

Issue 1 - Historic Conduct – Estoppel, Waiver and Remedy			
Pg	Qn	Refusal	March 28 Answer
Respondents' Memorandum of Fact and Law ¶ 29(a) & 30			
<ul style="list-style-type: none"> • why the 2009 investigation was commenced • remedy - as noted above, the Respondents will argue that the Commissioner's delay in bringing this Application and notifying the Respondents about any issue related to the display of pricing should mitigate or eliminate the award of any remedy against the Respondents. The Commissioner's knowledge of the Respondents' conduct, and its delay in proceeding, are issues that the Respondents will advance and which they should be entitled to explore on discovery. 			
16	69	What triggered the opening of the file leading to the current application?	The file was opened following an internal Bureau review of Ticketmaster's drip pricing practices.
16	70	Was [the current application] triggered on the basis of any consumer complaints?	The file was not triggered on the basis of any one specific complaint. The file was opened following an internal Bureau review of Ticketmaster's drip pricing practices. Various criteria, including complaints, inform the Bureau's decision to pursue cases.

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Respondents' Memorandum of Fact and Law ¶ 29(b) & 30 <ul style="list-style-type: none"> prior and contemporaneous consumer complaints of what the Commissioner now describes as "drip pricing" remedy - as noted above, the Respondents will argue that the Commissioner's delay in bringing this Application and notifying the Respondents about any issue related to the display of pricing should mitigate or eliminate the award of any remedy against the Respondents. The Commissioner's knowledge of the Respondents' conduct, and its delay in proceeding, are issues that the Respondents will advance and which they should be entitled to explore on discovery 			
16	70	Was [the current application] triggered on the basis of any consumer complaints?	The file was not triggered on the basis of any one specific complaint. The file was opened following an internal Bureau review of Ticketmaster's drip pricing practices. Various criteria, including complaints, inform the Bureau's decision to pursue cases.
109	410	Do you know whether there was any investigation into [REDACTED] complaint] or what steps were taken in response to [REDACTED] complaint?	<p>An acknowledgment letter was sent to the complainant on March 12, 2008, following which, the complaint was closed.</p> <p>The acknowledgment letter advised the complainant that due to the large number of complaints received by the Bureau each year, the Bureau was unable to resolve them all.</p>
109-110	411	Did anyone at the Bureau ever respond to [REDACTED]?	<p>An acknowledgment letter was sent to the complainant on March 12, 2008.</p> <p>The acknowledgment letter advised the complainant that the matter he had raised could not be addressed by the Bureau at that time but would be recorded in the Bureau's database and could be used to develop or support future enforcement activities under the laws enforced by the Bureau.</p>
359	1199	Why didn't the Commissioner do anything about [the complaints from 2008]?	[Refusal maintained]

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Respondents' Memorandum of Fact and Law ¶ 29(c) & 30 <ul style="list-style-type: none"> the nature of the “misrepresentations” being investigated in 2009, and the analysis of what was thought by the Commissioner to be misleading remedy - as noted above, the Respondents will argue that the Commissioner’s delay in bringing this Application and notifying the Respondents about any issue related to the display of pricing should mitigate or eliminate the award of any remedy against the Respondents. The Commissioner’s knowledge of the Respondents’ conduct, and its delay in proceeding, are issues that the Respondents will advance and which they should be entitled to explore on discovery 			
116	434	What was the misrep issue [that Ms. Rosen] was referring to [in her e-mail correspondence with Mr. Bryenton in Exhibit 114]?	Commissioner will answer (April 1)
123	461	Was a more fulsome analysis done by officers on [the issue of misreps on the current websites referred to in Mr. Bryenton’s e-mail to Ms. Rosen in Exhibit 114]?	[Refusal maintained]
123	462	I want any analysis that was actually done by officers [on the issue of misreps on the current websites referred to in Mr. Bryenton’s e-mail to Ms. Rosen in Exhibit 114].	[Refusal maintained]
123-124	463	What aspects of [the websites referred to in Exhibit 114] was Mr. Bryenton considering when he indicated that there does not appear to be an issue of misreps on those sites?	Commissioner will answer (April 1)
165-166	608	I want an undertaking to find out whether what was intended, beginning at the third paragraph on page 2 [of Exhibit 117], was to provide some guidance to Ticketmaster as to how to avoid missteps with respect to false or misleading representations and deceptive marketing practices, with respect to the matters that are then articulated below.	The author of the letter, Brent Homan, is no longer employed by the Bureau. However, the letter speaks for itself, more specifically, it makes it clear that the any actions taken based on this information should not be regarded as approved or endorsed by the Bureau.
293	976	Are [Exhibits 120 and 121] among [the screen captures] referred to in the March 6th, 2009 e-mail exchange with Ms. Rosen?	<p>The Commissioner is unable to confirm whether these screen captures [Exhibits 120 and 121] are those referred to in the email.</p> <p>The Commissioner is able to advise that these screen captures [Exhibits 120 and 121] relate to the Bureau’s 2009-2010 examination of Ticketmaster’s conduct under the misleading advertising and deceptive marketing practices provisions of the <i>Competition Act</i>.</p>

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Respondents' Memorandum of Fact and Law ¶ 29(d) & 30 <ul style="list-style-type: none"> • which aspects of the Ticketing Platforms were examined • remedy - as noted above, the Respondents will argue that the Commissioner's delay in bringing this Application and notifying the Respondents about any issue related to the display of pricing should mitigate or eliminate the award of any remedy against the Respondents. The Commissioner's knowledge of the Respondents' conduct, and its delay in proceeding, are issues that the Respondents will advance and which they should be entitled to explore on discovery 			
123	462	I want any analysis that was actually done by officers [on the issue of misreps on the current websites referred to in Mr. Bryenton's e-mail to Ms. Rosen in Exhibit 114].	[Refusal maintained]
123-124	463	What aspects of [the websites referred to in Exhibit 114] was Mr. Bryenton considering when he indicated that there does not appear to be an issue of misreps on those sites?	Commissioner will answer (April 1)
131-132	494	Do you know whether the Bureau looked at any aspects of [the .ca and ticketsnow] websites [REDACTED]?	<p>The investigation was commenced following concerns in the media regarding the unavailability of tickets in the primary market while tickets at inflated prices were available in the secondary market. The FBP investigation looked at the inadequate disclosure of the redirection from Ticketmaster's website for the primary market to Ticketmaster's website for the secondary market; the TicketsNow website.</p> <p>Specifically, the FBP examination was into the issue of whether Ticketmaster was making materially false or misleading representations to the public on its website by redirecting consumers to the secondary ticket marketplace without their knowledge, where consumers were being charged more than face value for the tickets.</p> <p>The FBP investigation also looked at a cash back incentive that was offered to Ticketmaster customers in light of complaints made at that time.</p>

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Respondents' Memorandum of Fact and Law ¶ 29(e) & 30 <ul style="list-style-type: none"> what the Bureau intended to convey to Ticketmaster in its no action letter remedy - as noted above, the Respondents will argue that the Commissioner's delay in bringing this Application and notifying the Respondents about any issue related to the display of pricing should mitigate or eliminate the award of any remedy against the Respondents. The Commissioner's knowledge of the Respondents' conduct, and its delay in proceeding, are issues that the Respondents will advance and which they should be entitled to explore on discovery 			
143-144	527-528	What open matters [was Mr. Homan referencing] when he communicated to Ticketmaster [REDACTED]]?	<p>The author of the letter, Brent Homan, is no longer employed by the Bureau. However, other matters that were open at the time relate to issues that were investigated by the Civil Matters Branch and the Mergers Branch.</p> <p>The Civil Matters Branch examined Ticketmaster's conduct under the restrictive trade practices provisions of the <i>Competition Act</i>. Specifically, the examination was into the issue of whether Ticketmaster had engaged in anti-competitive practices, contrary to section 79 of the Act.</p> <p>The Mergers Branch examined the proposed merger of Live Nation Inc. and Ticketmaster Entertainment Inc. Specifically, the examination was into the issue of whether the proposed merger of Live Nation Inc. and Ticketmaster Entertainment Inc. would result in a substantial prevention or lessening of competition.</p>
165-166	608	I want an undertaking to find out whether what was intended, beginning at the third paragraph on page 2 [of Exhibit 117 [REDACTED]]	<p>The author of the letter, Brent Homan, is no longer employed by the Bureau. However, the letter speaks for itself, more specifically, it makes it clear that the any actions taken based on this information should not be regarded as approved or endorsed by the Bureau.</p>

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167	612	<p>Why did Mr. Homan not bring to Ticketmaster's attention [in Exhibit 117] anything to do with fee displays so that Ticketmaster might avoid conflict with the false and misleading representations and deceptive marketing practices provisions of the Competition Act in the future?</p>	<p>Brent Homan is no longer employed by the Bureau.</p> <p>The Bureau does not provide advice outside the context of its program for advisory opinions.</p> <p>The investigation was commenced following concerns in the media regarding the unavailability of tickets in the primary market while tickets at inflated prices were available in the secondary market. The FBP investigation looked at the inadequate disclosure of the redirection from Ticketmaster's website for the primary market to Ticketmaster's website for the secondary market; the TicketsNow website.</p> <p>Specifically, the FBP examination was into the issue of whether Ticketmaster was making materially false or misleading representations to the public on its website by redirecting consumers to the secondary ticket marketplace without their knowledge, where consumers were being charged more than face value for the tickets.</p>

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Respondents' Memorandum of Fact and Law ¶ 29(f) & 30			
<ul style="list-style-type: none"> • why, if the Respondents' price displays drew no criticism from the Commissioner in 2009 and 2010, and were not even identified among the potential problems that Ticketmaster should have regard to in the future, those price displays were alleged to be deceptive and misleading eight years later in 2017 • remedy - as noted above, the Respondents will argue that the Commissioner's delay in bringing this Application and notifying the Respondents about any issue related to the display of pricing should mitigate or eliminate the award of any remedy against the Respondents. The Commissioner's knowledge of the Respondents' conduct, and its delay in proceeding, are issues that the Respondents will advance and which they should be entitled to explore on discovery 			
178-179	647, 650	Are there any facts associated with the 2009 version of the fee display that the Bureau did not have access to in 2009 and 2010?	The Bureau has become aware of additional facts following discoveries, for example, complaints received by Ticketmaster in relation to its 2009 version of the fee display. Additional examples of the Respondents' buy-flows were also included in the Respondents' productions.
187	677	When did the Bureau first consider that the 2009 fee displays were misleading?	[Refusal maintained]
187	678	When did the Bureau open its file as to whether or not the fee displays were misleading on ticketmaster.ca, the ticketsnow site or the ticketweb site?	Commissioner will answer (April 1)
187	679	Has anything changed since 2010 as to whether or not the 2009 or 2010 fee display was misleading?	[Refusal maintained]
189 - 190	685	Why did the Bureau take eight years [after Ms. Rosen started a screen capture campaign] to raise this complaint with Ticketmaster?	[Refusal maintained]

Issue 2 – Individual Respondent Allegations - Liability				
Pg	Qn	Refusal	Submission	March 28 Answer
Respondents' Memorandum of Fact and Law ¶ 34(a)				
• the connection between certain Respondents and the Ticketing Platforms				
45	176	Does the Commissioner say that Live Nation Entertainment Inc. made representations on [ticketmaster.ca, ticketweb.ca or ticketsnow.com]?		<p>The Commissioner has provided the facts with respect to Live Nation Entertainment Inc.'s participation in the representations.</p> <p>See, for example, the Respondents' Motion Record at pages 113-116 and answer to UT 4 (Respondents' Motion Record at Tab 5E, page 496).</p>
73	276-277	You are not aware of any facts associating VIP Tour with [ticketmaster.ca]?		<p>This question was answered at the examination – see for example the Respondents' Motion Record at page 152-3 (Q 265 and Q266), at page 156 (Q 278 and 280), at pages 157-158 (Q 285); and UT 9, UT 10 and UT 47 (Respondents' Motion Record at Tab 5E, pages 498; 515-516).</p>

Issue 2 – Individual Respondent Allegations - Liability				
Pg	Qn	Refusal	Submission	March 28 Answer
Respondents' Memorandum of Fact and Law ¶ 34(b)				
• whether, and how, each Respondent is said to have been acting <i>jointly</i> or <i>in concert</i> with other Respondents				
75-76	285-286	[When you said that you are not aware of any facts linking VIP Tour Company to ticketmaster.ca at this time], does that include directly or indirectly by acting in concert or jointly with somebody else?		[Refusal maintained]
239-240	844, 848	What facts are associated with Live Nation Entertainment Inc. [or any of the other seven respondents] acting jointly with another respondent in respect of the OneRepublic concert [referenced on page 12 of the Commissioner's pleadings]?		[Refusal maintained]
239-240	845, 848	What facts does the Commissioner have in association with whether Live Nation Entertainment Inc. [or any of the other seven respondents] acted in concert in respect of the OneRepublic concert [referenced on page 12 of the Commissioner's pleadings]?		[Refusal maintained]
Respondents' Memorandum of Fact and Law ¶ 34(c)				
• whether, and how, each Respondent is said to have been acting <i>separately</i> and <i>individually</i> with respect to certain price representations				
239-240	846, 848	What facts or information is the Commissioner aware of with respect to whether Live Nation Entertainment Inc. [or any of the other seven respondents] acted separately, in any way, with respect to the OneRepublic concert [referenced on page 12 of the Commissioner's pleadings]?		[Refusal maintained]
Respondents' Memorandum of Fact and Law ¶ 34(d)				
• whether, and how, each Respondent is said to have " <i>permitted</i> " others to make price representations on certain Ticketing Platforms				
240	847, 848	What information does the Commissioner have, or is the Commissioner aware of, with respect to, or in connection with, whether Live Nation Entertainment Inc. [or any of the other seven respondents] permitted some other respondent to act in any particular way with respect to the OneRepublic concert [referenced on page 12 of the Commissioner's pleadings]?		[Refusal maintained]
333	1119	Which respondents are said to make the price representations in question and which respondents are said to permit others to make the price representations in question?		[Refusal maintained]
333-334	1120	I would like to have the Commissioner's information with respect to the manner in which each of the respondents permits another respondent to make price representations.		[Refusal maintained]
Respondents' Memorandum of Fact and Law ¶ 34(e)				
• how each Respondent is actually said to have <i>made</i> the price representations at issue				
334	1121	I would like to have the Commissioner's information as to the manner in which each respondent makes the price representations that are the subject of this application.		[Refusal maintained]

Issue 3 – Industry Practices and Standards – Liability and Remedy				
Pg	Qn	Refusal	Submission	March 28 Answer
Respondents' Memorandum of Fact and Law ¶ 38				
<ul style="list-style-type: none"> the pleadings demonstrate that the parties view e-commerce standards as relevant to the disposition of this Application. The Commissioner has already delivered limited information about other e-commerce vendors, but has maintained his refusal to answer other related questions. The Commissioner should be obliged to answer fully with respect to his knowledge, information and belief in response to these questions 				
318-319-321-322	1067, 1079-1081	I want all [the information known to the Commissioner as to what online ticket vendors have marketed and sold tickets using "attainable prices" inclusive of any mandatory fees, in particular what competitors to Ticketmaster do so, where in Canada they do it, on what platforms, for what kinds of tickets (primary or resale) and in what time periods].		This question has been answered – see Respondents' Motion Record at tab 5E, page 513 – response to undertaking 45 arising from Q1081.
378, 380-381	1258, 1264	I would like to know what information the Commissioner has as to what, if anything, was standard [pricing practice] in e-commerce across the period relevant to this litigation.		The Commissioner does not allege that there is a standard. As alleged by the Commissioner in his Reply, drip pricing in e-commerce is far from universal. The Commissioner has provided the Respondents with examples of facts supporting this position. Examples were provided in response to undertakings #45, #57.
384	1276	Has the Bureau gathered or received information from market participants in the ticket sale or resale business in Canada?		The Bureau has gathered information from the websites of other ticket vendors, examples of which were included in the Commissioner's Affidavits of Documents and in the Commissioner's answers to undertakings (see answer to undertaking #45).
384	1277	Does the Commissioner have any information about the market for online sales or resales of tickets in Canada other than what has been discussed so far?		[Refusal maintained] Motion for answer withdrawn (March 29)

Issue 4 – Per Order Fees – Liability and Remedy				
Pg	Qn	Refusal	Submission	March 28 Answer
Respondents’ Memorandum of Fact and Law ¶ 40				
<ul style="list-style-type: none"> Per order fees (for order processing) are charged at a set price for an entire order, regardless of the number of tickets purchased. The Commissioner alleges that the per <u>ticket</u> amount of these fees should be disclosed on the very first page of the Ticketing Platforms seen by a fan. The Commissioner has refused to answer as to how the Respondents could know what the order processing fee would amount to, per ticket, before knowing how many tickets are being ordered. As the Commissioner has indicated that per order fees form part of his allegations against the Respondents, he should answer this question 				
279-280	941-942	[How does] Ticketmaster know what the order processing fee will amount to per ticket before it knows how many tickets are in the order?		<p>All fees applicable to tickets for particular events are set between the Respondents and their clients in advance of the event going on sale. The fees that apply to each purchase are therefore known to the Respondents prior to consumers entering into the purchase flow.</p> <p>In certain cases, the Respondents provide consumers with an option to pre-select the number of tickets for a purchase or else sets a default number of tickets for the consumer’s initial search. In these instances, the Respondents have all available information for that particular order to present an attainable price, inclusive of per-order fees. This demonstrates that it is open to the Respondents to structure their representations so as to know the full price of a particular order prior to presenting prices to consumers. However, the Respondents have chosen to structure their representations so as to represent prices that are not in fact attainable by choosing to reveal Non-Optional Fees, such as the order processing fee, later on in the purchasing process.</p>