

CT-2018-

THE COMPETITION TRIBUNAL

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

AND IN THE MATTER of a Consent Agreement pursuant to section 74.12 of the *Competition Act* with respect to certain deceptive marketing practices of Discount Car & Truck Rentals Ltd. under paragraph 74.01(1)(a) and sections 74.05 and 74.011 of the *Competition Act*.

BETWEEN:

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE
REGISTERED / ENREGISTRÉ
FILED / PRODUIT

Date: October 11, 2018
CT-2018-012

Andrée Bernier for / pour
REGISTRAR / REGISTRARE

OTTAWA, ONT.

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THE COMMISSIONER OF COMPETITION

Applicant

- and -

DISCOUNT CAR & TRUCK RENTALS LTD.

Respondent

CONSENT AGREEMENT

WHEREAS the Commissioner is responsible for the administration and enforcement of the *Competition Act*;

AND WHEREAS the Respondent operates and franchises a vehicle rental services business across Canada and also offers Related Products such as GPS systems, child safety seats, insurance products and roadside assistance services;

AND WHEREAS the Respondent has franchisees, including in Quebec, namely 2619-8077 Quebec Inc. and its subsidiaries 2313-7292 Quebec Inc. and Discam Leasing Inc.;

AND WHEREAS the Respondent has partnered and continues to partner with Europcar to provide such services to Discount's consumers for rentals at locations outside of Canada and to provide such services to Europcar's customers in Canada;

AND WHEREAS the Respondent and its franchisees made Representations to the public about the price at which consumers could rent vehicles and Related Products and also about percentage-off discounts;

AND WHEREAS the Respondent and its franchisees made these Representations to the public starting from at least 2009;

AND WHEREAS the Respondent and its franchisees made these representations across various media, including its Websites, Emails, in-store pamphlets and banners on trucks and cargo vans;

AND WHEREAS the Respondent and its franchisees charged consumers Non-Optional Fees in addition to the prices initially advertised;

AND WHEREAS the Commissioner has concluded that the Respondent's and its franchisees' Non-Optional Fees may increase the cost of a vehicle rental by 5% to 138%, depending on the rental location and vehicle type;

AND WHEREAS the Commissioner has concluded that certain of the Respondent's and its franchisees' initial price representations created the general impression that consumers could rent vehicles and Related Products at prices that were not in fact attainable, because consumers were required to pay these additional Non-Optional Fees;

AND WHEREAS the Commissioner has concluded that certain of the Respondent's and its franchisees' discount representations created the general impression that consumers could save on the cost of a vehicle rental at discounts that were not in fact attainable, because consumers were required to pay these additional Non-Optional Fees, certain of which were not discounted;

AND WHEREAS the Commissioner has concluded that the words chosen by the Respondent and its franchisees to describe certain of the Non-Optional Fees, where they were placed, and how they were combined with actual taxes, created the general impression that they were taxes, surcharges and/or fees that governments and authorized agencies required rental companies to collect from consumers;

AND WHEREAS the Commissioner has concluded it was the Respondent and its franchisees who chose to impose Non-Optional Fees on consumers to recoup part of their own cost of doing business;

AND WHEREAS the Commissioner has concluded that the Respondent and its franchisees made Representations to the public that were false or misleading in a material respect for the purpose of promoting the supply or use of their rental vehicles and Related Products, and their business interests more generally;

AND WHEREAS the Commissioner has concluded that the Respondent and its franchisees engaged in conduct reviewable pursuant to paragraph 74.01(1)(a) and section 74.011 of the *Competition Act*;

AND WHEREAS the Commissioner acknowledges that the Respondent and its franchisees informed consumers of the total estimated price for their rental before a rental reservation was completed;

AND WHEREAS IT IS AGREED AND UNDERSTOOD that for the purposes of this Agreement only, including execution, registration, enforcement, variation or rescission of this Agreement, the Respondent does not contest the Commissioner's conclusions but nothing in this Agreement shall be taken as an admission or acceptance by the Respondent of any facts, wrongdoing, submissions, legal argument or conclusions for any other purpose nor shall it derogate from any rights or defences of the Respondent against third parties including any defences available under the *Competition Act*,

AND WHEREAS IT IS AGREED AND UNDERSTOOD that the Respondent shall, for greater certainty, ensure its franchisees comply with the Consent Agreement in carrying on business as part of the Discount franchise;

AND WHEREAS the Parties are satisfied that this matter can be resolved with the registration of this Agreement which, upon registration, shall have the same force and effect as an order of the Tribunal;

AND WHEREAS the Commissioner has agreed to more favorable terms in this Agreement than would otherwise be the case because of the Respondent's full and timely cooperation with the Commissioner's investigation;

NOW THEREFORE, in order to resolve the Commissioner's concerns, the Parties hereby agree as follows:

I. INTERPRETATION

1. For the purpose of the Agreement, the following definitions shall apply:
 - a. **"Affiliate"** means in respect of a Person, any other Person controlling, controlled by or under common control with such first Person, whether directly or indirectly, and "control" means to directly or indirectly hold securities or other interests in a Person (i) to which are attached more than 50% of the votes that may be cast to elect directors or persons exercising similar functions or (ii) entitling the holder to receive more than 50% of the profits of the Person or more than 50% of its assets on dissolution;
 - b. **"Agreement"** means this Consent Agreement entered into by the Parties pursuant to section 74.12 of the *Competition Act*, including Appendix "A" hereto;
 - c. **"Base Rate"** means the price for a rental and/or a Related Product for time and/or mileage only, exclusive of Non-Optional Fees and federal and provincial sales taxes;
 - d. **"Commissioner"** means the Commissioner of Competition appointed pursuant to section 7 of the *Competition Act*, and his or her authorized representatives;
 - e. **"Competition Act"** means the *Competition Act*, R.S.C. 1985, c. C-34;

- f. **“Email”** means any electronic message sent by or on behalf of the Respondent to persons in Canada relating to vehicle rental services or Related Products supplied directly by the Respondent;
- g. **“Europcar”** means Europcar Groupe S.A., a French joint stock company (société anonyme) with registered offices located at 2 rue René-Caudron, 78960 Voisins-le-Bretonneux, France, its directors, officers, employees, agents, representatives, successors and assigns, and all joint ventures, divisions and Affiliates, and the respective directors, officers, employees, agents, representatives, successors and assigns of each;
- h. **“Execution Date”** means the date on which the Agreement has been signed by both Parties;
- i. **“Interpretation Act”** means the *Interpretation Act*, R.S.C. 1985, c. I-21;
- j. **“Marketing Personnel”** means all current and future Respondent’s employees and Respondent’s Senior Management who are materially involved in or responsible for the formulation or the implementation of advertising, marketing or pricing for products the Respondent supplies;
- k. **“Non-Optional Fees”** means any charges, surcharges, fees, or other amounts, excluding applicable provincial and federal sales taxes, that are charged in addition to Base Rates and that consumers are required to pay to rent a vehicle or Related Products. Non-Optional Fees include, but are not limited to, “Vehicle License Fee / Air Conditioning Tax Recovery”, “Concession Facility Charge”, “Tire Management”, “Parking Fee”, “Passenger Vehicle Rental Tax”, “Location Premium Charge”, “Airport Surcharge”, “Collision Damage Waiver” and “Environmental Fee”;
- l. **“Parties”** means the Commissioner and the Respondent collectively, and **“Party”** means any one of them;
- m. **“Person”** means any individual, corporation or partnership, sole proprietorship, trust, or unincorporated organization capable of conducting business;
- n. **“Related Products”** includes GPS systems, child safety seats, insurance products, and roadside assistance services;
- o. **“Representations”** means any and all representations made, caused to be made, or permitted to be made by or on behalf of the Respondent including any representation on a Website and any Email, flyer, television commercial, newspaper advertisement, in-store pamphlet or vehicle signage;
- p. **“Respondent”** means Discount Car & Truck Rentals Ltd. a corporation incorporated pursuant to the laws of Ontario, its directors, officers, employees, agents, representatives, successors and assigns, and all joint ventures, divisions

and Affiliates, and the respective directors, officers, employees, agents, representatives, successors and assigns of each;

- q. **“Senior Management”** means the current and future Chief Executive Officer, Chief Operating Officer, Chief Administrative Officer, Chief Financial Officer, Chief Accounting Officer, President, Vice Presidents, Secretary, Controller, General Manager, Managing Directors, if any, and any individual who performs their functions;
- r. **“Website”** means any Respondent controlled website promoting Discount vehicles, including websites accessible from www.discountcar.com and www.discountquebec.com; and
- s. **“Tribunal”** means the Competition Tribunal established by subsection 3(1) of *Competition Tribunal Act*, R.S.C., 1985, c. 19 (2nd Supp.).

II. COMPLIANCE WITH THE DECEPTIVE MARKETING PRACTICES PROVISIONS OF THE *COMPETITION ACT*

- 2. Within 120 days of the Execution Date, the Respondent shall comply with Part VII.1 of the *Competition Act*.
- 3. Without limiting the generality of the foregoing, within 120 days of the Execution Date, the Respondent shall not make, cause to be made, or permit any other person, including Europcar, to make or cause to be made on its behalf any representation to the public with respect to any product that creates a materially false or misleading general impression that:
 - a. consumers can rent vehicles and Related Products at prices or percentage-off discounts that are not in fact attainable because of the existence of additional Non-Optional Fees; or
 - b. any Non-Optional Fees are taxes, surcharges or fees that governments and authorized agencies require rental companies to collect from consumers, unless that is in fact the case.
- 4. If the Respondent becomes aware that there has been a breach or possible breach of any terms of this Agreement, the Respondent shall, within 10 days after becoming aware of the breach or possible breach, notify the Commissioner thereof, and shall provide details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or possible breach, and the steps the Respondent has taken to correct the breach or possible breach.

III. PAYMENT

ADMINISTRATIVE MONETARY PENALTY

5. The Respondent shall pay an administrative monetary penalty in the amount of \$700,000 dollars.

FORM AND TIME OF PAYMENT

6. The payment referred to in paragraph 5 shall be made within 30 days after the Execution Date by certified cheque or by wire transfer payable to the Receiver General for Canada.

IV. CORPORATE COMPLIANCE PROGRAM

7. Within 120 days after the Execution Date, the Respondent shall establish, and thereafter maintain, a corporate compliance program, the goal of which will be to promote the compliance of the Respondent with the *Competition Act* generally, and Part VII.1 of the *Competition Act* specifically. The compliance program shall be framed and implemented in a manner consistent with the Commissioner's bulletin titled "Corporate Compliance Programs", as published (as of the Execution Date of this Agreement) on the Competition Bureau's website at www.competitionbureau.gc.ca.
8. The Respondent's Senior Management shall fully support and enforce the compliance program and shall take an active and visible role in its establishment and maintenance.
9. Within 21 days after the establishment of the compliance program, each member of the Respondent's Senior Management shall acknowledge his or her commitment to the compliance program by signing and delivering to the Commissioner a commitment letter in the form set out in Appendix "A" of this Agreement. Any individual that becomes a member of the Respondent's Senior Management during the term of this Agreement, shall sign and deliver to the Commissioner a commitment letter in the form set out in Appendix "A" of this Agreement, within 21 days of becoming a member of the Respondent's Senior Management.

V. COMPLIANCE REPORTING AND MONITORING

10. The Respondent shall provide the Commissioner written confirmation that all Respondent's Marketing Personnel has received a copy of this Agreement, as required by paragraph 13, within 21 days after the registration of this Agreement.
11. For the purposes of monitoring compliance with this Agreement, the Respondent shall provide to the Commissioner information relating to any matters referred to in Parts II, IV and V of this Agreement that the Commissioner requests, within 30 days following receipt of a written request from the Commissioner.

12. No later than 120 days after the Execution Date, the Chief Executive Officer of the Respondent shall provide to the Commissioner a statement under oath or solemn affirmation that the compliance program required by Part IV of this Agreement has been implemented.

VI. GENERAL

13. During the term of this Agreement, (i) the Respondent shall provide a copy of this Agreement to each of its Marketing Personnel within 14 days after the date of registration of this Agreement, and (ii) all future Marketing Personnel will be provided with a copy of this Agreement within 14 days after his or her commencement of employment. Within 14 days after being provided with a copy of this Agreement, the Respondent shall secure from each such person a signed and dated statement acknowledging that he or she read and understood this Agreement and Part VII.1 of the *Competition Act*.
14. Notices, reports and other communications required or permitted pursuant to any of the terms of this Agreement shall be in writing and shall be considered to be given if dispatched by personal delivery, registered mail or facsimile transmission to the Parties at the following addresses:

- a. the Commissioner:

Competition Bureau
Place du Portage, 21st Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9

Attention: Senior Deputy Commissioner of Competition, Cartels and
Deceptive Marketing Practices Branch
Facsimile: (819) 956-2836

With a copy to:

Executive Director and Senior General Counsel
Competition Bureau Legal Services
Department of Justice
Place du Portage, 22nd Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9

Facsimile: (819) 953-9267

b. the Respondent:

Vice President
Discount Car & Truck Rentals Ltd.
720 Arrow Rd.
North York, Ontario
M9M 2M1

Attention: Jay Singer

Facsimile: (416) 744-0624

With a copy to:

Fasken Martineau DuMoulin LLP
333 Bay Street, Suite 2400
Toronto, Ontario
M5H 2T6

Facsimile : (416) 364-7813

Attention: Huy Do and Jenna Ward

15. This Agreement shall be binding upon the Respondent for a period of 10 years following its registration.
16. The Parties consent to the immediate filing of this Agreement for registration with the Tribunal pursuant to section 74.12 of the *Competition Act*.
17. The Commissioner may, in his sole discretion and after informing the Respondent in writing, extend any of the time frames in Parts IV and V of this Agreement.
18. The Commissioner may, with the consent of the Respondent, extend any of the time frames in Part VI of this Agreement.
19. Nothing in this Agreement precludes the Respondent or the Commissioner from bringing an application under section 74.13 of the *Competition Act*. The Respondent does not accept or admit, but will not, for the purposes of this Agreement only, including execution, registration, enforcement, variation or rescission, contest the Commissioner's conclusions.
20. The Respondent shall not make any public statements that contradict the terms of this Agreement.

21. The Respondent attorns to the jurisdiction of the Tribunal for the purposes of this Agreement and any proceeding initiated by the Commissioner or the Respondent relating to this Agreement for variation or rescission.
22. In the event of a dispute regarding the interpretation, implementation or application of this Agreement, any of the Parties shall be at liberty to apply to the Tribunal for an order or directions. In no event shall any dispute suspend any time period under the Agreement. The Parties agree that the Tribunal has jurisdiction to make such order as is required to give effect to this Agreement.
23. This Agreement may be executed in two or more counterparts, each of which shall be an original instrument, and all of which taken together shall constitute one and the same instrument. In the event of any discrepancy between the English and French versions of this Agreement, the English version shall prevail.
24. The Agreement constitutes the entire and only agreement between the Parties and supersedes all previous negotiations, communications and other agreements, whether written or oral, unless they are incorporated by reference herein. There are no terms, covenants, representations, statements or conditions binding on the Parties other than those contained herein.
25. The computation of time periods contemplated by this Agreement shall be in accordance with the *Interpretation Act*. For the purpose of this Agreement, the definition of “holiday” in the *Interpretation Act* shall include Saturday. For the purposes of determining time periods, the date of this Agreement is the last date on which it is executed by a Party.
26. The Agreement shall be governed by and interpreted in accordance with the laws of Ontario and the laws of Canada applicable therein, without applying any otherwise applicable conflict of law rules.

[Remainder of page intentionally left blank; signature page to follow]

The undersigned hereby agree to the filing of the Agreement with the Tribunal for registration.

DATED at Toronto, in the province of Ontario this 4th day of October, 2018.

for: Discount Car & Truck Rentals Ltd.

[Original signed by Jay Singer]

Jay Singer

I have authority to bind the corporation.

DATED at Gatineau, in the province of Quebec this 10th day of October, 2018.

[Original signed by Matthew Boswell]

Matthew Boswell

Commissioner of Competition

“APPENDIX A”

ACKNOWLEDGEMENT BY SENIOR MANAGEMENT

[Company Letterhead]

[date], 2018

Commissioner of Competition
Competition Bureau
Place du Portage, Phase 1
50 Victoria Street, 21st Floor
Gatineau, QC K1A 0C9

Re: Commitment to Establishment and Maintenance of Compliance Program

Further to Paragraph 9 of the Consent Agreement between the Commissioner of Competition (the “Commissioner”) and Discount Car & Truck Rentals Ltd., dated _____, 2018, I hereby commit to the successful implementation of Discount’s corporate compliance program for the purpose of promoting compliance with the *Competition Act*, R.S.C. 1985, c. C-34, including the deceptive marketing practices provisions in Part VII.1 of the Act. I will take an active and visible role in the establishment and maintenance of the corporate compliance program.

Sincerely,

[Name and title]

- c. Deputy Commissioner of Competition, Deceptive Marketing Practices Directorate, Cartels and Deceptive Marketing Practices Branch

Executive Director and Senior General Counsel, Competition Bureau Legal Services