

**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 -

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

Respondents

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

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**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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Competition Tribunal

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## **SCHEDULE "A"**

### **RESPONSES TO SPECIFIC ADVERTISEMENTS CITED BY THE COMMISSIONER**

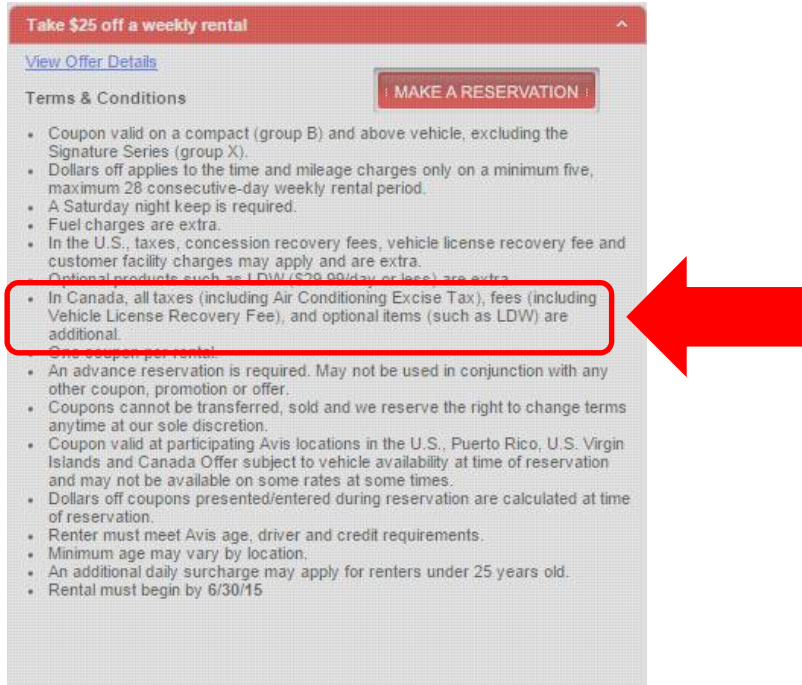
#### **Examples of Avis' Advertisements Are Not Misleading**

##### *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.

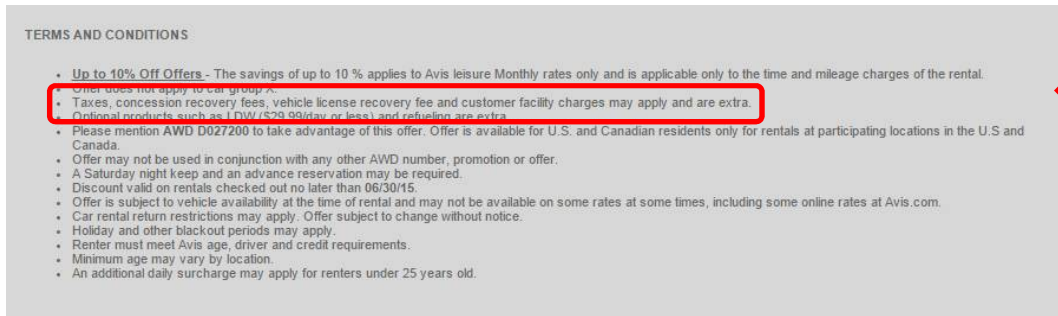
*No False or Misleading Website Representations*

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.

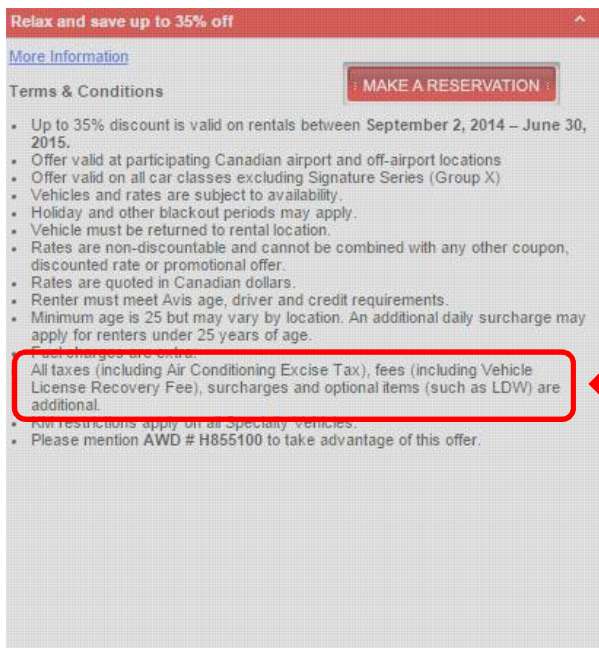
12. As represented, it is true that it was possible for a consumer to rent a vehicle for \$19.99 per weekend day because that price was the Base Rate for applicable vehicles. It is also true that it was possible for a consumer to obtain a weekly or weekend rental for 35% off of the Base Rate of an applicable 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.

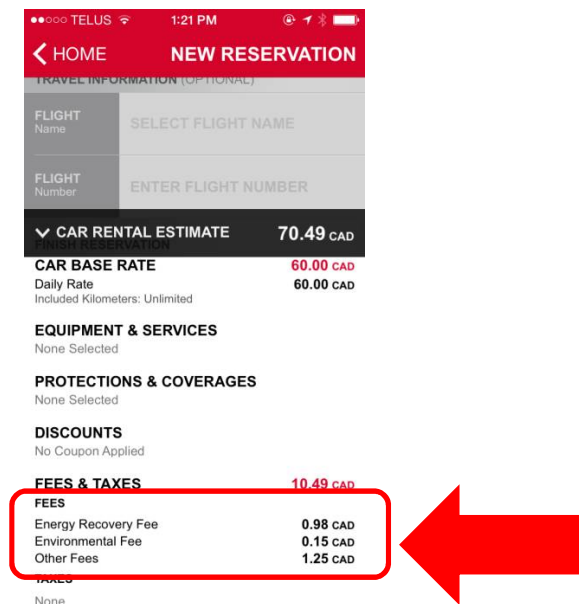
*No False or Misleading Mobile App Representations*

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.

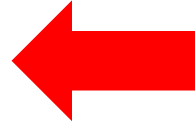
41. As represented, it is true that it was possible for a consumer to rent a vehicle for \$19 per weekend day or a midsize vehicle for \$149 per week because those prices were the Base Rates for the applicable vehicles. It is also true that it was possible for a consumer to save up to 35% on a car rental 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.



**THE COMPETITION TRIBUNAL**

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THE COMMISSIONER OF COMPETITION

Applicant

- and -

AVISCAR INC. et al.

Respondents

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

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