

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 12, 2015 CT-2015-001 Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 47

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 DEREK LESCHINSKY

I, **DEREK LESCHINSKY**, of the City of Ottawa, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am counsel to the Commissioner of Competition (the “**Commissioner**”) in this application. As such, I have knowledge of the matters to which I hereinafter depose, except where I have indicated that I am relying on information from others, in which case I believe such information to be true.
2. Attached and marked as Exhibits “A” to “F” to my affidavit is a copy of the following:
 - a. the Commissioner’s Amended Notice of Application (Exhibit “A”);

- b. particulars served by the Commissioner upon the Respondents (Exhibit “B”);
 - c. the Respondents’ Response to the Amended Notice of Application (Exhibit “C”);
 - d. the Commissioner’s Reply (Exhibit “D”);
 - e. the Competition Tribunal’s Confidentiality Order for this proceeding (Exhibit “E”); and
 - f. the scheduling order for this proceeding and the amendments thereto (Exhibit “F”).
3. On October 9, 2015, the Respondents have served three affidavits of documents upon the Commissioner:
- a. Aviscar Inc. (“**Aviscar**”) and Budgetcar Inc./Budgetauto Inc. (“**Budgetcar**”) have served one affidavit of documents sworn by William Boxberger (the Vice President and General Manager of Aviscar Inc. and Budgetcar Inc./Budgetauto Inc.);
 - b. Avis Budget Group, Inc. (“**Avis Budget Group**”) has served an affidavit of documents sworn by Ted Kushner (a paralegal in the legal department of Avis Budget Group and Avis Budget Car Rental, LLC (“**ABC Rental**”)); and
 - c. ABC Rental has served an affidavit of documents also sworn by Ted Kushner.
4. Attached and marked as Exhibits “G” to “I” to my affidavit is a copy of the following:
- a. Aviscar and Budgetcar’s sworn affidavit of documents (without schedules “A” and “B”) (Exhibit “G”)
 - b. Avis Budget Group’s sworn affidavit of documents (without schedules “A” and “B”) (Exhibit “H”); and
 - c. ABC Rental’s sworn affidavit of documents (without schedules “A” and “B”) (Exhibit “I”).

The schedules “A” and “B” of the Respondents’ affidavits of documents are voluminous and I have therefore not attached them to my affidavit but they will be made available for review at the hearing of the motion or earlier at the Tribunal’s request.

5. On October 20, 2015, the Commissioner served a Request to Admit upon each of the Respondents. Attached and marked as Exhibit “J” to my affidavit is a copy of the Requests to Admit and the accompanying cover letter.
6. On November 6, 2015, the Respondents responded to the Commissioner’s Requests to Admit. Attached and marked as Exhibit “K” to my affidavit is a copy of the Respondents’ responses and the accompanying cover letter.
7. I am advised by Sophie Beaulieu, a member of the case team working on this matter, that, to date, the case team has discovered 3538 documents among the Respondents’ productions that contain redactions without a description of the basis for the redactions. Attached and marked as “L” to my affidavit are 12 examples of redacted documents.
8. Avis Budget Group provided to the Commissioner, among other documents, a copy of what appears to be an employment agreement between Patric Siniscalchi and ABC Rental in Mr. Siniscalchi’s capacity as Executive Vice President, International at Avis Budget Group. A copy of this document is attached and marked as Exhibit “M” to my affidavit.
9. Based on searches I performed, Mr. Siniscalchi’s name appears as the author or recipient of 240 documents Aviscar and Budgetcar list in Schedule A of their Affidavit of Documents. Mr. Siniscalchi is listed as an author or recipient of 16 documents listed in the ABC Rental Affidavit of Documents. The only documents sent or received by Mr. Siniscalchi in the Avis Budget Group Affidavit of Documents are three employment agreements with ABC Rental. Examples of three of the documents sent or received by Mr. Siniscalchi that are listed in the Affidavit of Documents of Aviscar and Budgetcar but not Avis Budget Group or ABC Rental are attached and marked as Exhibit “N”.
10. The Commissioner has also listed documents in his Affidavit of Document that were received by the Bureau from Avis Budget Group in connection with a proposed merger that list Mr. Siniscalchi as an author or recipient. Examples of two such documents are

TAB A



Anthony D. Warner

**This is Exhibit A to the Affidavit of
Derek Leschinsky
Affirmed 12 November 2015**

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 CT-2015-001 April 29, 2015 Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 5

THE COMMISSIONER OF COMPETITION

Applicant

- and -

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

Respondents

AMENDED NOTICE OF APPLICATION

TAKE NOTICE that the Commissioner of Competition (the "**Commissioner**") will make an application to the Competition Tribunal (the "**Tribunal**") for an order pursuant to section 74.1 of the *Competition Act*, R.S.C. 1985, c. C-34 (the "**Act**"), as amended, in respect of conduct reviewable pursuant to paragraph 74.01(1)(a), section 74.05 and subsections 74.011(1) and (2) of the Act.

AND TAKE NOTICE that the Commissioner relies on the following Statement of the Grounds and Material Facts for this application.

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TO: AVISCAR INC.
1 Convair Drive E.
Etobicoke, Ontario
M9W 6Z9
Canada

AND TO: BUDGETCAR INC. / BUDGETAUTO INC.
1 Convair Drive E.
Etobicoke, Ontario
M9W 6Z9
Canada

AND TO: AVIS BUDGET GROUP, INC.
6 Sylvan Way
Parsippany, New Jersey
07054
United States of America

AND TO: AVIS BUDGET CAR RENTAL, LLC
6 Sylvan Way
Parsippany, New Jersey
07054
United States of America

APPLICATION

1. The Commissioner makes this application pursuant to section 74.1 of the Act for:
 - (a) a declaration that each Respondent is engaging in or 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) an order prohibiting each Respondent from engaging in the reviewable conduct or substantially similar reviewable conduct, in Canada, for a period of ten years from the date of such order;
 - (c) an order requiring each Respondent to publish or otherwise disseminate notices of the determinations made herein pursuant to paragraph 74.1(1)(b) of the Act, in such manner and at such times as the Commissioner may advise and this Tribunal shall permit;
 - (d) an order requiring each Respondent Aviscar Inc., Budgetcar Inc. and the Parent Companies (defined below) to pay an administrative monetary penalty in the amount of \$10,000,000;
 - (e) an order requiring the Respondents to jointly and severally reimburse current and former customers an amount reflective of, but not to exceed, revenue collected and retained in association with, or resulting from, the reviewable conduct between 12 March 2009 and the date of the order, to be distributed among the persons who rented passenger vehicles from the Respondents or their affiliates in such a manner as this Tribunal considers appropriate;
 - (f) costs; and
 - (g) such further and other relief as the Commissioner may advise and this Tribunal may permit.

I. OVERVIEW

2. The Respondents – among the largest rental car companies carrying on business in Canada – are engaging in deceptive marketing practices. They have made, and are continuing to make, representations to the public that are false or misleading in a material respect about the price consumers must pay to rent their passenger vehicles and associated products in Canada. They do so at the expense of Canadian consumers to promote their passenger vehicles rentals, their associated products and their business interests more generally.
3. As described below, the Respondents promote their products to the public at prices or discounts that are not in fact attainable. The Respondents' representations create the general impression that consumers can rent their cars and associated products for less than what the Respondents actually charge. The Respondents' representations are false or misleading in a material respect because the Respondents require consumers to pay additional Non-Optional Fees (defined below). The Respondents further represent these Non-Optional Fees (when they ultimately do reveal them) as taxes, surcharges and/or fees that rental car companies are required to collect from consumers, notwithstanding that it is the Respondents themselves who choose to impose these Non-Optional Fees on consumers to recoup part of their own cost of doing business.
4. The Respondents' Non-Optional Fees increase the cost of a rental by up to approximately 35%, depending on the rental location and type of vehicle.
5. The Respondents' false or misleading representations pervade their extensive marketing to the public, examples of which are particularized below. The Respondents however make various substantially similar false or misleading representations in a variety of media that are not limited to the representations particularized below.

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6. The Commissioner brings this application to stop the Respondents' deceptive marketing practices and to remedy the harm these practices have caused to Canadian consumers.

II. THE PARTIES

7. The Commissioner is an officer appointed by the Governor in Council under section 7 of the Act and is responsible for the administration and enforcement of the Act.
8. The Respondents Aviscar Inc. and Budgetcar Inc./Budgetauto Inc. are private corporations organized and existing under the laws of Canada, with head offices in Etobicoke, Ontario. Aviscar Inc. and Budgetcar Inc. operate a car rental services business throughout Canada.
9. The Respondent Avis Budget Group, Inc. ("**Avis Budget Group**") is a publicly-traded company organized and existing under the laws of Delaware. Directly, or through its subsidiaries, including Aviscar Inc. and Budgetcar Inc. and Avis Budget Car Rental, LLC ("**ABC Rental**"), Avis Budget Group and its licensees operate the Avis and Budget brands of rental cars in approximately 175 countries throughout the world.
10. The Respondent ABC Rental is a limited liability company organized and existing under the laws of Delaware. ABC Rental is a parent company of Aviscar Inc. and Budgetcar Inc.
11. The Respondents Avis Budget Group and ABC Rental are collectively referred to hereafter as the **Parent Companies**. Avis Budget Group is the parent company of Aviscar Inc. and Budgetcar Inc./Budgetauto Inc., and in this capacity. The Parent Companies planned, directed and werewas ultimately, essential to the making of the representations that are subject to this application.

12. The Respondents Aviscar Inc., ABC Rental and Avis Budget Group are collectively referred to hereafter as **Avis**. The Respondents Budgetcar Inc./Budgetauto Inc., ABC Rental and Avis Budget Group are collectively referred to hereafter as **Budget**.

III. THE RESPONDENTS' FALSE OR MISLEADING REPRESENTATIONS

A. Respondents Promote their Products to the Public at Prices or Discounts that are not Attainable

13. The Respondents' representations create the general impression that consumers can rent passenger vehicles and associated products at prices or discounts that the Respondents represent.
14. Consumers cannot, however, rent passenger vehicles and associated products from Avis and Budget at the prices the Avis and Budget represent. Consumers instead pay higher prices or receive lower discounts than the Respondents' representations convey.
15. Consumers pay higher prices or receive lower discounts than the Respondents represent because the Respondents require consumers to pay extra non-optional fees to rent passenger vehicles and associated products from them (the "**Non-Optional Fees**").
16. For rentals under the Avis brand, Avis has chosen to impose various Non-Optional Fees. Avis has chosen to charge consumers for an increasing variety of Non-Optional Fees, including the following:

English	Français	Introduced by Avis
Concession Recovery Fee	Frais de redevance aéroportuaire	1998
Premium Location Surcharge	Surtaxe emplacement de prestige	1998
Vehicle License Fee	Frais d'immatriculation du	2001

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English	Français	Introduced by Avis
	véhicule	
AC Excise Tax	Taxe d'accise sur la climatisation	2001
Energy Recovery Fee	Frais de récupération d'énergie	2008
Tire Management Fee	Taxe de mise au rebut des pneumatiques	2008
Parking Surcharge	Surtaxe stationnement	2008
Ontario Environmental Fee	Taxe environnementale de l'Ontario	2009

17. Avis also requires consumers to pay other Non-Optional Fees, such as "Other Fees" or "Autres frais".
18. For rentals under the Budget brand, Budget has chosen to impose various Non-Optional Fees on its customers, which have also increased in number over time, including the following:

English	Français	Introduced by Budget
Concession Recovery	Frais de redevance aéroportuaire	1998
Car Tax	Frais d'immatriculation des véhicules	2001
Energy Recovery Fee	Frais de récupération d'énergie	2008
Tire Management Fee	Taxe de mise au rebut des pneumatiques	2008
Ont Environ Fee	Taxe environnementale de l'Ontario	2009

19. Budget also mandates other Non-Optional Fees on its customers, such as "Fees" or "Frais supplémentaires".
20. The Non-Optional Fees Avis and Budget charge for passenger vehicles and associated products are known to the Respondents at the time they make their price or discount representations to the public. The Respondents nevertheless exclude these Non-Optional Fees from the representations they make to promote their rental cars, associated products and business interests.
21. The Respondents' Non-Optional Fees increase the cost of a rental by up to approximately 35%, depending on the rental location and type of vehicle.

B. Respondents Represent Non-Optional Fees as Mandated by Third Parties

22. In addition, when the Respondents ultimately do reveal their Non-Optional Fees, their representations are themselves false or misleading in a material respect.
23. The Respondents' representations create the general impression that their Non-Optional Fees are taxes, surcharges or fees that governments and authorized agencies require rental car companies to collect from consumers.
24. The Non-Optional Fees are not charges that governments and authorized agencies require rental car companies to collect from consumers. Instead, they are charges the Respondents themselves choose to impose on consumers to recoup part of their own cost of doing business.

IV. Examples of the Respondents' False or Misleading Representations

25. The dates, places and media in which the Respondents have made such false or misleading representations to the public are known to them. They have made these false or misleading representations to the public since 1997 or thereabouts and continue to make them.

26. The places and media include representations the Respondents make on their print advertisements, websites, mobile applications, commercials and through other means.

27. Examples of the Respondents' false or misleading representations are set out below.

A. Examples of the Respondents' False or Misleading Avis Representations

(i) Example of False or Misleading Newspaper Ad

28. Avis displays prices and percentage discounts in newspaper advertisements that are not attainable. For example, Avis placed the following advertisement in the Toronto Metro Newspaper on or about 8 March 2011, 22 March 2011 and 5 April 2011. The representation conveys the general impression that it is possible for a consumer to obtain a 2-Day Weekend Rental for \$55 and additional days for \$21 per day.

AVIS
DELIVERS GREAT WEEKEND RATES



2-Day Weekend Rental Rates Starting at \$55!
 And each additional day (to a maximum of 5 days) from \$21/day.

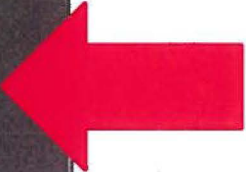
Plus earn 1,000 Bonus Aeroplan® Miles.*

For details and to reserve visit
avis.ca/metro
 or call 1 800 TRY-AVIS (879-2847)

Must quote AWD # H900200 and Coupon # MCAA009

AVIS
 We try harder.

*Terms & Conditions apply. Rates quoted are valid on a sub-compact or compact car. Special rates also available on mid-size cars (group C). Offers valid at off-airport locations in the GTA until June 19, 2011. Blackout periods apply.
 ©2011 Aviscar, Inc. All Rights Reserved. *Avis is a registered trademark licensed to Aviscar, Inc. for use in Canada.
 ®Aeroplan is a registered trademark of Aeroplan Canada Inc.



29. Avis' representation is false or misleading in a material respect because it is not possible for a consumer to obtain a 2-Day Weekend Rental for \$55 or obtain additional days for \$21 per day. Avis instead requires consumers to pay additional Non-Optional Fees that increase the cost of the rental above the price Avis represents.

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(ii) *Example of False or Misleading Promotional Flyer*

30. Avis displays prices and percentage discounts in its promotional flyers that are not attainable. For example, Avis mailed the following postcard to Edmonton residents in September 2009. The representation conveys the general impression that it is possible for a consumer who joins the Avis Weekender Club to rent a car for \$14.99 per weekend day.

JOIN THE
AVIS
WEEKENDER
CLUB AND
SAVE!

Join the Avis Weekender Club and you can enjoy many exciting benefits, including FREE membership, discounts on applicable weekend and weekly rentals, 3-day weekend rental rewards... and more!

To get you on your way to earning your free weekend reward, take advantage of this special rate:

Starting from
\$14.99*
per weekend day
Valid until 12/15/09

Minimum 3 day weekend rental
Compact car
Unlimited kilometres
Other car groups available

* See Terms and Conditions on reverse side.
Ask for rate code: XBI

Reserve today!
780-448-0066
10235 101 Street, Edmonton, AB.
avis.ca

AVIS weekender

AVIS

31. Avis' representation is false or misleading in a material respect because it is not possible for a consumer to rent a car for \$14.99 per weekend day. Avis instead requires consumers to pay additional Non-Optional Fees that increase the cost of the rental above the price Avis represents.

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32. Avis' representation is false or misleading in a material respect for an additional reason. The fine print on the back of Avis' postcard states: "All taxes (including Airport Concession and Air Conditioning Excise Tax), Vehicle License Recovery Fee, surcharges, optional items (such as LDW) and refuelling are additional ..." [emphasis added]. This statement conveys the general impression that Avis' Non-Optional Fees are taxes, fees or surcharges that rental car companies are required to collect from consumers.



AVIS

We try harder with:

- where2™ GPS Navigation available with any vehicle rental*
- FREE XM satellite Radio in select GM vehicles
- FREE enrollment in the Avis Weekender Club
- No more lost receipts! Avis e-Receipt, our paperless alternative to rental receipts. Customers can receive an electronic receipt directly in their inbox
- Aeroplan® Members can earn 250 Aeroplan Miles

Terms and Conditions: Valid at Avis downtown location only: 10235 101 Street Edmonton, AB T5J 3E9 on a Compact (group B) vehicle. Other car groups available. Special rates are valid only on a minimum 3 day weekend and maximum 4 day weekend rental. Weekend rental period begins Thursday and car must be returned by Monday 11:59 a.m. or higher rate may apply. An advance reservation is required. May not be used in conjunction with any other coupon, promotion or offer. A Saturday night keep is required. Vehicles are subject to availability at time of rental. Renter must meet Avis

additional daily surcharge may apply for renters under 25 years old. All taxes (including Airport Concession and Air Conditioning Excise tax), Vehicle License Recovery Fee, surcharges, optional items (such as LDW) and refueling are additional. Offer subject to vehicle availability at time of reservation and may not be available on some rates at some times. Offer may not be available during holiday and other blackout periods. Offer expires 12/15/09.

AVIS

We try harder.

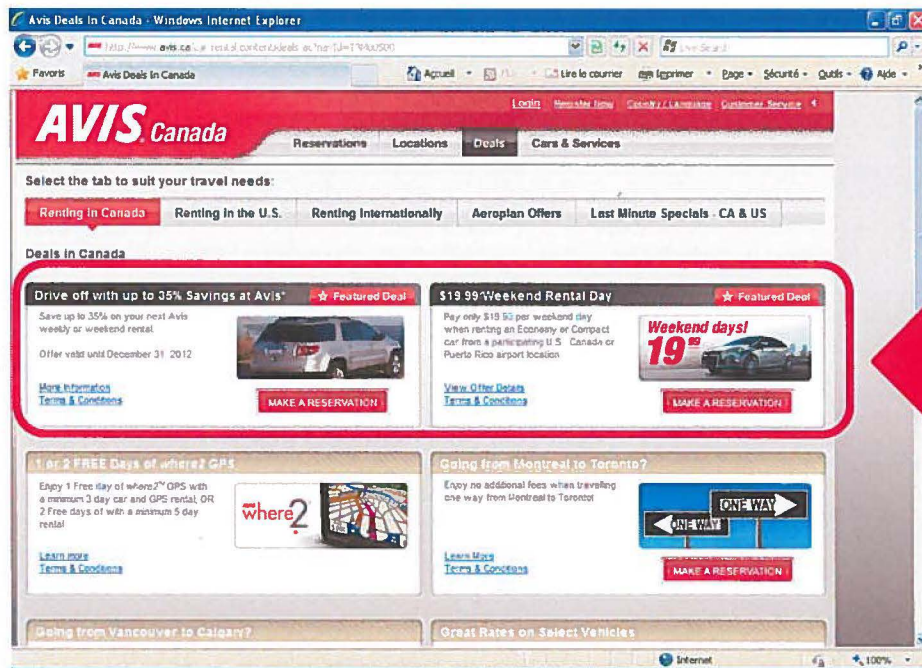
© 2009 Aviscar, Inc. All Rights Reserved. ® Registered trademark licensed to Aviscar, Inc. for use in Canada.
 ®Aeroplan is a registered trademark of Aeroplan Canada, Inc. *Available at participating locations for an additional fee.

33. The fine print on the back of Avis' postcard is false or misleading in a material respect. Avis' Non-Optional Fees are not taxes, fees or surcharges that rental car companies are required to collect from consumers. Rather, Avis' Non-Optional Fees are charges that Avis itself chooses to impose on consumers to recoup part of its own cost of doing business.

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(iii) **Example of False or Misleading Website Representations**

34. Avis displays prices and percentage discounts on its websites that are not attainable. For example, the following representations appeared on an Avis website on or about 5 June 2012. Avis' representation conveys the general impression that it is possible for consumers to rent a car for \$19.99 per weekend day or save 35% on their rental.



35. Avis' representation is false or misleading in a material respect because it is not possible for a consumer to rent a car for \$19.99 per weekend day or save 35% on his or her rental. Avis instead requires consumers to pay additional Non-Optional Fees that increase the cost of the rental above the price Avis represents.

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36. Avis' representation about the prices and percentage discounts on its websites are also false or misleading in a material respect for an additional reason. As set out in the example below from on or about 5 June 2012, Avis' representation conveys the general impression that its Non-Optional Fees are taxes and surcharges that rental car companies are required to collect from consumers.

The screenshot shows the Avis Canada website during a reservation process. The page is titled 'STEP 3: PRODUCTS & SERVICES'. It displays various rental options and protection coverages. A red box highlights the 'Estimated Total' section, which includes the following details:

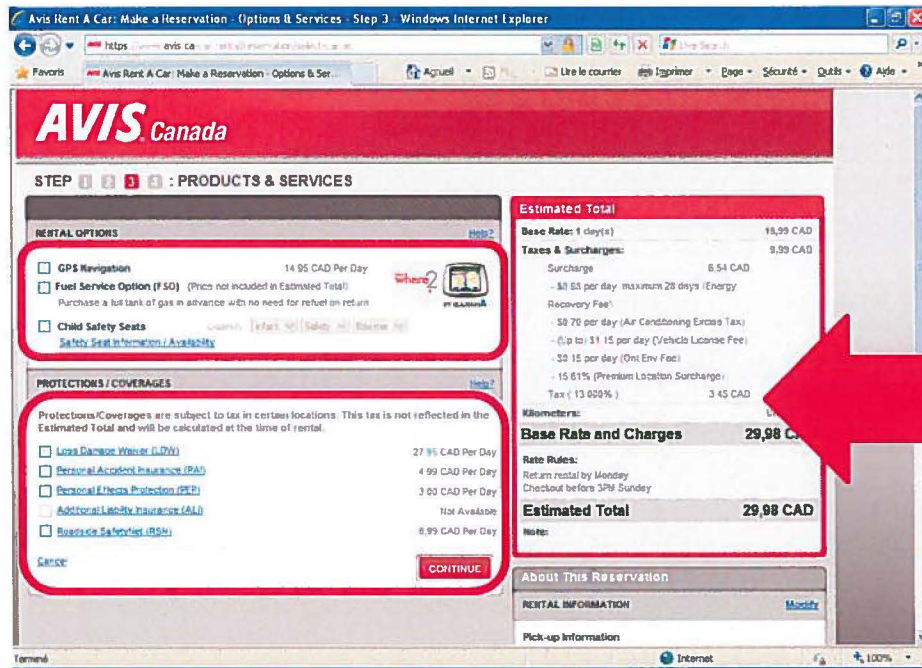
Estimated Total	
Base Rate (3 days)	19.99 CAD
Taxes & Surcharges:	9.99 CAD
Surcharge	8.54 CAD
- \$2.00 per day, maximum 28 days (Energy Recovery Fee)	
- \$2.70 per day (Air Conditioning Excise Tax)	
- (Up to) \$1.15 per day (Vehicle License Fee)	
- \$0.15 per day (Ondr Fee)	
- 15.81% (Premium Location Surcharge)	
Tax (13.000%)	3.45 CAD
Kilometers:	Unlimited
Base Rate and Charges	29.98 CAD
Rate Rule:	
Checkout before 3PM Sunday	
Estimated Total	29.98 CAD
Note:	

A red arrow points to the 'Estimated Total' section, highlighting the 'Taxes & Surcharges' and 'Base Rate and Charges' items.

37. Avis' representation is false or misleading in a material respect as it is Avis that chooses to impose these Non-Optional Fees on consumers to recoup part of its own cost of doing business.

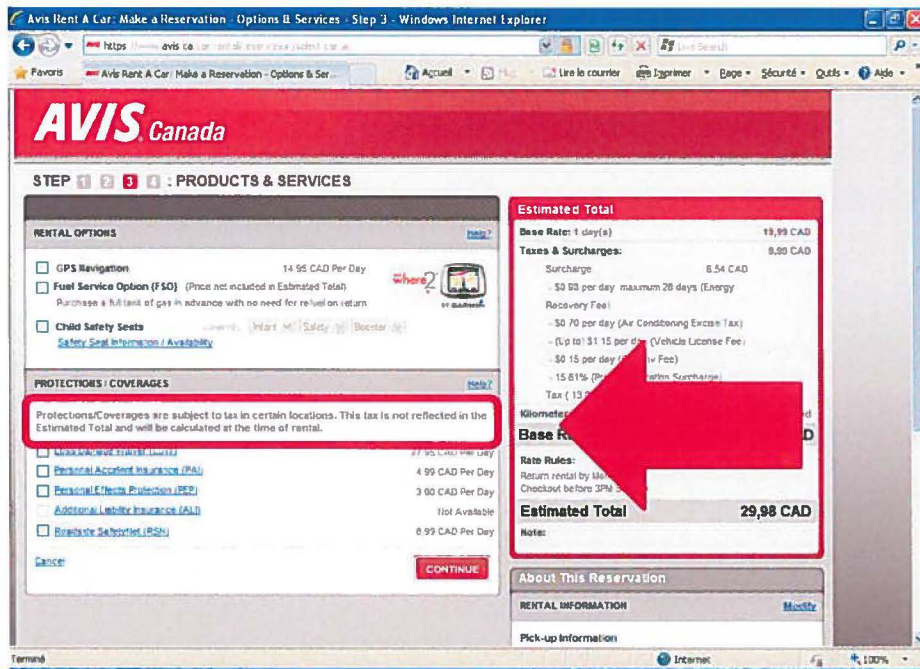
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38. Further, Avis' representation set out at paragraph 3436 above is false or misleading in a material respect for two additional reasons. First, Avis' representation conveys the general impression that it is possible for a consumer to rent a GPS Navigation Unit for \$14.95 per day and/or obtain additional protections/coverages for daily rates that Avis specifies on its webpage.



39. Avis' representation set out at paragraph 3638 (and 3436) above is false or misleading in a material respect. It is not possible for a consumer to rent a GPS Navigation Unit for \$14.95 per day from an airport location and/or obtain additional protections/coverages for rates that Avis specifies. A consumer would instead have to pay higher prices than Avis represents because Avis requires consumers to pay additional Non-Optional Fees to rent or obtain these associated products.

40. Second, Avis' representation set out at paragraph 3638 (and 3436) above conveys the general impression that governments require rental companies to collect taxes from consumers who obtain additional protections/coverages from certain locations. Avis states "Protections/Coverages are subject to tax in certain locations. This tax is not reflected in the Estimated Total and will be calculated at the time of rental" [emphasis added].



41. Avis' representation is false or misleading in a material respect. Governments do not require rental car companies to collect additional taxes from consumers who obtain additional protections/coverages from certain locations. Avis rather chooses to charge consumers additional Non-Optional Fees at these locations to recoup part of its own cost of doing business.
42. Avis also increases the price of its protections/coverages by charging consumers Non-Optional Fees. Avis chooses to do so to recoup part of its own cost of doing business.

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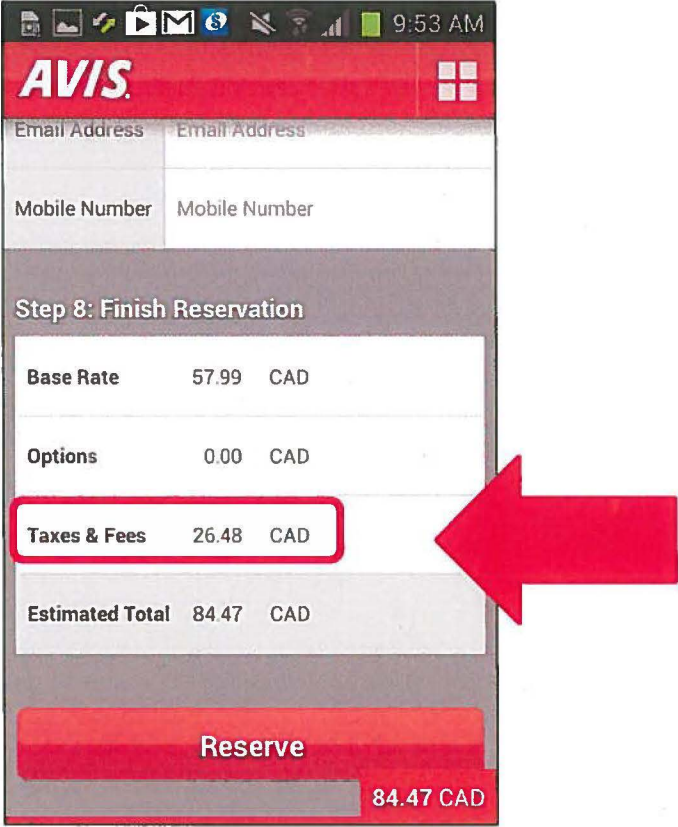
(iv) Example of False or Misleading Mobile Application Representations

43. Avis displays prices on its mobile applications that are not attainable. For example, the following representation appeared on Avis' mobile application on or about 3 December 2012. Avis' representation conveys the general impression that it is possible for a consumer to rent a small to full size vehicle for \$57.99.

Step 3: Your Information		Optional
Last Name	Last Name	
Wizard Number	Wizard Number	
Step 4: Discounts		Optional
Avis Worldwide Discount	AWD	
Coupon Code	Coupon Code	
Step 5: Vehicle Selection		Required
Small to Full Size	from 57.99 CAD	>
Luxury & Convertibles	from 72.99 CAD	>

44. Avis' representation is false or misleading in a material respect because it is not possible for a consumer to rent a small to full size vehicle for \$57.99. A consumer would instead have to pay higher prices than Avis represents because Avis requires consumers to pay additional Non-Optional Fees.

45. Avis' representation is false or misleading in a material respect for an additional reason. Avis' representation conveys the general impression that rental car companies are required to collect additional taxes and fees.



46. Avis' representation is false or misleading in a material respect. Rental car companies are not required to collect additional taxes and fees from consumers. Avis rather chooses to charge consumers additional Non-Optional Fees to recoup part of its own cost of doing business.

(v) ***Example of False or Misleading Oral Representations***

47. Avis orally represents prices that are not attainable. For example, in June 2011, the following on-hold script ran across all Canadian Avis locations (excluding Winnipeg and Ottawa). The representation conveys the general impression that it is possible for a consumer to rent a FIAT 500 for \$55 per day:

Rent the NEW, fuel-efficient FIAT 500 at Avis today and earn Bonus Aeroplan Miles! **Rent the FIAT 500 from \$55 per day** and receive 500 Bonus Aeroplan Miles. Applicable coupon number and AWD number must be quoted. Visit avis.ca or ask your Avis representative for more details. [Emphasis added]

48. Avis' representation is false or misleading in a material respect because it is not possible for a consumer to rent the FIAT 500 for \$55 per day. Avis instead requires consumers to pay additional Non-Optional Fees that increase the cost of the rental above the price Avis represents.

(vi) ***Examples of False or Misleading Customer Service Scripts***

49. Avis makes representations to its customers who seek an explanation of their total rental charges. In form emails sent to its customers, Avis represents that the government and other authorized agencies mandate all rental companies, including Avis, to collect the Non-Optional Fees from customers. Avis states:

Please be aware that in addition to the base car rental rate **customers are required to pay taxes, surcharges, and other rental related fees, which are mandated by the government and other authorized agencies. All rental companies, including Avis, must collect them in order to continue to provide the appropriate services to our customers.** [Emphasis added]

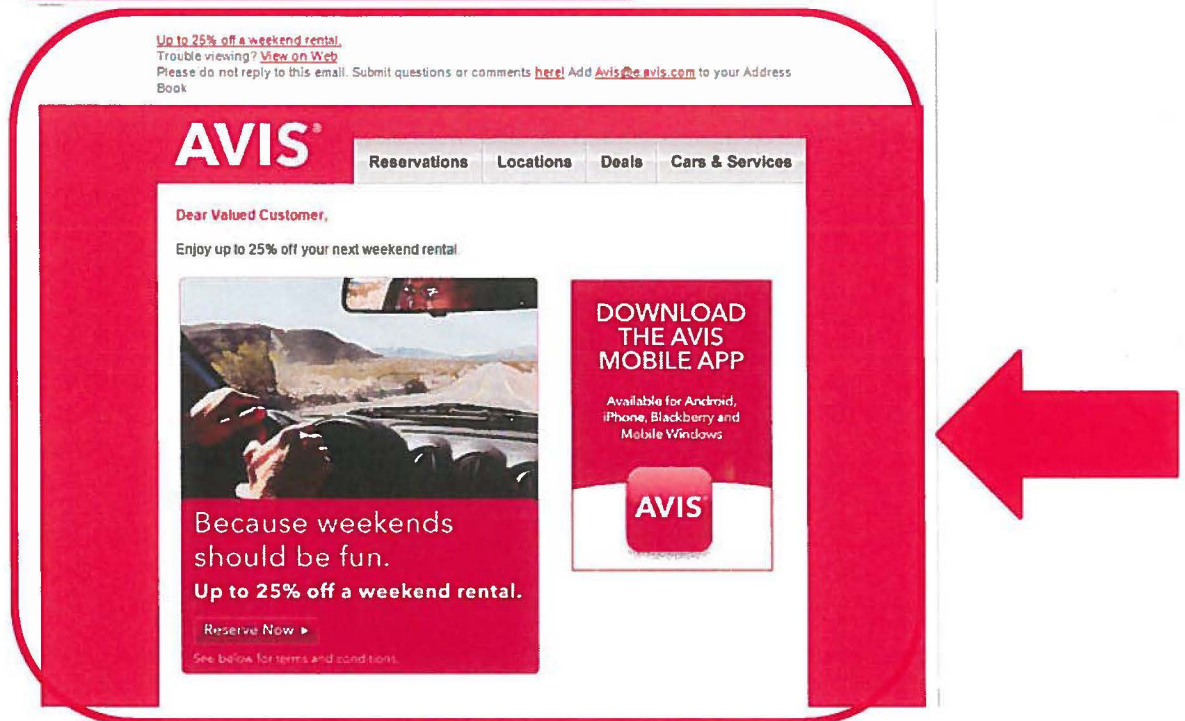
50. Avis' representation is false or misleading in a material respect. Governments and other authorized agencies do not mandate all rental companies, including Avis, to collect Non-Optional Fees from their customers. Avis instead chooses to impose these Non-Optional Fees on its customers to recoup part of its own cost of doing business.

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(vii) **Example of False or Misleading Subject Matter Information and Electronic Message**

51. Avis sends or causes to be sent false or misleading electronic messages. The subject matter information for these messages is false or misleading. The electronic messages themselves are also false or misleading in a material respect. For example, on 26 August 2014, Avis sent or caused to be sent the following electronic message. The subject matter information and the electronic message itself conveys the general impression that it is possible for a consumer to save up to 25% off his or her next weekend rental.

Subject: Valued Customer, relaxation that's more rewarding. Up to 25% off.
Date: Tue, 26 Aug 2014 08:07:44 -0600



52. The subject matter information for the electronic message is false or misleading. Avis does not apply the discount to its Non-Optional Fees or the total cost of the weekend rental. Accordingly, it is not possible for a consumer to obtain up to 25% off a weekend rental. A consumer must instead pay more to obtain a weekend rental than Avis represents. The electronic message is itself false or misleading in a material respect for the same reason.

B. Examples of the Respondents' False or Misleading Budget Representations

(i) Example of False or Misleading Newspaper Ad

53. Budget displays prices and percentage discounts in newspaper advertisements that are not attainable. For example, Budget placed the following advertisement in the Toronto Metro Newspaper eight times in April and May, 2013. The representation conveys the general impression that it is possible for a consumer to rent a sub-compact vehicle for \$19.95 per weekend day.

Savings worthy of a mini-vacay.



Sub-compact vehicle
\$19.95/weekend days*

Explore Toronto or plan a weekend getaway.
 Rent for 2 days or more and enjoy big savings
 when you use BCD # D601800.

Visit budget.ca or call 1 800 268-8900



*Rent & vehicle price available for renters from April 18, 2013 through June 10, 2013 at participating Toronto Airport and OAKVILLE locations. Rate applies to sub-compact vehicle only (group A). Weekend rates require a Friday pickup and Monday return. Friday night overstay is required. Minimum 2 day keep is required. Taxes and rates are subject to availability. Holiday and other seasonal prices may apply. Vehicle must be returned to rental location. Rates are non-transferable and cannot be combined with any other promotion, discount, rate or price. Rates are subject to Canadian dollars. Renters must meet Budget's age, driver and credit requirements. Minimum age is 25 but may vary by location. An additional daily charge may apply for renters under 25 years old. Inquiries about the rental agreement should be directed to the local office. Vehicle is not for recovery. Fees, charges and other terms are attached to all rentals. All restrictions apply as set forth in the rental agreement. Please see also the FINE PRINT on the agreement of this offer.
 ©2013 Budget Rent A Car System, Inc. All Rights Reserved. Budget is a registered trademark licensed to Budget Rent A Car System, Inc. in Canada.

54. Budget's representation is false or misleading in a material respect because it is not possible for a consumer to rent a sub-compact vehicle for \$19.95 per weekend day. Budget instead requires consumers to pay additional Non-Optional Fees that increase the cost of the rental above the price Budget represents.
55. Budget's representation set out at paragraph 54-53 above is false or misleading in a material respect for an additional reason. The fine print on the bottom of Budget's advertisement states: "In Toronto **all taxes (including Airport Concession and Air Conditioning Excise Tax, Vehicle License Recovery Fee, surcharges and optional items are additional)**" [emphasis added]. The fine print conveys the general impression Budget's Non-Optional Fees are taxes the government requires rental companies to collect from consumers.

Savings worthy of a mini-vacay.



Sub-compact vehicle
\$19⁹⁵/weekend days*

Explore Toronto or plan a weekend getaway.
 Rent for 2 days or more and enjoy big savings
 when you use BCD # D601800.

Visit budget.ca or call 1 800 268-8900



*Terms & conditions: Rent one week for rental from April 18, 2013 through June 30, 2013 at some participating locations. Some restrictions apply. See website for details. (Example) Weekend rates include Saturday pickup and Monday return. Friday night overstay is required. Minimum 2 day trip is required. Vehicles and rates are subject to availability. Pricing and other material periods may apply. Vehicles must be returned to rental location. Rates are non-refundable and cannot be combined with any other car pool, discounted, etc. or previous offer. Rates are for renters 25 years of age or older. All taxes are additional. In Toronto, all taxes are additional. (including Airport Concession and Air Conditioning Excise Tax, Vehicle License Recovery Fee, surcharges and optional items are additional). ©2013 Budget Car Inc. All Rights Reserved. Budget is a registered trademark licensed to Budget Car Inc. for use in Canada.

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56. The fine print on the bottom of Budget's advertisement is false or misleading in a material respect as Budget's Non-Optional Fees, such as its Airport Concession and Air Conditioning Excise Tax and Vehicle License Recovery Fee, are not taxes the government requires rental companies to collect from consumers. Budget's Non-Optional Fees are charges that Budget itself chooses to impose on consumers to recoup part of its own cost of doing business.

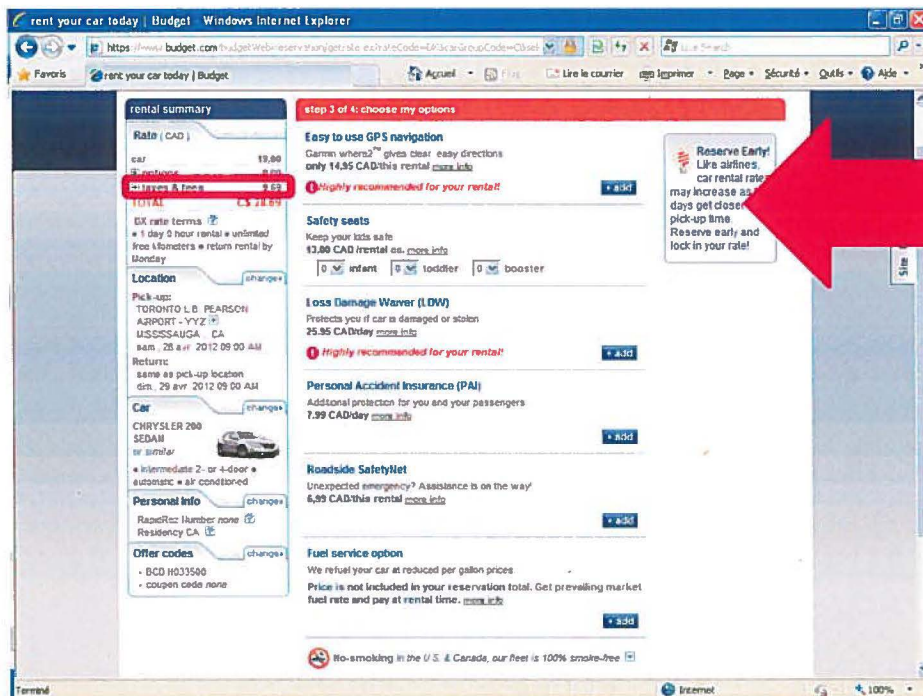
(ii) **Example of False or Misleading Website Representations**

57. Budget displays prices and percentage discounts on its websites that are not attainable. For example, the following representation appeared on a Budget website on or about 25 April 2012. Budget's representation conveys the general impression that it is possible for a consumer to rent a car for \$19 a weekend day, \$149 a week on a midsize vehicle or save 35% on their rental.

The screenshot shows the Budget website interface in Internet Explorer. The browser address bar displays 'http://www.budget.ca/'. The website header includes the Budget logo and navigation links for 'reservations', 'deals', 'cars', 'locations', 'frequent renter', 'customer care', and 'home'. A 'Rent A Car' section on the left contains a search form with fields for location, dates, and times, and a 'Reserve Now' button. The main content area features several promotional banners: 'today's best car rental deals - April 25, 2012' with a '\$19 a weekend day' offer, 'Save up to 35% in Canada', 'Special Rate on Special Vehicle', 'SAVE on your next weekend rental!', 'where2? Get up to 2 FREE days of GPS navigation', and 'Vegas vacation baby!'. A red box highlights the '\$19 a weekend day' offer, the '\$149 a week' offer, and the 'Pay Now and SAVE up to 35%' offer. A red arrow points to the 'Special Rate on Special Vehicle' offer.

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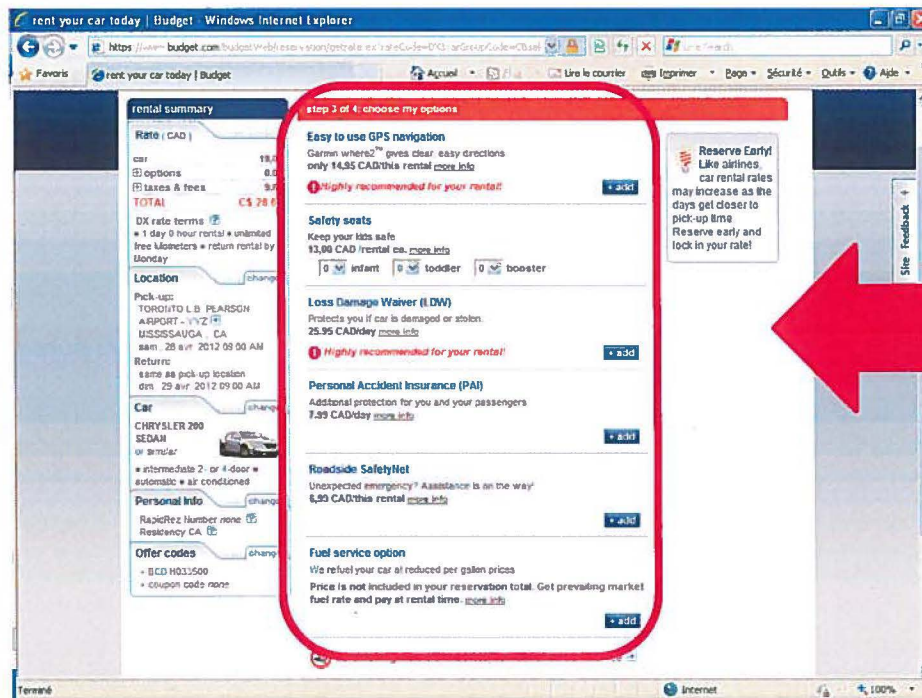
58. Budget's representation is false or misleading in a material respect. It is not possible for a consumer to rent a car for for \$19 a weekend day, \$149 a week on a midsize vehicle or save 35% on their rental. Budget instead requires consumers to pay additional Non-Optional Fees that increase the cost of the rental above the price Budget represents.
59. Budget's representation about the prices and percentage discounts on its website are also false or misleading in a material respect for an additional reason. As set out in the example below from on or about 25 April 2012, Budget's representation conveys the general impression that rental companies are required to collect additional taxes and fees from consumers.



60. Budget's representation is false or misleading in a material respect as it is Budget that chooses to impose its Non-Optional Fees on consumers to recoup part of its own cost of doing business.

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61. Further, Budget's representation set out at paragraph 5759 above is false or misleading for an additional reason. Budget's representation conveys the general impression that it is possible for consumers to obtain options such as a GPS navigation unit for \$14.95, a child safety seat for \$13, a loss damage waiver for \$25.95 per day, personal accident insurance for \$7.99 per day and/or roadside safety assistance for \$6.99.

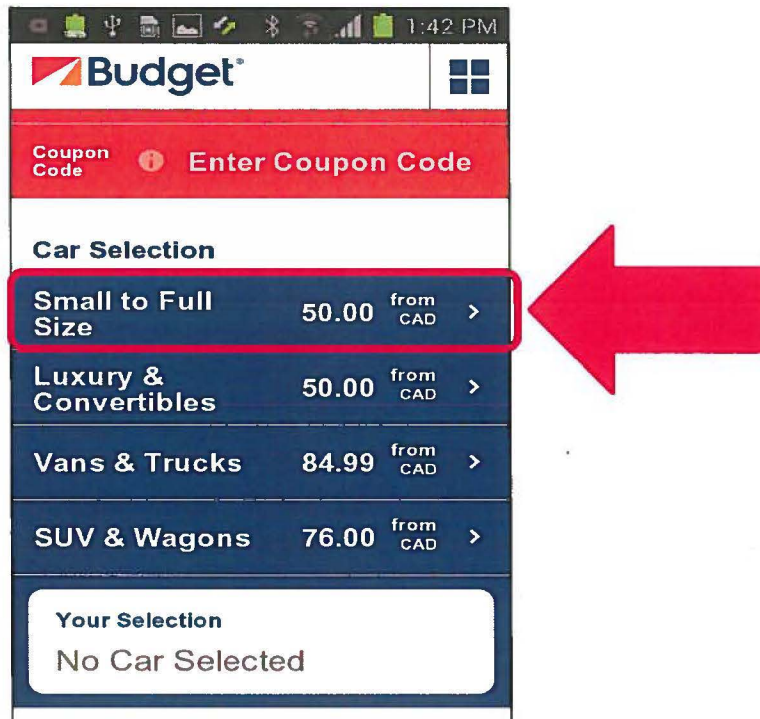


62. Budget's representation set out at paragraph 5961 (and 5759) above is false or misleading in a material respect. It is not possible for a consumer to obtain options such as a GPS navigation unit for \$14.95, a child safety seat for \$13, loss damage waiver for \$25.95 per day, personal accident insurance for \$7.99 per day or roadside safety assistance for \$6.99. A consumer would instead have to pay a higher price because Budget requires consumers to pay additional Non-Optional Fees to obtain these options.

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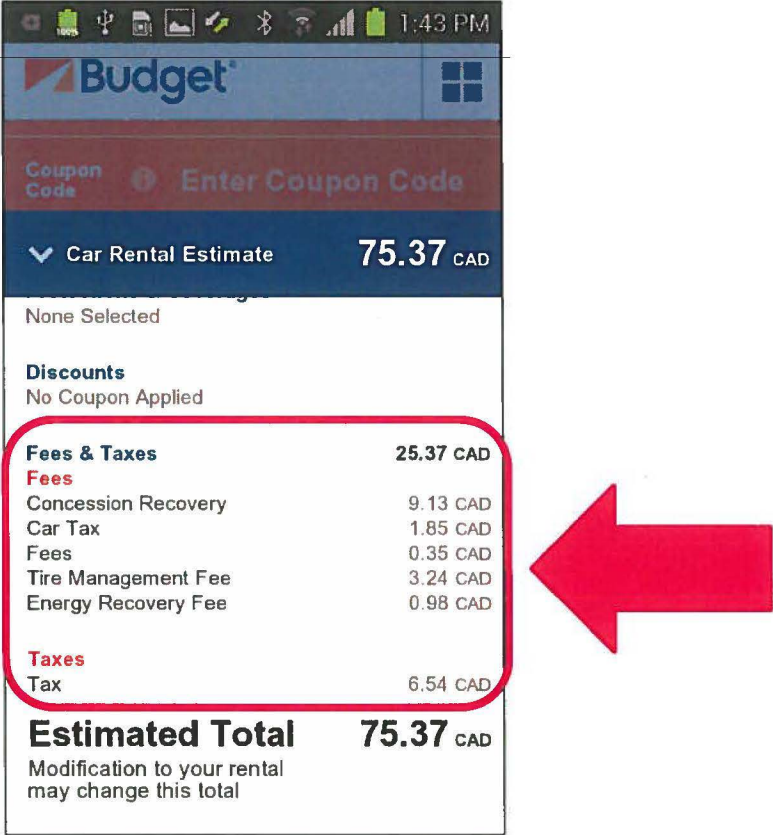
(iii) **Example of False or Misleading Mobile Application Representations**

63. Budget displays prices on its mobile applications that are not attainable. For example, the following representation appeared on Budget's mobile application on or about 10 June 2014. Budget's representation conveys the general impression that it is possible for a consumer to rent a small to full size car for \$50.00.



64. Budget's representation is false or misleading in a material respect because it is not possible for a consumer to rent a small to full size car for \$50. A consumer would instead have to pay a higher price than Budget represents because Budget requires consumers to pay additional Non-Optional Fees.

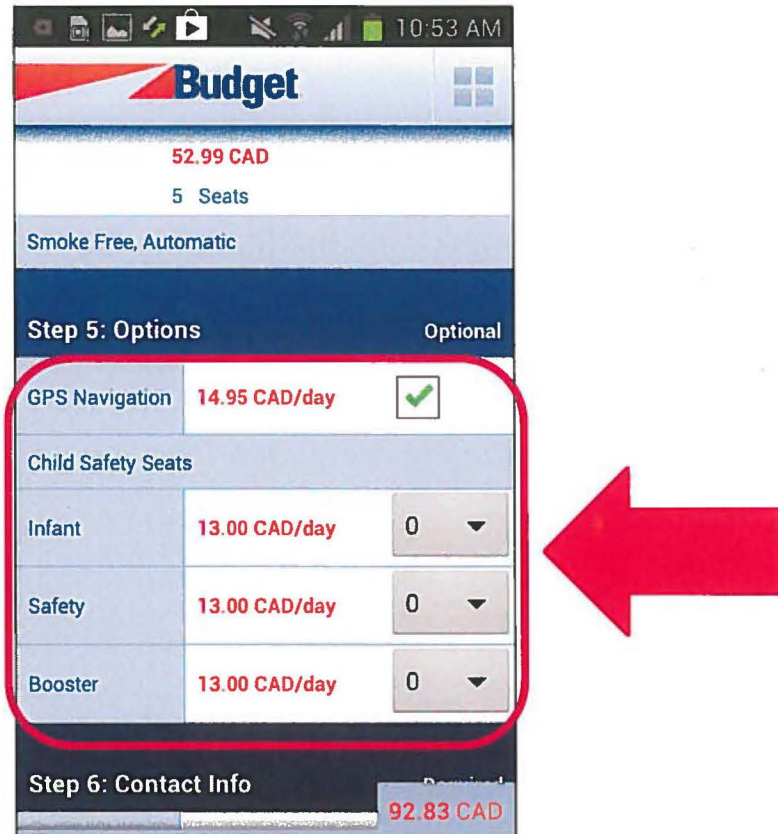
65. Budget's representation is false or misleading in a material respect for an additional reason. Budget's representation conveys the general impression that rental car companies are required to collect additional taxes and fees.



66. Budget's representation is false or misleading in a material respect. Rental car companies are not required to collect additional taxes and fees from consumers. Budget rather chooses to charge consumers additional Non-Optional Fees to recoup part of its own cost of doing business.

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67. Budget also displays prices for associated equipment and coverages on its mobile applications that are not attainable. For example, Budget's representation from on or about 3 December 2012 conveyed the general impression that it is possible for a consumer to rent a GPS navigation unit for \$14.95 per day, or child safety seats for \$13.00 per day.



68. Budget's representation is false or misleading in a material respect because it is not possible for a consumer to rent a GPS navigation unit for \$14.95 per day or a child safety seat for \$13.00 per day. A consumer would instead have to pay higher prices than Budget represents because Budget requires consumers to pay additional Non-Optional Fees to rent these products.

(iv) ***Example of False or Misleading Television Commercial***

69. Budget makes price representations in its television commercials that are not attainable. For example, between March and April 2012, a Budget commercial aired 2,473 times on over 30 different Canadian television channels promoting vehicle rentals for \$19 per weekend day. Budget's representation conveyed the general impression that cars were available for \$19 per weekend day.
70. Budget's representation is false or misleading in a material respect because it is not possible for a consumer to rent a vehicle for \$19 per weekend day. A consumer would instead have to pay a higher price than Budget represents because Budget requires consumers to pay additional Non-Optional Fees.

(v) ***Example of False or Misleading Oral Representations***

71. Budget orally represents prices that are not attainable. For example, in June 2011, the following on-hold script ran across all Canadian Budget locations. The representation conveys the general impression that it is possible for a consumer to rent a Chrysler 300 for only \$57 per day:

The NEW Chrysler 300 has arrived! **The Chrysler 300 is available to rent at Budget for only \$57 per day.** Applicable BCD number must be quoted. Ask your Budget representative for more details. [Emphasis added]

72. Budget's representation is false or misleading in a material respect because it is not possible for a consumer to rent the Chrysler 300 for only \$57 per day. A consumer would instead have to pay a higher price than Budget represents because Budget requires consumers to pay additional Non-Optional Fees.

(vi) ***Example of False or Misleading Customer Service Scripts***

73. Budget makes representations to its customers who seek an explanation of their total rental charges. In form emails sent to its customers, Budget represents that the government and other authorized agencies mandate all

rental companies, including Budget, to collect Non-Optional Fees from customers. Budget states:

Please be aware that in addition to the base car rental rate customers are **required to pay taxes, surcharges, and other rental related fees, which are mandated by the government and other authorized agencies. All rental companies, including Budget, must collect them in order to continue to provide the appropriate services to our customers.** [Emphasis added]

74. Budget's representations are false or misleading in a material respect. Governments and other authorized agencies do not mandate all rental companies, including Budget, to collect all Non-Optional Fees from their customers. Budget instead chooses to impose these Non-Optional Fees on its consumers to recoup part of its own cost of doing business.

V. Aggravating Factors

75. The Respondents have made, and continue to make, the foregoing false or misleading representations to the public for the purpose of promoting their passenger vehicle rentals, their associated products and their business interests more generally. Avis and Budget have collected and continue to collect millions of dollars a year by imposing the Non-Optional Fees on consumers who rent passenger vehicles and associated products from them.
76. Pursuant to section 74.1(5) of the Act, the deceptive conduct described herein is aggravated by the following:
- a. the national reach of the Respondents' conduct;
 - b. the Respondents have made the same or similar representations frequently and over an extended period of time;
 - c. the Respondents' false or misleading representations, described herein, are material;

- d. self-correction being unlikely to remedy adequately or at all the Respondents' conduct;
- e. the Respondents have collected more than \$35 million in Non-Optional Fees from their customers who have rented a passenger vehicle for use in Canada through the Respondents' websites and mobile applications since 12 March 2009; and
- f. the Respondents are one of the largest rental car companies carrying on business in Canada.

VI. Relief Sought

77. The Commissioner claims the relief set out in paragraph 1.

VII. Procedural Matters

78. The Commissioner requests that this proceeding be conducted in the English language.

79. The Commissioner requests that this application be heard in the City of Ottawa.

80. For the purposes of this application, service of all documents on the Commissioner may be effected on:

DATED AT Gatineau, this 10th day of March 2015.

AMENDED AT Gatineau, this 29th day of April 2015.

"Derek Leschinsky"

for:

John Pecman
Commissioner of Competition

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DEPARTMENT OF JUSTICE CANADA

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AND TO: The Registrar
Competition Tribunal
Thomas D'Arcy McGee Building
90 Sparks Street, Suite 600
Ottawa, Ontario
K1P 584

TAB B

A handwritten signature in blue ink, appearing to read "Andy Dillman", is written over a solid black horizontal line.

**This is Exhibit B to the Affidavit of
Derek Leschinsky
Affirmed 12 November 2015**

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:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

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

Respondents

**PARTICULARS OF PARAGRAPH 11 OF THE AMENDED NOTICE OF
APPLICATION**

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The Commissioner of Competition (the “**Commissioner**”) provides the following particulars regarding paragraph 11 of the Amended Notice of Application, namely that “[t]he Parent Companies planned, directed and were ultimately, essential to the making of the representations that are subject to this application”:

1. The Respondents or the Parent Companies know how the Parent Companies planned, directed and were ultimately essential to the making of the representations that are the subject of this application. In particular but without limitation and based on information currently in the possession of the Commissioner:
 - (a) the business and marketing activities of each of Aviscar Inc. and Budgetcar Inc. is inextricably interwoven with that of the Parent Companies;
 - (b) the Parent Companies direct or control the pricing and marketing activities for vehicles and associated products located in Canada and for consumers seeking to rent passenger vehicles and associated products from Canada, including:
 - (i) that Non-Optional Fees be excluded from the representations promoting the Respondents’ passenger vehicles, associated products and business interests more generally;
 - (ii) whether to add new additional Non-Optional Fees to the Respondents’ passenger vehicles and associated products;
 - (iii) the types or classes of Non-Optional Fees that are excluded from the representations promoting the Respondents’ passenger vehicles, associated products and business interests more generally;
 - (iv) the amount of each Non-Optional Fee, including as amended and increased from time-to-time;

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- (v) when and how, if at all, Non-Optional Fees are presented to consumers;
 - (vi) the Respondents' pricing and marketing strategies, practices and campaigns; and
 - (vii) more generally, how prices for passenger vehicles and associated products are represented to consumers;
- (c) the Parent Companies direct and control the systems or processes whereby consumers in Canada or consumers seeking to rent passenger vehicles and associated products from Canada reserve and pay to rent the Avis and Budget brands of passenger vehicles and associated products;
- (d) the Parent Companies work jointly with Aviscar Inc. and Budgetcar Inc. in supplying passenger vehicles and associated products to consumers located in Canada and seeking to rent passenger vehicles and associated products from Canada and provide products and services to Aviscar Inc. and Budgetcar Inc.;
- (e) persons located in Canada and employed by the Respondents or their affiliates use the name Avis Budget Group, Inc. when carrying on business activities in Canada; and
- (f) one or more officers, directors and employees of:
- (i) the Parent Companies are also officers, directors and employees of Aviscar Inc. and Budgetcar Inc.;
 - (ii) Aviscar Inc. and Budgetcar Inc. carry on business from the Parent Companies' place of business; and
 - (iii) the Parent Companies and of each of Aviscar Inc. and Budgetcar Inc. visit each other and communicate regularly regarding the representations that are the subject of this application.

DATED AT Gatineau, this 29th day of May 2015.



(signature of solicitor)

DEPARTMENT OF JUSTICE CANADA

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AND TO: THE REGISTRAR
COMPETITION TRIBUNAL
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Ottawa, Ontario
K1P 584

TAB C

A handwritten signature in blue ink, appearing to read "Arta D. Duce", is written over a horizontal line.

**This is Exhibit C to the Affidavit of
Derek Leschinsky
Affirmed 12 November 2015**

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE FILED / PRODUIT CT-2015-001 July 15, 2015 Guillaume Phancuf for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT.	# 39

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 :

THE COMMISSIONER OF COMPETITION

Applicant

- and -

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

Respondents

**RESPONSE OF THE RESPONDENTS
TO THE AMENDED NOTICE OF APPLICATION**

PART I: OVERVIEW

1. This application by the Commissioner of Competition (**Commissioner**) is focused on the practice of charging consumers additional fees and surcharges (**Recovery Fees**) for car rental services in Canada. Recovery Fees are openly charged across the industry, have been standard in both the Canadian and U.S. car rental markets for over 15 years, and are well-known to any consumer who has rented a car in North America during that time. Notwithstanding that both the existence of Recovery Fees and the estimated amount of

Recovery Fees payable for a specific reservation are repeatedly made known to a potential renter during the reservation process and before the transaction is completed, the Commissioner asserts that this conduct amounts to deceptive marketing.

2. Although the Recovery Fees at issue in this application are charged in Canada, the Commissioner brings this application against Avis Budget Group, Inc. (**ABG**) and Avis Budget Car Rental, LLC (**ABCR**) (the **U.S. Respondents**), two U.S. companies that are not engaged in any aspect of the car rental business in Canada and whose only real connection to this case is as the indirect parent companies of the Canadian Respondent car rental companies, Aviscar Inc. (**Avis**) and Budgetcar Inc./Budgetauto Inc. (**Budget**) (collectively the **Canadian Respondents**).

3. The Commissioner's allegation that the business and marketing activities of the Canadian Respondents are directed and controlled by the U.S. Respondents, and are "inextricably interwoven" with the business of the U.S. Respondents, is simply false. The Canadian Respondents are separate legal entities that are independently directed and managed. Each Canadian Respondent is responsible for all aspects of its car rental business in Canada, including marketing to Canadian consumers. In any event, even if the Commissioner's allegations regarding the U.S. Respondents were true, they would not support a finding that the U.S. Respondents actually made any of the representations that the Commissioner alleges are false or misleading.

4. In naming the U.S. Respondents, the Commissioner has ignored fundamental principles of corporate separateness and is effectively attempting to extend the reach of the Canadian *Competition Act* (**Act**) into the U.S. without sufficient factual foundation or legal authority.

5. The substance of the Commissioner's application is similarly lacking in factual foundation or legal authority. There is no support for the Commissioner's allegation that the Canadian Respondents materially misrepresent the prices they charge by failing to adequately disclose the Recovery Fees to consumers. Any consumer who rents a car from one of the Canadian Respondents is advised that the Recovery Fees are included in the total rental price at least four times during the reservation process alone, which normally occurs well before the consumer makes a final purchase decision. The Recovery Fees are presented once again before a consumer signs a rental agreement.

6. The Commissioner's application cherry-picks communications by the Canadian Respondents and completely ignores the continuum of information that is conveyed to the average consumer throughout the enquiry, reservation and rental process. Instead, the Commissioner relies on isolated representations taken out of context. For example, in the Amended Notice of Application, the Commissioner has cut and pasted selective excerpts from the Canadian Respondents' online reservation interface, including screen shots of individual pages from the Canadian Respondents' websites (the **Websites**) or their applications for mobile devices (**Mobile Apps**). In many circumstances, the information regarding Recovery Fees that the Commissioner asserts is hidden or missing on these pages is available on the very next page, only a click or tap away.

7. Not only are Avis and Budget customers repeatedly advised of the Recovery Fees throughout the reservation and rental process, but the vast majority of those consumers have also rented from Avis, Budget or other car rental companies in the past and are already familiar with car rental pricing in general, and with Recovery Fees in particular. When viewed from the standpoint of the average consumer of the Canadian Respondents' car rental services, the

failure to disclose Recovery Fees in a single representation or advertisement, even if it occurred, is not misleading. Further, such a discrete omission would not be material nor influence the average consumer's eventual decision to purchase car rental services given that by the time of purchase the average consumer will have been notified of the Recovery Fees multiple times.

8. Similarly, there is no basis for the Commissioner's allegation that the Canadian Respondents misrepresent the Recovery Fees as taxes or fees "that governments and authorized agencies require the Respondents to collect from consumers." In fact, in their day-to-day marketing and communications with consumers (other than in response to individual consumer enquiries), the Respondents do not generally make any representations as to the reason for the Recovery Fees. Representations about the Recovery Fees made by the Canadian Respondents in their day-to-day communications with consumers are primarily limited to the names and amounts of the individual Recovery Fees.

9. The names of the individual Recovery Fees themselves do not create an impression, general or otherwise, that they are fees payable to governments or authorized agencies that the Respondents are mandated to collect from consumers. Indeed, the Concession Recovery Fee, which generates the majority of the Recovery Fees collected by the Canadian Respondents, contains the word "recovery" in it. Other Recovery Fees such as the Vehicle Licence Fee, Customer Facility Charge and Parking Surcharge do not convey any information about whether they are fees that the Canadian Respondents are required to collect from consumers.

10. In any event, even if the Canadian Respondents' representations relating to the Recovery Fees did create the general impression alleged by the Commissioner, such a misrepresentation would be immaterial to the average consumer.

11. From the standpoint of the average consumer, the misrepresentation alleged by the Commissioner amounts to a distinction without a difference. For a consumer, the question of whether the Recovery Fees the consumer is being charged are either:

- (a) mandatory fees, taxes or surcharges that are paid or payable by the Respondents to governments or other authorities and recouped from the consumer by the Respondents; or
- (b) mandatory fees, taxes or surcharges that are payable by the consumer and that the Respondents are mandated to collect from the consumer and remit to such governments or other authorities,

is entirely irrelevant to the consumer's purchase decision. Either way, the total price payable by the consumer is the same.

12. The Commissioner's application fundamentally misconstrues both the meaning and intent of the deceptive marketing provisions under Part VII.1 of the *Act*. The clear purpose of these provisions is to protect Canadian consumers from being deceived in their decisions to purchase goods and services in Canada. Canadian consumers who purchase car rental services from Avis and Budget receive exactly the service they paid for at exactly the price they agreed to, based on information that is fully and repeatedly disclosed to them prior to purchase. The deceptive marketing provisions under Part VII.1 of the *Act* have no application to the conduct in question.

PART II: ADMISSIONS AND DENIALS

13. Save as expressly admitted below, the Respondents deny each and every allegation in the Amended Notice of Application, including the particulars of paragraph 11 served on May 29,

2015 (the **Application**). The Respondents further deny that the Commissioner is entitled to the relief sought in the Application and put the Commissioner to the strict proof thereof.

PART III: MATERIAL FACTS ON WHICH THE RESPONDENTS RELY

The Respondents

14. Avis is a company incorporated in Canada, with its head office at 1 Convair Drive East, Etobicoke, Ontario. Avis operates a car rental business across Canada, and also offers ancillary products and services such as GPS systems, insurance products, optional roadside assistance services, and other products.

15. There are 201 Avis locations in Canada operated by Avis and its licensees, which generate approximately **[CONFIDENTIAL]** rentals per year.

16. Budget is a company incorporated in Canada, with its head office at 1 Convair Drive East, Etobicoke, Ontario. Budget operates a vehicle rental business, and also offers ancillary products and services similar to those offered by Avis, across Canada.

17. There are 296 Budget locations in Canada operated by Budget and its licensees, which generate approximately **[CONFIDENTIAL]** rentals per year.

18. ABG is a company incorporated in Delaware, USA, with its head office at 6 Sylvan Way, Parsippany, New Jersey, USA. The shares of ABG are listed for trading on the NASDAQ Global Select Market. ABG is a holding company whose subsidiaries carry on vehicle rental and sharing businesses worldwide under a number of brand names, including "Avis" and "Budget". ABG is the indirect ultimate parent company of ABCR.

19. ABCR is a limited liability company incorporated in Delaware, USA, with its head office at 6 Sylvan Way, Parsippany, New Jersey, USA. ABCR operates vehicle rental and sharing

services in the U.S. and its subsidiaries operate vehicle rental and sharing services worldwide. ABCR is a wholly-owned indirect subsidiary of ABG and an indirect parent company of Avis and Budget.

20. Each of the Respondents is an independent and separate legal entity.

U.S. Parent Companies do Not Operate in Canada

21. ABG and ABCR are incorporated and based in the U.S., and do not operate in Canada. Moreover, the U.S. Respondents do not advertise in Canada and do not direct or control the representations made by the Canadian Respondents to Canadian consumers.

22. ABG is a holding company. ABG does not offer or supply any car rental services in Canada or elsewhere. Rather, this business is conducted by ABG's subsidiaries and licensees. At no time during the relevant period or otherwise did ABG direct, plan or control the day-to-day operations of Avis or Budget, including in relation to the representations that are the subject of this Application.

23. ABCR does not operate a car rental business in Canada. Rather, ABCR's subsidiaries, including Avis and Budget, conduct the business of offering and supplying car rental services in Canada and elsewhere. At no time during the relevant period or otherwise did ABCR direct, plan or control the day-to-day operations of Avis or Budget, including in relation to the representations that are the subject of this Application.

24. Contrary to the allegations in paragraph 11 of the Application, the U.S. Respondents' operations are not "interwoven" with those of Avis and Budget. Avis and Budget each have one director in common with the U.S. Respondents, use similar infrastructure and software in their

day-to-day operations, and consult with employees of their affiliates, all of which are common, efficiency-enhancing practices for large multi-national corporations.

Avis and Budget are Independent of U.S. Respondents

25. The U.S. Respondents do not work jointly with Avis and Budget to supply passenger vehicles and associated products to consumers in Canada. Further, and contrary to the allegations at paragraph 11 of the Application, the U.S. Respondents do not direct or control the operations of Avis and Budget in respect of the pricing or marketing of car rentals and ancillary products and services in Canada. Rather, Avis and Budget develop their own pricing strategies, including with respect to the types of Recovery Fees charged, the amounts of those charges, whether to add new fees and charges, and pricing strategies, practices and advertising campaigns generally in Canada.

26. Similarly, Avis and Budget develop their own marketing strategies for Canada, including in respect to representations about Recovery Fees. In particular, Avis and Budget, and not the U.S. Respondents, ultimately determine:

- (a) whether Recovery Fees are included in representations promoting their car rental services, and if so, which ones;
- (b) the format and manner of presenting Recovery Fees to consumers; and
- (c) the method of representing prices for car rental and ancillary services to consumers.

27. There is no basis upon which to found this proceeding as against the U.S. Respondents under sections 74.01(a), 74.011(1), 74.011(2), and 74.05 of the *Act*. The U.S. Respondents are distinct entities from Avis and Budget, and do not supply car rental services in Canada. On this

basis alone, section 74.05 of the *Act* cannot apply to these Respondents. Furthermore, the U.S. Respondents do not have control of or direction over the marketing or pricing activities of Avis and Budget, and were not directly involved in the representations that are the subject of this Application. Accordingly, there is no basis for this Application as against the U.S. Respondents.

Itemized Pricing

28. Since at least the late 1990s, car rental companies in Canada and the U.S. have priced their services by combining a variable daily base rate for the vehicle (**Base Rate**) and the daily rate for any options and accessories (**Options**) with Recovery Fees, which are additional fees and surcharges that are directly linked to taxes, fees, surcharges and expenses paid by car rental companies to governments, authorities and third parties. Such Recovery Fees have been routinely charged by Avis and Budget in Canada for over 15 years. Other car rental companies in Canada have also imposed similar recovery fees over this period.

29. Car rental services are both priced and sold using a Base Rate plus Options plus Recovery Fee calculation. The Base Rate, selected Options and all applicable Recovery Fees are itemized and disclosed to consumers of car rental services as components of the estimated total price for each rental (**Itemized Pricing**).

30. Itemized Pricing was first employed in the U.S. in response to significant increases in rental vehicle title and registration fees charged by various U.S. states. Recovery Fees were implemented to recoup the cost of these fees and to inform consumers of the reason for increasing prices. The Canadian Respondents adopted Itemized Pricing in Canada shortly after its implementation in the U.S., in approximately 1998.

31. The Itemized Pricing model (sometimes referred to as “unbundled pricing”) has been the subject of significant review by U.S. regulators and legislators. In 1997, the Itemized Pricing model was subject to a review by both the U.S. Federal Trade Commission and the Car Rental Task Force of the National Association of Attorneys General. In each case, these experienced consumer protection authorities took no issue with the practice so long as consumers knew the estimated total price of the car rental at the time of making a reservation.

32. The purpose and effect of Itemized Pricing is to provide car rental consumers with more information, not less. Itemized Pricing discloses to consumers the specific daily Base Rate, Options and Recovery Fees that are incorporated into the price of each rental, information that consumers would not have if only the total price of the rental was disclosed. Itemized Pricing also gives consumers more information for the purpose of price-comparison, allowing them to price-compare on both daily Base Rate and total rental price for a multi-day rental.

33. The fact that most, if not all, car rental companies in Canada use Itemized Pricing promotes competition. Itemized Pricing effectively separates the underlying fixed and unavoidable costs that all car rental companies must pay (the Recovery Fees) from the variable component of the price over which car rental companies have control (the Base Rate). This allows car rental companies to compete directly on Base Rates, which are set largely based on market supply and demand conditions, similar to commodity pricing.

Base Rates

34. Pricing on all Avis and Budget car rentals starts with a Base Rate. The Base Rate is the most significant component of the total rental price, accounting, on average, for over 90% of the total rental price (before Options and sales taxes) for non-airport locations and over 80% of the total rental price for airport locations.

35. Base Rates are entirely variable; there is no fixed component to Base Rates. Avis and Budget set daily Base Rates that are specific to the pick-up location rented from, the type of vehicle rented and the date of the rental. For example, the Base Rate for a particular vehicle rented from a particular location for use on a particular day is set separately from, and may be different than, the Base Rate for the same vehicle rented from the same location for use on the following day.

36. Base Rates are set based on a number of factors. In setting Base Rates, Avis and Budget expend substantial resources collecting and analyzing relevant data. The information and data collected and analyzed includes, but is not limited to:

- (a) competitor Base Rate data collected online;
- (b) current and projected inventory of each vehicle type at each Avis and Budget location;
- (c) seasonal variations in demand for each location; and
- (d) location-specific events such as major conferences or sporting events.

37. All of this data is fed into a mainframe computer where it is analyzed and used to set Base Rates in real time. Avis' and Budget's Base Rates are constantly updated and revised as data is collected and analyzed. The Respondents make (on average) over **[CONFIDENTIAL]** changes to their Base Rates every day.

Recovery Fees

38. In addition to Base Rates, Recovery Fees are charged by all major car rental companies in Canada to recoup costs associated with mandatory fees and taxes imposed by government

and third party agencies. To remain competitive, both Avis and Budget also charge Recovery Fees. Contrary to the Commissioner's assertions, the Recovery Fees are not retained by Avis and Budget for profit; rather, they are cost-based and representative of amounts that are paid to other entities.

39. Unlike Base Rates, Recovery Fees are primarily fixed. As some of the mandatory taxes and fees which the Recovery Fees are designed to recoup vary by region or location, the specific Recovery Fees also vary by region and location. However, Recovery Fees do not vary by rental date nor, with the exception of the Tire Management Fee (as described below), by vehicle type. With the exception of Concession Recovery Fees (as described below), all Recovery Fees are charged as a fixed amount, either per rental transaction or per rental day.

40. Each of the Recovery Fees charged by Avis and Budget is described in further detail below.

Concession Recovery Fee

41. When applicable, concession recovery fees (**CRF**) are charged to consumers to recover the concession fees that Avis and Budget are required to pay under their concession agreements with various airport authorities. Both Avis and Budget have charged CRFs at their airport locations since before March 2009.

42. Avis refers to the CRF as "Concession Recovery Fee", and applies it at its 39 airport locations throughout Canada. Budget refers to the CRF as "Concession Recovery" and applies it at its 29 airport locations throughout Canada. In some airport locations Avis and Budget are required by the airport authority to refer to the CRF as a "Premium Location Surcharge" in their rental agreements and in communications with consumers.

43. Airport authorities unilaterally determine the concession rate that will be paid by all car rental companies operating at each airport. The applicable concession rate varies by airport and applies as a percentage of each car rental company's gross revenues generated at that airport location. The airports charge a concession fee ranging from 3.25-17.83%, with the majority charging a concession fee in the in the range of 10-14%. The Canadian Respondents remit the CRF in its entirety to the relevant airport authorities.

Customer Facility Charge

44. From time to time when required by airport authorities, Avis and Budget impose a customer facility charge (CFC). The rate for the CFC is determined and imposed unilaterally by airport authorities and is used to pay down their indebtedness on bonds used to construct new, or fund improvements to existing, car rental facilities in the airport. CFCs are imposed by airport authorities on either a per transaction or per rental day basis and range between \$4 and \$6 per transaction or between \$0.35 and \$6 per rental day.

45. Avis refers to the CFC as a "Customer Facility Charge" and Budget refers to it as a "Customer Facility" fee. Currently, the CFC only applies at Avis' and Budget's airport locations in Deer Lake, Charlottetown, Montreal, Calgary, Fort McMurray and Abbotsford.

46. Airport authorities require Avis and Budget to collect the CFC from their customers and to remit it directly to the authorities under the terms of their concession agreements. The only exception is in Calgary, where all car rental companies are permitted to retain \$1.00 of each CFC collected to compensate them for costs associated with moving their airport administrative offices and service facilities.

47. Although the Canadian Respondents deny making any representation to consumers that the CFC is a tax, surcharge or fee that governments and authorized agencies require them to collect from consumers, the CFC is, in fact, precisely such a fee. Accordingly, even if the Canadian Respondents had made such a representation in relation to the CFC as the Commissioner alleges, that representation would be true.

Vehicle License Fee

48. Both Avis and Budget have charged a vehicle license fee (**VLF**) in Canada since before March 2009. The VLF is the sum of two amounts: an amount charged to consumers to recover costs that Avis and Budget are required to pay to provincial governments to put their vehicles on the road; and an amount charged to recover costs associated with the federal Air Conditioner Excise Tax (**A/C Tax**) charged on air conditioners installed in motor vehicles.

49. The amounts paid to provincial governments for putting vehicles on the road vary by province but generally include vehicle title fees, license plate costs and registration fees. The A/C Tax is levied on vehicle manufacturers by the federal government, and is in turn directly passed on to vehicle buyers such as Avis and Budget by the vehicle manufacturers.

50. Avis and Budget refer to the VLF on the Websites and in rental agreements as the "Vehicle Licence Fee" and, occasionally, as the "Vehicle Licence Fee/AC Excise Tax". Up to 2014, Budget used the abbreviated name "Car Tax" to refer to the VLF (including the A/C Tax) on its Website due to system and formatting constraints, but has always used the full names of the VLF and the A/C Tax in its rental agreements.

51. The amount of the VLF charged by Avis and Budget varies by province. On average, VLF charges are approximately \$1.50 per rental day. Through the VLF, each consumer is

allocated a proportionate share of the costs associated with vehicle licensing and the A/C Tax that Avis and Budget are required to pay to provincial governments and vehicle manufacturers. The VLF only partially offsets the associated amounts paid by the Canadian Respondents to these entities.

Energy Recovery Fee

52. Avis and Budget have been charging an energy recovery fee (ERF) since before March 2009 at their locations throughout Canada. Avis refers to the ERF as “Energy Recovery Fee” and Budget refers to it as “Energy Recovery Fees”. The ERF is charged to consumers to recoup certain energy-related costs incurred by Avis and Budget.

53. The rate for the ERF is calculated based on a formula that includes various energy-related costs, such as vehicle energy costs of production, vehicle delivery costs, the costs to operate shuttle vans, and the cost of fuel and fuel-based supplies. The current rate for the ERF charged by both Avis and Budget is \$0.98 per rental day. The ERF only partially offsets the associated costs incurred by Avis and Budget.

Parking Surcharge

54. Avis has been charging fees related to parking costs that it incurs at 11 premium locations throughout Canada since 2009. Avis refers to these parking surcharges as “Parking Surcharges”. Budget refers to these parking surcharges as “Fees” and charges them at 12 of its premium locations throughout Canada.

55. The parking surcharges charged by Avis and Budget range from \$7 to \$12 per rental transaction. Avis and Budget use these surcharges to partially offset parking costs that third parties require Avis and Budget to pay at these select locations.

Environmental Fee

56. Avis and Budget have been charging an environment fee (EF) at their Ontario locations since before March 2009. The EF is charged to consumers to recover the Ontario Eco Fee that Avis and Budget are required to remit to the Ontario government. The government imposes the Ontario Eco Fee whenever a product that requires special disposal, such as oil and oil filters, is consumed. Because Avis and Budget use such products to maintain their fleets, Avis and Budget are required to pay the Ontario Eco Fee.

57. Avis previously referred to the EF as "Ontario Environmental Fee" and in 2015 changed it to "Environmental Fee" and Budget previously referred to it as "Ont Environ Fee" and in 2015 changed it to "ENVIRON FEE".

58. Avis and Budget determine the rates of their respective EFs by estimating the total costs that they will incur under the Ontario Eco Fee in a given year and dividing that amount by the number of rental days per year. The current rate for the EF charged by both Avis and Budget is \$0.15 per rental day. The EF only partially offsets the amount of the Ontario Eco Fee that Avis and Budget remit to the Ontario government.

Tire Management Fee

59. Avis and Budget have been charging a "Tire Management Fee" (TMF) at their Quebec locations since before March 2009. In Quebec, the government mandates that all vehicles use snow tires. The TMF is a recovery fee charged to recover the costs associated with the purchase, installation, de-installation, storage and re-installation of these mandatory snow tires.

60. The TMF applies to all vehicles, with non-core vehicles (specialty or premium vehicles, sport utility vehicles and mini-vans) paying a slightly higher rate than core vehicles (sub-

compact, compact, intermediate and full-sized vehicles). The current TMF rates charged by both Budget and Avis are \$3.24 per rental day for core vehicles and \$4.24 per rental day for non-core vehicles. The TMF only partially offsets the costs incurred by Avis and Budget in relation to Quebec's snow tire law.

PART IV: GROUNDS ON WHICH THE APPLICATION IS OPPOSED

Recovery Fees are Fully Disclosed to Consumers

61. Contrary to the Commissioner's allegations, the Recovery Fees are not hidden from consumers. The Recovery Fees are fully and repeatedly disclosed to the consumer throughout the reservation and rental process, typically days before the consumer makes a purchase decision by entering into a rental agreement.

62. The vast majority of car rentals from Avis and Budget, over 80%, are reserved in advance. Over 50% of these advance bookings are made indirectly through a third party such as a travel agent or online travel service. Consumers can make a reservation directly with Avis or Budget by telephone, through the Avis and Budget Mobile Apps or on the Websites. Similar to a restaurant reservation, a car rental reservation requires no financial or contractual commitment from the consumer, who is free to cancel at any time or to simply not show up. Over **[CONFIDENTIAL]** of all car rental reservations with Avis and Budget result in cancellations or no-shows.

63. Over 80% of direct consumer reservations with Avis and Budget are made on the Websites. Consumers making reservations on the Avis and Budget Websites follow the same five-step process:

- (a) Step 1 – The consumer enters the desired rental location and rental dates. Any applicable Promotion Code (as described below) is also entered at this time.
- (b) Step 2 – The Website displays a list of available vehicle types for the requested location and dates and the associated daily Base Rate for each. The consumer is advised that additional charges will apply. The consumer selects the desired vehicle type by clicking on it.
- (c) Step 3 – The Website displays the Base Rate and all applicable Recovery Fees plus taxes for the selected vehicle type as well as the total estimated rental price, which is prominently displayed. The Website also displays a list of available Options for the selected vehicle (GPS, child car seat, etc.) with the daily rates for each. The consumer selects any desired Options by selecting them and clicking 'Continue' or 'Next'.
- (d) Step 4 – The Website again displays the Base Rate and all applicable Recovery Fees and adds any Options that have been selected. The total estimated rental price is updated accordingly and prominently displayed. The consumer can now confirm the reservation by entering his or her name and email address.
- (e) Step 5 – A reservation confirmation page is displayed, again with the Base Rate, Options, all applicable Recovery Fees, taxes and the estimated total rental price. At the same time, an automated email message is sent to the consumer confirming the details of the reservation including the Base Rate, selected Options, the applicable Recovery Fees and the estimated total rental price.

64. As detailed above, the Recovery Fees applicable to any car rental are displayed or disclosed to the consumer at least four times in the online reservation process – on the web pages displayed at Steps 3, 4 and 5 and in the reservation confirmation email.

65. Reservations made on the Mobile Apps follow a similar process which discloses all applicable Recovery Fees both within the Mobile Apps and in a reservation confirmation email.

66. These multiple disclosures of the Recovery Fees during the reservation process all occur well before the consumer has arrived at the rental location and signed a rental agreement. On average, customers of Avis and Budget reserve their car rentals approximately **[CONFIDENTIAL]** in advance of the pick-up date. Further, those customers who show up for their rentals and do not cancel will be shown all applicable Recovery Fees again on the rental agreement they must sign to complete their rental purchase. In total, most Avis and Budget customers will have been advised of the Recovery Fees applicable to their rental on at least five separate occasions before completing a purchase.

Recovery Fees are Known to the Average Consumer

67. Over **[CONFIDENTIAL]** of rentals from Budget and Avis are by repeat consumers of Avis and/or Budget. The percentage of rentals by customers who have rented from any car rental company is even higher.

68. As an experienced car renter, the average consumer will be aware of Recovery Fees, which have been widely used by North American car rental companies for at least the last 15 years.

Base Rate Advertising

69. Price advertising in the Canadian car rental industry is focused on Base Rates. Accordingly, to the extent that companies in the car rental industry run promotions on price, those promotions generally apply only to Base Rates (**Base Rate Promotions**).

70. In order to remain competitive Avis and Budget use Base Rate Promotion advertising, which is prevalent throughout the industry. At all times, the representations made by Avis and Budget with respect to such Base Rate Promotions have been consistent with industry practice. By targeting Base Rates in their pricing promotions, Avis and Budget have always sought to provide consumers with all the relevant information by advertising on a level playing field with their competitors so that consumers can make educated purchase decisions based on price.

71. Base Rate advertising is easy for consumers to understand and assess. Contrary to the Commissioner's position, the Canadian Respondents' practice of offering fixed Base Rate Promotions (**Fixed Rate**) and percentage-off Base Rate Promotions (**Percentage-Off**) is not deceptive. Rather, by advertising their promotions in the framework of Itemized Pricing, the Canadian Respondents provide consumers with a clear reference point for the savings being offered. The constant, whether a promotion is available or not, is the fact that Recovery Fees are a separate, and in most cases unchanging, component of the overall price of the car rental.

72. In order to implement Base Rate Promotions across numerous locations and dates, Avis and Budget create promotional codes (**Promotion Codes**) that will override the systems that normally calculate the Base Rate based on actual existing supply and demand conditions. As all Fixed Rate and Percentage-Off promotions require the use of a Promotion Code, consumers must use the reservation system and enter or provide the Promotion Code in order to take

advantage of a Base Rate Promotion. The Promotion Codes also allow the Canadian Respondents to track precisely how many rentals are generated by each promotion.

73. During the period from March 2009 through to the present, Avis and Budget collectively ran 26 Fixed Rate promotions, 17 of which appeared only on the Websites. In total, these Fixed Rate promotions generated [CONFIDENTIAL] rentals. During the same period, Avis and Budget completed more than [CONFIDENTIAL] rental transactions in Canada. Accordingly, the rentals generated from these campaigns accounted for approximately 0.05% of Avis' and Budget's collective rentals during the period.

74. During the period from March 2009 through to the present, Avis and Budget collectively ran about 49 Percentage-Off promotions, 25 of which appeared only on the Websites or in other electronic advertising. In total, these Percentage-Off promotions generated approximately [CONFIDENTIAL] car rentals, accounting for approximately 0.4% of Avis' and Budget's collective rentals in the relevant period.

Base Rate Promotions Not False or Misleading

75. The Canadian Respondents deny that any of Avis' or Budget's Base Rate Promotion advertising is false or misleading in a material respect pursuant to section 74.01 of the Act. Contrary to the Commissioner's allegations, the representations in Avis' and Budget's advertisements of Base Rate Promotions were true at the time they were made. Consumers taking advantage of these promotions were able to rent cars at the fixed Base Rate or discounted Base Rate advertised.

76. At all material times, Avis and Budget disclosed the Recovery Fees in conjunction with their Base Rate Promotions. In print media advertisements, a traditional disclaimer directs the

reader to consult terms and conditions where they are notified that additional fees or surcharges apply. In Website, Mobile App and electronic message advertisements, links are provided which when clicked or tapped direct the consumer within seconds to terms and conditions and other information, which make it clear that Recovery Fees are extra.

77. Further, the average consumer of the Canadian Respondents is a repeat customer and an experienced car renter who knows that the promotions offered in such advertisements apply to Base Rates, and not to Recovery Fees or Options.

Not Misleading In a Material Respect

78. In the alternative, if Avis' and Budget's Base Rate Promotion advertisements are false or misleading (which is denied), they are not false or misleading in a material respect as required under section 74.01. Even if the average consumer was misled by the initial display of a particular Base Rate, that misunderstanding is either immediately clarified or corrected in the reservation process. As discussed above, the total price of the rental, including the Recovery Fees, is disclosed to the consumer on multiple occasions through that process, prior to purchase. Accordingly, any initial misleading impression would not be material nor would it influence the average consumer's eventual decision to purchase car rental services.

79. The Canadian Respondents deny the Commissioner's allegations that specific Base Rate Promotions cited at paragraphs 28-31, 34-35, 38-39, 42-44, 47-48, 51-54, 57-58, 61-64 and 67-72 of the Application are false or misleading in a material respect. The Canadian Respondents' responses to these allegations are detailed in Schedule "A" to this Response.

Nature of Recovery Fees

Description of Recovery Fees is Not Misleading

80. Contrary to the allegations at paragraphs 22-24, 32-33, 36-37, 40-41, 45-46, 55-56, 59-60 and 65-66 of the Application, the Canadian Respondents do not misrepresent the Recovery Fees as taxes, surcharges or fees that they are mandated by governments or other authorized agencies to collect from consumers. Other than in response to individual customer enquiries, the Respondents do not generally make any representations as to the purpose of the Recovery Fees.

81. Representations about the Recovery Fees made by the Canadian Respondents in their day-to-day communications with consumers are primarily limited to the names and amounts of the individual Recovery Fees.

82. The names of the Recovery Fees do not in themselves suggest that the Canadian Respondents are required to collect these fees from consumers. The names of two of the Recovery Fees, including the Concession Recovery Fee, which accounts for more than half of the Recovery Fees collected by the Canadian Respondents, contain the word "recovery", suggesting they are amounts recovered by the Respondents from consumers, not mandated to be collected and remitted to an authority.

83. The names of most of the other recovery fees, including Customer Facility Charge, Vehicle License Fee, Parking Surcharge and Environmental Fee, convey no information regarding whether or not they are mandated to be collected from consumers and create no general impression one way or the other.

84. Even those Recovery Fees that have contained the word "tax" in their names from time to time do not create the general impression asserted by the Commissioner. The use of the word "tax" does not, on its own, connote a charge that is mandated to be collected *from consumers*. It can equally refer to a tax charged to a seller that is passed on to consumers. At most, the use of the word "tax" in the names of certain of the Recovery Fees from time to time was ambiguous, not misleading.

85. In any event, it is not uncommon for businesses to directly pass on to their customers taxes and other government-imposed fees that those businesses are required to pay. For example, the Air Conditioner Excise Tax that is incorporated in the Canadian Respondents' Vehicle Licensing Fee is a federal tax imposed on automobile manufacturers that is passed on by those manufacturers to Avis and Budget as a separate charge on their automobile purchases. This same Air Conditioner Excise Tax is also passed on as a separate charge by automobile dealerships in Canada to purchasers of automobiles.

86. The Commissioner appears to take the extraordinary position in paragraphs 36, 45, 59 and 65 of the Application that even mentioning the Recovery Fees together with, or adjacent to, provincial or federal sales taxes conveys the general impression that the Recovery Fees are required to be collected from consumers by the Respondents. The Commissioner maintains this position even when the sales taxes and Recovery Fees are listed under separate headings or subheadings.

87. Considered collectively, the Commissioner's allegations amount to an assertion that, regardless of how they are named, displayed or described, any fees or surcharges that are additional to the Base Rate and Options necessarily convey the general impression that they

are taxes or fees that the Canadian Respondents are mandated by governments or other authorities to collect from consumers. This position is untenable.

Nature of Recovery Fees is Not Material

88. Even if the characterization and method of display of the Recovery Fees conveys a general impression that is misleading as alleged by the Commissioner, it is not misleading in a material respect.

89. The total price of a car rental is the same irrespective of the consumer's understanding of the rationale for charging Recovery Fees. It is simply immaterial to the average consumer whether the Recovery Fees are mandated to be collected from consumers or collected from consumers in order to recoup the costs of mandated charges paid or payable by the Canadian Respondents.

Section 74.05 Not Contravened

90. The Canadian Respondents' advertising of Base Rate Promotions does not contravene section 74.05 of the *Act*. Both the Fixed Rate advertisements and the Percentage-Off advertisements promoted Base Rate prices or Base Rate discounts at which the Canadian Respondents actually sold their services. Any time a consumer supplied the appropriate advertised Promotion Code, the Canadian Respondents applied the related Fixed Rate or Percentage-Off adjustment to the Base Rate and provided car rental services at that adjusted Base Rate.

91. As discussed above, the fact that such Base Rate Promotions advertising related to Base Rates only was disclosed to consumers through references to additional Recovery Fees, Options and taxes in printed disclaimers or in clickable links included on the Base Rate

Promotion advertisements. Further, the average consumer to whom the Base Rate Promotions were directed was familiar with car rental pricing and knew that these promotions apply to Base Rates only and that Recovery Fees, Options and taxes were extra.

92. Further, and in the alternative, to the extent any of the Canadian Respondents' Base Rate Promotion advertisements could be misinterpreted by consumers as applying to Recovery Fees, Options and taxes as well as Base Rates, which is not admitted but denied, such misinterpretation would be immediately corrected as soon as the consumer enters the Promotion Code and/or starts the reservation process. As discussed above, both the existence and amount of the Recovery Fees and Options are immediately and repeatedly disclosed to the consumer through the reservation process. Accordingly, even if one of the Canadian Respondents' Base Rate Promotion advertisements is found to be contrary to section 74.05(1), it is saved by section 74.05(2)(b).

93. As discussed in paragraphs PART III:21-PART III:23 above, section 74.05 can have no possible application to the U.S. Respondents because the U.S. Respondents did not supply any product for sale or rent in Canada during the period in question.

Respondents' Email Advertising is Not Reviewable Conduct Under Section 74.011

94. The Respondents have not breached subsections 74.011(1) or 74.011(2) of the *Act*. The Respondents specifically deny that they have sent or caused to be sent any false or misleading representations in the sender information, subject matter information, or electronic message that are false or misleading in a material respect.

95. The Percentage-Off advertisements in the electronic messages cited by the Commissioner promoted discounts off of Base Rates at which the Canadian Respondents

actually sold their services. The fact that such Percentage-Off advertising related to Base Rates only was disclosed to consumers by the reference to additional Recovery Fees, Options and taxes in clickable links included in the electronic messages.

96. Moreover, the average consumer to whom these electronic messages were directed is a repeat customer of Avis or Budget who is familiar with car rental pricing and knew that the Percentage-Off promotions applied to Base Rates only and that Recovery Fees, Options and taxes were extra. Accordingly, the Percentage-Off promotions in the electronic messages were not misleading.

97. Further, and in the alternative, to the extent any of the Percentage-Off promotions in these electronic messages created the general impression for consumers receiving these emails that the discounts applied to Recovery Fees, Options and taxes as well as Base Rates, which is not admitted but denied, such an incorrect impression would have been quickly corrected as soon as the consumer clicked on the "Reserve Now" link in the email and started the reservation process.

98. As discussed above, both the existence and amount of the Recovery Fees and Options are immediately and repeatedly disclosed to the consumer through the reservation process before any purchase decision is made. Accordingly, even if one or more of the Percentage-Off advertisements in the electronic messages sent to consumers by the Respondents was false or misleading, which is not admitted but denied, it was not false or misleading in a material respect as it would have had no influence on the average consumer's purchase decision.

Subsection 74.011(1) is Unconstitutional

99. In the alternative, to the extent the Tribunal finds that the Respondents engaged in reviewable conduct under subsection 74.011(1) of the *Act*, the Respondents plead that subsection 74.011(1) is constitutionally invalid as it places unauthorized and unjustified limits on their freedom of expression as guaranteed by section 2(b) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11*. Specifically, subsection 74.011(1) places unauthorized and unjustified limits on freedom of expression in that it applies over-broadly to all false or misleading representations regardless of whether they are false or misleading *in a material respect*.

100. The Respondents plead that subsection 74.011(1) should be struck out as it is unconstitutional. In the alternative, the Respondents plead that a requirement should be read into subsection 74.011(1) that a false or misleading representation in the subject matter information of an electronic message must be false or misleading *in a material respect* to constitute reviewable conduct.

Administrative Monetary Penalties Not Warranted

101. The Application seeks an order requiring payment of an administrative monetary penalty in the maximum amount of \$10,000,000 by each of Avis, Budget, and the U.S. Respondents. The Respondents deny that such penalties are warranted in this case.

102. The Respondents have not engaged in reviewable conduct under the *Act* and therefore are not liable for administrative monetary penalties.

103. In any event, the Respondents deny each of the alleged aggravating factors on which the Commissioner relies at paragraph 76 of the Application, and in particular:

- (a) The national presence and size of the Canadian Respondents cannot be relied upon to order an administrative monetary penalty against the U.S. Respondents, who are completely absent from the jurisdiction;
- (b) The representations are not materially misleading. As such, the fact of their having been made frequently and over an extended period of time, even if proven, does not justify an administrative monetary penalty;
- (c) To the extent that the representations are found to be misleading, which is denied, self-correction will completely remedy the conduct.

Reliance on Commissioner's Acquiescence

104. The Respondents have openly charged Recovery Fees and promoted Fixed Rate and Percentage-Off offers for at least the past 15 years, as have others in the car rental industry in Canada. Only in 2013 did the Commissioner first raise questions with this practice.

105. The Respondents have structured their pricing practices, and indeed their competitive approach to the market, with an understanding that these strategies were known to, and not contested by, the Commissioner. As a result, the Respondents have integrated these practices into their business models to such an extent that to reverse them will cause hardship to the Respondents in terms of lost opportunity and loss of competitive advantage.

106. The Commissioner has a statutory duty under section 10 of the *Act* to conduct an inquiry whenever he has reason to believe that grounds exist for the making of an order under Part VII.1 of the *Act*. Nevertheless, the Commissioner chose not to conduct an inquiry into, or commence enforcement proceedings regarding, the subject-matter of this application prior to 2013.

107. The Canadian Respondents have relied on the Commissioner's non-action against them and any other car rental company that engaged in similar conduct to their detriment. As such, the Commissioner is estopped from pursuing administrative monetary penalties in respect of the Canadian Respondents' past conduct and must be deemed to have waived his rights to do so.

108. In the circumstances, there is no basis upon which the Tribunal should grant an order requiring the Respondents to pay any administrative monetary penalties, let alone the maximum allowable penalties totalling \$30 million.

Consumers Have Suffered No Loss

109. The Respondents reject the Commissioner's request that the Respondents reimburse current and former customers as set out at paragraph 1(e) of the Application. Customers of Avis and Budget have suffered no loss. They received the services and products they sought at prices that they understood and agreed to pay. Accordingly, there is no reimbursement to be made.

PART V: RELIEF SOUGHT

110. The Respondents request that the Competition Tribunal dismiss the Commissioner's application with costs to the Respondents.

DATED at Toronto, this 29th day of June, 2015

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SCHEDULE "A"

RESPONSES TO SPECIFIC ADVERTISEMENTS CITED BY THE COMMISSIONER

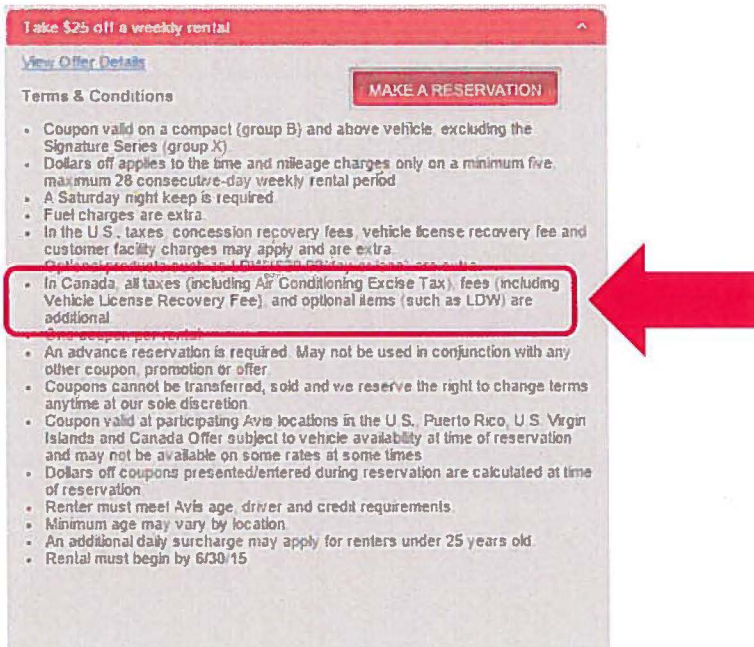
Examples of Avis' Advertisements Are Not Misleading

No False or Misleading Newspaper Ads

1. Contrary to the allegations at paragraphs 28-29 of the Application, the Avis advertisements appearing in the Toronto Metro Newspaper on or about March 8, March 22 and April 5, 2011 are not false or misleading in a material respect.

2. It is true that it was possible for a consumer to obtain a 2-day weekend rental "starting at \$55" or to obtain additional days "from \$21" per day because the Base Rates of applicable vehicles started at those prices. Additional fees were not hidden in the reservation process: the advertisement neither states nor implies that the consumer does not need to pay taxes or Recovery Fees. To the contrary, as is apparent in the example provided at paragraph 28 of the Application, the advertisement directs the reader to visit "Avis.ca/metro" and clearly states that "Terms & Conditions apply".

3. As an example, when a user clicks the "Terms & Conditions" link appearing in a promotion on Avis.ca, a pop-up message immediately appears so that the user is made aware of the Recovery Fees that will apply to the promotion:



4. The average consumer of car rental services would have known that the advertised rates only applied to Avis' Base Rates and/or that Recovery Fees would apply.

5. In order to take advantage of this promotion, the consumer would be required to enter a Promotion Code and complete the reservation process. Both the existence and amount of the Recovery Fees and Options are immediately and repeatedly disclosed to the consumer through the reservation process before any purchase decision is made. Accordingly, even if this promotion was false or misleading, which is not admitted but denied, it was not false or misleading in a material respect.

6. These advertisements appeared three times over a period of 28 days and generated a total of [CONFIDENTIAL] rentals for Avis.

No False or Misleading Promotional Flyers

7. Contrary to the allegations at paragraphs 30-31 of the Application, the promotional, non-addressed Avis postcard mailed in Edmonton on or about September 1, 2009 is not false or misleading in a material respect.

8. It is true that it was possible for a consumer to rent a car "starting from \$14.99" per weekend day because the Base Rates of applicable vehicles started at those prices. Additional fees were not hidden in the reservation process: the postcard neither states nor implies that the consumer does not need to pay taxes or Recovery Fees. To the contrary, the reader is directed to the reverse side of the postcard to review the Terms and Conditions listed, which disclose applicable additional charges.

9. The average consumer of car rental services would have known that the advertised rates applied to Avis' Base Rates and/or that Recovery Fees would apply. In order to take advantage of this promotion, the consumer would be required to enter a Promotion Code and complete the reservation process. Both the existence and amount of the Recovery Fees and Options are immediately and repeatedly disclosed to the consumer through the reservation process before any purchase decision is made. Accordingly, even if this promotion was false or misleading, which is not admitted but denied, it was not false or misleading in a material respect.

10. The postcard promotion was mailed only once and generated a total of **[CONFIDENTIAL]** rentals for Avis.

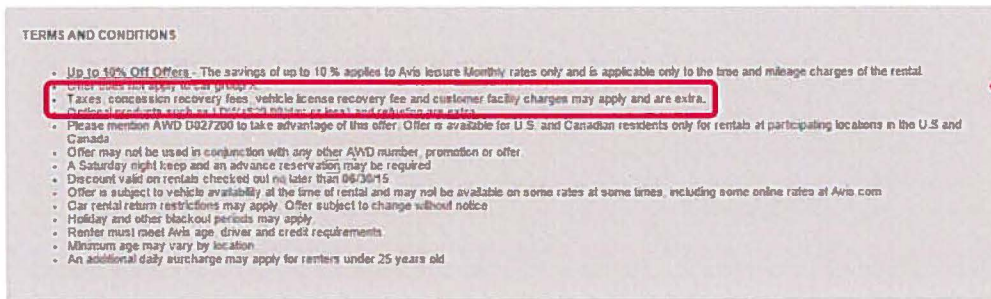
No False or Misleading Website Representations

11. Contrary to the allegations at paragraphs 34-35 of the Application, Avis' representations on its Website on or around June 5, 2012 are not false or misleading in a material respect.

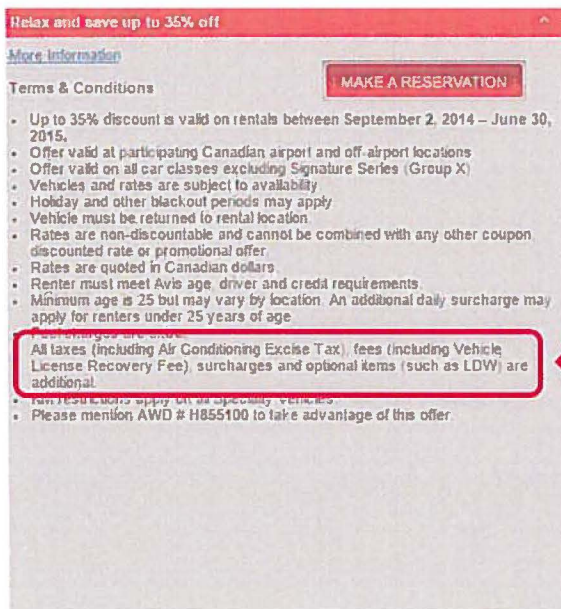
12. As represented, it is true that it was possible for a consumer to rent a vehicle for \$19.99 per weekend day because that price was the Base Rate for applicable vehicles. It is also true that it was possible for a consumer to obtain a weekly or weekend rental for 35% off of the Base Rate of an applicable vehicle. Additional fees were not hidden in the reservation process. The Fixed Rate advertisement neither states nor implies that the consumer does not need to pay taxes or Recovery Fees. In addition, the 35% off offer neither states nor implies that the 35% discount is applicable to taxes or Recovery Fees. To the contrary, each advertisement directs the visitor to two web links: "View Offer Details" and "Terms & Conditions".

13. The example of Avis' Website representations provided at paragraph 34 of the Application is incomplete because it does not include excerpts from these two web links, which form a part of the representations. The complete Website representations detail the additional charges that may apply to each offer. Absent the complete representations, the Commissioner's example is out of context.

14. Had the Commissioner included screenshots of the two web links, it would have been apparent that the consumer would have been made fully aware of all of the additional charges that would have applied. For example, when a consumer clicks on “View Offer Details” on promotions appearing on the Website, the following information is displayed:



15. Similarly, when a consumer clicks on a link to “Terms & Conditions” in relation to promotions appearing on the Website, a pop-up window discloses all additional surcharges and Recovery Fees:



16. Regardless of the Commissioner's out of context excerpts, it is clear that no additional fees were hidden in the reservation process. As shown in the example provided at paragraph 36 of the Application, after clicking on the promotion, within seconds of selecting his or her vehicle of choice, the consumer is taken to a screen where the "Estimated Total", including all applicable taxes and Recovery Fees, is displayed in a summary box.

17. The average consumer of car rental services would have known that the rates advertised on Avis' homepage applied only to Base Rates and/or that Recovery Fees would apply. In order to take advantage of this promotion, the consumer would be required to enter a Promotion Code and complete the reservation process. Both the existence and amount of the Recovery Fees and Options are immediately and repeatedly disclosed to the consumer through the reservation process before any purchase decision is made. Accordingly, even if this promotion was false or misleading, which is not admitted but denied, it was not false or misleading in a material respect.

18. The \$19.99 per weekend day promotion appeared on Avis.ca from March 19, 2012 through June 30, 2012 and generated a total of [CONFIDENTIAL] rentals for Avis. The 35% off promotion appeared on Avis.ca from January to July 15, 2012 and from August 19 to December 31, 2012.

No False or Misleading Representations on Options

19. Contrary to the allegations at paragraphs 38-39 and 42 of the Application, Avis' representations on its Website regarding the rental of a GPS Navigation Unit and/or additional protections/coverages were not false or misleading in a material respect. As represented, it is true that it was possible for a consumer to obtain a GPS Navigation unit for \$14.95 per day and additional protections/coverages for the prices listed on Avis' Website because these were the rental prices of these Options.

20. Additional fees were not hidden in the reservation process: there is no suggestion on the Website that the customer does not need to pay taxes or Recovery Fees in relation to these Options. The only Recovery Fee payable on Options such as GPS devices or car seats is the CRF, which is only payable if the customer is renting at one of Avis' 39 airport locations. Renters using any of Avis' other 162 locations would pay no Recovery Fee on selected Options. The CRF, which applies as a percentage of the total rental amount, applies because Avis and Budget must pay fees to the airport authority based on all concessionable revenues, and the rental income generated from the rental of Options such as GPS devices or car seats is considered concessionable revenue under the terms of the airport concession agreements. As with all aspects of the reservation process, applicable taxes and Recovery Fees are updated in real time in the "Estimated Total" summary box as soon as a GPS device or additional protections/coverages are selected so that the customer is fully aware of the estimated cost of the rental; there are no hidden fees.

21. The average consumer of car rental services would have known that the representations related to the Options only related to the rental price of those Options and/or that Recovery Fees would apply.

No False or Misleading Mobile App Representations

22. Contrary to the allegations at paragraphs 43-44 of the Application, Avis' representations in its Mobile App on or around December 3, 2012 are not false or misleading in a material respect.

23. As represented, it is true that it was possible for a consumer to obtain a rental "from \$57.99" because the Base Rates of small to full size vehicles started at that price. Additional fees were not hidden in the reservation process: the representation neither states nor implies that the consumer does not need to pay taxes or Recovery Fees.

24. Furthermore, the examples of Avis' Mobile App provided at paragraphs 43 and 45 of the Application are incomplete because they do not display the "Car Rental Estimate" bar, which forms a part of the representation and, when tapped, shows the full details of the Base Rate and additional charges. Absent the complete representation, the Commissioner's example is presented out of context.

25. Had the Commissioner included a screen shot of the "Car Rental Estimate" bar, it would have been apparent that the consumer would have been made fully aware of all of the additional charges that would have applied. For example, when a user clicks on this feature in Avis' Mobile App, all of the details of the Recovery Fees are available with one simple click:



26. The average consumer using the Mobile App would know that the rates appearing at the top of the screen in the Mobile App only apply to Avis' Base Rates and/or that Recovery Fees would apply. Both the existence and amount of the Recovery Fees and Options are immediately and repeatedly disclosed to the consumer through the reservation process before any purchase decision is made. Accordingly, even if this promotion was false or misleading, which is not admitted but denied, it was not false or misleading in a material respect.

No False or Misleading Oral Representations

27. Contrary to the allegations at paragraphs 47-48 of the Application, Avis' representations in its on-hold call scripts that were used in June 2011 are not materially false or misleading. Avis played this on-hold call script in its locations across Canada, excluding Winnipeg, Manitoba and Ottawa, Ontario.

28. As represented, it is true that it was possible for a consumer to rent a Fiat 500 "from \$55 per day" because the Base Rate for the Fiat 500 was that price. Additional fees were not hidden in the reservation process: the call script neither states nor implies that the consumer does not need to pay taxes or Recovery Fees. To the contrary, the listener was prompted to visit Avis.ca or speak to an Avis representative for more details. Avis customer service representatives are trained to advise callers of the applicable Base Rate and total rental fees including taxes and Recovery Fees.

29. The average consumer of car rental services would have known that the rate in the call script only applied to Avis' Base Rate for the Fiat 500 and/or that Recovery Fees would apply. In order to take advantage of this promotion, the consumer would be required either to speak with an Avis representative or visit the Website and enter a Promotion Code and complete the reservation process. Both the existence and amount of the Recovery Fees and Options are immediately and repeatedly disclosed to the consumer through the reservation process before any purchase decision is made. Accordingly, even if this promotion was false or misleading, which is not admitted but denied, it was not false or misleading in a material respect.

30. This promotion in the on-hold call script aired from May 2011 to December 2011 and generated a total of [CONFIDENTIAL] rentals.

Percentage-Off Advertisements in Avis' Electronic Messages

31. Contrary to the allegations at paragraphs 51-52 of the Application, Avis' electronic message offering up to 25% off a weekend rental on or around August 26, 2014 is not false or misleading in a material respect.

32. It is true that it was possible for a consumer to save 25% off a weekend rental because the Base Rate of the applicable vehicle was reduced by that percentage. Additional fees were not hidden in the reservation process: the offer neither states nor implies that the 25% discount is applicable to taxes or Recovery Fees. To the contrary, the offer included a disclaimer for the consumer to "See below for terms and conditions".

33. The example of Avis' email representation provided at paragraph 51 of the Application is incomplete because it does not include the terms and conditions which were listed below. These terms and conditions formed a part of the representation and detailed the additional charges that applied to the offer. Absent the complete representation, the Commissioner's example is out of context.

34. Had the Commissioner included the entire screenshot of the email and the below terms and conditions, it would have been apparent that the consumer would have been made fully aware that the 25% off offer applied to Base Rates only, and not to any Recovery Fees. Regardless of the Commissioner's out of context excerpts, it is clear that no additional fees were hidden in the reservation process. As shown in the example provided at paragraph 51 of the Application, the promotion included a "Reserve Now" link. Once the "Reserve Now" link was clicked, the consumer would have been brought into the online reservation process.

35. In order to take advantage of this promotion, the consumer would be required to enter a Promotion Code and complete the reservation process. Both the existence and amount of the Recovery Fees and Options are immediately and repeatedly disclosed to the consumer through

the reservation process before any purchase decision is made. Accordingly, even if this promotion was false or misleading, which is not admitted but denied, it was not false or misleading in a material respect.

Examples of Budget's Advertisements Are Not Misleading

No False or Misleading Newspaper Ads

36. Contrary to the allegations at paragraphs 53-54 of the Application, the Budget advertisements appearing in the Toronto Metro Newspaper in or around April and May 2013 are not false or misleading in a material respect.

37. As represented, it is true that it was possible for a consumer to obtain a rental for \$19.95 per weekend day because the Base Rate of sub-compact vehicles started at that price. Additional fees were not hidden in the reservation process: the advertisement neither states nor implies that the consumer does not need to pay taxes or Recovery Fees. To the contrary, the advertised price contains an asterisk which directs the reader to the terms and conditions that disclose applicable taxes and Recovery Fees.

38. The average consumer of car rental services would have known that the advertised rates only applied to Avis' Base Rates and/or that Recovery Fees would apply. In order to take advantage of this promotion, the consumer would be required to enter a Promotion Code and complete the reservation process. Both the existence and amount of the Recovery Fees and Options are immediately and repeatedly disclosed to the consumer through the reservation process before any purchase decision is made. Accordingly, even if this promotion was false or misleading, which is not admitted but denied, it was not false or misleading in a material respect.

39. These advertisements appeared eight times in Toronto Metro Newspaper between April 18 and June 30, 2013, in conjunction with a wider campaign consisting of other print

advertisements, digital spots at Union Station and online advertisements on Budget.ca, Facebook and Twitter. This campaign generated a total of [CONFIDENTIAL] rentals for Budget.

No False or Misleading Website Representations

40. Contrary to the allegations at paragraphs 57-58 of the Application, Budget's representations on its Website on or around April 25, 2012 are not false or misleading in a material respect.

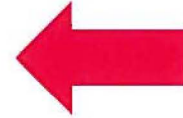
41. As represented, it is true that it was possible for a consumer to rent a vehicle for \$19 per weekend day or a midsize vehicle for \$149 per week because those prices were the Base Rates for the applicable vehicles. It is also true that it was possible for a consumer to save up to 35% on a car rental because the Base Rate would have been reduced by that amount. Additional fees were not hidden in the reservation process. The Fixed Rate advertisement neither states nor implies that the consumer does not need to pay taxes or Recovery Fees. In addition, the Percentage-Off offer neither states nor implies that the 35% discount is applicable to taxes or Recovery Fees. To the contrary, each advertisement directs the visitor to "learn more" via a web link.

42. The example of Budget's Website representations provided at paragraph 57 of the Application is incomplete because it does not include excerpts from these web links, which form a part of the representation. The complete Website representation details the additional charges that may apply to each offer. Absent the complete representation, the Commissioner's example is out of context.

43. Had the Commissioner included screenshots of these "learn more" web links, it would have been apparent that the consumer would have been made fully aware of all of the additional charges that would have applied. For example, when a consumer clicks the "learn more" link appearing in promotions on Budget.ca, the following information is displayed:

Terms and Conditions:

- Coupon valid on all cars excluding the Signature Series (group X)
- Dollars off applies to the time and mileage charges only on a minimum five, maximum 28 consecutive-day weekly rental period.
- A Saturday night keep is required. Fuel charges are extra.
- In the U.S., taxes, concession recovery fees, vehicle license recovery fee and customer facility charges may apply and are extra.
- In Canada, all taxes (including Air Conditioning Excise Tax), fees (including Vehicle License Recovery Fee), and optional items (such as LDW) are additional.
- One coupon per rental. An advance reservation is required.
- May not be used in conjunction with any other coupon, promotion or offer.
- Coupons cannot be transferred, sold and we reserve the right to change terms anytime at our sole discretion.
- Coupon valid at participating Budget locations in the contiguous U.S., Canada, Puerto Rico, and U.S. Virgin Islands.
- Offer subject to vehicle availability at time of reservation and may not be available on some rates at some times.
- Dollars off coupons presented/entered during reservation are calculated at time of reservation. Renter must meet Budget age, driver and credit requirements.
- Minimum age may vary by location.
- An additional daily surcharge may apply for renters under 25 years old.
- Rental must begin by 6/30/15.



44. The average consumer of car rental services would have known that the rates advertised on Budget's homepage applied only to Base Rates and/or that Recovery Fees would apply. In order to take advantage of this promotion, the consumer would be required to enter a Promotion Code and complete the reservation process. Both the existence and amount of the Recovery Fees and Options are immediately and repeatedly disclosed to the consumer through the reservation process before any purchase decision is made. Accordingly, even if this promotion was false or misleading, which is not admitted but denied, it was not false or misleading in a material respect.

45. The 35% off promotion appeared on Budget.ca until July 15, 2012 and from August 19 to December 31, 2012, generating a total of [CONFIDENTIAL] rentals.

No False or Misleading Representations on Options

46. Contrary to the allegations at paragraphs 61 and 62 of the Application, Budget's representations on its Website regarding various rental Options were not false or misleading in a material respect. As represented, it is true that it was possible for a consumer to obtain a GPS Navigation unit for \$14.95 per day, a child safety seat for \$13, a loss damage waiver for \$25.95 per day, personal accident insurance for \$7.99 per day and/or roadside safety assistance for \$6.99 because these were the actual rental prices for these Options.

47. Additional fees were not hidden in the reservation process of offering these Options: there is no suggestion on the Website that the customer does not need to pay taxes or

Recovery Fees in relation to these Options. As noted above with respect to Avis' rental Options, the only Recovery Fee payable on the Options offered by Budget is the CRF, which is only payable if the customer is renting at one of Budget's 29 airport locations. A Budget customer renting at any of its other 267 locations would not pay any Recovery Fees on any selected Options. As with all aspects of the reservation process, the applicable taxes and Recovery Fees are updated in real time in the "rental summary" box as soon as an Option is selected so that the customer is fully aware of the estimated cost of the rental; there are no hidden fees.

48. The average consumer of car rental services would have known that the representations related to the Options only related to the rental price of those Options and/or that additional surcharges would apply.

No False or Misleading Mobile App Representations

49. Contrary to the allegations at paragraphs 63-64 of the Application, Budget's representations in its Mobile App on or around June 10, 2014 are not false or misleading in a material respect.

50. As represented, it is true that it was possible for a consumer to rent a car "from \$50.00" because the Base Rates for small to full size vehicles started at that price. Additional fees were not hidden in the reservation process: the representation neither states nor implies that the consumer does not need to pay taxes or Recovery Fees. To the contrary, prior to making the reservation, the consumer is shown the applicable Recovery Fees and taxes that apply and has the choice of whether or not to continue.

51. Furthermore, as shown in the example of Budget's Mobile App provided at paragraph 65 of the Application, all of the details of the Base Rate, Recovery Fees and taxes are accessible to the user with a simple tap of the "Car Rental Estimate" bar, which forms a part of the representation. Therefore, the average consumer of car rental services would know that the

rates appearing at the top of the screen in the Mobile App only apply to Budget's Base Rates and/or that Recovery Fees would apply.

No False or Misleading Representations about Options on the Mobile App

52. Contrary to the allegations at paragraphs 67-68 of the Application, Budget's representations at Step 5 of its Mobile App regarding various Options are not false or misleading in a material respect. As represented, it is true that it was possible for a consumer to obtain a GPS Navigation unit for \$14.95 per day, or a child safety seat for \$13, because these were the actual rental prices for these Options.

53. Additional fees were not hidden in the reservation process of offering these Options: there is no suggestion in the Mobile App that the customer does not need to pay taxes or Recovery Fees in relation to these Options. As mentioned above, the only Recovery Fee applicable to such optional products is the CRF, which is only payable if the consumer is renting at an airport location. Any applicable taxes and Recovery Fees are updated in real time in the "Estimated Total" appearing at the bottom of the mobile screen as soon as an Option is selected.

54. The average consumer using the Mobile App would have known that the representations on the Mobile App in relation to the Options only related to the rental price of those Options and/or that Recovery Fees would apply. Both the existence and amount of the Recovery Fees and Options are immediately and repeatedly disclosed to the consumer through the reservation process before any purchase decision is made. Accordingly, even if this representation was false or misleading, which is not admitted but denied, it was not false or misleading in a material respect.

No False or Misleading Television Commercial

55. Contrary to the allegations at paragraphs 69-70 of the Application, the Budget television commercials which aired in or around March and April 2012 are not false or misleading in a material respect.

56. It is true that it was possible for a consumer to rent a car for \$19 per weekend day because that price was the Base Rate for the applicable vehicles. Additional fees were not hidden in the reservation process: the advertisement neither states nor implies that the consumer does not need to pay taxes or Recovery Fees. Furthermore, the consumer was directed to Budget.ca, where on the landing page he or she is shown the terms and conditions, which state the applicable taxes and Recovery Fees will apply.

57. The average consumer of car rental services would have known that the price in the commercial only related to the Base Rate and/or that Recovery Fees would apply. In order to take advantage of this promotion, the consumer would be required to enter a Promotion Code and complete the reservation process. Both the existence and amount of the Recovery Fees are immediately and repeatedly disclosed to the consumer through the reservation process before any purchase decision is made. Accordingly, even if this promotion was false or misleading, which is not admitted but denied, it was not false or misleading in a material respect.

58. The commercial aired on different Canadian television channels during a four-week period, generating a total of [CONFIDENTIAL] rentals for Budget.

No False or Misleading Oral Representations

59. Contrary to the allegations at paragraphs 71-72 of the Application, Budget's representations in its on-hold call scripts during June 2011 are not materially false or misleading. Budget played this on-hold call script in its locations across Canada.

60. As represented, it is true that it was possible for a consumer to rent a Chrysler 300 for \$57 per day because the Base Rate for the Chrysler 300 was that price. Additional fees were not hidden in the reservation process: the call script neither states nor implies that the consumer does not need to pay taxes or Recovery Fees. To the contrary, the listener was prompted to ask a Budget representative for more details. Budget customer service representatives are trained to advise callers of the applicable Base Rate and total rental fees including taxes and Recovery Fees.

61. The average consumer of car rental services would have known that the rate in the call script only applied to Budget's Base Rate for the Chrysler 300 and/or that Recovery Fees would apply. In order to take advantage of this promotion, the consumer would be required to enter a Promotion Code and complete the reservation process. Both the existence and amount of the Recovery Fees and Options are immediately and repeatedly disclosed to the consumer through the reservation process before any purchase decision is made. Accordingly, even if this promotion was false or misleading, which is not admitted but denied, it was not false or misleading in a material respect.

62. This on-hold call script generated a total of [CONFIDENTIAL] rentals for Budget.

Court File No. CT-2015-001

THE COMPETITION TRIBUNAL

THE COMMISSIONER OF COMPETITION

Applicant

- and -

AVISCAR INC. et al.

Respondents

**RESPONSE OF THE RESPONDENTS
TO THE AMENDED NOTICE OF APPLICATION**

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Lawyers for the Respondents

TAB D

A handwritten signature in blue ink, reading "Anton D. Herrera", is positioned above a horizontal line.

**This is Exhibit D to the Affidavit of
Derek Leschinsky
Affirmed 12 November 2015**

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE

FILED / PRODUIT
CT-2015-001
July 13, 2015

CT-2015-001

Guillaume Phancuf for / pour
REGISTRAR / REGISTRAIRE

OTTAWA, ONT.

35

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:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

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

Respondents

REPLY

A. Overview

1. The Commissioner of Competition (the "**Commissioner**") repeats and relies upon the allegations in his Amended Notice of Application, and except as hereinafter expressly admitted, denies the allegations in the Response. Unless otherwise indicated, defined terms in this Reply have the meaning ascribed to them in the Amended Notice of Application.
2. Contrary to the allegation in paragraph 1 of the Response, the Commissioner's application is not focused on the practice of charging fees and surcharges to consumers who rent passenger vehicles and associated products. The

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Commissioner's application is focused on the false or misleading representations the Respondents have made, and continue to make, to promote their passenger vehicles and associated products, as set out in the Commissioner's Amended Notice of Application.

B. Practices and Acts the Respondents Do Not Dispute

3. The Respondents do not dispute many allegations in the Amended Notice of Application. In particular, the Respondents do not dispute that they (or Aviscar Inc. and Budgetcar Inc.):
 - a. exclude Non-Optional Fees from representations they make to consumers to promote their passenger vehicles and associated products;
 - b. *can* but *choose not to* make representations to consumers that contain the total amount consumers will pay to rent a passenger vehicle or associated products;
 - c. display unattainably low prices, and that these unattainably low prices are the *first or only* prices a consumer sees when encountering promotional materials for the Avis and Budget brands of rental vehicles and associated equipment (see e.g., paragraphs 1, 5, 6, 63(b) and 78 of the Response);
 - d. exclude the Non-Optional Fees from representations about the price consumers must pay to rent the Avis and Budget brands of rental vehicles and associated products, which the Respondents acknowledge "vary by region and location" (see e.g., paragraph 39 and also paragraphs 42, 43, 44, 49, 54, 56 and 59 of the Response);
 - e. do *not* apply represented discounts to the total price a consumer must pay to rent the Avis and Budget brands of rental vehicles and associated products (see e.g., paragraphs 75, 76, 91 and 95 of the Response);

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- f. **choose** to impose their Non-Optional Fees on consumers to recoup part of their own cost of doing business (see e.g., paragraphs 38, 41, 48, 52, 55, 56 and 59 of the Response); and
 - g. **choose** the names they use to describe their Non-Optional Fees, including “Car tax”, “AC Excise Tax”, “surtaxe stationnement”, “surtaxe emplacement de prestige” and “taxe environnementale de l’Ontario” (see e.g., paragraphs 48, 50 and 57 of the Response).
- 4. Further and notwithstanding the denials contained in paragraphs 4 and 21 to 27 of the Response, the Parent Companies cannot dispute that they (or ABC Rental):
 - a. make representations to consumers in Canada about the prices of rental vehicles and associated products outside Canada (e.g., for locations in the United States) that exclude the same or similar Non-Optional Fees in a same or similar manner as is done with respect to Non-Optional Fees charged in Canada; and
 - b. supply rental vehicles and associated products to Canadian consumers who travel to locations outside Canada (e.g., to locations in the United States).
- 5. Further, and contrary to their denials in paragraphs 5, 7, 10, 11 and 89 of the Response that excluding Non-Optional Fees from price and discount representations influences consumer behaviour, the Respondents acknowledge elsewhere in their Response that this same practice confers a competitive advantage to parties adopting it, that maintaining these practices are necessary “[t]o remain competitive” and that “to reverse them will cause hardship to the Respondents in terms of lost opportunity and loss of competitive advantage” (see paragraphs 38, 70 and 105 of the Response). As such, the Respondents have acknowledged – through the pleas in paragraphs 38, 70 and 105 of the

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Response – that excluding Non-Optional Fees from their representations does indeed affect consumer behaviour, and their own belief that this is the case.

6. In addition, and as set out in paragraphs 22-24 of the Response, the Respondents do not deny that the Parent Companies direct, plan or control the Canadian operations of Aviscar Inc. and Budgetcar Inc. The Parent Companies only deny controlling the “day-to-day operations” of Aviscar Inc. and Budgetcar Inc. The Respondents further acknowledge at paragraph 24 of the Response that “Avis and Budget each have one director in common with the U.S. Respondents, use similar infrastructure and software in their day-to-day operations, and consult with employees of their affiliates”.

C. The Respondents’ False or Misleading Representations Are Material

7. Contrary to the allegations in the Response, including paragraphs 5, 7, 10, 11 and 89, the Respondents’ representations have a material impact on consumer behaviour, including consumer purchasing processes and decisions. In addition, other suppliers of rental vehicles and associated products, including for example some third party resellers, do not exclude non-optional fees from their representations, charge different non-optional fee amounts than the Respondents charge and/or use different language than the Respondents do to describe the non-optional fees they charge.

D. The Names the Respondents Use to Describe Their Non-Optional Fees to Consumers Create the General Impression That They Are Mandated by Third Parties

8. Contrary to allegations contained in their Response, including paragraphs 80-87, the names the Respondents use to describe their Non-Optional Fees to consumers, such as “Car tax”, “AC Excise Tax”, “surtaxe stationnement”, “surtaxe emplacement de prestige” and “taxe environnementale de l’Ontario”, and the grouping of Non-Optional Fees together with actual taxes, gives the general impression that the Non-Optional Fees are mandated by third parties,

such as governments and authorized agencies, that require rental car companies to collect such fees from consumers.

E. The Respondents Have Failed to Disclose Altogether Certain Non-Optional Fees

9. Contrary to the allegations contained in the Response, including paragraph 12, the Respondents have failed to disclose all Non-Optional Fees the Respondents exclude from their price and discount representations when consumers make a reservation and prior to purchase. In particular, until approximately February 2013 for their websites and late 2013 / early 2014 for their mobile applications, the Respondents did not disclose the Non-Optional Fees they charged for associated products, including additional insurance coverages, GPS devices and child seats.

F. Subsection 74.011(1) of the *Competition Act* is Constitutional

10. Contrary to the allegations contained in the Response, including paragraphs 99-100, subsection 74.011(1) of the *Competition Act* conforms to the *Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c. 11* (the "**Charter**").
11. Subsection 74.011(1) of the *Competition Act* does not place unjustified limits on freedom of expression and, in particular, is not overbroad. False or misleading representations in the sender information or subject matter information of an electronic message affect consumer behaviour, including, in particular, a consumer's decision to open (or not open) an electronic message and view its contents.
12. As such, subsection 74.011(1) of the *Competition Act* does not contravene the *Charter*. It is a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society.

G. The Doctrine of Estoppel is Unavailable

13. Contrary to the allegations contained in the Response, including paragraphs 104 to 108, the doctrine of estoppel is unavailable to the Respondents as its application would interfere with the positive obligations set out in paragraph 74.01(1)(a), section 74.05 and subsections 74.011(1) and (2) of *Competition Act*. In any event, the Respondents did not rely or did not rely reasonably on any action by the Commissioner to ground an estoppel. Indeed, as per the allegations contained in paragraph 107 of the Response, the Respondents do not even plead any positive action on the Commissioner that could properly give rise to an estoppel.

DATED AT Gatineau, this 13th day of July 2015.

"Original signed by"

John Pecman

Commissioner of Competition

DEPARTMENT OF JUSTICE CANADA

Competition Bureau Legal Services

Place du Portage, Phase 1

50 Victoria Street, 22nd Floor

Gatineau, QC K1A 0C9

Derek Leschinsky (LSUC: 48095T)

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Lawyers for the Commissioner of Competition

- 7 -

AND COPIES TO:

NORTON ROSE FULBRIGHT CANADA LLP

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Fax: (416) 216-3930

Kevin Ackhurst

Tel: (416) 216-3993

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AND TO:

The Registrar

Competition Tribunal

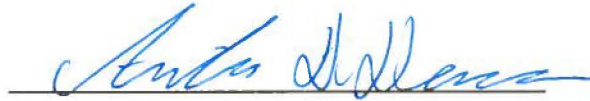
Thomas D'Arcy McGee Building

90 Sparks Street, Suite 600

Ottawa, Ontario

K1P 584

TAB E

A handwritten signature in blue ink, appearing to read "Andre Hollander", is written over a horizontal line.

**This is Exhibit E to the Affidavit of
Derek Leschinsky
Affirmed 12 November 2015**

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

[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

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

TAB F

A handwritten signature in blue ink, appearing to read "Arts & Sciences", is written over a horizontal line.

**This is Exhibit F to the Affidavit of
Derek Leschinsky
Affirmed 12 November 2015**

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

[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 Ackhurst
Christine Kilby
Christine Spence

September 25, 2015

Sent by E-mail

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

 **NORTON ROSE FULBRIGHT**

Barristers & Solicitors / Patent & Trade-mark Agents

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

Our reference
01012106-0047

Your Honour:

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

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*)

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

TAB G

A handwritten signature in blue ink, appearing to read "Ade di Marco", is written over a horizontal line.

**This is Exhibit G to the Affidavit of
Derek Leschinsky
Affirmed 12 November 2015**

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 :

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 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.

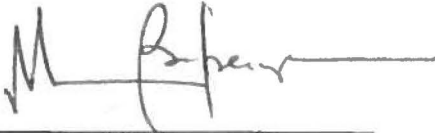
Communications including correspondence, e-mails, notes, reports and/or other documentation sent and received by me that were lost, destroyed and/or not archived, if any.

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

Denny 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

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 H

A handwritten signature in blue ink, appearing to read "Anita D. Wilson", is written over a horizontal line.

**This is Exhibit H to the Affidavit of
Derek Leschinsky
Affirmed 12 November 2015**

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*.

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

**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 ^{Parvippamy} ~~Parvippamy~~ ^{11th} ~~11th~~
the State of New Jersey, on October 9th,
2015.

Aida Aviles
Commissioner for Taking Affidavits

Ted M Kushner
Ted Kushner


AIDA AVILES
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

TAB I



Andre Adlman

**This is Exhibit I to the Affidavit of
Derek Leschinsky
Affirmed 12 November 2015**

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*.

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

**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.

Aida Aviles
Commissioner for Taking Affidavits

Ted M. Kushner
Ted Kushner

AIDA AVILES
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

TAB J

A handwritten signature in blue ink, appearing to read "Derek Leschinsky", is written over a horizontal line.

**This is Exhibit J to the Affidavit of
Derek Leschinsky
Affirmed 12 November 2015**



Ministère de la Justice
Canada

Department of Justice
Canada

Cote de sécurité – Security classification

Bureau de la concurrence
Services juridiques

Competition Bureau
Legal Services

Place du Portage, Tour I
22e étage
50, rue Victoria
Gatineau QC K1A 0C9

Place du Portage, Phase I
22nd Floor
50 Victoria Street
Gatineau, QC K1A 0C9

Date : 2015-10-20

Téléphone/Télécopieur
(819) 997-2837

Telephone/Fax
(819) 953-9267

20 October 2015

VIA EMAIL and FACIMILE

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

Dear Counsel:

Re: *Commissioner of Competition (“Commissioner”) vs Aviscar Inc., Budgetcar Inc. / Budgetauto Inc., Avis Budget Group, Inc., and Avis Budget Car Rental, LLC - CT-2015-001*

We enclose Requests to Admit of the Commissioner in the above-captioned proceeding, which is hereby served upon you. The Requests to Admit are pursuant to Rule 57 of the *Competition Tribunal Rules* and section 69 of the *Competition Act*.

As you will read, the Requests to Admit refer to each of the documents listed in the affidavits of documents sworn by Mr. William Boxberger and Mr. Ted Kushner. Accordingly, the Responses to the Requests to Admit must address each of the documents listed in the applicable affidavit of documents. In order to avoid the service of a voluminous document upon you, however, we have not listed in the enclosed Requests to Admit each document listed in the Respondents' various affidavits of documents.

— 2 —

As a practical matter, if a Respondent's response to a particular fact is identical, then that Respondent may provide one answer that applies to all the documents captured by that fact. For example, Aviscar Inc. is requested to admit, for the purposes of this proceeding only, the truth of the following fact:

"Aviscar Inc., or an agent 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."

If Aviscar Inc.'s answer to the foregoing is "yes" for all the documents listed in the Affidavit of Documents sworn by William Boxberger on October 9, 2015, then Aviscar Inc. need only indicate that the answer is "yes" with respect to each of the documents listed in the Affidavit of Documents sworn by William Boxberger on October 9, 2015. If a Respondent's response varies by document, the Response to the Request to Admit will obviously need to identify the Respondent's answer with respect to each document. In this regard, and for the sake of efficiency, please identify each document using the Bates number associated with each document.

We look forward to service of the Responses to the Requests to Admit within the time period prescribed by Rule 57(1) of the *Competition Tribunal Rules*.

Yours very truly,



Antonio DiDomenico

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: Aviscar Inc.

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.

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.

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.

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.

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 K

A handwritten signature in blue ink, appearing to read "Anko Willner", is written over a horizontal line.

**This is Exhibit K to the Affidavit of
Derek Leschinsky
Affirmed 12 November 2015**



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

November 6, 2015

Sent By E-mail and Facsimile

Mr. Derek Leschinsky
Mr. Antonio Di Domenico
Department of Justice Canada
Competition Bureau Legal Services
Place du Portage, Phase 1
50 Victoria Street
22nd Floor
Gatineau, Quebec K1A 0C9

Dear Sirs:

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

Please find enclosed our clients' Responses to your Requests to Admit dated October 20, 2015, which are hereby served upon you.

Yours very truly,

A handwritten signature in blue ink, appearing to read "D. Michael Brown", with a long horizontal flourish extending to the right.

D. Michael Brown

DMB/cd

Enclosures

Copies to: Christine Kilby / Kevin Ackhurst

DOCSTOR: 5343012

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 at nortonrosefulbright.com.

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 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

- 1 -

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

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P.O. Box 84

Toronto, Ontario M5J 2Z4

D. Michael Brown LSUC #: 38985U

Tel: 416.216.3962

Kevin Ackhurst LSUC#:41806E

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Tel: 416.216.1921

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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

- 1 -

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



NORTON ROSE FULBRIGHT CANADA LLP
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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

- 1 -

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



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Court File No. CT-2015-001

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THE COMMISSIONER OF COMPETITION

Applicant

- and -

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CT-2015-001

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B E T W E E N :

THE COMMISSIONER OF COMPETITION

Applicant

- and -

**AVIS CAR INC., BUDGET CAR INC. / BUDGET AUTO 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

- 1 -

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

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Applicant

- and -

AVISCAR INC. et al.

Respondents

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Fax: 416.216.3930

Lawyers for the Respondents


TAB L

A handwritten signature in blue ink, appearing to read "Ants Dillman", is written over a horizontal line.

**This is Exhibit L to the Affidavit of
Derek Leschinsky
Affirmed 12 November 2015**

Tab Redacted
Subject to Confidentiality Claim by the Respondents

TAB M

A handwritten signature in blue ink, appearing to read "Arto Wilander", is written over a horizontal line.

**This is Exhibit M to the Affidavit of
Derek Leschinsky
Affirmed 12 November 2015**

EX-10.6 3 dex106.htm EMPLOYMENT AGREEMENT - PATRIC T. SINISCALCHI

Exhibit 10.6

December 19, 2008

Mr. Patric Siniscalchi
Executive Vice President, International
Avis Budget Group
6 Sylvan Way
Parsippany, NJ 07054

Dear Pat:

We are pleased to confirm your continued employment with Avis Budget Car Rental, LLC, ("ABCR" or the "Company"), a subsidiary of Avis Budget Group, as Executive Vice President, International. To comply with the requirements of Section 409A of the Internal Revenue Code and the regulations thereunder ("Section 409A"), the Company is hereby amending and restating this letter agreement as set forth herein.

Your salary will continue to be paid on a bi-weekly basis at its current rate. You will be eligible to receive a target bonus equal to the percentage of your regular base salary during the performance period that is no less than your current target bonus percentage, subject to the Company achieving performance goals as described in the Management Incentive Plan for ABG Senior Executive Leadership and you remaining employed with the Company through the payment date. The bonus distribution is typically in the first quarter of the next year.

Per ABCR's standard policy, this letter is not intended, nor should it be considered, to be an employment contract for a definite or indefinite period of time. As you know, employment with ABCR is at will, and either you or ABCR may terminate your employment at any time, with or without cause.

If, however, your employment with ABCR is terminated by ABCR other than: (i) "for cause" (as defined below); (ii) in connection with your disability which prevents you or is reasonably expected to prevent you from performing services for ABCR for a period of 12 months (your "disability"); or (iii) death, you will receive (1) a lump-sum severance payment within 15 days following the Release Date (as defined below) equal to 200% of the sum of your base salary plus your target incentive (bonus) and (2) perquisites to include continued access to company car usage, financial planning and health coverage (Company-subsidized COBRA) for a period of 24 months. For purposes of this agreement 'company subsidized COBRA' shall mean that the Company shall subsidize the total cost of COBRA coverage such that the contributions required of you for health plan participation during the 24 month period shall be substantially equal to the contributions required of active employed executives of ABG. All other programs and perquisites would be governed by their respective plan documents; provided, however, that the provision of such severance pay is subject to, and contingent upon, your executing within forty-five days following your termination of employment and failing to revoke a separation agreement with ABCR (the date on which the release is no longer revocable, the "Release Date"), in such form determined by ABCR, which requires

Mr. Patric Siniscalchi
Page Two
December 19, 2008

you, in part, to release all actual and purported claims against ABCR and its affiliates and which also requires you to agree to: (i) protect and not disclose all confidential and proprietary information of ABCR; (ii) not compete, directly or indirectly, against ABCR for a period of no longer than one year after your employment separation or for a period of time and within a geographic scope determined by ABCR to be reasonable to protect ABCR's business interests; and (iii) not solicit any ABCR employees, consultants, agents or customers during and for one year after your employment separation.

In addition, if you experience an involuntary termination of employment from ABCR other than "for cause," and other than as a result of your "disability" or death, you will receive a lump sum cash payment within 15 days following the Release Date equal to the fair market value as of your termination of employment of your stock-based awards which would have vested in accordance with their original vesting schedule by the one-year anniversary of your termination of employment; provided that, to the extent required to achieve deductibility under Section 162(m) of the Internal Revenue Code of awards that vest based on the achievement of performance criteria, with respect to any awards that vest based on the achievement of performance criteria, for performance periods beginning after January 1, 2009, payment in respect of these awards shall not occur unless and until ACBR determines that all applicable performance goals have been attained (and you or your beneficiary will receive such payment at the same time, and on the same basis, as awards granted to other executive officers who are subject to the same performance goals vest).

In addition, if you experience a termination of employment from ABCR due to your "disability" or death, you or your beneficiary will receive a lump sum cash payment within 15 days following the Release Date (or, in the event of your death, within 30 days of your death) equal to the fair market value as of your termination of employment of all of your stock-based awards.

"Termination for Cause" shall mean: (i) your willful failure to substantially perform your duties as an employee of the Company or any subsidiary (other than any such failure resulting from your incapacity due to physical or mental illness); (ii) any act of fraud, misappropriation, dishonesty, embezzlement or similar conduct against the Company or any subsidiary; or (iii) conviction of a felony or any crime involving moral turpitude (which conviction, due to the passage of time or otherwise, is not subject to further appeal).

The payments and benefits described in this letter are intended to comply with Section 409A and, accordingly, to the maximum extent permitted, the terms of this letter shall be interpreted and administered to be in compliance with Section 409A of the Internal Revenue Code ("Section 409A"). Notwithstanding anything to the contrary contained herein, to the extent required to avoid accelerated taxation and/or tax penalties under Section 409A, you will not be considered to have terminated employment with ACBR for purposes of the benefits provided in this letter and no payments shall be due to you on termination of employment hereunder until you are considered to have incurred a "separation from service" from ACBR within the meaning of Section 409A. Each amount to be paid or benefit to be provided in this letter shall be construed as a separate identified payment for purposes of Section 409A. Any payments described in this Agreement that are paid pursuant to a "separation pay plan" as described in Treas. Reg. 1.409A-1(b)(9)(iii) or that are due within

Mr. Patric Siniscalchi
Page Three
December 19, 2008

the "short term deferral period" as defined in Section 409A shall not be treated as deferred compensation unless applicable law requires otherwise. Notwithstanding anything contained herein, to the extent required in order to avoid accelerated taxation and/or tax penalties under Section 409A amounts that would otherwise be payable and benefits that would otherwise be provided pursuant to this letter (or any other plan or agreement of the Company providing you with payments or benefits upon your separation from service) during the six-month period immediately following your separation from service shall instead be paid or provided on the first business day after the date that is six months following your separation date (or death, if earlier).

The by-laws of the Company provide that officers will be indemnified for their authorized actions on behalf of our Company to the fullest extent permitted under applicable law.

This severance pay as set forth in this letter is in lieu of and supersedes any other severance benefits otherwise payable to you under any other agreement or severance plan of ABCR or its affiliates.

Regards,

/s/ Mark J. Servodidio
Mark J. Servodidio
Executive Vice President – Human Resources

Understood and accepted:

/s/ Patric Siniscalchi
Patric Siniscalchi

Date: 12/23/2008

TAB N

A handwritten signature in blue ink, appearing to read "Aubrey D. [unclear]", is written over a horizontal line.

**This is Exhibit N to the Affidavit of
Derek Leschinsky
Affirmed 12 November 2015**

Tab Redacted
Subject to Confidentiality Claim by the Respondents

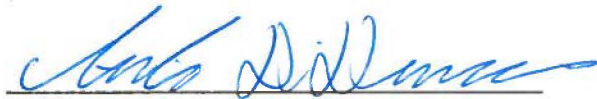
TAB O

A handwritten signature in blue ink, reading "Anto D'Rosario", is written over a horizontal line.

**This is Exhibit O to the Affidavit of
Derek Leschinsky
Affirmed 12 November 2015**

**Tab Redacted
Subject to Confidentiality Claim by the Respondents**

TAB P

A handwritten signature in blue ink, appearing to read "Andrew D. Lawrence", is written over a horizontal line.

**This is Exhibit P to the Affidavit of
Derek Leschinsky
Affirmed 12 November 2015**

Leschinsky, Derek (IC/IC)

From: DiDomenico, Antonio (IC/IC)
Sent: November-06-15 12:41 PM
To: Brown, Michael (Toronto)
Cc: Leschinsky, Derek (IC/IC); Rydel, Katherine (IC/IC); Ackhurst, Kevin; Kilby, Christine; Spence, Kristine
Subject: Avis/Budget - examinations for discovery

Michael:

Given the upcoming oral examinations for discovery, we wanted to follow-up with you about timing, logistics and the deponents for the examinations for discovery.

With respect to timing, we would like to set aside the weeks of December 14 and 21 for the oral examinations (for all examinations). The Commissioner's deponent can be examined in Gatineau/Ottawa. Please let us know if you would also like the Respondents' deponents to be examined in Gatineau/Ottawa.

With respect to the deponents, we would like to examine William Boxberger on behalf of Aviscar Inc. and Budgetcar Inc./Budgetauto Inc.. With respect to Avis Budget Car Rental, LLC and Avis Budget Group Inc., we would like to examine Patric Siniscalchi. If you have any issues in this regard, please let us know. Sophie Beaulieu (the lead case officer) will be the deponent examined on behalf of the Commissioner of Competition. Ms. Beaulieu wishes to be examined in French.

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

CT-2015-001

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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

MOTION RECORD

DEPARTMENT OF JUSTICE CANADA
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Gatineau, Quebec, K1A 0C9

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Jean-Sebastien Gallant (LSUC#: 49319J)
Katherine Rydel (LSUC#: 58143I)
Tel: 819-997-2837
Fax: 819-953-9267

**Counsel to the Commissioner of
Competition**