

**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.,  
and AVIS BUDGET GROUP, INC. and AVIS BUDGET CAR RENTAL, LLC**

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	
<b>FILED / PRODUIT</b> CT-2015-001 May 13, 2015	
Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 10

Respondents

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**COMMISSIONER OF COMPETITION'S RESPONSE TO  
RESPONDENTS' NOTICE OF MOTION**

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**A. Overview**

1. The Commissioner of Competition (the “**Commissioner**”) seeks a remedy for the Respondents’ deceptive marketing practices that are reviewable by this Tribunal. The Respondents 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. The Commissioner’s application concerns two related practices: (1) the Respondents’ practice of promoting their vehicles and associated products for less than what the Respondents actually charge; and (2) the Respondents’ practice of describing their additional mandatory fees 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 fees on consumers to recoup part of their own cost of doing business. The Commissioner brings this action to stop the Respondents’ deceptive marketing practices and to remedy the harm they have caused to the Canadian public and the Canadian economy by these practices.
  
2. The Commissioner’s Notice of Application clearly and concisely sets out the grounds for this application and the material facts upon which he relies. The Respondents do not challenge the substance of the Commissioner’s pleading and that it gives rise to a valid cause of action against Aviscar Inc. and Budgetcar Inc. / Budgetauto Inc. (collectively, the “**Canadian Affiliates**”). Instead, the Respondents seek to evacuate their parent companies, Avis Budget Group, Inc. (“**Avis Budget Group**”) and Avis Budget Car Rental, LLC (“**ABC Rental**”)

(collectively, the “**Parent Companies**”), from this proceeding before discovery takes place and they are required to disclose the relevant documents and information within their possession, power and control.

3. The Commissioner has properly pleaded his case against the Parent Companies. The Commissioner’s case against the Parent Companies is that:

- a. Avis Budget Group operates the Avis and Budget brands of rental cars – directly or through its subsidiaries, including ABC Rental and the Canadian Affiliates – throughout 175 countries, including Canada;
- b. the Parent Companies planned, directed and were ultimately essential to the making of the representations that are the subject of this application; and
- c. the Parent Companies did the acts ascribed to the Respondents, Aviscar Inc. and Budgetcar Inc. / Budgetauto Inc. in paragraphs 13-76 of the Notice of Application.

4. The Respondents ask this Tribunal to strike the Commissioner’s claim against the Parent Companies, or order the Commissioner to provide additional particulars, because the Commissioner does not plead additional facts. However, the additional information the Respondents seek are not material facts but evidence, including evidence that the Respondents already know, and as such is improper to include in a Notice of Application before this Tribunal.

5. There is no basis for granting any of the relief the Respondents request. The Commissioner's pleadings are clear and concise; and the Commissioner's case against the Parent Companies should be argued and decided on the evidence at the hearing. The Respondents' motion should be dismissed in its entirety with costs awarded to Commissioner.

6. The Commissioner opposes the Respondents' Motion on the following specific grounds.

**B. The Commissioner Properly Pleads the Case Against the Parent Companies**

7. The Commissioner has pleaded the material facts that constitute the constituent elements to establish that the Parent Companies have engaged in reviewable conduct pursuant to paragraph 74.01(1)(a), section 74.05 and subsections 74.011(1) and (2) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended.

8. The Respondents know *what* the Commissioner intends to prove against the Parent Companies. Further pleadings showing *how* the Commissioner intends to prove his case against the Parent Companies do not form part of a proper pleading before the Tribunal as they are evidence and the Tribunal has a formal process whereby evidence is adduced following discovery.

9. Moreover, the Parent Companies know *how* they planned, directed and were ultimately essential to the making of the representations that are the subject of this application. They know their business.

10. The pleadings set out in the Notice of Application and summarized at paragraph 3 above establish a real and substantial connection between the Parent Companies and Canada. The Parent Companies' conduct was and is directed at Canada. Canadian consumers and the Canadian economy are being harmed by the Parent Companies' deceptive marketing practices. The Parent Companies are accordingly conducting business in Canada and are causing economic damage within Canada.
11. With respect to the Respondents' statements at paragraph 10 of the Notice of Motion regarding the Commissioner's section 74.05 pleading, the Commissioner has pled the material facts that constitute the constituent elements of the reviewable conduct, including that the Parent Companies supply passenger vehicles and associated products within the meaning of the section. In this regard, the Commissioner has pled that the products at issue are the Parent Companies' products, that the Parent Companies operate the Avis and Budget brands in Canada, and that consumers cannot rent passenger vehicles from the Respondents at the prices the Respondents represent. The details about *how* the Parent Companies supply these products are evidence, and again, this evidence is known to the Respondents.

**C. The Respondents have Chosen not to File Evidence**

12. Finally, the Respondents' employees have not themselves put forward any evidence in this proceeding, filing instead an affidavit from a lawyer in the Toronto Office of their outside counsel. The solicitor's affidavit includes no

evidence that the Commissioner's application is an abuse of process or that the Respondents are entitled to further particulars.

**D. Delay**

13. Despite not raising any issue about the substance of the Commissioner's Notice of Application and challenging only his allegations against the Parent Companies, the Respondents have not filed a Response as required under the *Competition Tribunal Rules*. Through this motion, the Respondents seek to delay the adjudication of the Commissioner's claims before this Tribunal so that they can continue their deceptive marketing practices and protect the revenue they generate from them.

**E. Order Sought**

14. For the foregoing reasons, the Commissioner requests that this motion be dismissed with costs.

**DATED AT** Gatineau, this 13<sup>th</sup> day of May 2015.

**DEPARTMENT OF JUSTICE CANADA**

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**AND TO:**

**The Registrar**

**Competition Tribunal**

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