;

- (b) further, the request to admit seeks, in part, the admission of facts already set out in Aviscar Inc.'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 Aviscar Inc.'s Affidavit of Documents, the information sought is not properly the subject of a request to admit.

November 6, 2015



NORTON ROSE FULBRIGHT CANADA LLP
Royal Bank Plaza, South Tower
Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4

D. Michael Brown LSUC #: 38985U
Tel: 416.216.3962
Kevin Ackhurst LSUC#: 41806E
Tel: 416.216.3993
Christine Kilby LSUC #: 54323C
Tel: 416.216.1921
Fax: 416.216.3930

Lawyers for the Respondents

Court File No. CT-2015-001

THE COMPETITION TRIBUNAL

THE COMMISSIONER OF COMPETITION

Applicant

- and -

AVISCAR INC. et al.

Respondents

RESPONSE TO REQUEST TO ADMIT

(Filed this 6 day of November, 2015)

NORTON ROSE FULBRIGHT CANADA LLP

Royal Bank Plaza, South Tower

Suite 3800, 200 Bay Street

P.O. Box 84

Toronto, Ontario M5J 2Z4

D. Michael Brown LSUC #: 38985U

Tel: 416.216.3962

Kevin Ackhurst LSUC#:41806E

Tel: 416.216.3993

Christine Kilby LSUC #:54323C

Tel: 416.216.1921

Fax: 416.216.3930

Lawyers for the Respondents

CT-2015-001

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 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*; and

AND IN THE MATTER OF an application filed by the Commissioner of Competition (the "Commissioner") against the Respondents for orders pursuant to section 74.1 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the "Act") for conduct reviewable pursuant to paragraphs 74.01(1)(a) and sections 74.05 and 74.011 of the Act

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

AVISCAR INC., BUDGETCAR INC. / BUDGETAUTO INC.,
AVIS BUDGET GROUP, INC. and AVIS BUDGET CAR RENTAL, LLC

Respondents

RESPONSE TO REQUEST TO ADMIT

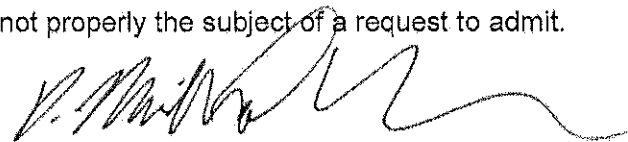
In response to your request to admit dated October 20, 2015, the Respondent Avis Budget Group, Inc.:

1. Refuses to admit the truth of facts numbered: 1-4 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 Avis

Budget Group, Inc.'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, Avis Budget Group, Inc. cannot practicably answer the request to admit;

- (b) further, the request to admit seeks, in part, the admission of facts already set out in Avis Budget Group, Inc.'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 Avis Budget Group, Inc.'s Affidavit of Documents, the information sought is not properly the subject of a request to admit.

November 6, 2015



NORTON ROSE FULBRIGHT CANADA LLP
Royal Bank Plaza, South Tower
Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4

D. Michael Brown LSUC #: 38985U
Tel: 416.216.3962
Kevin Ackhurst LSUC#: 41806E
Tel: 416.216.3993
Christine Kilby LSUC #: 54323C
Tel: 416.216.1921
Fax: 416.216.3930

Lawyers for the Respondents

Court File No. CT-2015-001

THE COMPETITION TRIBUNAL

THE COMMISSIONER OF COMPETITION

Applicant

- and -

AVISCAR INC. et al.

Respondents

RESPONSE TO REQUEST TO ADMIT

(Filed this 6 day of November, 2015)

NORTON ROSE FULBRIGHT CANADA LLP

Royal Bank Plaza, South Tower

Suite 3800, 200 Bay Street

P.O. Box 84

Toronto, Ontario M5J 2Z4

D. Michael Brown LSUC #: 38985U

Tel: 416.216.3962

Kevin Ackhurst LSUC#:41806E

Tel: 416.216.3993

Christine Kilby LSUC #:54323C

Tel: 416.216.1921

Fax: 416.216.3930

Lawyers for the Respondents

CT-2015-001

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 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*; and

AND IN THE MATTER OF an application filed by the Commissioner of Competition (the "Commissioner") against the Respondents for orders pursuant to section 74.1 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the "Act") for conduct reviewable pursuant to paragraphs 74.01(1)(a) and sections 74.05 and 74.011 of the Act

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

AVISCAR INC., BUDGETCAR INC. / BUDGETAUTO INC.,
AVIS BUDGET GROUP, INC. and AVIS BUDGET CAR RENTAL, LLC

Respondents

RESPONSE TO REQUEST TO ADMIT

In response to your request to admit dated October 20, 2015, the Respondent Avis Budget Car Rental, LLC:

1 Refuses to admit the truth of facts numbered: 1-4 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 Avis

Budget Car Rental, LLC'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, Avis Budget Car Rental, LLC cannot practicably answer the request to admit;

- (b) further, the request to admit seeks, in part, the admission of facts already set out in Avis Budget Car Rental, LLC'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 Avis Budget Car Rental, LLC's Affidavit of Documents, the information sought is not properly the subject of a request to admit.

November 6, 2015



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Lawyers for the Respondents

Court File No. CT-2015-001

THE COMPETITION TRIBUNAL

THE COMMISSIONER OF COMPETITION

Applicant

- and -

AVISCAR INC. et al.

Respondents

RESPONSE TO REQUEST TO ADMIT

(Filed this 6 day of November, 2015)

NORTON ROSE FULBRIGHT CANADA LLP
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Lawyers for the Respondents

CT-2015-001

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 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*; and

AND IN THE MATTER OF an application filed by the Commissioner of Competition (the "Commissioner") against the Respondents for orders pursuant to section 74.1 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the "Act") for conduct reviewable pursuant to paragraphs 74.01(1)(a) and sections 74.05 and 74.011 of the Act

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

AVISCAR INC., BUDGETCAR INC. / BUDGETAUTO INC.,
AVIS BUDGET GROUP, INC. and AVIS BUDGET CAR RENTAL, LLC

Respondents

RESPONSE TO REQUEST TO ADMIT

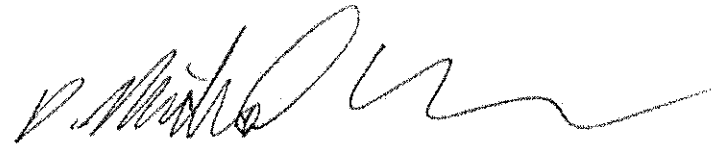
In response to your request to admit dated October 20, 2015, the Respondent Budgetcar Inc. / Budgetauto Inc.:

1. Refuses to admit the truth of facts numbered: 1-4 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

Budgetcar Inc./Budgetauto Inc.'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, Budgetcar Inc./Budgetauto Inc. cannot practicably answer the request to admit;

- (b) further, the request to admit seeks, in part, the admission of facts already set out in Budgetcar Inc./Budgetauto Inc.'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 Budgetcar Inc./Budgetauto Inc.'s Affidavit of Documents, the information sought is not properly the subject of a request to admit.

November 6, 2015



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Lawyers for the Respondents

Court File No. CT-2015-001

THE COMPETITION TRIBUNAL

THE COMMISSIONER OF COMPETITION

Applicant

- and -

AVISCAR INC. et al.

Respondents

RESPONSE TO REQUEST TO ADMIT

(Filed this 6 day of November, 2015)

NORTON ROSE FULBRIGHT CANADA LLP
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Lawyers for the Respondents

TAB V

**NORTON ROSE FULBRIGHT**

Barristers & Solicitors / Patent & Trade-mark Agents

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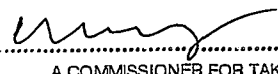
Our reference
01012106-0047

November 13, 2015

Sent by E-Mail

Derek Leschinsky
Antonio Di Domenico
Competition Bureau Legal Services
50 Victoria Street, 22nd Floor
Gatineau, QC K1A 0C9

This is Exhibit ^{"V"}.....referred to in the
affidavit of.....*Kristine Spence*.....
sworn before me, this.....*20th*.....
day of.....*November*.....20...*15*.....


.....
A COMMISSIONER FOR TAKING AFFIDAVITS
Christine M. Kilby

Dear Counsel:

Aviscar Inc. et al. ats The Commissioner of Competition

We are writing in response to your e-mail of November 6, 2015 and your motion record served on us yesterday afternoon.

We are disappointed that you have opted to serve a 400-page motion record as a first step, rather than contacting us directly to resolve the issues raised therein. In our view, most of the issues raised in your motion could have been addressed by way of a simple call or email. Indeed, if expedience in conducting the examinations for discovery is desired, this would have been the most efficient way to proceed. Nevertheless, we have the following responses in relation to your motion and the relief you are seeking:

1. Responses to the Requests to Admit

For greater clarity, and as is already stated in the Affidavits of Documents served by our clients, each of our clients admits that each document listed in its own Affidavit of Documents is or was in the power, possession or control of the respondent(s) on whose behalf the Affidavit of Documents was sworn.

To the extent that the Requests to Admit seek admissions as to which documents were specifically in each party's "possession", as opposed to only within their power or control, the request is over-broad. Possession in the sense you are seeking to confirm is a legal concept – it is not a "fact" as contemplated by Rule 57. Determining possession requires a legal analysis, conducted on a document by document basis, which would be onerous and disproportionate to any benefit in light of the volume of our clients' productions. Further, in light of the electronic nature of the majority of the productions, and given that an electronic document can exist in various forms at different times in different locations (including on computer servers "in the cloud" or those owned and operated by third party e-mail and internet service providers) the inquiry required in order to admit or deny possession for over 60,000 such documents goes well beyond the scope of a reasonable request to admit. Similar difficulties arise in relation to ascertaining, for each document, the "premises" on which such an electronic document resides or has resided.

DOCSTOR: 5350555

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November 13, 2015

NORTON ROSE FULBRIGHT

In our view, the Affidavits of Documents are sufficiently clear that the productions were or are in each respondent's possession, power or control, and there is no further requirement at the production stage to delineate whether each document is or was legally in the respondents' possession or on their premises.

In any event, even if this was an appropriate Request to Admit, it cannot be used as a sword to compel a specific admission or denial. The *Competition Tribunal Rules* clearly provide that a party may respond to a request to admit by refusing to admit the truth of a fact. The remedy for an improper refusal is costs at trial, and then only if the facts refused to be admitted are proven at trial. The Tribunal does not have the jurisdiction to grant the relief you are seeking. No court, including the Tribunal, can force a party to specifically admit or deny a fact sought to be admitted in a Request to Admit.

2. Further and Better Affidavits of Documents

The Affidavits of Documents served comply with the form prescribed in the Federal Court, and mirror the format used by the Commissioner. We do not understand what modifications you are suggesting are required to Schedules A and B in the event that certain documents are not found to be in the possession (as opposed to possession, power or control) of a particular affiant.

Moreover, we note that the Tribunal Rules do not require a Schedule C, although we provided that information in any case. To that end, although the Respondents are not presently aware of any specific, relevant documents that are no longer in their power or control, we took the additional step of indicating in the Affidavits, where appropriate, that relevant documents may have been lost because they were deleted before being backed-up or as a result of known technical failures which have taken place in the past.

3. Redactions

As was discussed with you prior to making our production, we redacted documents for privilege and to protect information under PIPEDA and related provincial privacy legislation. As a result of your motion, it has just come to our attention that we neglected to provide you with coding indicating the reason for the redaction in each case. That was an oversight on our part as we always intended to provide you with that information. If you had asked us as soon as you became aware of the issue, we could have taken relatively simple steps to remedy it. Now that we are aware of the issue we will prepare a separate schedule listing all of the redacted documents with the reason for the redactions and send that to you shortly.

It has also come to our attention that certain documents were redacted to protect trade secrets. This was done out of an abundance of caution before the confidentiality order had been settled and those redactions should have been removed, but were not. We will arrange to provide you with unredacted versions of those documents shortly.

4. Discoveries

In respect to the November 6, 2015 email concerning the examinations for discovery, we can now advise as to our proposed witnesses and schedule, having had to coordinate with multiple parties in two different jurisdictions. We were surprised at the relatively small window of availability you have offered in light of the four-week time period set aside in the timetable. Please note that our clients are not available during the week of December 21, however, we are available to examine Ms. Beaulieu in Gatineau on December 22, 2015, with the assistance of a translator supplied by the Tribunal in accordance with applicable statute. Please confirm this date so that we may proceed to request the translator.

For both of Aviscar Inc. and Budgetcar Inc., we are agreeable to producing William Boxberger. Mr. Boxberger is available to be examined from November 30 to December 15.

November 13, 2015

 NORTON ROSE FULBRIGHT

We do not agree that one witness can represent both Avis Budget Group, Inc. and Avis Budget Car Rental, LLC. Moreover, Mr. Siniscalchi has retired and is not available to be examined on behalf of Avis Budget Car Rental, LLC. Instead, we propose Andre Meesschaert, Senior Vice-President Operations, who is available December 9-11 and 14-18. For Avis Budget Group, Inc., we propose Bryon Koepke, an officer of the company, who is available December 1-18. We propose that all three of our witnesses be examined in Toronto.

5. Documents

As we previously raised with you, the Commissioner's productions were not delivered to us in conformance with the standards we applied to our productions, which were discussed with, and deemed acceptable by, the Bureau staff in advance of exchanging productions. Our clients incurred significant additional expense plus associated time delays in reviewing the productions, in order for our external e-discovery platform vendor to repair the most pressing issues identified with your production. Even with the repairs, there is no date coding which would allow us to sort the documents into chronological order, nor any family coding that will allow us to see documents that are related to each other (i.e. several e-mails that say "see attached", but the associated attachment cannot be found except through extremely time-consuming manual cross-referencing). Our external vendor indicated that it had never seen a production set as poor as this one. This has caused us substantial difficulty but we have done our best to move forward without insisting on a new production.

On the basis of the foregoing, and in light of the solutions which we now are offering (which we could have offered weeks ago had you raised those issues then), we consider your motion to be unnecessary and it is our position that it should be withdrawn. If you are not prepared to withdraw the motion we intend to write to the Tribunal to request a case conference with Justice Barnes to address these issues.

Yours very truly,



D. Michael Brown

DMB/ck

Copy to: K. Ackhurst
 C. Kilby

TAB W

avis budget group

This is Exhibit W referred to in the
affidavit of Kristine Spence
sworn before me, this 20th
day of November, 2015


A COMMISSIONER FOR TAKING AFFIDAVITS

Christine M.
Kilby

AVIS BUDGET GROUP ANNOUNCES MANAGEMENT CHANGES AND COMBINATION OF OPERATING REGIONS

PARSIPPANY, N.J., December 15, 2014 – Avis Budget Group, Inc. (NASDAQ: CAR) announced today that it plans to combine its three operating regions into two, the Americas and International. This realignment of the Company's operations will take effect on January 1, 2015, in connection with the following management changes:

Patric Siniscalchi, president, Latin America/Asia-Pacific, will retire from his current position effective December 31, 2014, following an exemplary 43-year career at the Company. Mr. Siniscalchi is expected to continue to be involved with the Company's joint ventures in China and Brazil through a consulting arrangement and to assist with the transition.

Thomas Gartland, president, North America, will retire from his current position effective December 31, 2014, after an impactful six-year career with the Company. Mr. Gartland is expected to stay on with the Company in a consulting capacity to assist with the transition.

Joseph Ferraro, Senior Vice President, North America Operations, will assume the role of president, Americas, effective January 1, 2015. In this role, he will have responsibility for the Company's operations in North and South America, including Latin America and the Caribbean. Mr. Ferraro has held positions of increasing responsibility in our North America operations since joining Avis in 1979.

"We thank Tom Gartland for his extraordinary contributions to the growth, culture and profitability of our Company. We also thank Pat Siniscalchi, who has played a critical role in the development and success of our business in Latin America and the Asia-Pacific region. Joe Ferraro brings proven leadership and a strong track record of strategic achievement and operational excellence," said Ronald L. Nelson, chairman and chief executive officer, Avis Budget Group. "Joe's extensive experience in our North America field operations and his outstanding work as the 'right-hand man' to Tom over the past several years make him the ideal person to assume Tom's responsibilities. Our ability to promote from within the Company is reflective of a deep leadership bench, a strong succession planning process and a culture that values service and performance."

Larry De Shon, currently president, Europe, Middle East and Africa (EMEA), will assume responsibility for the Company's Asia-Pacific operations, and will assume the title of president, International effective January 1, 2015. Mr. Ferraro will continue to be based in Avis Budget Group's World Headquarters in Parsippany, N.J. and will report directly to Mr. Nelson.

About Avis Budget Group

Avis Budget Group, Inc. is a leading global provider of vehicle rental services, both through its Avis and Budget brands, which have more than 10,000 rental locations in approximately 175 countries around the world, and through its Zipcar brand, which is the world's leading car sharing network, with more than 900,000 members. Avis Budget Group operates most of its

car rental offices in North America, Europe and Australia directly, and operates primarily through licensees in other parts of the world. Avis Budget Group has approximately 29,000 employees and is headquartered in Parsippany, N.J. More information is available at www.avisbudgetgroup.com.

Forward-Looking Statements

Certain statements in this press release constitute "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements involve known and unknown risks, uncertainties and other factors which may cause the actual results, performance or achievements of the Company to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. Statements preceded by, followed by or that otherwise include the words "believes," "expects," "anticipates," "intends," "projects," "estimates," "plans," "may increase," "may fluctuate," "will," "should," "would," "may" and "could" or similar words or expressions are generally forward-looking in nature and not historical facts. Any statements that refer to characterizations of future events, circumstances or results are also forward-looking statements. Important risks, assumptions and other important factors that could cause future results to differ materially from those expressed in the forward-looking statements are specified in Avis Budget Group's Annual Report on Form 10-K for the year ended December 31, 2013, its Current Report on Form 8-K filed May 12, 2014 and its Quarterly Report on Form 10-Q for the three months ended September 30, 2014, included under headings such as "Forward-Looking Statements", "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" and in other filings and furnishings made by the Company with the Securities and Exchange Commission from time to time. The Company undertakes no obligation to release publicly any revisions to any forward-looking statements, to report events or to report the occurrence of unanticipated events.

Contacts

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John Barrows
(973) 496-3916
PR@avisbudget.com

Investor Contact:

Neal Goldner
(973) 496-5086
IR@avisbudget.com

###

TAB X

REDACTED

Subject to Confidentiality Claim by the
Respondents

Court File No. CT-2015-001

THE COMPETITION TRIBUNAL

THE COMMISSIONER OF COMPETITION

Applicant

- and -

AVISCAR INC. et al.

Respondents

AFFIDAVIT OF KRISTINE SPENCE

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Lawyers for the Respondents

THE COMPETITION TRIBUNAL

THE COMMISSIONER OF COMPETITION

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- and -

AVISCAR INC. et al.

Respondents

RESPONDING MOTION RECORD

NORTON ROSE FULBRIGHT CANADA LLP

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