

**THE COMPETITION TRIBUNAL**

**IN THE MATTER OF** the *Competition Act*, RSC 1985, c C-34, as amended;

**AND IN THE MATTER OF** an application by the Commissioner of Competition for orders pursuant to section 74.1 of the *Competition Act* regarding conduct reviewable pursuant to paragraph 74.01(1)(a) and section 74.05 of the *Competition Act*;

**BETWEEN:**

**COMMISSIONER OF COMPETITION**

**Applicant**

- and -

**LIVE NATION ENTERTAINMENT, INC., LIVE NATION WORLDWIDE, INC.,  
TICKETMASTER CANADA HOLDINGS ULC, TICKETMASTER CANADA LP,  
TICKETMASTER L.L.C., THE V.I.P. TOUR COMPANY, TICKETSNOW.COM, INC.,  
and TNOW ENTERTAINMENT GROUP, INC.**

**Respondents**

---

**MOTION RECORD OF THE RESPONDENTS  
(Respondents' Motion on Commissioner's Refusals)  
(Returnable April 2, 2019)**

**VOLUME I OF II**

---

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE  <b>FILED / PRODUIT</b> Date: March 21, 2019 CT-2018-005  Bianca Zamor for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT.	#58

**McMILLAN LLP**  
Brookfield Place  
181 Bay Street, Suite 4400  
Toronto, Ontario M5J 2T3

Tel: (416) 865-7000  
Fax: (416) 865-7048

David W. Kent  
Mark Opashinov  
Guy Pinonnault  
Adam D. H. Chisholm  
Joshua Chad  
Nicole Rozario

Counsel to the Respondents

Public

AND TO: **ATTORNEY GENERAL OF CANADA**  
Department Of Justice Canada  
Place de Portage, Phase 1  
50 Victoria Street, 22<sup>nd</sup> floor  
Gatineau, Quebec K1A 0C9

François Joyal  
Tel: (514) 283-5880

Paul Klippenstein  
Tel: (819) 934-2672

Derek Leschinsky  
Tel: (819) 956-2842

Ryan Caron  
Tel: (819) 953-3889

Counsel to Commissioner of Competition

AND TO: **THE REGISTRAR OF THE COMPETITION TRIBUNAL**  
Competition Tribunal  
Thomas D'Arcy McGee Building  
90 Sparks Street, Suite 600  
Ottawa, Ontario K1D 5B4

Public

# Index

**THE COMPETITION TRIBUNAL**

**IN THE MATTER OF** the *Competition Act*, RSC 1985, c C-34, as amended;

**AND IN THE MATTER OF** an application by the Commissioner of Competition for orders pursuant to section 74.1 of the *Competition Act* regarding conduct reviewable pursuant to paragraph 74.01(1)(a) and section 74.05 of the *Competition Act*;

**BETWEEN:**

**COMMISSIONER OF COMPETITION**

**Applicant**

**- and -**

**LIVE NATION ENTERTAINMENT, INC., LIVE NATION WORLDWIDE, INC.,  
TICKETMASTER CANADA HOLDINGS ULC, TICKETMASTER CANADA LP,  
TICKETMASTER L.L.C., THE V.I.P. TOUR COMPANY, TICKETSNOW.COM, INC.,  
and TNOW ENTERTAINMENT GROUP, INC.**

**Respondents**

---

**INDEX**

---

<b>VOLUME I</b>		
<b>MOTION RECORD</b>		
<b>Tab</b>	<b>Document</b>	<b>Page #s</b>
1	Notice of Motion (including Schedule A of Refused Questions)	1-10
2	Notice of Application dated January 25, 2018	11-34
3	Respondents' Response dated March 12, 2018	35-59
4	Reply dated March 26, 2018	60-72
5	Affidavit of Deborah Pouliot sworn March 19, 2019	73-75
A	Order Further Amending the Scheduling Order of Judicial Member Justice Gascon, Pouliot Exhibit "A"	76-81

Public

B	Transcript of the Examination of L. Nikolova held on January 31, 2019, Pouliot Exhibit "B"	82-348
C	Transcript of the Examination of L. Nikolova held on February 1, 2019, Pouliot Exhibit "C"	349-473
<b>VOLUME II</b>		
D	Email from A. Chisholm to counsel to the Commissioner attaching an undertakings chart dated February 21, 2019, Pouliot Exhibit "D"	474-492
E	Commissioner's Responses to Undertakings, Pouliot Exhibit "E"	493-520
F	Commissioner's Responses to Refusals, Pouliot Exhibit "F"	521-523
G	[REDACTED]	524-526
H	[REDACTED]	527-529
I	[REDACTED]	530-532
J	[REDACTED]	533-536
K	[REDACTED]	537-538
L	[REDACTED]	539-581
<b>MEMORANDUM OF FACT AND LAW AND AUTHORITIES</b>		
6	Memorandum of Fact and Law dated March 21, 2019	582-601
7	<i>Apotex Inc v. Sanofi-Aventis Canada Inc.</i> , 2011 FC 52.	602-614
8	<i>Apotex Inc. v. Wellcome Foundation Ltd.</i> , 2007 FC 236.	615-624
9	<i>Canada v. Lehigh Cement Ltd.</i> , 2011 FCA 120.	625-635
10	<i>Monit International Inc. v. Canada</i> (1999), 175 FTR 258 (FCTD).	636-638

Public

# Tab 1

**VOLUME I – MOTION RECORD**

CT-2018-005

**THE COMPETITION TRIBUNAL**

**IN THE MATTER OF** the *Competition Act*, RSC 1985, c C-34, as amended;

**AND IN THE MATTER OF** an application by the Commissioner of Competition for orders pursuant to section 74.1 of the *Competition Act* regarding conduct reviewable pursuant to paragraph 74.01(1)(a) and section 74.05 of the *Competition Act*;

**BETWEEN:**

**COMMISSIONER OF COMPETITION**

**Applicant**

- and -

**LIVE NATION ENTERTAINMENT, INC., LIVE NATION WORLDWIDE, INC.,  
TICKETMASTER CANADA HOLDINGS ULC, TICKETMASTER CANADA LP,  
TICKETMASTER L.L.C., THE V.I.P. TOUR COMPANY, TICKETSNOW.COM, INC.,  
and TNOW ENTERTAINMENT GROUP, INC.**

**Respondents**

---

**NOTICE OF MOTION  
(Respondents' Motion on Commissioner's Refusals)**

---

**TAKE NOTICE** that the Respondents will make a motion to Competition Tribunal (“**Tribunal**”) at a hearing to be held on April 2, 2019 at 9:30 a.m., or as soon thereafter as the motion can be heard in Ottawa, Ontario.

**THE MOTION IS FOR:**

1. an Order compelling the Applicant's witness, Lina Nikolova ("**Ms. Nikolova**"), to answer those questions set out in Schedule A to this Notice of Motion (the "**Refused Questions**");
2. an Order compelling Ms. Nikolova to attend for continued examination on discovery on behalf of the Commissioner of Competition ("**Commissioner**"), or provide follow-up answers in a form agreed upon by the parties, all in accordance with the scheduling order as most recently amended on February 11, 2019 (the "**Scheduling Order**");
3. the Respondents' Costs of this motion; and
4. such further and other relief as counsel may request and the Tribunal deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. The Commissioner filed the within Application alleging reviewable conduct pursuant to the *Competition Act*, R.S.C. 1985, c. C-34, dating back to 2009. More specifically, the Commissioner alleges that the display of prices for tickets on certain internet websites and mobile applications (the "**Ticketing Platforms**") constituted deceptive marketing practices under the Act in 2009 continuously until today.
2. The parties completed their examinations for discovery on February 1, 2019. Ms. Nikolova was examined for discovery on behalf of the Commissioner, and refused to answer 76 questions asked of her by counsel for the Respondents.

3. In accordance with the Scheduling Order, the deadline for fulfilling answers to discovery undertakings was March 1, 2019.
4. The Commissioner provided answers for five questions that Ms. Nikolova had refused to answer, leaving 71 questions which remain refused. This motion seeks to compel answers to 34 of those questions (the “**Refused Questions**”).
5. Broadly speaking, the Refused Questions relate to the following issues, and are organized accordingly in Schedule A:
  - a. The Commissioner reviewed the Respondents’ Ticketing Platforms for deceptive marketing practices in 2009, but raised no issues about the displays of prices that he now alleges were and continue to be deceptive until almost eight years later. The Commissioner’s 2009 review, and his eight year delay in proceeding, are relevant to both the Respondents’ pleading of estoppel and waiver and to remedy.
  - b. The Commissioner has named eight Respondents, but most of his allegations assert conduct by the “Respondents” without distinguishing among them. The Commissioner also asserts generally that the Respondents work “together and/or individually” and “make or permit” certain representations. Which Respondent is actually alleged to take what steps, and with whom, are relevant to certain Respondents’ pleading that they are simply not responsible for the impugned representations.
  - c. All parties have pleaded industry practices and online e-commerce standards, which are relevant to whether any representations were deceptive and to remedy.

- d. Ms. Nikolova also refused to answer a question regarding the Respondents' "per-order fees" and, in particular, the manner in which the Commissioner says those amounts could be calculated for each ticket prior to fans selecting the number of tickets they wish to purchase. As the Commissioner has indicated that per-order fees are part of the allegations against the Respondents, he should provide an answer to this question.
6. The Refused Questions are all proper questions relating to issues arising from the pleadings in this proceeding, and should be answered in order to provide the Respondents with adequate disclosure and discovery.
7. The *Competition Tribunal Rules*, rr. 2, 34(1), 64-66 and the *Federal Court Rules*, rr. 97, 240-243; and
8. Such further or other grounds as counsel may advise and the Tribunal permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. The transcripts of the examination for discovery of Lina Nikolova, dated January 31, 2019 and February 1, 2019;
2. The Affidavit of Deborah Pouliot sworn March 19, 2019;
3. The pleadings herein; and
4. Such further or other documents as counsel may advise and the Tribunal permit.

Public

**DATED AT TORONTO, ONTARIO** this 21st day of March, 2019.

per 

David W. Kent  
Mark Opashinov  
Guy Pinsonnault  
Adam D. H. Chisholm  
Joshua Chad  
Nicole Rozario

**McMILLAN LLP**  
Brookfield Place  
181 Bay Street, Suite 4400  
Toronto, Ontario M5J 2T3

Tel: (416) 865-7000  
Fax: (416) 865-7048

Counsel to the Respondents

**TO: ATTORNEY GENERAL OF CANADA**

Department Of Justice Canada  
Place de Portage, Phase 1  
50 Victoria Street, 22<sup>nd</sup> floor  
Gatineau, Quebec K1A 0C9

François Joyal  
Tel: (514) 283-5880

Paul Klippenstein  
Tel: (819) 934-2672

Derek Leschinsky  
Tel: (819) 956-2842

Ryan Caron  
Tel: (819) 953-3889

Counsel to Commissioner of Competition

AND TO: **THE REGISTRAR OF THE COMPETITION TRIBUNAL**  
Competition Tribunal  
Thomas D'Arcy McGee Building  
90 Sparks Street, Suite 600  
Ottawa, Ontario K1D 5B4

## Schedule A

<b>Issue 1 - Historic Conduct – Estoppel, Waiver and Remedy</b>		
Page	Question	Refusal
16	69	What triggered the opening of the file leading to the current application?
16	70	Was [the current application] triggered on the basis of any consumer complaints?
109	410	Do you know whether there was any investigation into [REDACTED]'s complaint] or what steps were taken in response to [REDACTED] complaint?
109-110	411	Did anyone at the Bureau ever respond to [REDACTED] ?
116	434	What was the misrep issue [that Ms. Rosen] was referring to [in her e-mail correspondence with Mr. Bryenton in Exhibit 114]?
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]?
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].
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?
131-132	494	Do you know whether the Bureau looked at any aspects of [the .ca and ticketsnow] websites [REDACTED] ]?
143-144	527-528	What open matters [was Mr. Homan referencing] when he communicated to Ticketmaster [REDACTED] ?
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] .
167	612	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?
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?
187	677	When did the Bureau first consider that the 2009 fee displays were misleading?
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?
187	679	Has anything changed since 2010 as to whether or not the 2009 or 2010 fee display was misleading?
189-190	685	Why did the Bureau take eight years [after Ms. Rosen started a screen capture campaign] to raise this complaint with Ticketmaster?
293	976	Are [Exhibits 120 and 121] among [the screen captures] referred to in the March 6 <sup>th</sup> , 2009 e-mail exchange with Ms. Rosen?
359	1199	Why didn't the Commissioner do anything about [REDACTED] ]?

<b>Issue 2 – Individual Respondent Allegations - Liability</b>		
Page	Question	Refusal
45	176	Does the Commissioner say that Live Nation Entertainment Inc. made representations on [ticketmaster.ca, ticketweb.ca or ticketsnow.com]?
73	276-277	You are not aware of any facts associating VIP Tour with [ticketmaster.ca]?
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?
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]?
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]?
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]?
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]?
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?
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.
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.

<b>Issue 3 – Industry Practices and Standards – Liability and Remedy</b>		
Page	Question	Refusal
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].
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.
384	1276	Has the Bureau gathered or received information from market participants in the ticket sale or resale business in Canada?
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?

<b>Issue 4 – Per Order Fees – Liability and Remedy</b>		
Page	Question	Refusal
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?



Public

# Tab 2

**VOLUME I – MOTION RECORD**

CT-2018-

**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 by the Commissioner of Competition for orders pursuant to section 74.1 of the *Competition Act* regarding conduct reviewable pursuant to paragraph 74.01(1)(a) and section 74.05 of the *Competition Act*;

**BETWEEN:**

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE  FILED / PRODUIT Date: January 25, 2018 CT-2018-005 Andr�e Bernier for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT.	# 2

**COMMISSIONER OF COMPETITION****Applicant**

– and –

**LIVE NATION ENTERTAINMENT, INC., LIVE NATION WORLDWIDE, INC.,  
 TICKETMASTER CANADA HOLDINGS ULC, TICKETMASTER CANADA LP,  
 TICKETMASTER L.L.C., THE V.I.P. TOUR COMPANY, TICKETSNOW.COM, INC., and  
 TNOW ENTERTAINMENT GROUP, INC.**

**Respondents**


---

**NOTICE OF APPLICATION**


---

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

**AND TAKE NOTICE** that the Commissioner relies on the following Statement of Grounds and Material Facts in support of this Application and on such further or other material as counsel may advise and the Tribunal may permit.

**AND TAKE NOTICE** that if you do not file a Response with the Registrar of the Tribunal within 45 days of the date upon which this Application is served upon you, the Tribunal may, upon

application by the Commissioner and without further notice, make such order or orders as it may consider just, including the orders sought in this Application.

**THE ADDRESSES FOR SERVICE ARE:**

For the Respondents:

McMillan LLP  
Brookfield Place  
181 Bay Street, Suite 4400  
Toronto, Ontario  
Canada M5J 2T3

Attention: Mark Opashinov  
David Kent  
Guy Pinsonnault  
Joshua Chad

For the Commissioner of Competition:

Department of Justice Canada  
Competition Bureau Legal Services  
Place du Portage, Phase I  
50 Victoria Street, 22nd Floor

Attention: Derek Leschinsky  
Kenneth Jull  
Ryan Caron

**APPLICATION**

1. The Commissioner makes this Application pursuant to section 74.1 of the Act for:
  - a. a declaration that each Respondent separately, jointly and/or in concert is engaging in or has engaged in reviewable conduct, contrary to paragraph 74.01(1)(a) and section 74.05 of the Act;
  - b. an order prohibiting each Respondent from engaging in the reviewable conduct or substantially similar reviewable conduct in Canada for a period of ten years from the date of such order;
  - c. an order requiring each Respondent to publish or otherwise disseminate notices of the determinations made herein pursuant to paragraph 74.1(1)(b) of the Act, in such manner and at such times as the Commissioner may advise and this Tribunal may permit;
  - d. an order requiring the Respondents to pay such administrative monetary penalties as the Tribunal deems appropriate;
  - e. an order requiring the Respondents to pay an amount, not exceeding the total amounts paid to the Respondents for the products in respect of which the reviewable conduct was engaged in, to be distributed among those persons to whom the products were sold, in an amount and manner to be assessed by the Tribunal;
  - f. costs; and
  - g. such further and other relief as the Commissioner may advise and this Tribunal may permit.

## STATEMENT OF GROUNDS AND MATERIAL FACTS

### I. OVERVIEW

2. The Respondents' parent company, Live Nation Entertainment, Inc. ("**Live Nation**") describes itself and the businesses it controls as the world's leading live entertainment ticketing sales and marketing company. Live Nation and its Respondent subsidiaries act and have acted separately, jointly and/or in concert with each other to make or permit representations and supply tickets to sports and entertainment events since Live Nation took control of the Respondents. The Respondents derive hundreds of millions of dollars in revenue a year from consumers in Canada pursuant to their marketing and supply of tickets.
3. The Respondents have engaged in, and continue to engage in, deceptive marketing practices by promoting the sale of tickets to the public at prices that are not in fact attainable (the "**Price Representations**") and then supplying tickets at prices above the advertised price. They have done so for a number of years and at least since the time they were under the control of Live Nation. The Respondents engage in the conduct that is subject to this Application for the purpose of promoting the tickets they or their affiliates sell and their business interests more generally. The Price Representations are made to and target the public in Canada on the websites accessible from "ticketmaster.ca", "ticketweb.ca", and "ticketsnow.com", as well as the Respondents' mobile applications.
4. The Respondents' Price Representations create the false or misleading general impression that consumers can buy tickets to sports and entertainment events for less than what the Respondents actually charge. As the Respondents know, consumers cannot buy tickets for the prices they represent, because the Respondents require consumers who respond to the Price Representations to pay additional non-optional fees (the "**Non-Optional Fees**"). While the amount of the Non-Optional Fees and the true cost of the tickets are known to the Respondents when the Price Representations are made, the Respondents only reveal the Non-Optional Fees and the true cost of the tickets once consumers select their tickets and navigate through certain steps in the

purchasing process. This disclosure is wholly inadequate to prevent the Price Representations from being false or misleading.

5. The Respondents' Non-Optional Fees often increase the cost of tickets to sports and entertainment events by over 20% and, in some cases, by over 65%.
6. The Respondents have made, and continue to make, representations to the public that are false or misleading in a material respect about the price consumers in Canada must pay to buy tickets, and the Respondents supply tickets at prices higher than the advertised price. The Respondents have made the Price Representations to the public in Canada countless times since Live Nation assumed control of the Respondents, examples of which are particularized below.
7. The Commissioner brings this Application to cease the Respondents' deceptive marketing practices and to obtain orders so as to ensure conformity with the deceptive marketing provisions of the Act.

## II. THE PARTIES

8. The Commissioner is an officer appointed by the Governor in Council under section 7 of the Act and is responsible for the administration and enforcement of the Act.
9. The Respondents, set out below, work together and/or individually to make or permit the Price Representations and supply tickets to consumers in Canada.
10. The Respondent, Live Nation Entertainment, Inc. ("**Live Nation**"), is a company organized and existing under the laws of Delaware. Live Nation describes itself as the largest live entertainment company in the world and the world's leading live entertainment ticketing sales and marketing company. Live Nation's headquarters are in Beverly Hills, California. The Price Representations made to the public as accessed through ticketmaster.ca and ticketweb.ca come from a computer network under the control of Live Nation. Since approximately 2009/2010, a consumer must access Live Nation's computer network in order to view these representations and purchase tickets to events.

11. The Respondent, Live Nation Worldwide, Inc. ("**Live Nation Worldwide**"), is a subsidiary of Live Nation organized and existing under the laws of Delaware. Live Nation Worldwide's headquarters are co-located with those of Live Nation in Beverly Hills, California. Since approximately March 2013, Live Nation Worldwide has controlled the domain name ticketmaster.ca and the associated website.
12. The Respondent, Ticketmaster Canada Holdings ULC ("**Ticketmaster Canada Holdings**") is a subsidiary of Live Nation organized and existing under the laws of Nova Scotia. Ticketmaster Canada Holdings is the successor to Ticketmaster Canada Ltd. ("**TMLC**"). Ticketmaster Canada Holdings' headquarters is located in the Rogers Centre, a sports stadium in Toronto, Ontario (the "**Rogers Centre**"). Since at least 2009, Ticketmaster Canada Holdings and its predecessor controlled and continue to control the domain name ticketweb.ca and the associated website. Further, at certain times since 2010, websites accessed from ticketmaster.ca and ticketweb.ca identified TMLC as the company handling consumer transactions and collecting payments for events in Canada with respect to ticketmaster.ca and ticketweb.ca.
13. The Respondent, Ticketmaster Canada LP ("**Ticketmaster Canada**"), is a limited partnership organized and existing under the laws of Ontario. Ticketmaster Canada is a subsidiary of Live Nation and its general partner is Ticketmaster Canada ULC. Ticketmaster Canada's headquarters is located in the Rogers Centre. Since at least 2009, Ticketmaster Canada has provided services enabling tickets to be sold to consumers through ticketmaster.ca.
14. The Respondent, Ticketmaster L.L.C. ("**Ticketmaster LLC**"), is a limited liability corporation organized and existing under the laws of Virginia. Ticketmaster LLC is a subsidiary of Live Nation and its head office is in West Hollywood, California. Ticketmaster LLC is the successor to a company of the same name organized under the laws of Delaware and to Ticketmaster Corporation, which was also organized under the laws of Delaware. Since at least 2009 until approximately March 2013, Ticketmaster LLC controlled the domain name ticketmaster.ca and the associated website. Moreover, since approximately 2009/2010, the website accessed from the domain name ticketmaster.ca

identifies Ticketmaster LLC as the company handling consumer transactions and collecting payments for events in the United States with respect to ticketmaster.ca. Further, Ticketmaster LLC offers the mobile application to consumers in Canada for download and use.

15. The Respondent, The V.I.P. Tour Company ("**VIP Tour**"), is a company organized and existing under the laws of Delaware. VIP Tour is a subsidiary of Live Nation. VIP Tour's headquarters are in Beverly Hills, California. VIP Tour controls a computer network from which Price Representations are made. A consumer could access these Price Representations through ticketsnow.com. Since approximately 2009, a consumer must access VIP Tour's network in order to view these representations and purchase tickets to events.
16. The Respondent, TNOW Entertainment Group, Inc. ("**TNOW Entertainment**"), is a company organized and existing under the laws of Illinois. TNOW Entertainment is a subsidiary of Live Nation. TNOW Entertainment's headquarters are co-located with VIP Tour in Beverly Hills, California. Since April 2010, TNOW Entertainment controls the domain name ticketsnow.com and the associated website.
17. The Respondent, Ticketsnow.com, Inc. ("**Ticketsnow**"), is a corporation organized and existing under the laws of Illinois. Ticketsnow is a subsidiary of Live Nation. Ticketsnow's headquarters are in Beverly Hills, California. Ticketsnow provides services enabling tickets to be sold to consumers from the domain name ticketsnow.com and the associated website.
18. In addition, a number of officers and directors of the Respondents are officers, directors and/or employees of the other Respondents.
19. The Respondents work together and/or individually to make or permit each other to make the Price Representations that are the subject of this Application. The Commissioner pleads and relies on subsection 52(1.2) of the Act in this regard.

20. The Respondents work together and/or individually to supply or offer to supply tickets for the purpose of section 74.05 of the Act. The Commissioner pleads and relies on the definition of supply in subsection 2(1) of the Act.

### **III. THE RESPONDENTS' DECEPTIVE MARKETING PRACTICES**

21. The Respondents offer primary tickets as well as resale tickets. Primary tickets refer to the Respondents' initial sale of tickets whereas resale tickets refer to the Respondents' resale of tickets on behalf of a holder who originally purchased them from a venue, promoter or other entity.
22. The Respondents make the Price Representations described in this Application to promote the tickets they sell to consumers for sports and entertainment events and their business interests more generally. The Respondents' business interests include their financial interests and their interests in promoting events and providing services to venues and/or other customers to enable the sale of tickets for sports and entertainment events.
23. The Respondents have promoted and continue to promote their products and business interests to the public by making false or misleading Price Representations that tickets are available for purchase at unattainable prices. The Respondents' representations create the general impression that consumers can buy tickets to sports and entertainment events for less than what the Respondents actually charge consumers when they supply the tickets.
24. Consumers cannot purchase tickets to sports and entertainment events from the Respondents at the prices that the Respondents represent, because the Respondents require consumers who respond to the Price Representations to pay additional Non-Optional Fees. While the amount and type of Non-Optional Fees the Respondents impose varies from ticket to ticket, the Respondents have chosen to charge consumers a variety of Non-Optional Fees, including the following:

English	French
Service Fee or Charge	Frais de service
Facility Charge	Frais de la sale / Frais d'établissement
Order Processing Fee	Frais de traitement de la commande
Resale Service Fee	Frais de service pour la revente
TM+ Resale Service Fee	—

25. The Respondents' Non-Optional Fees often increase substantially the cost of tickets to sports and entertainment events by over 20% and, in some cases, by over 65%. The Non-Optional Fees are known to the Respondents at the time they make their Price Representations to the public. The Respondents nevertheless exclude these Non-Optional Fees from the Price Representations when promoting the sale of tickets to the public.
26. The Respondents have structured their purchasing processes so that they only reveal the amount of their Non-Optional Fees and the true cost of the tickets they sell once consumers have selected their tickets and after consumers have invested time and effort to navigate through certain steps in the purchasing process. In many instances, this information is presented at different steps, so that consumers only learn the true and actual cost after they have entered their information and have navigated close to the end of the purchasing process, a marketing technique often referred to as drip pricing. Moreover, the Respondents' use, in certain instances, of a countdown clock increases pressure on consumers to complete a purchase.

27. Disclosing the true cost of the tickets *after* consumers rely on the Price Representations to price out, select their seats and decide to buy their selected tickets is wholly inadequate to prevent the Price Representations from being materially misleading: consumers have made their purchasing decision on the basis of the false or misleading Price Representations, and, among other things, often do not wish to 'lose their tickets' once they learn the truth. Moreover, dripping prices in this fashion tends to mislead consumers about the true cost of the tickets, because it results in consumers underestimating the total price. The Respondents are aware of the material effect such practices can have on consumer perception and behaviour.
28. While some of the Price Representations are accompanied by fine print disclaimers that allude to the existence of additional fees (but not the amount of those fees and not the true price of the tickets), other Price Representations are not. These fine print disclaimers, when present, do nothing to alter the false or misleading general impression created by the Price Representations that consumers can buy tickets for less than what the Respondents actually charge.
29. The exception in Canada is in Quebec, where provincial law mandates all-inclusive pricing. For events in Quebec, the Respondents in their Price Representations show consumers the "true" price of the tickets upfront, and disclose the Non-Optional Fees that are included in the cost of the tickets. This model demonstrates that the internet buying process can be structured in a way that is transparent and not misleading. However, the Respondents choose not to use this model in other parts of Canada.
30. The Respondents' false or misleading representations are material to consumers' decision-making, as price is an important factor that consumers consider when deciding whether to make a purchase and when deciding what to buy. The Respondents' deceptive marketing practices negatively affect consumer decision-making, resulting in consumer harm. Conversely, for the Respondents, these deceptive marketing practices result in an increase in sales and/or revenue.
31. The Respondents' deceptive marketing practices are reviewable pursuant to paragraph 74.01(1)(a) and section 74.05 of the Act.

32. The Respondents have made representations that are false or misleading in a material respect and sold their tickets at higher than prices advertised, as described above, at least since Live Nation took control of the Respondents. The exact dates, places and media in which the Respondents have engaged in this reviewable conduct in Canada are known to the Respondents.

#### **IV. EXAMPLES OF THE RESPONDENTS' MATERIALLY FALSE OR MISLEADING REPRESENTATIONS AND SUPPLYING TICKETS ABOVE THE PRICE ADVERTISED**

33. The Respondents' Price Representations reached the public in Canada countless times since Live Nation assumed control of the Respondents, examples of which are provided below. More specifically, examples of the Respondents' false or misleading Price Representations are set out below. The representations targeting consumers in Canada from the domains ticketmaster.ca, ticketweb.ca and ticketsnow.com, as well as on the Respondents' mobile applications, are substantially similar.

##### **A. Example of the Reviewable Conduct Before September 2017**

34. The Respondents have made Price Representations promoting prices that are not attainable. For example, the Respondents promoted a OneRepublic concert scheduled to take place on August 21, 2017 at Rogers Arena in Vancouver. Consumers interested in tickets at ticketmaster.ca were shown the following page on the website. Under the default "Buy on Map" tab, consumers could select the seats that interested them directly from the map. The website then popped up a message that made a Price Representation for the ticket selected, which in this instance was \$84.50. At the bottom of the page, the Price Representation is repeated, with a button inviting the consumer to "Buy Tickets".

Vancouver & Area Music Sports Arts & Theatre Family VIP Deals 

All Tickets > Music Tickets > Rock & Pop > OneRepublic > Aug 21, 2017 07:00 PM

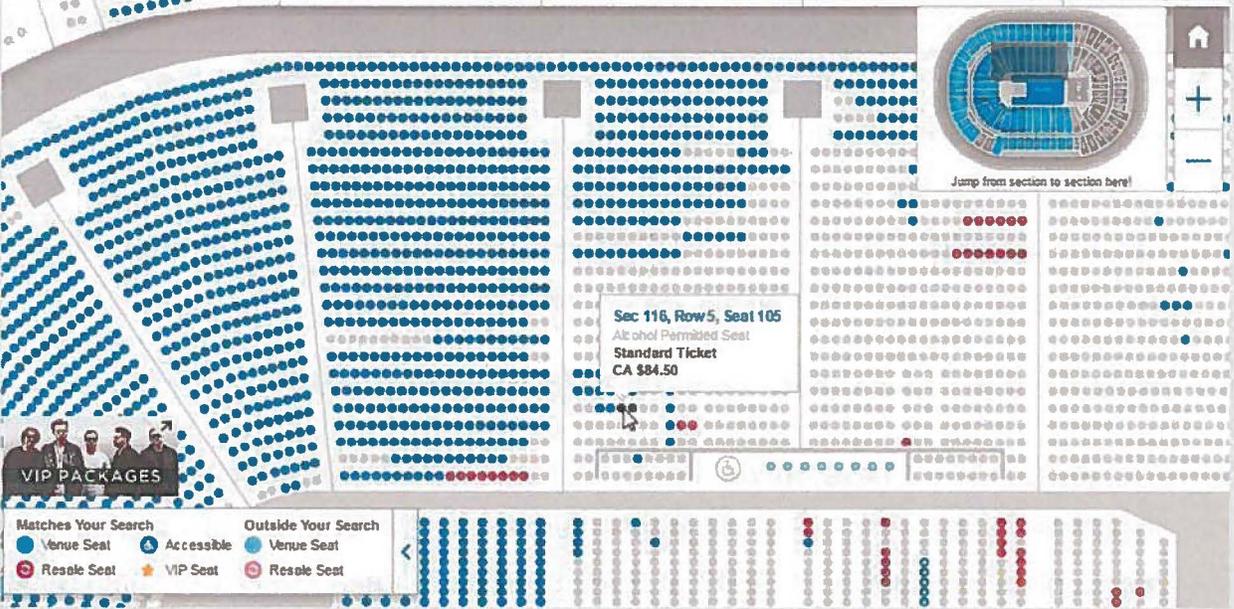


**OneRepublic**  
 ★★★★★ (105)  
 Rogers Arena, Vancouver, BC  
 Mon, Aug 21, 2017 07:00 PM  
 Details: OneRepublic, Fitz & the Tantrums  
 Event Info | Onsale Times | Price Range | Ticket Limits

 Look for this symbol for more ways in with Fan-to-Fan Resale.

**BUY ON MAP** SEE RESALE ONLY FIND SEATS FOR ME OFFICIAL PLATINUM SEATS

\$ 20 \$ 240+ Resale  Special Offers   Reset



Jump from section to section here!

Sec 116, Row 5, Seat 105  
 Alcohol Permitted Seat  
 Standard Ticket  
 CA \$84.50

VIP PACKAGES

Matches Your Search: Venue Seat, Accessible, Resale Seat  
 Outside Your Search: Venue Seat, Resale Seat

Selected Seats\* (1) [Show Details](#) **SUBTOTAL: CA \$84.50** [Buy Tickets](#)

 **ROGERS ARENA**  
 Rogers Arena  
 800 Griffiths Way, Vancouver, BC V6B 6G1  
 Directions | Parking | See All Events at this Venue

Additional fees are applied at Checkout.  
 Per order delivery and/or processing fees are added when applicable.  
 By clicking on the "Buy Tickets" button, or otherwise using this website, you agree to the [Terms of Use](#).  
 \*Your seats aren't officially reserved until you click "Buy Tickets" and pass the security check!

35. The Respondents' Price Representations in this example create the general impression that consumers in Canada can buy the tickets selected for this event for less than what the Respondents actually charge for the tickets.

36. In fact, the price promoted in the Price Representation is unattainable and the general impression is false or misleading. Consumers who respond to the Price Representations such as those featured in this example are required to pay Non-Optional Fees. While the amount of the Non-Optional Fees and the true cost of the tickets in the example above were known to the Respondents when the above-referenced Price Representations were made, the Respondents only revealed the Non-Optional Fees and the "true" cost of the tickets later in the purchasing process and once consumers had selected their tickets and navigated through certain steps in the purchasing process.

**ticketmaster®**

OFFICIAL CARD OF **ticketmaster®** 

REVIEW    DELIVERY    SIGN IN    PAYMENT

Note: The timer at bottom right shows how long you have to complete this page before we release your tickets for others to buy.



**OneRepublic**  
 Details: OneRepublic, Fitz & the Tantrums  
 Rogers Arena, Vancouver, BC  
 Mon, Aug 21, 2017 07:00 PM

Section	116
Row	5
Seats	105 - 106
Description	NO AISLE BETWEEN SECTIONS-AISLE SEATS ARE 1 & 101
Price Level	3
Plaza Level	LOW
Alcohol Permitted Seat	
Seating Chart	

Type	Standard Ticket
Ticket Price	CA \$84.50 x 2
Facility Charge	CA \$3.00 x 2
Service Fee	CA \$16.90 x 2

**SUBTOTAL CA \$208.80**

Tickets/Items	CA \$208.80
Order Processing Fee	CA \$6.00
Delivery via: eTickets	Free!

**TOTAL CHARGES CA \$214.80**

**Payment**

Credit / Debit Card  

\* Required Field

**Credit / Debit Card**

\* Visa Debit also accepted

CREDIT / DEBIT CARD TYPE \*

CREDIT / DEBIT CARD NUMBER \*    SECURITY CODE \*  
   

Expires:  
 MONTH \*    YEAR \*  
   

**Billing Address**

FIRST NAME \*    LAST NAME \*  
   

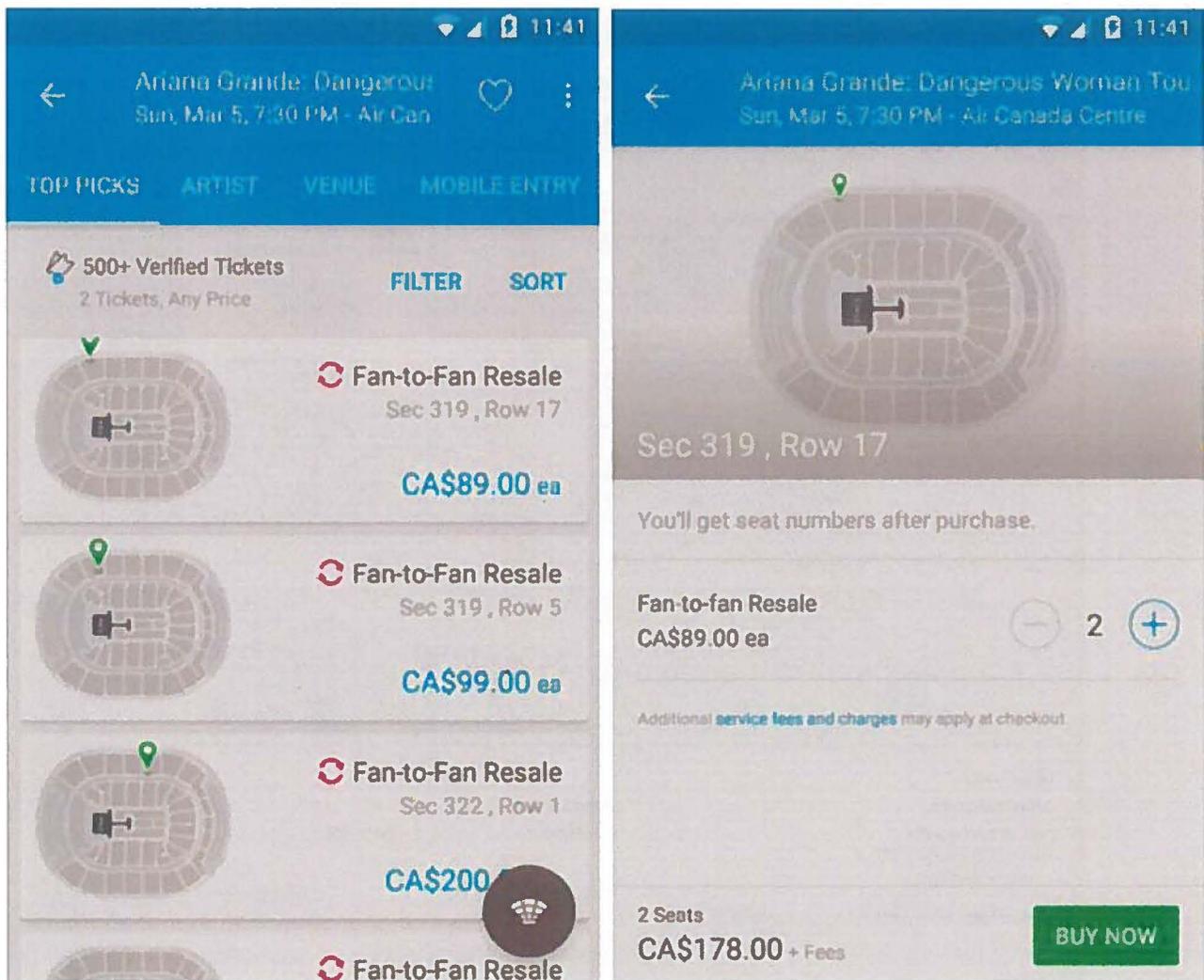
ADDRESS \*    UNIT # (OPTIONAL)  
   

ADDRESS LINE 2 (OPTIONAL)

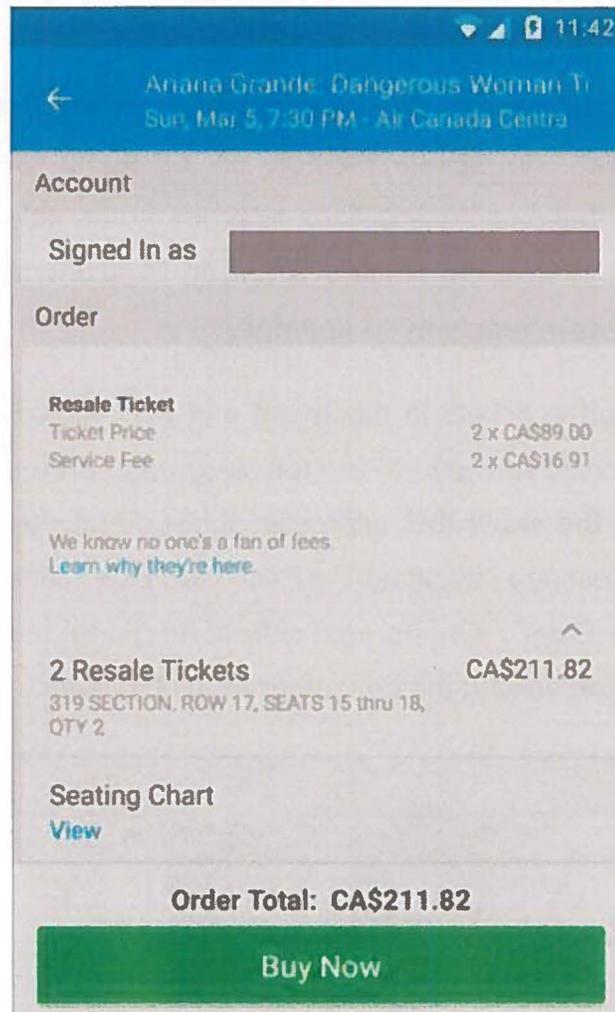
CITY \*

Time left to complete page  
**09:36**

37. As identified in the image above, the Non-Optional Fees in this example amount to \$45.80 in fees for the pair of tickets. The Non-Optional Fees therefore increased the original advertised price of the tickets by over 25%, which is significant.
38. The Respondents made similar Price Representations when consumers clicked on any of the other tabs from ticketmaster.ca in order to shop for event tickets.
39. Similar Price Representations were made on Ticketmaster's mobile application. For example, two tickets to an Ariana Grande concert on March 5, 2017 were shown to be available for \$89.00 each.



40. These prices, however, were unattainable as additional Non-Optional Fees in the amount of \$33.82 were added to the cost of tickets later in the purchasing process and after consumers clicked “Buy Now”. The Non-Optional Fees increased the original advertised price of these tickets by 19%, which is significant.

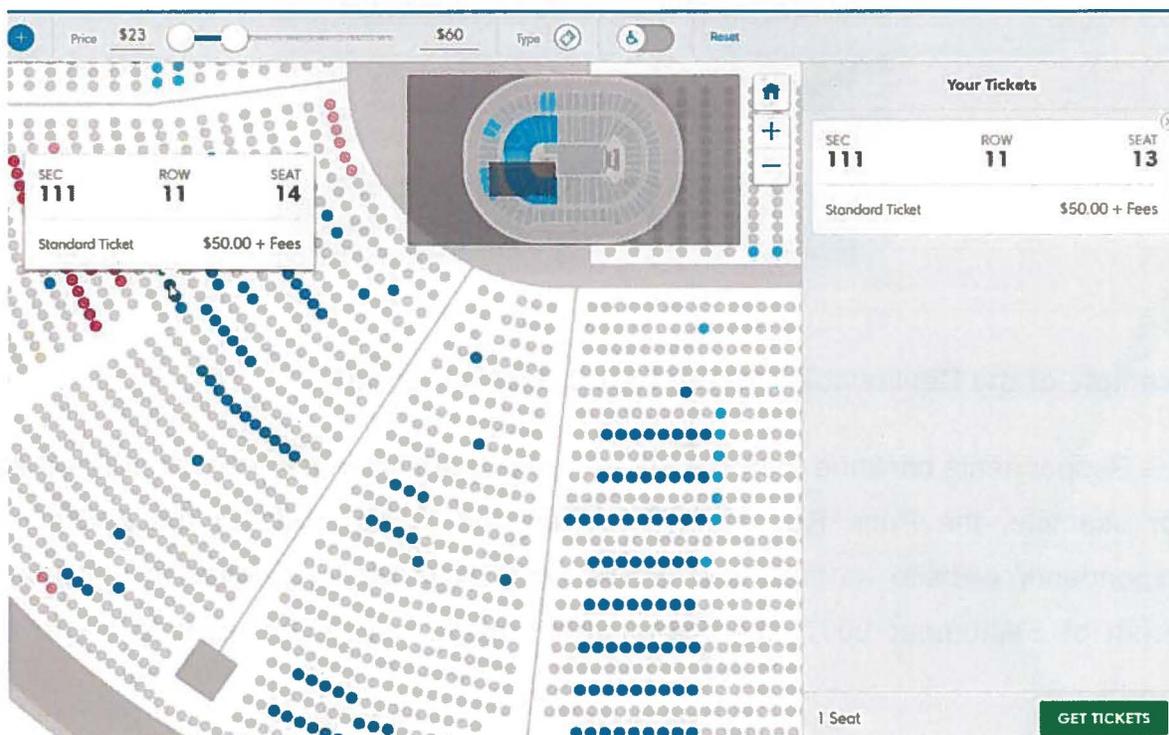


#### B. Example of the Reviewable Conduct After September 2017

41. The Respondents continue to make Price Representations in the manner outlined above. For example, the Price Representations continue to be made to the public on the respondents' website via ticketweb.ca and ticketsnow.com. However, in or around the month of September 2017, the Respondents made certain changes to some of the

representations they made. Specifically, in some instances the Respondents have increased the prominence of the disclosure of the existence of the Non-Optional Fees to consumers. However, even where the disclosure of the existence of the fees has become more prominent, the Respondents continue to conceal the amount of the fees and the actual ticket price from consumers until after consumers have selected their tickets for purchase.

42. For example, the Price Representations identified in the images below were made on the Respondents' website via [ticketmaster.ca](http://ticketmaster.ca) on or about September 30, 2017. The Respondents made these representations to promote the sale of tickets to a Nickelback concert on October 1, 2017 at Rogers Arena in Vancouver, British Columbia, and to promote their business interests more generally.
43. Consumers interested in tickets to this event and who visited the Respondents' website via [ticketmaster.ca](http://ticketmaster.ca) could navigate to the following page on the website. Consumers had the option to select the seats that interested them directly from the map. The website then popped up a message indicating the Price Representation for the ticket, which in this instance was "\$50 + Fees". On the right side of the page, the Price Representation was repeated, with a button inviting the consumer to "Get Tickets".



44. The Price Representation is unattainable and creates the false or misleading general impression that consumers can buy tickets for this event for less than what the Respondents actually charge. The only difference between the earlier example and this example is that the website now has the words "+ Fees" beside the Price Representation. Even though the amount of some or all of the fees are known to the Respondents prior to making the Price Representations to the public, the Respondents choose to only reveal the amount of their Non-Optional Fees and the "true" cost of the tickets once consumers select their tickets and take the time and effort to navigate through certain steps in the purchasing process. For the reasons outlined in paragraph 27 above, this disclosure is wholly inadequate to prevent this drip pricing practice from being misleading to consumers.

Nickelback Feed the Machine Tour
Sun 10/01 @ 6:00pm, Rogers Arena
03:11

OFFICIAL CARD OF **ticketmaster**

\* Required

or \*

✓

Security Code \*

✓

✓

✓

✓

SEC  
111
ROW  
11
SEAT  
13-14

Order Details
^

seating chart
Cancel Order

2 Standard Ticket v \$50.00 x 2

**Fees**

\$14.30 (Service Fee) x 2  
\$3.00 (Facility Charge) x 2  
\$0.00 Order Processing Fee

Delivery v Update delivery Free!

eTickets

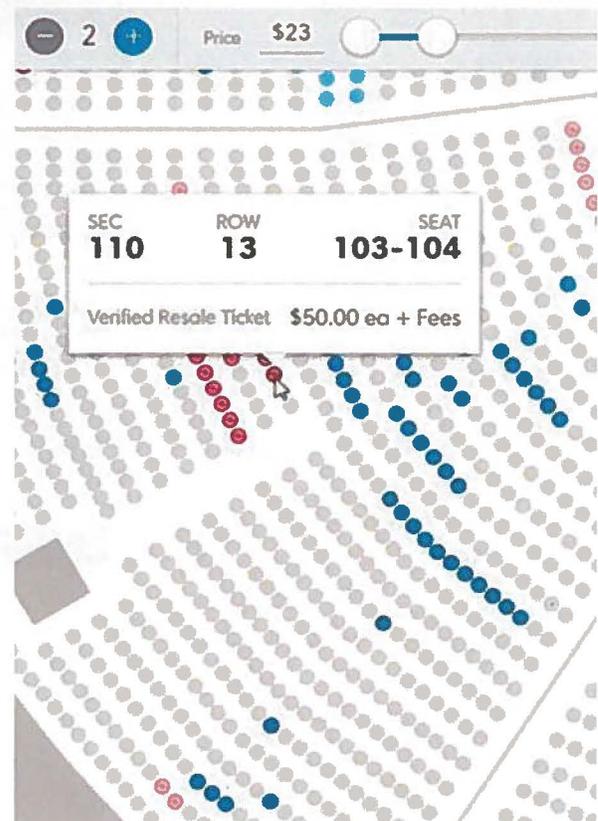
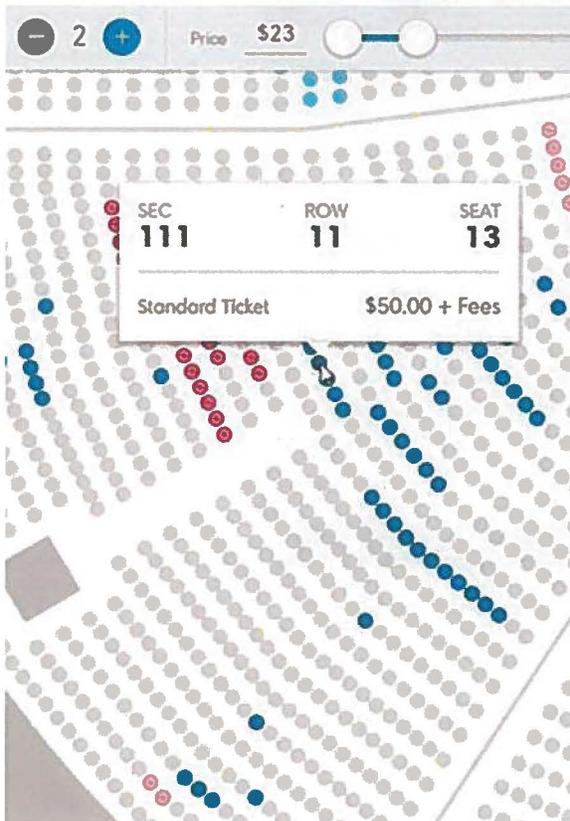
---

**Total** CA \$140.60

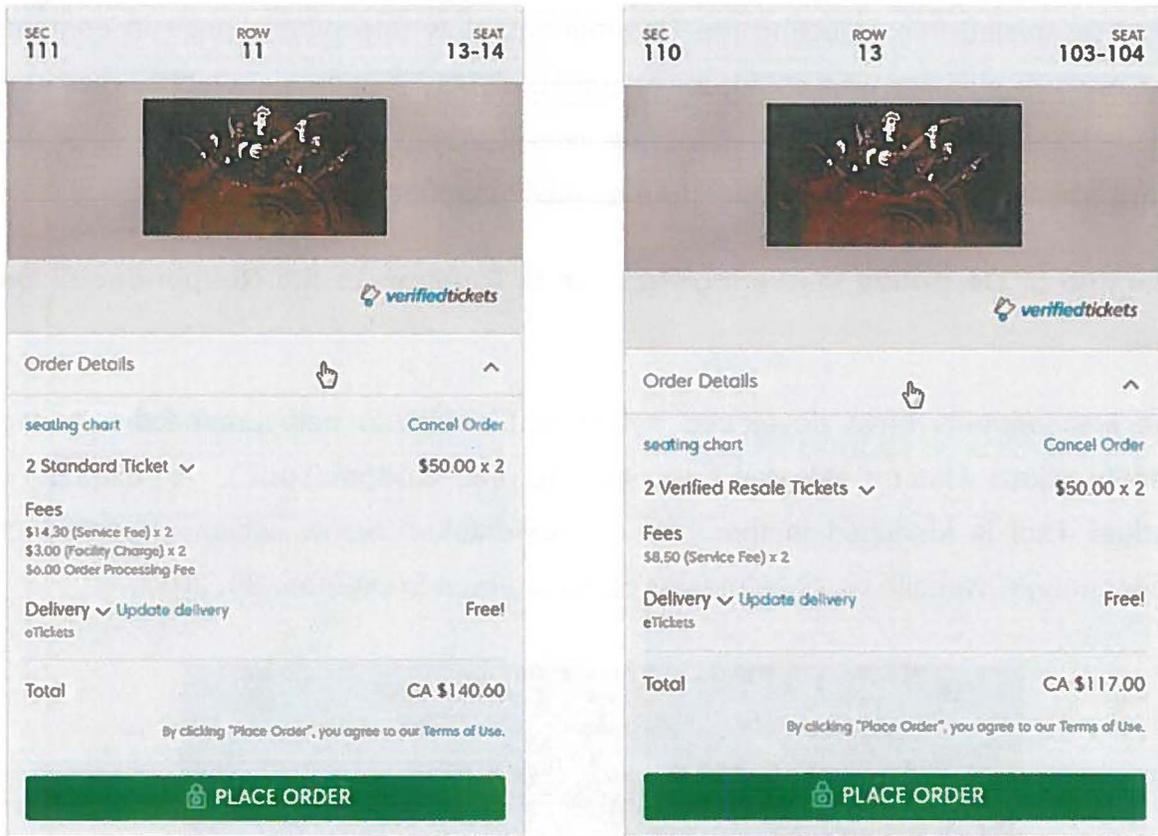
By clicking "Place Order", you agree to our Terms of Use.

PLACE ORDER

45. As identified in the image above, the Non-Optional Fees increased the price of two “Standard Tickets” from \$100 to \$140.60. The Non-Optional Fees therefore increased the advertised price of the “Standard Tickets” by over 40%, which is significant.
46. In addition, consumers in Canada choosing to select tickets from a list tool available on ticketmaster.ca are still presented with Price Representations substantially similar to those observed before September 2017. These Price Representations are false or misleading in a material respect, and amount to the supply of a product above an advertised price, for the same reasons identified in paragraphs 26 to 30 and 34 to 40.
47. The example below helps to underscore the misleading nature of the Price Representations as seen on the ticketmaster.ca website. The example involves representations identified in the images below that were made to promote the sale of tickets to Nickelback’s concert on October 1, 2017 at Rogers Arena in Vancouver, British Columbia. The representation on the left displays information in respect of a “Standard Ticket” while the representation on the right displays information in respect of a “Verified Resale Ticket”. These tickets are located two rows apart, and are in adjacent sections of the stadium.



48. In both cases, the Price Representations for the tickets are \$50. However, as can be seen below, the true cost for a pair of tickets on the left is \$140.60, while the true cost for a pair tickets on the right is \$117. The Non-Optional Fees increased the advertised price of the "Standard Tickets" by over 40%, but increased the advertised price of the "Verified Resale Tickets" by 17%.



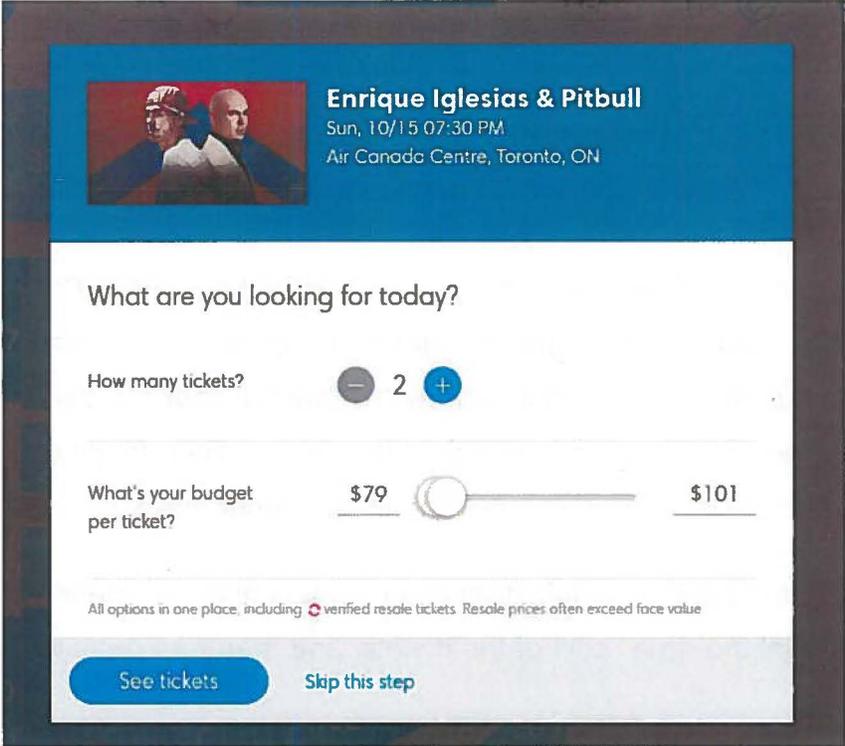
49. If the Respondents disclosed the "true" cost of the tickets in the Price Representations, then consumers could easily make informed decisions on the basis of accurate information about the price of the different offerings, thereby avoiding the consumer deception caused by the use of unattainable prices. This dripping of costs negatively affects consumer decision-making, resulting in consumer harm.
50. The example illustrates that simply disclosing the fact of the existence of fees does not, in and of itself reveal the "true" cost of the tickets, and therefore does not dispel the false or

misleading general impression created by the unattainable prices in the Price Representations. The example also illustrates that the “true” cost of the tickets varies widely and is unknowable for the consumer.

51. The foregoing is however only an illustration of a more general mechanism of deception. The exclusion of Non-Optional Fees from the Respondents’ Price Representations would create a similar misleading impression in any price comparison. That is, a consumer could be misled into selecting the Respondents’ low unavailable price in comparisons with another supplier who could, for example, display a seemingly higher (but in reality lower) all-inclusive price or impose lower Non-Optional Fees (should the other supplier adopt a similar dripped pricing structure as the Respondents).

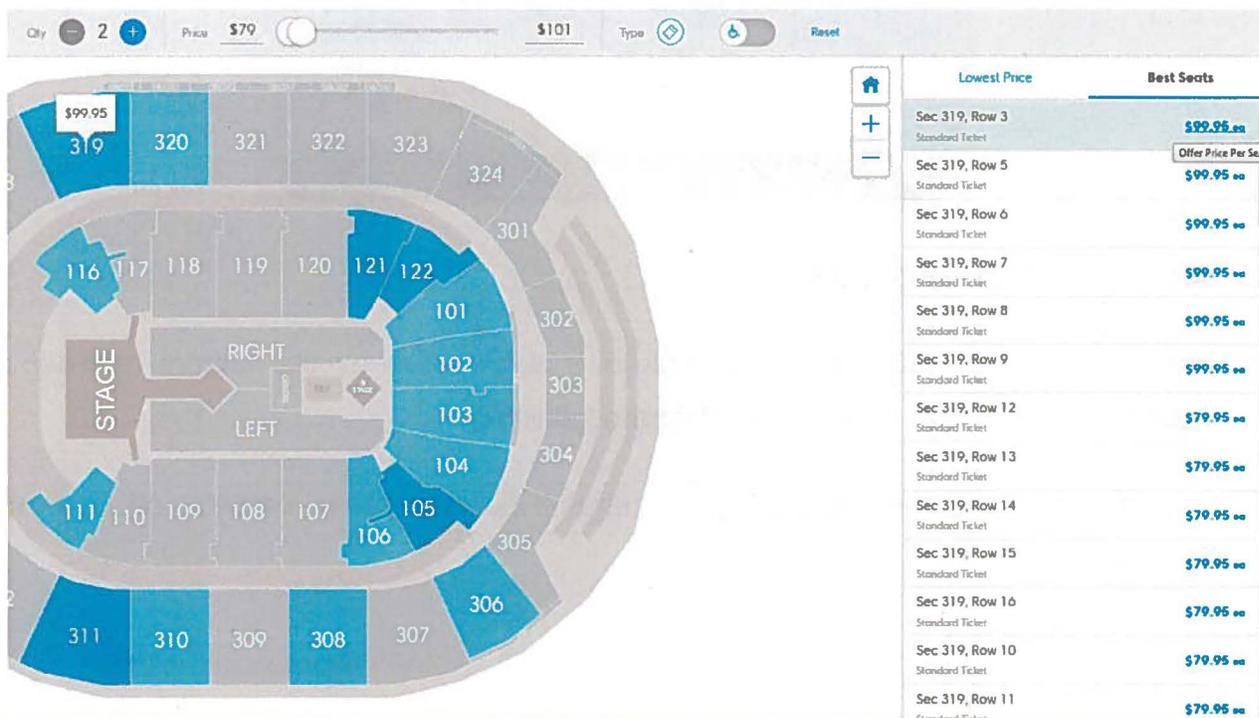
**C. Example of Deceptive Marketing Practice in Relation to the Respondents’ Budget Tool**

52. The Respondents have developed a tool that claims to help prospective consumers identify tickets within a selected budget range (the “**Budget Tool**”). An example of the Budget Tool is identified in the Price Representation below, which appeared on the Respondents’ website via ticketmaster.ca on or about September 30, 2017.



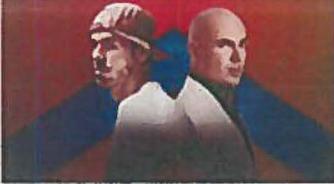
The screenshot shows a ticket selection interface for Enrique Iglesias & Pitbull. At the top, there is a blue header with a photo of the artists, the event name "Enrique Iglesias & Pitbull", and the date and time "Sun, 10/15 07:30 PM" at the "Air Canada Centre, Toronto, ON". Below the header, the question "What are you looking for today?" is displayed. Underneath, there are two interactive elements: "How many tickets?" with a minus button, the number "2", and a plus button; and "What's your budget per ticket?" with a slider ranging from "\$79" to "\$101". At the bottom, there is a note: "All options in one place, including verified resale tickets. Resale prices often exceed face value." Two buttons are at the bottom: "See tickets" and "Skip this step".

- 53. The Respondents' Budget Tool conveys the general impression that a consumer can use this tool to narrow the universe of available tickets to just those tickets that are available for purchase within the consumer's budget range, which in the above example is the range between \$79 and \$101. The Budget Tool also conveys the general impression that there are tickets available for the amount listed at the default low range of the scale, which in the above example is \$79.
- 54. The Respondents' representation is false or misleading in a material respect, as no tickets are available at \$79 because the Respondents require consumers in Canada to pay Non-Optional Fees in addition to the advertised price.
- 55. Furthermore, the Respondents' representation is false or misleading in a material respect because many of the tickets identified by Ticketmaster in response to this budget range are not actually available for purchase between the price of \$79 and \$101. Instead, many of the tickets identified by the Respondents in response to the consumer's stated budget range actually cost more than \$101, because the Respondents require consumers to pay undisclosed additional Non-Optional Fees.
- 56. As identified in the image below, a number of the tickets identified by the Respondents in response to the consumer's stated budget range appear to be available for purchase for \$99.95, which is within the consumer's budget range.



57. After accounting for Non-Optional Fees, a single \$99.95 ticket actually costs approximately \$123.07 (while two \$99.95 tickets cost \$246.15), which exceeds the consumer's budget range by more than 20%, which is significant.

SEC 319      ROW 3      SEAT 21-22





Order Details 

[seating chart](#)      [Cancel Order](#)

2 Standard Ticket       \$99.95 x 2

Fees

- \$17.00 (Service Fee) x 2
- \$3.25 (Facility Charge) x 2
- \$5.75 Order Processing Fee

Delivery  [Update delivery](#)      Free!

eTickets

---

Total      CA \$246.15

By clicking "Place Order", you agree to our [Terms of Use](#).

 PLACE ORDER

## V. AGGRAVATING FACTORS

58. The deceptive conduct described herein is aggravated by the factors referred to in subsection 74.1(5) of the Act, including the following:

- the Respondents are among the largest ticket vendors carrying on business in Canada;

- b. the Respondents earned gross revenue from sales affected by the conduct in excess of several hundred million dollars in a year in Canada;
- c. the Respondents enjoy substantial profits from their business activities in Canada;
- d. the Respondents engaged in the deceptive conduct frequently and over a long duration;
- e. the Respondents engaged in the deceptive conduct in numerous geographic markets;
- f. the Respondents' conduct has had a material impact on consumer purchasing behaviour – it increases both the likelihood that a consumer would purchase a ticket from the Respondents and the amount of money a consumer likely would spend; and
- g. the Respondents have studied the behavioural mechanisms identified in this Application and engaged in the deceptive practice of promoting its products with unattainable prices with full awareness and understanding of the effect such practices could have on consumer perception and behaviour.

## VI. RELIEF SOUGHT

59. The Commissioner claims the relief set out in paragraph 1, above.

## VII. PROCEDURAL MATTERS

60. The Commissioner requests that this proceeding be conducted in English.
61. The Commissioner requests that this application be heard in the City of Ottawa.

**DATED AT** Gatineau, this 25<sup>th</sup> day of January 2018.

**ORIGINAL SIGNED BY  
MATTHEW F.J. BOSWELL**

*for*

\_\_\_\_\_  
John Pecman  
Commissioner of Competition

ORIGINAL SIGNED BY  
MATTHEW F.J. BOSWELL

Public

# Tab 3

**VOLUME I – MOTION RECORD**

COMPETITION TRIBUNAL TRIBUNAL PUBLIC CONCURRENCE  <b>FILED / PRODUIT</b> Date: March 12, 2018 CT-2018-005  Bianca Zamor for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT.	#4

CT-2018-005

**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 by the Commissioner of Competition for orders pursuant to section 74.1 of the *Competition Act* regarding conduct reviewable pursuant to paragraph 74.01(1)(a) and section 74.05 of the *Competition Act*,

**BETWEEN:**

**THE COMMISSIONER OF COMPETITION**

Applicant

-and-

**LIVE NATION ENTERTAINMENT, INC., LIVE NATION WORLDWIDE, INC.,  
 TICKETMASTER CANADA HOLDINGS ULC, TICKETMASTER CANADA LP,  
 TICKETMASTER L.L.C., THE V.I.P. TOUR COMPANY, TICKETSNOW.COM, INC.,  
 and TNOW ENTERTAINMENT GROUP, INC.**

Respondents

---

**RESPONDENTS' RESPONSE**

---

## Table of Contents

1. OVERVIEW OF RESPONSE.....	1
2. RESPONSE TO THE ALLEGATIONS.....	2
3. GROUNDS ON WHICH THE APPLICATION IS OPPOSED AND MATERIAL FACTS .....	3
(a) Many Of The Named Respondents Are Improper Parties.....	3
(b) Ticketmaster’s Business .....	4
(i) The Role Of Ticketmaster In Ticketing.....	4
(ii) The Primary Ticket Market Segment .....	4
(iii) The Secondary Ticket Market Segment .....	7
(c) The Ticketing Platforms’ Buy-flows Are Standard In E-Commerce .....	8
(i) Ticketmaster’s Buy-flows .....	8
(ii) Obvious Fee Signals .....	11
(iii) An Example Of An Obvious Fee Signal In A Buy-Flow.....	12
(iv) Time Limits In The Buy-flow Are Not Misleading And Are Pro- Consumer .....	15
(d) “Drip Pricing” Is Not Reviewable Under The Act.....	16
(i) The Respondents Have Not Made Any Representation That Is False Or Misleading In A Material Respect.....	16
(ii) Section 74.05 of the Act Has No Application.....	18
(e) The Commissioner Should Be Estopped .....	19
(f) Ticketmaster Compliance With Provincial Law Affords Them A Due Diligence Defence .....	20
(g) The Restitution Remedy Sought By The Commissioner Is Improper .....	21
4. OFFICIAL LANGUAGE AND PROCEDURE .....	22

## 1. OVERVIEW OF RESPONSE

1. The Application focuses on pricing practices on Ticketmaster's Ticketing Platforms. Those practices are transparent, pro-consumer and proper. They are standard in the ticketing industry, and in e-commerce more generally.
2. Ticketmaster's online pricing practices involve an initial disclosure of unit prices of tickets, followed by the disclosure of all applicable fees as the customer provides information about her order. These fees are transparently disclosed to consumers, often through Obvious Fee Signals. The consumer is told what amounts are paid to which parties.
3. Ticketmaster never suggests or implies that there are no fees associated with a consumer's purchase. The opposite is true. Consumers who purchase tickets online are aware that they will pay fees above the unit price of the ticket. Ticketmaster's online pricing practices give rise to no misleading or false impressions.
4. The Commissioner of Competition's Application disguises and obscures the real issues by substituting pejorative labels for proper factual and legal analysis. Nothing in the *Competition Act* prohibits Ticketmaster's pricing practices. There is no provision related to "Drip Pricing". The Commissioner seeks to force a square peg into a round hole by attempting to apply general provisions of the Act to conduct that they were not intended to cover. The only question is whether Ticketmaster's pricing practices are materially misleading. They are not.

5. The Commissioner of Competition misunderstands, or misconstrues, the ticketing process, Ticketmaster's role in that process, and the fees that are collected when consumers purchase tickets online. The Commissioner's position that total per-ticket pricing must be displayed in the first step of a purchase has no basis in law, ignores the transparent disclosure of all fees in the course of each purchase transaction, and runs contrary to how e-commerce transactions are effected.
6. The Application also fails to understand Ticketmaster's role as agent for its clients (such as venues, promoters, etc.) and for ticket resellers. It confuses ticket sales revenue with Ticketmaster's revenue. In fact, Ticketmaster retains nothing from the face value of a ticket and many of the fees it collects. In return, clients get a comprehensive enterprise ticketing solution, and consumers get access to simple distribution and easy access to an effective ticketing system online and by phone.
7. Some provinces have passed legislation relating specifically to how retail pricing, or even ticket pricing, should be displayed. Ticketmaster complies with all such requirements. The Act, however, contains no such prescriptions, and cannot be transformed into a similar kind of detailed regulatory scheme simply by describing the target conduct in derogatory terms.
8. Ticketmaster requests that this Application be dismissed, with costs.

## **2. RESPONSE TO THE ALLEGATIONS**

9. The respondents deny all allegations in the Application, except as expressly admitted herein.

### 3. GROUNDS ON WHICH THE APPLICATION IS OPPOSED AND MATERIAL FACTS

10. Ticketmaster, defined below, is the leading ticketing agent for live events in Canada. It offers ticketing services as “Ticketmaster” and associated brands.

(a) Many Of The Named Respondents Are Improper Parties

11. The Application relates to representations and advertisements about pricing made on the *ticketmaster.ca*, *ticketweb.ca*, *ticketsnow.com* domains and the respondents’ mobile applications (the “**Ticketing Platforms**”).

12. Only certain of the named respondents control the display of pricing on the Ticketing Platforms referred to in the Application. Ticketmaster L.L.C., Live Nation Worldwide, Inc., Ticketmaster Canada Holdings ULC and TNOW Entertainment Group, Inc. (collectively “**Ticketmaster**”) are entities which control the content on the Ticketing Platforms.

13. The remaining respondents are not proper parties to the Application. Ticketmaster Canada LP, Live Nation Entertainment, Inc., V.I.P. Tour Company and Ticketsnow.com, Inc. do not control the display of any ticket price on the Ticketing Platforms. They therefore cannot and do not make any representation as to price or distribute the advertisements alleged in the Application. In the alternative, the response made below by Ticketmaster applies to all of the respondents.

(b) Ticketmaster's Business

(i) The Role Of Ticketmaster In Ticketing

14. Ticketmaster's business is to provide ticketing services to venues, promoters, sports teams and leagues ("**Clients**") and to ticketholders who wish to resell their tickets. These ticketing services are offered through different media: by phone, in person and, most commonly today, over the Internet.

15. Ticketmaster acts as agent for its Clients and reselling ticketholders. As further discussed below, as a function of its role as agent, Ticketmaster remits to others the majority of amounts that it collects from consumers.

16. Ticketmaster participates in two market segments for the sale of tickets in Canada: the primary ticket market segment and the secondary ticket market segment.

17. Although the Commissioner confuses the two, consumers are generally aware that total ticket costs and fees may differ between primary and secondary market segment tickets. Those costs and fees are described below.

(ii) The Primary Ticket Market Segment

18. In the primary ticket market segment, Ticketmaster sells tickets as agent for its Clients. Clients of Ticketmaster include venues, teams, artist representatives and fan clubs, promoters and leagues. Ticketmaster's Canadian Clients are predominantly venues.

19. Ticketmaster typically has ongoing contractual relationships with its Clients.

20. A ticket's unit price in the primary ticket market segment is the "**face value**" of the ticket. The face value of a ticket is set by Ticketmaster's Clients, not by Ticketmaster.

The face value of a ticket is not retained by Ticketmaster. The amount collected for the face value of a ticket is collected by Ticketmaster on behalf of its Clients and is generally remitted to Clients in its entirety.

21. All fees charged to consumers in the primary market segment are negotiated between Ticketmaster and its Clients. These negotiations result in agreement on the amounts that Ticketmaster will collect and remit, and on what basis.

22. Ticketmaster may derive revenue from some of the fees charged to consumers for the services it provides. Other fees are entirely retained by Ticketmaster's Clients. For example, Ticketmaster does not retain any portion of the "facility charge" described in more detail below.

23. Fees charged to consumers beyond the face value of a ticket may vary from event to event and venue to venue. The amount consumers pay in fees depends on many factors, some of which are controlled by consumers themselves. These factors can include:

(a) the identity of the Client offering the event and the related contractual agreements that Ticketmaster has with that Client;

(b) the event venue;

(c) the jurisdiction of the event;

(d) the unit price of a ticket;

(e) how many tickets a consumer orders in a single order; and

(f) the delivery option selected by a consumer.

24. In some circumstances, ticket purchases can be made not only online, but also at box offices without the payment of fees.

25. The fees that may be charged in addition to the face value of a ticket are described below. This information is publicly available from Ticketmaster's websites to any interested consumer.

(1) Service Fees

26. As noted, consumers get access to an effective ticketing system through Ticketmaster's Ticketing Platforms and thereby avoid the need to go in person to a venue box office or retail outlet. In exchange for this access, Ticketmaster generally charges a service fee.

27. Service fees are charged on a per-ticket basis. The proceeds of service fees are generally shared between Ticketmaster and its Clients. The proportions in which the amount is shared between Ticketmaster and its Clients are negotiated with each Client.

(2) Order Processing Fee

28. Order processing fees may be charged by Ticketmaster for primary ticket sales on the Ticketing Platforms. Order processing fees are generally charged on a per-order

(not per-ticket) basis. The proportions in which the amount is shared between Ticketmaster and its Clients are negotiated with each Client.

(3) Facility Charge

29. Facility charges are collected by Ticketmaster solely on behalf of venues. Each venue decides whether it will assess a facility charge, sets its value and receives 100% of the amount charged to consumers. Facility charges are charged on a per-ticket (not per-order) basis.

(4) Delivery Fee

30. Delivery fees are not always charged on orders made on the Ticketing Platforms. When delivery fees are charged, it is generally on a per-order (not per-ticket) basis. Whether consumers pay this fee depends on which delivery option is selected by the consumer. There is almost always a free option.

(iii) The Secondary Ticket Market Segment

31. Ticketmaster's contractual arrangements differ with respect to the secondary ticket market segment. In this market segment, Ticketmaster also acts as agent. Instead of acting for Clients, however, it acts on behalf of ticketholders seeking to sell their tickets and provides them with an online platform through which such sales take place.

32. The ticket's unit price in the secondary ticket market segment is the "**resale price**". The resale price of a secondary ticket is set by the ticketholder seeking to sell his tickets, not Ticketmaster, and the ticketholder receives the resale price net of applicable fees. The resale price may vary from the original face value.

33. A resale service fee is charged to purchasers for secondary ticket sales on the Ticketing Platforms. The fee is a percentage based on the price of the ticket, and Ticketmaster typically shares the fee with its Clients.

34. Consumers may also pay delivery fees per order, described above, depending on what delivery option they select.

(c) The Ticketing Platforms' Buy-flows Are Standard In E-Commerce

35. The Application is about the rise of e-commerce in recent years and how Canadian consumers understand the processes involved in online purchasing.

36. The primary way in which Ticketmaster offers tickets to live events is through the Ticketing Platforms. Whereas, historically, consumers had to purchase tickets over the phone or in person at venues or box offices, the majority of ticket purchases made today are made online.

(i) Ticketmaster's Buy-flows

37. Ticketmaster uses the term “**buy-flow**” to refer to the screen-by-screen and button-by-button process used by consumers to purchase products in an online environment such as the Ticketing Platforms.

38. Ticketmaster's buy-flow is what is at issue in this case.

39. The Commissioner mischaracterizes the buy-flow as an attempt by Ticketmaster to mislead consumers into making purchases that they otherwise would not make. Rather, the buy-flow transparently guides consumers through each element such that

consumers are aware of the prices composing the purchase price before reaching the final transactional screen.

40. It is artificial to treat the first page of the buy-flow as a representation as to final total purchase cost, and consumers who make purchases online do not expect the first page of the buy-flow to represent the final, total price to be paid. The general impression test requires that the Tribunal consider the overall impression that the buy-flow as a whole makes on consumers.

41. Ticketmaster does not present the unit price — whether the face value or resale price — as the total cost of a ticket purchase. Indeed, consumers cannot even attempt to purchase tickets at the unit prices shown when they first see such unit prices. Consumers know that that unit price is not generally the total cost of the purchase.

42. Through the use of transparent pricing displays on the Ticketing Platforms, consumers are clearly informed about the total cost of the purchase, including all fees, before completing the purchase of a ticket. Fees are expressly disclosed to consumers during the checkout process.

43. A consumer first visits one of the Ticketing Platforms and selects an event that she is interested in. Only after selecting the event are unit prices for the event disclosed.

44. This initial display of unit prices without a listing of possible applicable fees is common in online commerce. Many other prominent online retailers display unit prices of items available without listing mandatory fees such as shipping costs.

45. As some fees are charged on a “per-order” basis (that is, the fee is the same regardless of the total number of tickets ordered) a “per-order” fee cannot be divided by the number of tickets to yield a “per-ticket” price until a consumer indicates how many tickets she wishes to purchase.

46. Additionally, some fees depend on consumer decisions. For example, consumer decisions about delivery or available promotions – which affect the total price of the ticket – are not known by Ticketmaster when consumers initially visit an event page on the Ticketing Platforms.

47. The Commissioner has referred to buttons within the buy-flow which contain statements like “Buy Tickets.” These expressions are well understood in e-commerce as leading to the next stage of a buy-flow. No consumer believes that — before providing any payment information (such as a credit card number) — she has made a purchase at the moment that she has clicked on such a button.

48. Consumers are always advised of the existence of fees prior to any decision to purchase or transaction occurring. There is no restriction in the buy-flow which prevents the consumer from selecting tickets other than those she initially selected or, indeed, purchasing no tickets at all. The consumer can exit the process at any time for any reason, including upon seeing the amount of fees. This is done, with little effort, by closing the web browser or clicking the web browser’s “back” button.

49. This is consistent with e-commerce in general – not just in the ticketing industry – and no consumer is misled by such a transparent buy-flow.

50. Contrary to the Commissioner's assertions, there is no material time or effort invested by consumers into their selection of tickets prior to being advised of the existence of fees.

(ii) Obvious Fee Signals

51. Immediately after tickets have been selected by a consumer, the applicable fees are displayed on the Ticketing Platforms. That is, right after making the first proactive step of a selection of tickets, consumers are told what fees apply.

52. Where the buy-flows contain more than two or three pages, consumers are presented with obvious price signals about the existence of fees beyond the unit price of each ticket ("**Obvious Fee Signals**").

53. Depending on the specific Ticketing Platform and buy-flow, these Obvious Fee Signals may include:

- (a) statements that fees apply to the face value of a ticket and/or that additional fees will be applied at checkout; disclosures that additional fees will be displayed on the billing page; and statements that per-order delivery and/or processing fees are added when applicable or analogous statements;
- (b) "pop-up" or "shadow boxes" that appear over other information in the buy-flow;
- (c) the description of the face value of selected tickets as a "subtotal"; and/or

(d) providing consumers with links, such as that stating that “Additional service fees and charges may apply at checkout” or “We know no one’s a fan of fees / Learn why they’re here,” through which consumers may obtain detailed information about Ticketmaster fees and the basis for them.

54. Many of the Obvious Fee Signals that form part of Ticketmaster’s transparent prices are, in fact, shown in paragraphs 34, 36, 39, 40, 43, 44, 47, 48 and 57 of the Application.

55. Obvious Fee Signals demonstrate that the listing of ticket face values is not a representation as to the final cost of a ticket ordered on the Ticketing Platforms. The display of face values is not a representation as to “true cost” as alleged by the Commissioner.

(iii) An Example Of An Obvious Fee Signal In A Buy-Flow

56. In some Ticketmaster buy-flows, consumers are advised of the existence of fees before leaving the initial event ticket selection page. An example from www.ticketmaster.ca for a “Raptors 905” basketball game is illustrative.

57. The initial display of tickets for an event on [www.ticketmaster.ca](http://www.ticketmaster.ca) shows a list of face value prices for available tickets. In this example, the tickets are listed in ascending price starting with tickets with a face value of \$9.05 as the least expensive.

Lowest Price	Best Seats
Sec 11, Row H Standard Ticket	CA \$9.05 ea
Sec 11, Row J Standard Ticket	CA \$9.05 ea
Sec 24, Row H Standard Ticket	CA \$9.05 ea
Sec 24, Row J Standard Ticket	CA \$9.05 ea
Sec 26, Row J Standard Ticket	CA \$9.05 ea
Sec 26, Row F Standard Ticket	CA \$9.05 ea
Sec 26, Row G Standard Ticket	CA \$9.05 ea
Sec 26, Row H Standard Ticket	CA \$9.05 ea
Sec 11, Row P Standard Ticket	CA \$9.05 ea
Sec 11, Row Q Standard Ticket	CA \$9.05 ea
Sec 11, Row R Standard Ticket	CA \$9.05 ea

58. The moment that a consumer clicks on tickets from the list, she is advised that there are fees applicable to the tickets she has selected. The indication of the applicability of fees is stated clearly beside the face value of the ticket through an Obvious Fee Signal. In this example, the text reads: “CA \$9.05 ea + Fees”. This takes place prior to the consumer clicking on “GET TICKETS” or proceeding further in the buy-flow.

**Sec 11, Row H** ✕

You'll get 2 tickets together in this row.



Bowl Ends  
Sec 11, Row H

Standard Ticket CA \$9.05 ea + Fees	<span>−</span> 2 <span>+</span>
Student and Senior Discount CA \$9.05 ea + Fees	<span>+</span>

2 Tickets **GET TICKETS**

59. In the example above, the amount of all fees and total cost of the tickets is disclosed on the screen immediately after tickets are selected. This same screen provides consumers with options which can vary the amount to be paid, such as delivery options.

(iv) Time Limits In The Buy-flow Are Not Misleading And Are Pro-Consumer

60. The Application refers to clocks displayed within Ticketing Platform buy-flows. These clocks inform consumers of the time limit during which they may complete their purchases. They are a pro-consumer feature of the buy-flow that are essential to ensure the fair and equitable distribution of tickets to popular events.

61. The Commissioner's allegations regarding the buy-flow clocks demonstrate how the Commissioner has failed to consider details about the ticket industry and, indeed, about e-commerce in general.

62. The buy-flow clocks serve a number of purposes including, most importantly:

- Assisting in the equitable distribution of tickets among ticket purchasers. Thousands of consumers may seek to buy seats to the same event at the same time. Buy-flow clocks play a role in ensuring that potential ticket purchasers can access available inventory.
- Hindering resellers in their arbitrage efforts. Limiting the time for the completion of a purchase discourages resellers from "holding" tickets in the buy-flow queue solely for the purpose of determining if they can profit on the resale market before buying the tickets.

- Promoting, in conjunction with “time-outs,” the security and commercial efficacy of the Ticketing Platforms.

(d) “Drip Pricing” Is Not Reviewable Under The Act

63. What the Commissioner refers to as “drip pricing” is, in this case, transparent, itemized pricing shown to consumers.

64. “Drip pricing” is not a reviewable practice under the Act. The Commissioner’s allegations are not grounded in the wording of the Act nor, as a result, in Parliament’s intention. The Commissioner relies on a provision regarding misleading representations when there has been no misleading representation, and a provision concerning advertising when no advertising has been distributed.

(i) The Respondents Have Not Made Any Representation That Is False Or Misleading In A Material Respect

65. Ticketmaster has not made any representation that is false or misleading in a material respect and has not acted contrary to section 74.01 of the Act.

66. Ticketmaster’s display of a unit price of a ticket is not a representation that the total purchase cost will not differ from that unit price. It is therefore not the “Price Representation,” as defined in the Application. There is never a representation that the unit price is the only price to be paid. Quite the contrary, the Obvious Fee Signals indicate in many instances that additional fees are payable.

67. The relevant consumer is the average consumer who is interested in the product. Modern consumers understand the purchasing buy-flows used in e-commerce. As noted above, leading online retailers use similar buy-flows to those of Ticketmaster.

68. Every consumer, even if she were credulous and technically inexperienced, would be aware when browsing the Ticketmaster websites that Ticketmaster charges fees in addition to the unit price of the ticket.

69. The general impression conveyed by Ticketmaster's display of unit prices of tickets on an initial buy-flow page is that consumers are selecting between tickets available at different unit prices, nothing more.

70. In the alternative, the Tribunal must consider the information provided throughout the buy-flow as a whole in order to determine the general impression arising from the Ticketing Platform. Just as the general impression of information on a page of print advertisement must be considered in the context of the rest of the page, the price disclosed prior to any selection of tickets must be considered in the context of the entire buy-flow.

71. Moreover, the Obvious Fee Signals contained in the Ticketing Platform buy-flows are disclaimers which, in any event, ensure that the representation is not false or misleading.

72. The fact that the display of unit prices of tickets is capable of a meaning which is not misleading means that the Application must fail.

73. As noted above, the clock used in Ticketmaster's buy-flows is not a representation and is irrelevant to any allegations made in relation to section 74.01 of the Act.

74. The Application also makes allegations about the budget tool offered within the *www.ticketmaster.ca* buy-flow. The budget tool, which asks consumers a question about their budget, is not a representation as to price, a false or misleading representation, or false or misleading in any material way because it is not likely to influence a consumer's decision to purchase tickets.

(ii) Section 74.05 of the Act Has No Application

75. The Commissioner seeks to apply section 74.05 of the Act to conduct that the section was not intended to cover.

76. First, section 74.05 of the Act only applies to advertisements. Even assuming that the "Price Representations" alleged by the Commissioner have been made, which is not admitted but expressly denied, they are not "advertisements."

77. The simple display of a price cannot be an advertisement, otherwise every instance where a store adds the applicable tax to the sticker price at check-out or an online vendor charges delivery fees would be in breach of section 74.05.

78. The Commissioner treats the words "advertisement" contained in section 74.05 and "representation" contained in 74.01 as interchangeable, when they are not. The use of different words in the different sections of the Act demonstrates Parliament's intention, which must have meaning and be respected.

79. The Commissioner's own guidance in applying the Act, found in his "Technical guidance documents", refers to advertising being "distributed". In this case, there is no "distribution" of the unit prices pushed by Ticketmaster to consumers in the manner that

an advertisement is distributed in print, on radio or television or even online. Rather, consumers have chosen to visit Ticketmaster's Ticketing Platforms before they ever see the unit prices for a particular event.

80. In the alternative, to the extent that Ticketmaster's initial display of a unit price constitutes an advertisement, which is not admitted but expressly denied, section 74.05 still has no application. No product has been supplied at a higher price than the price at which it is "advertised". The unit price of the ticket is never supplied at a higher price than initially displayed.

81. In the further alternative, if describing the face value of a ticket is an advertisement, which is not admitted but expressly denied, the description of the total cost of the purchase immediately follows it. According to section 74.05(2)(b) of the Act, 74.05 does not apply where one advertisement is immediately followed correcting the price in the first advertisement.

(e) The Commissioner Should Be Estopped

82. The Commissioner has been aware of Ticketmaster's pricing practices for many years. In fact, in 2010 the Competition Bureau closely examined Ticketmaster's buy-flows and Ticketing Platforms. At that time, the Competition Bureau chose to take no action. It would be inappropriate to penalize Ticketmaster now for conduct that the Commissioner chose not to pursue many years ago.

83. In 2010, the Competition Bureau considered the adequacy of Ticketmaster's disclosure about customers being directed to secondary ticket market options on the Ticketing Platforms. The Competition Bureau also considered other facets of

Ticketmaster's Ticketing Platforms, such as incentives that were offered to sign up for rewards programs.

84. The Competition Bureau expressly reviewed whether Ticketmaster's practices were false or misleading representations. It concluded that they were not. The Commissioner thus did not take any action against Ticketmaster regarding consumer access to the secondary ticket market segment, or any other component of Ticketmaster Ticketing Platforms or buy-flows.

85. Over the past eight years, Ticketmaster has had knowledge of and relied upon the fact that the Commissioner chose not to take action against Ticketmaster's buy-flows in 2010. Ticketmaster has relied on the Commissioner's non-action to its detriment by not amending its buy-flows in any fashion that the Commissioner may have sought in 2010.

86. The Commissioner should be estopped from bringing this Application in respect of Ticketmaster's past conduct and must be deemed to have waived his rights to do so.

(f) Ticketmaster's Compliance With Provincial Law Affords Them A Due Diligence Defence

87. In contrast to the Commissioner's attempt to rely upon inapplicable sections of the Act, some provinces have instituted consumer laws requiring all-inclusive pricing. Where a province requires all-inclusive pricing, such as in the Province of Quebec, Ticketmaster uses all-inclusive pricing.

88. Ticketmaster complies with specific legislation that governs their display of pricing. As a result of Ticketmaster's compliance with such specific legislation applicable

to Ticketmaster, they have exercised adequate due diligence and should not have an administrative monetary penalty made against them by the strained application of a law of general applicability such as the Act.

(g) The Restitution Remedy Sought By The Commissioner Is Improper

89. For the reasons described above, no order should be made against Ticketmaster. In the alternative, the restitution remedy sought by the Commissioner is improper.

90. The Commissioner is seeking restitution from the respondents for amounts not retained by them. This demonstrates the Commissioner's misunderstanding of the business and the market segments that are the subject of the Application.

91. The Commissioner purports to rely on section 74.1(1)(d) of the Act to seek restitutionary relief. The purpose of section 74.1(1)(d) of the Act does not support such relief. Section 74.1(1)(d) of the Act exists to reimburse for consumer losses, for example in relation to the purchase of products that do not work as represented. Consumers have suffered no losses in this case.

92. Consumers received a benefit when they completed purchases of tickets from Ticketmaster. At no time did any consumers purchase a ticket from Ticketmaster at a price higher than disclosed to them prior to making their purchase. In any event, "counter-restitution" is not available with respect to any event that has already occurred. As a result, it would be inappropriate for consumers to receive any amount in connection with events that they have already enjoyed.

#### 4. OFFICIAL LANGUAGE AND PROCEDURE

93. The respondents consent to this proceeding being conducted in English.

94. The respondents oppose the hearing of this matter in Ottawa. To the extent that the respondents have a presence anywhere in Canada, it is in Toronto and not Ottawa. Ticketmaster Canada Holdings ULC has its headquarters in Toronto. To the extent the respondents are headquartered outside of Ontario, Toronto is a materially more convenient travel destination than Ottawa. Potential witnesses are located in Toronto. The respondents' legal counsel are located in Toronto, Ontario. As such, the respondents request that the hearing take place in Toronto, Ontario.

**DATED AT** Toronto, this 12<sup>th</sup> day of March 2018.



---

Mark Opashinov  
David W. Kent  
Guy Pinsonnault  
Adam D.H. Chisholm  
Joshua Chad

Lawyers to Live Nation Entertainment,  
Inc., Live Nation Worldwide, Inc.,  
Ticketmaster Canada Holdings ULC,  
Ticketmaster Canada LP, Ticketmaster  
L.L.C., The V.I.P. Tour Company,  
Ticketsnow.Com, Inc., and TNOW  
Entertainment Group, Inc.

Public

CT-2018-005

**IN THE MATTER OF** the *Competition Act*, R.S.C. 1985, C. C-34, as amended;

**AND IN THE MATTER OF** an application by the Commissioner of Competition for orders pursuant to section 74.1 of the *Competition Act* regarding conduct reviewable pursuant to paragraph 74.01(1)(a) and section 74.05 of the *Competition Act*;

**BETWEEN:**

**THE COMMISSIONER OF COMPETITION**

Applicant

-and-

**LIVE NATION ENTERTAINMENT, INC., LIVE NATION WORLDWIDE, INC., TICKETMASTER CANADA HOLDINGS ULC, TICKETMASTER CANADA LP, TICKETMASTER L.L.C., THE V.I.P. TOUR COMPANY, TICKETSNOW.COM, INC., and TNOW ENTERTAINMENT GROUP, INC.**

Respondents

**RESPONDENTS' RESPONSE**

**McMILLAN LLP**

Brookfield Place  
181 Bay Street, Suite 4400  
Toronto, Ontario  
M5J 2T3

Mark Opashinov  
Phone: 416.865.7873  
David W. Kent  
Phone: 416-865-7143  
Guy Pinsonnault  
Phone: 613-691-6125  
Adam D.H. Chisholm  
Phone: 416-307-4209  
Joshua Chad  
Phone: 416-865-7181  
Fax: 416-865-7048

Lawyers to Live Nation Entertainment, Inc., Live Nation Worldwide, Inc., Ticketmaster Canada Holdings ULC, Ticketmaster Canada LP, Ticketmaster L.L.C., The V.I.P. Tour Company, Ticketsnow.Com, Inc., and TNOW Entertainment Group, Inc.

Public

# Tab 4

**VOLUME I – MOTION RECORD**

**FILED / PRODUIT**  
Date: March 26, 2018  
CT-2018-005

Bianca Zamor for / pour  
REGISTRAR / REGISTRAIRE

CT-2018-005

OTTAWA, ONT.

#11

**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 by the Commissioner of Competition for orders pursuant to section 74.1 of the *Competition Act* regarding conduct reviewable pursuant to paragraph 74.01(1)(a) and section 74.05 of the *Competition Act*;

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

– and –

LIVE NATION ENTERTAINMENT, INC., LIVE NATION WORLDWIDE, INC.,  
TICKETMASTER CANADA HOLDINGS ULC, TICKETMASTER CANADA LP,  
TICKETMASTER L.L.C., THE V.I.P. TOUR COMPANY, TICKETSNOW.COM, INC.,  
and TNOW ENTERTAINMENT GROUP, INC.

Respondents

---

**Reply**

---

1. The Commissioner repeats and relies upon the allegations in his Notice of Application and, except as hereinafter expressly admitted, denies the allegations in the Response. Unless otherwise indicated, defined terms in the Reply have the meaning ascribed to them in the Notice of Application.

**I. OVERVIEW**

2. The Response alleges that the “standard” is for e-commerce businesses to engage in the same behaviour that the Respondents engaged in, an assertion that is untrue. The Respondents also assert that consumers cannot be misled by their price representations because consumers know that the price offered is not the actual price of a ticket, but rather the price of a “unit” that is some component of the ticket they market and supply. This flies in the face of the plain meaning of the

Price Representations. It also ignores the fact that consumers do not know the true cost of the tickets until the Respondents choose to reveal that information *after* consumers select their tickets and try to complete their purchase.

3. Moreover, the Response ignores how consumers actually respond to the Respondents' Price Representations, even though the Respondents' own records demonstrate that they are fully aware of the effect that their pricing practices have on these very consumers. The Respondents' own records reveal that, when consumers are faced with lower prices and then face fees that are later dripped, consumers "remember the base price (don't want to do the math)" and "**will not rationally combine different prices** to work out bundle costs".

## II. THE RESPONDENTS' PRACTICES ARE NOT "STANDARD" IN E-COMMERCE

4. The Respondents' practice of obscuring the "true" price of a product is not "standard" in e-commerce, as alleged in paragraph 1 and part 3(c) of the Response. To the contrary, many other e-commerce companies, when promoting other products to consumers, present prices that are in fact attainable as the first price consumers see.
5. Even some online ticket vendors, including some of the Respondents' own competitors, have marketed and sold tickets using attainable prices inclusive of any mandatory fees. In fact, the Respondents and their affiliates themselves follow a very different pricing structure in some jurisdictions, including Quebec. The Respondents' assertion that their deceptive pricing practices merely reflect "how e-commerce transactions are effected" is simply false and misleading.
6. In suggesting at paragraph 44 of the Response that the Respondents' pricing practices are common because other merchants do not include shipping and handling as part of the price of the product, the Respondents conflate Non-Optional Fees, which form the subject-matter of the Commissioner's Notice of Application, with delivery charges, which are optional in many cases, and variable in others (depending on the destination, choice of delivery method, etc.).

7. In doing so, the Respondents ignore the fact that the Commissioner's case is founded on the assertion that their Price Representations are not attainable because they require consumers to pay additional Non-Optional Fees that they reveal only later in the purchasing process.

**III. THE RESPONDENTS' PRICE REPRESENTATIONS ARE FALSE OR MISLEADING**

8. The Respondents disregard the general impression created by the Price Representations, and instead assert in paragraph 67 of the Response that these representations will not mislead consumers because they understand how "buy-flows" work in e-commerce. The general impression at issue in the Commissioner's Application is a function of the Respondents' Price Representations, not what others may or may not be doing in the marketplace. But even if it was a function of the marketplace at large, as already indicated, drip pricing in e-commerce is far from universal.
9. Contrary to paragraphs 1, 2, 5, 25, 39, 42, 49, 54 and 63 of the Response, the Respondents' pricing practices are not transparent for consumers. The actual cost of the tickets is not known by consumers until such time as the Respondents choose to disclose the true cost to the consumer.
10. To be clear, the true cost is unknown to consumers because the Respondents do not disclose the existence of their fees in some cases, and the amount of the fees and the total cost in others, until later. The true cost is unknowable to consumers because the various Non-Optional Fees are inherently variable in nature and are the result of the Respondents' individualized arrangements with third parties, such as venues, promoters, sports teams and leagues. As such, any bald suggestion that consumers would somehow be able to divine the actual cost of tickets before the Respondents choose to reveal them is simply incorrect.
11. Further, the Respondents' assertion that the general impression created by the Price Representations is that the prices represented are "unit prices" (referred to at paragraphs 2, 3, 20, 23, 32, 41, 43, 44, 52, 66, 68, 69, 72, 79 and 80) and "face

value” (referred to at paragraphs 6, 20, 53, 55, 57, 58 and 81) flies in the face of the plain meaning of the representations at issue. Instead, the language used, such as “price”, “tickets”, “buy on map” and “buy tickets”, furthers the unambiguous general impression for consumers that the Price Representations represent the price for tickets, not the price for a “unit”, whatever that means.

12. The Respondents also assert in paragraphs 2, 52, 53, 54, 55, 58, 66 and 71 of the Response that consumers will not be misled by the Price Representations because there are what they call “Obvious Fee Signals”. Nothing about the Respondents’ Non-Optional Fees is “obvious”. This is clearly demonstrated in the example at paragraphs 47-51 of the Commissioner’s Notice of Application. Some Price Representations contain absolutely no indication at all that the price for the ticket is not the total price. Other Price Representations are, at best, accompanied by a fine print disclaimer, which by its very nature is the opposite of “obvious”.
13. Moreover, even if some consumers are fortunate enough to see and process the disclaimers, some are so simply ambiguous the consumer is yet again misled. Further, none of the disclaimers disclose the actual cost of the ticket, or even the amount of the fees. In the instances where there is a somewhat more prominent disclosure of the existence of fees, there remains no disclosure of the amount of those fees, nor of the actual cost of the ticket.
14. The examples the Respondents use in their Response (which reflect their revised website) help the Commissioner to illustrate the latter point. Specifically, at paragraph 57 of the Response, the Respondents provide a number of Price Representations as displayed to consumers. There is absolutely no disclosure of the fact that the Price Representations do not reflect the actual cost of the ticket. Further, there is no disclosure of the actual cost of the ticket, no disclosure of the amount of any additional fees, or even the very existence of additional fees. Conversely, the Price Representations say: “CA \$9.05 ea.”. Simply put, even the Respondents’ own example provides no fee signals, obvious or otherwise.

15. Consumers who responded to the Price Representations provided in the example in paragraph 57 would then see the representations in paragraph 58 of the Response. But, prior to September 2017, there would have been no “fee signal” at all. Since September 2017, the Respondents have made some additional reference to the existence of fees earlier in the process. However, there is no disclosure of the actual amount of the fees, whether optional or not, or what the actual cost of the ticket will ultimately be to the consumer.
16. Contrary to the Respondents’ allegation in paragraph 44 of the Response, consumers do not have control over the Non-Optional Fees that the Respondents require them to pay in order to obtain tickets to sports and entertainment events. Interestingly, the Respondents seek to conceal this fact by conflating Non-Optional Fees with:
  - a. optional fees that consumers choose (paragraphs 23 and 30);
  - b. fees that can be avoided by paying at a box office (paragraph 24);
  - c. shipping options, where a merchant does not know the shipping destination until a consumer provides it and a consumer can choose amongst various delivery options (paragraphs 44 and 46);
  - d. promotions (paragraph 46); and
  - e. sales taxes whose rates are common to transactions within a jurisdiction but may not be known to a merchant until a consumer provides information to the merchant about the applicable jurisdiction (paragraph 77).
17. The Respondents treat Non-Optional Fees and the myriad of fees described above as if they were one and the same. They disingenuously argue that consumers treat them that way as well, which is unsubstantiated.

#### **IV. THE RESPONSE MISCHARACTERISES CONSUMERS AND HOW THEY BEHAVE**

18. The Commissioner admits that the issue of who is the relevant hypothetical consumer and consumer behaviour when faced with representations such as Price Representations is relevant to this matter. However, in paragraph 67 of the Response, the Respondents have misdescribed the appropriate test as being the “average consumer who is interested in the product”.
19. In fact, the appropriate test for the hypothetical consumer is the consumer who is “credulous” and “inexperienced”. This is the appropriate test because the “credulous and inexperienced” consumer is prepared to trust merchants on the basis of the general impression conveyed to him or her by the representations at issue, and is inexperienced at detecting subtleties and falsehoods in commercial representations.
20. The Commissioner denies the characteristics which the Respondents attribute to the “relevant consumer”, including at paragraphs 3, 17, 39, 41, 47 and 67-68 of the Response. Further, even if one or more of the characteristics the Respondents identify, or aspects of them are possibly accurate, which the Commissioner does not admit and expressly denies, these aspects are not, at all, material to consumer perception and behaviour.
21. Consumers faced with many of the Price Representations will form the general impression that they represent the actual price of a ticket, rather than the price of a “unit”. Whether consumers recognize from bitter experience or otherwise that the Price Representations do not in fact reflect the actual cost of the ticket they select for purchase, the relevant consumer anchors on and is more influenced by numeric information he or she encounters first, being the Price Representation, and does not process, or does not fully process, Non-Optional Fees that the Respondents deliberately exclude from their prices. As indicated in paragraph 3, the Respondents are fully aware of this fact.

**V. THE DECEPTIVE REPRESENTATIONS CREATE COSTS FOR CONSUMERS**

22. The Response suggests at paragraphs 48 and 50 of the Response that abandoning a purchase is costless for consumers. It is not. Tickets may often be scarce or subject to an impression of scarcity.
23. In addition and contrary to the Respondents' allegation at paragraph 50 that "there is no material time or effort invested by the consumer in their selection of tickets prior to being advised of fees", the Respondents impose material costs on consumers in terms of time and effort.
24. In particular but without limitation, because the Respondents never disclose the true cost of their tickets up front, the purchasing process requires consumers to expend substantial time and effort on a ticket-by-ticket basis to ultimately learn the "true" cost of his or her various options. This time and effort would be wasted whenever a consumer abandons one ticket purchase to consider another option.
25. Moreover, the Respondents' assertions in paragraphs 48 and 50 ignore the fact that consumers invest significant time and effort into the purchase of tickets. Having done so, consumers think of the tickets they select as theirs, and at the price they were initially attracted to. When the Respondents reveal their Non-Optional Fees, the consumer realises for the first time, if at all, late in the process, that the initial price is not attainable. As the Commissioner has stated in his Notice of Application, this late disclosure does not cure the initial misleading impression to which the consumer has anchored. To the contrary, the process is likely to lead the consumer to make the decision to keep going and to make the purchase, which may have been outside their budget and financial means.

**VI. THE COMMISSIONER'S APPROACH IS CONSISTENT WITH CONSUMER BEHAVIOUR**

26. Contrary to the allegations at paragraphs 40, 41, 55, 66 and 69-72 of the Response, the first price that the Respondents present to consumers is both a Price Representation and an advertisement. This approach corresponds with how

the relevant consumer experiences and responds to the prices the Respondents display. Contrary to allegations at paragraph 40 of the Response and as set out at paragraph 21 (above), the relevant consumer anchors on and is more influenced by the numeric information he or she encounters first and does not process or fully process Non-Optional Fees that the Respondents' deliberately exclude from their prices.

**VII. THE DECEPTIVE REPRESENTATIONS AT ISSUE FALL SQUARELY WITHIN THE DECEPTIVE MARKETING PRACTICES PROVISIONS OF THE ACT**

27. The Respondents misconstrue the nature of the Act in their assertion that there is no provision related to "Drip Pricing". Paragraph 74.01(1) (a) and section 74.05 of the Act are principle-based prohibitions that apply to a wide array of reviewable matters. The Respondents' practices are accordingly false or misleading irrespective of whether they are characterized as "drip pricing" or by any other applicable label.

**VIII. THE RESPONDENTS' ADVERTISING IS CONTRARY TO SECTION 74.05 OF THE ACT**

28. Contrary to the allegation at paragraph 80 of the Response, the Respondents supply tickets above the prices they advertise to consumers. The Response inappropriately seeks to read in criteria not found in section 74.05 of the Act to create a defence that does not exist. Contrary to paragraphs 75-79 of the Response, section 74.05 of the Act does not depend on whether an advertised price is distributed; and the guidance the Competition Bureau provides on its website includes no such requirement.

29. In addition and contrary to the assertion at paragraph 80 of the Response, the suggestion that the so-called "unit price" of a ticket is never supplied at a "*higher* price than initially displayed" is unfounded as the Respondents never supply only a "unit". The unavailability of the so-called "unit" illustrates the absurdity of the position the Respondents advance at paragraph 80 of their Response.

30. In any event and irrespective of this, contrary to paragraph 81 of the Response, disclosure later in the purchasing process does not save the Respondents' conduct from contravening section 74.05 of the Act and does not constitute a correction for the purposes of paragraph 74.05(2)(b) of the Act.

**IX. THE DOCTRINE OF ESTOPPEL IS UNAVAILABLE**

31. Contrary to the allegations contained in the Response, including paragraphs 82-86, the doctrine of estoppel is unavailable to the Respondents, as its application would interfere with the positive obligations set out in paragraph 74.01(1)(a) and section 74.05 of the Act.
32. In any event, the Respondents did not rely or did not rely reasonably on any action by the Commissioner to ground an estoppel. Instead, the Respondents continue to engage in the reviewable conduct based on their own independent business assessment and the benefits (financial and otherwise) that this conduct provides to them.
33. Further, the Respondents do not even plead any positive action on part of the Commissioner that could properly give rise to an estoppel; nor did they seek or obtain any advisory opinion as was open to them under section 124.1 of the Act.

**X. THE RESPONDENTS DID NOT EXERCISE DUE DILIGENCE**

34. The Respondents did not exercise due diligence to prevent the reviewable conduct from occurring during the period set out in the Commissioner's Notice of Application. In particular, but without limitation, any steps taken by the Respondents to comply with provincial law are insufficient to amount to due diligence in respect of the Act, particularly when the Respondents chose to continue their reviewable conduct throughout the rest of Canada notwithstanding the changes they have made to their advertising in Quebec.

35. Due diligence requires a system that is designed to prevent the type of violation which is in issue. The Respondents' Response makes no reference to any system to prevent the type of misleading advertising which occurred in this case.

**XI. RELIEF UNDER PARAGRAPH 74.1(1)(D) ACT IS PROPER**

36. Contrary to paragraphs 89-92 of the Response, relief is available to consumers pursuant to paragraph 74.1(1)(d) of the Act. Relief remains available when consumers have attended a sports or entertainment event.
37. Paragraph 74.1(1)(d) of the Act provides the Tribunal with broad discretion to order the Respondents to pay an amount to consumers affected by reviewable conduct. The only limit set out in the statute is that the amount of consumer payment does not exceed the total amounts paid to the Respondents for the tickets in respect of which the conduct was engaged in.

**XII. PROCEDURAL MATTERS**

38. The Commissioner maintains that Ottawa is the most appropriate venue for the hearing. The reviewable conduct has had effects on and continues to affect consumers across the country (except for one province noted above). Further, the Respondents engage in the reviewable conduct through Canadian and foreign corporations and have an Ottawa office. The Tribunal and the Commissioner are, of course, also headquartered in the National Capital Region of Canada.

Public

Wherefore the Commissioner joins issue on the Respondents' Defences.

**DATED AT** Gatineau, this 26<sup>th</sup> day of March 2018.

"Matthew Boswell" for

---

John Pecman  
Commissioner of Competition

Public

**ATTORNEY GENERAL OF CANADA**

Department of Justice Canada  
Competition Bureau Legal Services  
Place du Portage, Phase 1  
50 Victoria Street, 22nd Floor  
Gatineau, QC K1A 0C9  
Fax: (819) 953-9267

François Joyal  
Tel: (514) 283-5880

Derek Leschinsky  
Tel: (819) 956-2842

Kenneth Jull  
Tel: (819) 953-3884

Ryan Caron  
Tel: (819) 953-3889

Counsel to the Commissioner of Competition

**TO: McMILLAN LLP**  
Brookfield Place  
181 Bay Street, Suite 4400  
Toronto, Ontario  
M5J 2T3  
Fax: (416) 865-7048

Mark Opashinov  
Tel: (416) 865-7873

David W. Kent  
Tel: (416) 865-7143

Guy Pinsonnault  
Tel: (613) 691-6125

Adam D.H. Chisholm  
Tel: (416) 307-4209

Joshua Chad  
Tel: (416) 865-7181

Lawyers to Live Nation Entertainment, Inc., Live  
Nation Worldwide, Inc., Ticketmaster Canada Holdings  
ULC, Ticketmaster Canada LP, Ticketmaster L.L.C.,  
The V.I.P. Tour Company, Ticketsnow.Com, Inc., and  
TNOW Entertainment Group, Inc.

Public

# Tab 5

**VOLUME I – MOTION RECORD**

CT-2018-005

**THE COMPETITION TRIBUNAL**

**IN THE MATTER OF** the *Competition Act*, RSC 1985, c C-34, as amended;

**AND IN THE MATTER OF** an application by the Commissioner of Competition for orders pursuant to section 74.1 of the *Competition Act* regarding conduct reviewable pursuant to paragraph 74.01(1)(a) and section 74.05 of the *Competition Act*;

**BETWEEN:**

**COMMISSIONER OF COMPETITION**

**Applicant**

**- and -**

**LIVE NATION ENTERTAINMENT, INC., LIVE NATION WORLDWIDE, INC.,  
TICKETMASTER CANADA HOLDINGS ULC, TICKETMASTER CANADA  
LP, TICKETMASTER L.L.C., THE V.I.P. TOUR COMPANY,  
TICKETSNOW.COM, INC., and TNOW ENTERTAINMENT GROUP, INC.**

**Respondents**

---

**AFFIDAVIT OF DEBORAH POULIOT  
SWORN MARCH 19, 2019**

---

I, Deborah Pouliot, of the City of Brampton, in the Province of Ontario MAKE OATH AND SAY:

1. I am a law clerk with the firm of McMillan LLP (“**McMillan**”), lawyers for the Respondents. I do not have any regular involvement in the within Application. My knowledge and information arises from Nicole Rozario and Joshua Chad, associates at McMillan who have been involved in the Application on behalf of the respondents. Where my knowledge is based on information provided by others, I have stated the source of that information and believe it to be true.
2. Ms. Rozario has provided me with a copy of the Order Further Amending the Scheduling Order of Judicial Member Justice Gascon dated February 11, 2019, which

sets out a timetable for fulfilling answers to undertakings and other steps in this litigation, a true copy of which is attached as **Exhibit “A”** to this affidavit.

3. Ms. Rozario has provided me with copies of the transcripts of the examination for discovery of the Commissioner of Competition’s (“**Commissioner**”) representative, Lina Nikolova, which indicate that they concern examinations held on January 31, 2019 and February 1, 2019. True copies of Ms. Nikolova’s transcripts are attached as **Exhibits “B”** and **“C”** to this affidavit.

4. Josh Chad is an associate at McMillan and has also been involved in McMillan’s representation of the Respondents. Mr. Chad has provided me with a copy of an email and its attachment from Adam Chisholm, a McMillan partner acting on behalf of the Respondents, to Francois Joyal, Ryan Caron, and Paul Klippenstein dated February 21, 2019, a true copy of which is attached as **Exhibit “D”** to this affidavit.

5. Ms. Rozario has provided me with a copy of the Commissioner’s Responses to Undertakings and Responses to Refusals, true copies of which are attached as **Exhibits “E” and “F”**, respectively.

6. Ms. Rozario has provided me with the following documents, true copies of which are attached as exhibits to this affidavit, which she advises me were produced by the parties in the course of documentary discovery in this Application:

- (a) A record of a complaint received by the Commissioner dated February 9, 2005 bearing document identification number PEJG00479\_00000138, a true copy of which is attached as **Exhibit “G”** to this affidavit;
- (b) A record of a complaint received by the Commissioner dated October 24, 2006, bearing document identification number PEJG00479\_00000144, a true copy of which is attached as **Exhibit “H”** to this affidavit;
- (c) A record of a complaint received by the Commissioner dated March 12, 2008 bearing document identification number PEJG00479\_00000148, a true copy of which is attached as **Exhibit “I”** to this affidavit;

- (d) A [REDACTED] bearing document identification number PHAD00777\_00000258, a true copy of which is attached as **Exhibit "J"** to this affidavit;
- (e) An email from [REDACTED]  
[REDACTED]  
[REDACTED], a true copy of which is attached as **Exhibit "K"** to this affidavit.
- (f) A memorandum from [REDACTED]  
[REDACTED], bearing document identification number PEJG00479\_00001529, a true copy of which is attached as **Exhibit "L"** to this affidavit.

SWORN BEFORE ME at the City of Toronto,  
in the Province of Ontario, this 19th day of  
March, 2019.

\_\_\_\_\_  
A Commissioner for taking Affidavits (or as may be)

\_\_\_\_\_  
Deborah Pouliot

**Nicole Rozario**  
Barrister and Solicitor  
in the Province of Ontario

Public

# Exhibit “A”

This is Exhibit "A" referred to in the  
Affidavit of Deborah Pouliot  
sworn before me, this 19th day of  
March, 2019.



---

A Commissioner for Taking Affidavits

**Nicole Rozario**  
Barrister and Solicitor  
in the Province of Ontario

Public

Competition Tribunal



Tribunal de la concurrence

Reference: *The Commissioner of Competition v Live Nation Entertainment, Inc et al*, 2019 Comp Trib 1

File No: CT-2018-005

Registry Document No: 56

**IN THE MATTER OF** an application by the Commissioner of Competition for orders pursuant to section 74.1 of the *Competition Act*, RSC 1985, c C-34 regarding conduct allegedly reviewable pursuant to paragraph 74.01(1)(a) and section 74.05 of the Act;

**AND IN THE MATTER OF** an agreement to further amend the Order amending the Scheduling Order issued on December 21, 2018.

BETWEEN:

**The Commissioner of Competition**  
(applicant)

and

**Live Nation Entertainment, Inc, Live Nation Worldwide, Inc, Ticketmaster Canada Holdings ULC, Ticketmaster Canada LP, Ticketmaster L.L.C., The V.I.P. Tour Company, Ticketsnow.com, Inc, and TNOW Entertainment Group, Inc**  
(respondents)



Decided on the basis of the written record  
Before Judicial Member: D. Gascon J. (Chairperson)  
Date of Order: February 11, 2019

**ORDER FURTHER AMENDING THE SCHEDULING ORDER**

[1] **FURTHER TO** the application filed by the applicant, the Commissioner of Competition (“**Commissioner**”), against the respondents, Live Nation Entertainment, Inc et al (“**Respondents**”), for orders pursuant to section 74.1 of the *Competition Act*, RSC, c C-34, as amended (“**Act**”) regarding conduct allegedly reviewable under paragraph 74.01(1)(a) and section 74.05 of the Act (“**Application**”);

[2] **AND FURTHER TO** the Scheduling Order issued by the Tribunal on April 17, 2018;

[3] **AND FURTHER TO** the Order amending the Scheduling Order issued by the Tribunal on December 21, 2018;

[4] **AND WHEREAS** the Tribunal has asked the parties to modify the date set for the hearing of potential motions arising from answers to undertakings and refusals, and counsel for the parties have advised the Tribunal of their availability for April 2, 2019;

[5] **AND WHEREAS** counsel for the parties have proposed related amendments to the steps leading to the hearing of such motion, which are agreeable to the Tribunal;

[6] **AND WHEREAS**, further to a typographical error, the date set for the last day for follow-up examinations for discovery needs to be changed from March 3, 2019 to May 3, 2019;

[7] **AND WHEREAS** the Tribunal is satisfied that these minor date amendments (underlined hereafter) are appropriate and respect the principles found in subsection 9(2) of the *Competition Tribunal Act*, RSC 1985, c 19 (2<sup>nd</sup> Supp);

**THE TRIBUNAL ORDERS THAT:**

[8] The schedule for the remaining pre-hearing steps shall now be as follows:

March 1, 2019	Deadline for fulfilling answers to discovery undertakings
<u>March 21</u> , 2019	Last day to file motions arising from answers to undertakings or refusals
<u>March 28</u> , 2019	Deadline to file any responses to motions arising from answers to undertakings or refusals
<u>April 2</u> , 2019	Hearing of any motions arising from answers to undertakings or refusals
<u>May 3</u> , 2019	Last day for follow-up examinations for discovery
May 17, 2019	Deadline to provide and deliver mediation briefs

## Public

May 30, 2019	Case management conference on pre-hearing disclosure steps and preliminary issues
June 3-4, 2019	Mediation
June 28, 2019	Commissioner to serve his documents relied upon and witness statements, and to serve and file his expert reports, if any
	Commissioner to serve his list of documents proposed to be admitted without further proof
	Commissioner to indicate documents on which privilege is waived
July 11, 2019	Last day to file motions for further examination for discovery following waivers of privilege
July 18, 2019	Deadline to file any responses to motions for further examination for discovery following waivers of privilege
July 26, 2019	Hearing of any motions for further examination for discovery following waivers of privilege
August 23, 2019	Respondents to serve their documents relied upon and witness statements, and to serve and file their expert reports, if any
	Deadline for delivering any requests for admissions
September 10, 2019	Commissioner to serve his reply documents relied upon and reply witness statements, and to serve and file his reply expert reports, if any
	Last day to file motions for summary disposition and/or any motions related to the evidence (documents relied upon, witness statements and expert reports)
September 17, 2019	Deadline to file any responses to motions for summary disposition and/or motions related to the evidence (documents relied upon, witness statements and expert reports)
	Deadline for responding to any requests for admissions
September 18, 2019	Pre-hearing case management conference
September 23, 2019	Hearing of any motions for summary disposition and/or any motions related to the evidence (documents relied upon, witness statements and expert reports)

## Public

September 30, 2019      Deadline to provide documents to the Tribunal for use at the hearing (e.g., witness statements, agreed books of documents and joint books of authorities)

Deadline for delivering any agreed statement of facts

**[6]** The hearing of the Application shall commence at 9:30 a.m. on Tuesday, October 8, 2019, in the hearing room of the Tribunal located at 610-90 Sparks Street, Ottawa, and the schedule for the hearing shall be as follows:

October 8-11, 2019	First week of hearing (4 days in Ottawa)
October 15-18, 2019	Second week of hearing (4 days in Ottawa)
October 22-25, 2019	Third week of hearing (4 days in Ottawa)
October 30-31, 2019	Oral arguments (2 days in Ottawa)

DATED at Ottawa, this 11<sup>th</sup> day of February 2019.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Denis Gascon

**COUNSEL OF RECORD:**

For the applicant:

The Commissioner of Competition

François Joyal  
Derek Leschinsky  
Kenneth Jull  
Ryan Caron

For the respondents:

Live Nation Entertainment, Inc et al

Mark Opashinov  
David W. Kent  
Guy Pinonnault  
Adam D.H. Chisholm  
Joshua Chad

Public

# Exhibit “B”

Public

This is Exhibit "B" referred to in the  
Affidavit of Deborah Pouliot  
sworn before me, this 19th day of  
March, 2019.



---

A Commissioner for Taking Affidavits

**Nicole Rozario**  
Barrister and Solicitor  
in the Province of Ontario

Public

Court File No. CT-2018

THE COMPETITION TRIBUNAL

VP/ke

IN THE MATTER OF the Competition Act, R.S.C. 1985,  
c. C-34, as amended;  
AND IN THE MATTER OF an application by the Commissioner of  
Competition for orders pursuant to section 74.1 of the  
Competition Act regarding conduct reviewable pursuant to  
paragraph 74.01(1)(a) and section 74.05 of the Competition  
Act;

B E T W E E N:

COMMISSIONER OF COMPETITION

Applicant

- and -

LIVE NATION ENTERTAINMENT, INC., LIVE  
NATION WORLDWIDE, INC., TICKETMASTER  
CANADA HOLDINGS ULC, TICKETMASTER CANADA LP,  
TICKETMASTER L.L.C., THE V.I.P. TOUR COMPANY,  
TICKETSNOW.COM, INC., and TNOW ENTERTAINMENT  
GROUP, INC.

Respondents

- - - - -

This is the Examination for Discovery of LINA NIKOLOVA,  
produced and examined on behalf of the Commissioner of  
Competition herein, taken at the offices of VICTORY  
VERBATIM REPORTING SERVICES INC., Suite 900, Ernst & Young  
Tower, 222 Bay Street, Toronto, Ontario, on the 31st day of  
January, 2019.

- - - - -

Public

APPEARANCES:

PAUL KLIPPENSTEIN ) -- for the Applicant  
FRANCOIS JOYAL )  
RYAN CARON )  
DAVID KENT ) -- for the Respondents  
ADAM CHISHOLM )  
JOSHUA CHAD )

ALSO PRESENT:

Laura DiMarco

## Public

L. Nikolova - 3

## INDEX OF PROCEEDINGS

	PAGE NUMBER
LINA NIKOLOVA, affirmed	
Examination by Mr. Kent	4 - 256
Index of Exhibits	257
Index of Undertakings	258 - 260
Index of Under Advisements	261
Index of Refusals	262 - 264
Certificate	265

## Public

L. Nikolova - 4

1 -- upon convening at 9:30 a.m.

2 -- upon commencing at 9:36 a.m.

3

4 LINA NIKOLOVA, affirmed

5 EXAMINATION BY MR. KENT:

6 1. Q. Can I get your full name for the  
7 record, please?

8 A. My name is Lina Nikolova.

9 2. Q. And you are here today as the  
10 witness for discovery for the Competition  
11 Commissioner in the application brought by the  
12 Commissioner against Live Nation and others?

13 A. That is correct.

14 3. Q. You understand that you are under  
15 oath?

16 A. Yes.

17 4. Q. You understand your answers today  
18 will bind the Commissioner in this proceeding?

19 A. I understand.

20 5. Q. Let's start with this; I understand  
21 you work at the Competition Bureau, is that right?

22 A. That is correct.

23 6. Q. What is your position at the Bureau?

24 A. I am a competition law officer.

25 7. Q. And you have held that position for

## Public

L. Nikolova - 5

1           how long?

2                   A.       I have held the position since  
3           November, 2016.

4       8.           Q.       Were you at the Bureau prior to  
5           that?

6                   A.       I was a summer student in 2013, and  
7           I stayed on as a student from the end of summer  
8           until December part-time.

9       9.           Q.       Okay. You started, then, as a  
10          full-time employee with the Bureau in November of  
11          '16?

12                   A.       That is correct.

13       10.          Q.       And prior to that were you a  
14          student? Is that your principal occupation?

15                   A.       I was a law student, and then I was  
16          an articling student, and I very briefly worked as  
17          an associate prior to joining the Bureau in  
18          November, 2016.

19       11.          Q.       Where did you article?

20                   A.       I articulated at a Toronto law firm.

21       12.          Q.       Called?

22                   A.       Dale & Lessmann LLP.

23       13.          Q.       And where were you an associate  
24          after that?

25                   A.       At the same firm.

## Public

L. Nikolova - 6

1 14. Q. And so you were called to the Bar in  
2 which year?

3 A. I was called to the Bar in 2016.

4 15. Q. And that is the Ontario Bar?

5 A. That is correct.

6 16. Q. Are you a member of any other Bar?

7 A. I am not a member of any other Bar.

8 17. Q. Could you summarize for us, please,  
9 your duties as a law officer at the Bureau?

10 A. I investigate cases relating to  
11 cartels and deceptive marketing practices.

12 18. Q. I should have asked you which part  
13 of the Bureau you work in. The Bureau is divided  
14 into parts, right?

15 A. The Bureau is divided into parts.

16 19. Q. Called?

17 A. Various branches or directorates,  
18 and the designation.

19 20. Q. Right. And which branch or  
20 directorate are you employed in?

21 A. I work in the cartels and deceptive  
22 marketing practices branch.

23 21. Q. And is that true since you began in  
24 November of '16?

25 A. That is true, since November '16,

## Public

L. Nikolova - 7

1                   yes.

2           22.           Q.           Who do you report to?

3                   A.           I report to Russell Jutlah.

4           23.           Q.           And who does he report to?

5                   A.           He reports to Josephine Palumbo.

6           24.           Q.           And is Ms. Palumbo the head of the

7                   Cartels and Deceptive Practices branch?

8                   A.           She is a deputy commissioner of

9                   deceptive marketing practices.

10          25.           Q.           She reports to the Commissioner?

11                  A.           She reports to the senior deputy

12                  commissioner.

13          26.           Q.           Who is who?

14                  A.           Vicky Eatrides.

15          27.           Q.           And Ms. Eatrides reports to?

16                  A.           Ms. Eatrides reports to the

17                  Commissioner.

18          28.           Q.           Currently Mr. Boswell.

19                  A.           The interim Commissioner, that is

20                  correct.

21          29.           Q.           Do you have any direct reports to

22                  you?

23                  A.           I have no direct reports.

24          30.           Q.           So as a law officer job do you

25                  hold...could that be fairly described as an entry

## Public

L. Nikolova - 8

1 level position for someone coming into the Bureau  
2 with legal training, with a law degree?

3 A. For me it was the entry level  
4 position. I am not sure if there are other entry  
5 level positions for those with law degrees.

6 31. Q. And I don't want you to disclose any  
7 privileged information, but could you tell us,  
8 please, what steps you have taken to prepare for  
9 your role today as the Commissioner's witness for  
10 examination for discovery?

11 A. I spoke with my counsel, I reviewed  
12 some of my notes, I reviewed some documents.

13 32. Q. And did you choose the documents  
14 that you reviewed, or did somebody else choose them  
15 for you?

16 A. It was a combination.

17 33. Q. And the notes you referred to, those  
18 are what kind of notes?

19 A. My officer's notes.

20 34. Q. Okay, they are notes of what?

21 A. Of steps I would have taken, things  
22 contained in my officer's notebook.

23 35. Q. And those are notes taken from time  
24 to time with respect to things you did with respect  
25 to the matters that are at issue in this

## Public

L. Nikolova - 9

1 application?

2 A. Those would be notes with respect to  
3 this investigation.

4 36. Q. Okay. Just for the record, you were  
5 present for the examination for discovery of each of  
6 the respondent's witnesses, except the second day of  
7 Ms. Tarlton, is that correct?

8 A. That is correct. Yes.

9 37. Q. So, let's talk for a moment about  
10 your role in the investigation relating to the  
11 matter that is now the subject of this application.  
12 I take it you had some involvement in that, from  
13 what you have said so far?

14 A. I have been involved with the  
15 current investigation, yes.

16 38. Q. So, tell me about that. What has  
17 been your role with respect to that?

18 A. I am the primary officer for this  
19 investigation, and I am part of a case too, of  
20 officers.

21 39. Q. And who else is the case team?

22 A. Sophie Beaulieu is the senior  
23 officer. Other case officers are Steven Boudreau,  
24 Michael Knight and Laura DiMarco.

25 40. Q. Does that comprise the team?

## Public

L. Nikolova - 10

1 A. That is the current team.

2 41. Q. What is your role as primary  
3 officer?

4 A. I investigate matters with respect  
5 to this file.

6 42. Q. Well, why don't you help me...what  
7 does it mean to be the primary officer, as opposed  
8 to a member of the case team who is not the primary  
9 officer?

10 A. The primary officer is an internal  
11 designation we use. For each investigation there is  
12 at least a primary officer and a senior officer.

13 43. Q. Okay. And what distinguishes the  
14 roles of primary officer and senior officer as  
15 between them, and as between those two and the roles  
16 of these other people you have mentioned who are on  
17 the team?

18 A. So, as between the primary officer  
19 and the senior officer, typically the senior officer  
20 will exercise a supervisory role, assign tasks. The  
21 primary officer would carry out those tasks and the  
22 various other matters that are required of the  
23 investigation.

24 As the team grows other case officers are  
25 added, and their roles would depend on the

## Public

L. Nikolova - 11

1 particular file.

2 44. Q. Do...you mentioned, I think, a Mr.  
3 Boudreau and a Mr. Knight. They also have internal  
4 designations. You are the primary, Sophie is the  
5 senior. Do the other two have an adjective?

6 A. I don't believe they do.

7 45. Q. And who supervised their work on  
8 this matter?

9 A. Sophie Beaulieu supervises the work  
10 of the case team.

11 46. Q. All right. So she supervises the  
12 work of each of the members, including you?

13 A. That is my understanding.

14 47. Q. And did you have any supervisory  
15 role on that team?

16 A. I did for a short time.

17 48. Q. And so tell me about that.

18 A. So, between February...the beginning  
19 of February, 2018 and about the beginning of March,  
20 2018, there was no senior officer on the file, so I  
21 would have exercised the duties otherwise associated  
22 with those, carried out by the senior officer during  
23 that time.

24 49. Q. And that is after the Notice of  
25 Application was filed?

## Public

L. Nikolova - 12

1 A. That is correct.

2 50. Q. And was there a gap in the senior  
3 officer role because the senior officer was absent  
4 for a bit, or because there was a change in senior  
5 officers?

6 A. There was a change in senior  
7 officers between those dates.

8 51. Q. Who was the previous senior officer?

9 A. The previous...well, there have been  
10 several. So, the previous senior officer was  
11 Michael Packer.

12 52. Q. Okay. And he was the senior officer  
13 from approximately when to when?

14 A. I can't recall his exact start date,  
15 but it would have been some time...it would have  
16 been around the time of September, 2017, to  
17 approximately the end of January, 2018.

18 53. Q. And prior to Mr. Packer?

19 A. Ian Roger was senior officer.

20 54. Q. From roughly when?

21 A. Approximately January, 2017 to  
22 September, 2017.

23 55. Q. Was there a senior officer prior to  
24 that?

25 A. There was no senior officer prior to

## Public

L. Nikolova - 13

1           that, because the file began in January, 2017.

2       56.           Q.       Okay. You have correctly predicted  
3           my next question, which was when was there a file of  
4           any kind...and I am not worried about whether it is  
5           called an inquiry or an investigation or what the  
6           noun is that is associated with it. When was the  
7           file opened or begun to be worked on, with respect  
8           to the matters that are now in this application?

9                   MR. KLIPPENSTEIN:       I am just going to  
10           stop you. What is the relevance of when  
11           the Commissioner began an investigation?

12       57.           MR. KENT:       Well, it is going to be  
13           relevant both to estoppel, and it may be  
14           relevant to whether we have any issues at  
15           the end of the day, with respect to whether  
16           we are entitled to any different witness.  
17           But we won't know that until we get to the  
18           end of the day.

19                   MR. KLIPPENSTEIN:       Can you help me  
20           understand why it is...and I don't want to  
21           preempt anything, but why it is relevant to  
22           the estoppel argument? I guess...I am  
23           sorry, the estoppel is a reliance-based  
24           argument of Ticketmaster, so what relevance  
25           does this timing of this current

## Public

L. Nikolova - 14

1 investigation have to the estoppel  
2 argument?

3 58. MR. KENT: I am not going to get into a  
4 debate with you about that. If you are  
5 objecting to the question, I have heard  
6 your objections, and it is based on...

7 MR. KLIPPENSTEIN: It is based on  
8 relevance. /R

9 59. MR. KENT: So, let me come at this  
10 slightly differently, Ms. Nikolova.

11

12 BY MR. KENT:

13 60. Q. Were you already at the Bureau when  
14 this file was opened? I mean as a legal officer, or  
15 did it precede you?

16 A. The current investigation began  
17 after I joined the Bureau.

18 61. Q. Okay, and when you say "current",  
19 that means there was a prior investigation. What  
20 prior investigation are you implying?

21 A. Not necessarily. I am speaking  
22 about the investigation relating to the current  
23 proceedings.

24 62. Q. Okay. So, sorry, so come back to  
25 that. Was it opened before or after you started at

## Public

L. Nikolova - 15

1 the Bureau, the current investigation?

2 A. The current investigation began  
3 after I started.

4 63. Q. And have you been involved in the  
5 current investigation since it started?

6 A. Yes, I have been.

7 64. Q. Were you part of the process by  
8 which the Bureau decided to open a file and begin  
9 investigating this file?

10 MR. KLIPPENSTEIN: I am going to object  
11 to that question on the basis of relevance.  
12 And it goes to...the question is going to  
13 the Commissioner's decision process in  
14 opening a file are not relevant. /R

15 65. MR. KENT: I am trying to find out what  
16 this witness is in a position to know, and  
17 therefore help us with it.

18 MR. KLIPPENSTEIN: I heard you. This  
19 witness has testified that she has been  
20 involved since this file was opened.

21 66. MR. KENT: So you are refusing to let me  
22 know if she is part of the decision-making  
23 process by which the file was opened?

24 MR. KLIPPENSTEIN: Yes.

25 67. MR. KENT: I haven't asked about what

## Public

L. Nikolova - 16

1                   went on yet. I have only asked if she was  
2                   part of it.

3                   MR. KLIPPENSTEIN:        Yes.

4       68.           MR. KENT:            Yes, meaning you won't let  
5                   her answer that?

6                   MR. KLIPPENSTEIN:        I am refusing on the  
7                   basis of relevance.

8

9       BY MR. KENT:

10       69.           Q.            What triggered the opening of the  
11                   file leading to the current application?

12                   MR. KLIPPENSTEIN:        I think that is also  
13                   refused on the basis of relevance.                   /R

14

15       BY MR. KENT:

16       70.           Q.            Was it triggered on the basis of any  
17                   consumer complaints?

18                   MR. KLIPPENSTEIN:        That is also  
19                   irrelevant.                   /R

20

21       BY MR. KENT:

22       71.           Q.            And Ms. Nikolova, were you involved  
23                   in any way, with the preparation of the pleadings in  
24                   this application? And when I say pleadings I am  
25                   really thinking of the Commissioner's Notice of

## Public

L. Nikolova - 17

1 Application and the Commissioner's reply.

2 MR. KLIPPENSTEIN: We are going to  
3 refuse that on relevance. /R

4 72. MR. KENT: Well, I am simply asking some  
5 questions about the pleadings, and I am  
6 entitled to know whether this witness is in  
7 any position to help me.

8 MR. KLIPPENSTEIN: Would it satisfy your  
9 inquiry to ask her if she has reviewed the  
10 pleadings?

11 73. MR. KENT: No, it will not. I will ask  
12 her that, but that is not my question. I  
13 want to know...are you refusing?

14 MR. KLIPPENSTEIN: Yes. /R

15 74. MR. KENT: I am going to try it a  
16 slightly different way then, Ms. Nikolova.

17

18 BY MR. KENT:

19 75. Q. Were you shown drafts of the  
20 pleadings before they were finalized?

21 MR. KLIPPENSTEIN: Refused. Relevance. /R

22

23 BY MR. KENT:

24 76. Q. Were you given any opportunity to  
25 comment on the pleadings before they were finalized?

## Public

L. Nikolova - 18

1 MR. KLIPPENSTEIN: Refused for  
2 relevance. /R  
3

4 BY MR. KENT:

5 77. Q. You are the Commissioner's  
6 representative today. Did you, meaning the  
7 Commissioner, have any revisions or corrections to  
8 make to the Commissioner's pleadings as they  
9 currently stand?

10 MR. KLIPPENSTEIN: If we have amendments  
11 to make, we will make them in accordance  
12 with the Rules.  
13

14 BY MR. KENT:

15 78. Q. Are there any corrections to them?  
16 Are there any inaccuracies in them that you are  
17 aware of now?

18 MR. KLIPPENSTEIN: No.

19 THE DEPONENT: I am not aware of any at  
20 this time.  
21

22 BY MR. KENT:

23 79. Q. Have you made any inquiry of anyone  
24 who might be responsible for these pleadings to  
25 determine whether the answer you just gave is the

## Public

L. Nikolova - 19

1 answer of your organization, as opposed to what is  
2 in your personal head?

3 MR. KLIPPENSTEIN: The answer to that,  
4 I think, would necessarily involve  
5 solicitor/client privilege. /R

6

7 BY MR. KENT:

8 80. Q. Okay, have you made any inquiry of  
9 anybody, Ms. Nikolova, as to whether there are any  
10 inaccuracies currently in your pleadings? And  
11 obviously when I say "your" I mean the  
12 Commissioner's.

13 MR. KLIPPENSTEIN: As the question is  
14 framed I am still struggling with how it  
15 could be answered without going to  
16 solicitor/client privilege.

17 81. MR. KENT: Well, I am not going to ask  
18 of any conversation with counsel. I am  
19 entitled to know whether an inquiry has  
20 been made.

21

22 BY MR. KENT:

23 82. Q. So, let me circle back. You said  
24 you weren't aware of any inaccuracies in the  
25 pleadings, as we sit here today. Is that right?



## Public

L. Nikolova - 21

1 Commissioner's pleadings?

2 A. Not from that discussion.

3 88. Q. From any discussion that you are  
4 aware of?

5 A. Not from any discussion that I am  
6 aware of.

7 89. Q. So your best information, sitting  
8 here today on behalf of the Commissioner, is that  
9 there are no inaccuracies in your pleadings,  
10 correct?

11 A. That is correct.

12 90. Q. The Commissioner's productions, you  
13 are aware the Commissioner has produced documents in  
14 this proceeding?

15 A. Yes.

16 91. Q. And you have been part of that  
17 process presumably?

18 A. Part of the process of producing  
19 documents? Yes, I was a part of it.

20 92. Q. So, the Commissioner's documents  
21 have...I am going to leave out all the  
22 editorialization, have a variety of numbers and  
23 letters on them to identify each document. You are  
24 aware of that, right?

25 A. Yes. I am aware of those numbers.

## Public

L. Nikolova - 22

1 93. Q. Can you tell me, please, what the  
2 different letter codes and number styles mean?

3 A. So, I am not aware of all of them  
4 individually. There are several different codes.

5 94. Q. Why don't you do the best you can,  
6 and we will pick up the balance with an undertaking?

7 A. So, certain of the codes identify  
8 where those documents would have been found, or what  
9 file they would be associated from...

10 95. Q. Okay.

11 A. ...or with.

12 96. Q. So, for example, there are documents  
13 that start off PEJG, and then numbers and then an  
14 underscore, and then more numbers. Why don't we use  
15 that as an example? What does an identifier like  
16 that tell us?

17 A. PEJG relates to documents associated  
18 with the current investigation.

19 97. Q. Okay. And then there is typically  
20 five numbers, underscore, and then about eight  
21 numbers. What does that numbering convention  
22 signify?

23 A. That would identify a particular  
24 document. I am not entirely sure of the sequence  
25 and what that would mean.

## Public

L. Nikolova - 23

1 98. Q. Can you find out for me, please?  
2 MR. KLIPPENSTEIN: So you are asking us  
3 to advise whether the sequence of five  
4 numbers and the sequence of eight numbers  
5 have any meaning? So, what does that mean?

6 99. MR. KENT: Yes, please.

7 MR. KLIPPENSTEIN: We will do that. U/T

8 100. MR. KENT: And so just another example,  
9 and I am only going to do a couple of  
10 examples and then I am going to ask a lot  
11 of questions.  
12

13 BY MR. KENT:

14 101. Q. There are some that begin PHAD, and  
15 then a sequence of numbers, sometimes followed by a  
16 couple of letters. What does that signify?

17 A. Sorry, could you repeat the  
18 question?

19 102. Q. Sure. There are some documents that  
20 begin with the document code PHAD and then numerals.  
21 What does that PHAD signify?

22 A. PHAD denotes the documents are  
23 sourced from a file that was in place, I believe in  
24 2009, 2010.

25 MR. KLIPPENSTEIN: I don't have



## Public

L. Nikolova - 25

1 108. Q. Paul, why don't we do this? We have  
2 got what I think is a complete list of all the  
3 letter codes we found in the Commissioner's  
4 productions. If we...rather than go through it on  
5 the record, if we provide you with that list, can  
6 you undertake to provide us with an the  
7 Commissioner's information about what the letter  
8 codes signify?

9 MR. KLIPPENSTEIN: I don't have the list  
10 in front of me, but I don't anticipate any  
11 problems with giving that. I will just say  
12 for the sake of prudence, subject to any  
13 privilege. I don't imagine we would have  
14 any dispute with relevance since they are  
15 in our production, but I will say subject  
16 to the relevance and privilege. U/A

17 109. MR. KENT: Okay, we will do it on that  
18 basis, otherwise I am going to have to read  
19 a list into the record, and I no one is  
20 going to enjoy that. So, we will take that  
21 undertaking.

22

23 BY MR. KENT:

24 110. Q. The second part of the question has  
25 to do with the numerals that follow the letters.

## Public

L. Nikolova - 26

1           You are aware that there is different combinations  
2           of numbers on your documents, sometimes there is an  
3           underscore in the middle, sometimes there is not.  
4           You are aware of that?

5                   A.       I am aware that the sequences vary,  
6           but there are underscores with multiple numbers, I  
7           think they follow the alpha code, yes.

8    111.           MR. KENT:     All right.  So, I would like,  
9                   as part of the undertaking, then, for you  
10                  to advise us what the various numbering  
11                  systems signify, other, obviously, than the  
12                  fact that a given document is not the same  
13                  as another given document, but there is  
14                  clearly some significance to these numbers,  
15                  whether it has to do with where things are  
16                  found, or when they came up or whatever.  
17                  Will you advise us of that as well?

18                 MR. KLIPPENSTEIN:     Subject to those same  
19                  reservations, we will advise...and subject  
20                  to them having some significance, we will  
21                  give that undertaking.                                 U/T

22    112.           MR. KENT:     Well, even if they have no  
23                   significance I would like to know that too,  
24                   so I am not wondering, okay?

25                 MR. KLIPPENSTEIN:     Sounds fair.                                 U/T

## Public

L. Nikolova - 27

1       113.           MR. KENT:       And then finally to the  
2                   degree that any of the numbering or  
3                   lettering codes identify the source of the  
4                   document, or where they were found, either  
5                   of those two things, I would like to know  
6                   not just that that is what it signifies,  
7                   but particularly what it means. So, if the  
8                   numbering code means it was found in  
9                   so-and-so's files, I would like to know who  
10                  so-and-so was.

11                 MR. KLIPPENSTEIN:    Subject to the same  
12                   qualifications, we will do that.                   U/T

13       114.           MR. KENT:        Okay.  
14

15       BY MR. KENT:

16       115.           Q.        Okay, let's take a look, then, at  
17                   your pleading and, in particular, at the  
18                   Commissioner's Notice of Application. And you  
19                   reviewed this as part of your preparation for today,  
20                   I assume?

21                   A.        I reviewed the pleadings, yes.

22       116.           Q.        I want to ask you some questions  
23                   about the parties that the Commissioner has named as  
24                   respondents. So, if you could turn with me to  
25                   paragraph 10, please? And just if you need to take

## Public

L. Nikolova - 28

1 another look at it, do, and let me know when you are  
2 comfortable with me asking you a question about it.

3 A. Okay, I have read paragraph 10.

4 117. Q. And you understand in paragraph 10,  
5 is with respect to the respondent, Live Nation  
6 Entertainment Inc.?

7 A. That is the company named in that  
8 paragraph, yes.

9 118. Q. And that is the company that that  
10 paragraph is about, right?

11 A. That is correct.

12 119. Q. Now, about six lines down the  
13 Commissioner says...sorry, about six lines down, or  
14 five lines down the Commissioner refers to an  
15 uppercase term, "PRICE REPRESENTATIONS". Do you see  
16 that in the middle of the line?

17 A. I do see the term, yes.

18 120. Q. And just for the sake of our  
19 conversation going forward, price representations  
20 refers to the representations that the Commissioner  
21 alleges are inconsistent with the Competition Act?

22 A. Well, the price representations are  
23 defined at paragraph 3 of the Notice of Application.

24 121. Q. Right, and those are the  
25 representations that the Commissioner alleges are

1 inconsistent with the Competition Act, as being  
2 deceptive marketing practices by promoting the sale  
3 of tickets to the public at prices that are not, in  
4 fact, attainable...supplying tickets at prices above  
5 the average price, right?

6 A. I am sorry, what was the first part  
7 of your question?

8 122. Q. I am really just trying to make sure  
9 we both understand what price representations are so  
10 that we continue on without having to use long  
11 phrases like "misleading" and "deceptive" and  
12 "attainable".

13 For the purposes of your pleading, price  
14 representations refer to the representations that  
15 the Commissioner says are offside, right?

16 A. That is correct.

17 123. Q. Okay. So, in paragraph 10, it is  
18 said that the price representations...I don't think  
19 that this is particularly controversial...that there  
20 are price representations made to the public on  
21 ticketmaster.ca and ticketweb.ca. Do you see that?

22 A. It reads:

23 "...the price representations made to the  
24 public as accessed through those two,  
25 ticketmaster.ca and ticketweb.ca...."

## Public

L. Nikolova - 30

1 124. Q. Right, and in this paragraph the  
2 price representations referred to are price  
3 representations made on ticketmaster.ca and  
4 ticketweb.ca, right?

5 A. Yes, that is right.

6 125. Q. And Live Nation Entertainment Inc.'s  
7 involvement in that is said to be that it controls a  
8 computer network which a consumer must access in  
9 order to see the representations on those two  
10 websites. Do I correctly understand that?

11 A. It states that Live Nation controls  
12 a computer network which the public must access, to  
13 view representations on ticketmaster.ca and  
14 ticketweb.ca.

15 126. Q. Okay. So, let's pause for a second  
16 here. You are here as the Commissioner's witness.  
17 I don't need you to read the pleading to me, but I  
18 am entitled to ask you, as the Commissioner's  
19 witness, what the Commissioner means when he pleads  
20 these things, okay? Do you understand?

21 A. I understand.

22 127. Q. All right. So the activity  
23 described on the part of Live Nation Entertainment  
24 Inc. is that it controls a computer network which a  
25 consumer must access in order to see the price

## Public

L. Nikolova - 31

1 representations that are complained about on the  
2 ticketmaster.ca and ticketweb.ca websites, correct?

3 A. That is correct.

4 128. Q. Is there some other activity or step  
5 on the part of Live Nation Entertainment Inc. that  
6 the Commissioner alleges against it, with respect to  
7 those price representations? And I am not asking  
8 you necessarily what the words say. I am asking  
9 you, sitting here today on behalf of the  
10 Commissioner, whether there is something in addition  
11 to what we have just established is the  
12 Commissioner's allegation in this paragraph.

13 A. I am aware of the facts relating to  
14 Live Nation's potential involvement in making the  
15 price representations that aren't necessarily stated  
16 in this paragraph.

17 129. Q. Okay. Why don't you tell me about  
18 those facts?

19 A. Well, some examples, Live Nation  
20 Entertainment is the parent company to the other  
21 respondents in the application.

22 130. Q. Okay.

23 A. Another instance, I think they  
24 govern...Live Nation Entertainment's annual reports,  
25 refer to Ticketmaster as the company's ticketing

## Public

L. Nikolova - 32

1 arm.

2 131. Q. I am sorry, say that again? I am  
3 not sure I got it down right. So, "Live Nation  
4 Entertainment Inc.'s annual reports refer to", and  
5 that is where is I lost it. I am sorry.

6 A. Referring to Ticketmaster as the  
7 company's ticketing arm. Some other facts I can  
8 think of, Live Nation Entertainment is noted on  
9 certain policies that appear on the websites  
10 mentioned in the Commissioner's application.

11 132. Q. Okay, noted in what sense?

12 A. I have seen the name Live Nation  
13 Entertainment in association with some of those  
14 policies.

15 133. Q. Okay. And it is noted in  
16 association with what policies and in what way?

17 A. So one example I can think of, the  
18 Live Nation Entertainment privacy policy appears on  
19 some of the websites.

20 134. Q. Okay. Anything else? You told us  
21 about it being the parent company to some other  
22 respondents. Its annual report refers to  
23 Ticketmaster as the company's ticketing arm, and it  
24 is noted on some policies, including, in particular,  
25 the LNE privacy policy, as identified on some

## Public

L. Nikolova - 33

1 websites. Anything else?

2 A. Based on my review of the documents  
3 from the productions, [REDACTED] [REDACTED]

4 [REDACTED]

5 [REDACTED] [REDACTED]

6 [REDACTED]

7 135. Q. Such as who?

8 A. The name I can think of right now is

9 [REDACTED] [REDACTED].

10 136. Q. Okay. Anything else?

11 A. Well, we continued to investigate  
12 and are waiting on answers from discovery.

13 137. Q. Okay, but subject to that anything  
14 else?

15 A. Not that I can think of offhand  
16 right now.

17 138. MR. KENT: Could I have an undertaking  
18 to let me know if the witness thinks of  
19 anything else?

20 MR. KLIPPENSTEIN: How is that different  
21 from our general obligation to correct any  
22 answers that turn out to be incorrect, in  
23 your review?

24 139. MR. KENT: It is just her answer so far  
25 is that she can't think of anything else

## Public

L. Nikolova - 34

1 right now. So, I accept that as true, and  
2 if she thinks of something else tomorrow  
3 there won't be a correction to make, so  
4 that is why I am asking for the  
5 undertaking.

6 MR. KLIPPENSTEIN: If there is anything  
7 else that this witness recalls, we will let  
8 you know, in relation to the question  
9 obviously. U/T

10 140. MR. KENT: Yes. And because your answer  
11 was tailored to the witness, I would like  
12 an undertaking to make reasonable inquiries  
13 to determine whether there is anything  
14 else, so far as the Commissioner is  
15 concerned.

16 MR. KLIPPENSTEIN: We will do so. U/T

17 141. MR. KENT: Thank you.

18

19 BY MR. KENT:

20 142. Q. What does it mean, Ms. Nikolova, to  
21 say that Live Nation Entertainment Inc. controls a  
22 computer network, which a consumer must access in  
23 order to get to the price reps on ticketmaster.ca  
24 and ticketweb.ca. What does that mean?

25 A. As I understand it from documents

## Public

L. Nikolova - 35

1           that I have looked at, certain IP addresses that are  
2           associated with ticketmaster.ca and ticketweb.ca are  
3           registered to Live Nation Entertainment.

4    143.           Q.       And is that what you understand to  
5           be meant by "controlling a computer network"?

6                   A.       I don't...

7    144.           Q.       I just...I want to know what that  
8           phrase means.

9                   A.       I don't have a technical background.  
10           My understanding is that there are IP addresses  
11           registered to Live Nation, and that those need to be  
12           accessed in order to view representations on  
13           ticketmaster.ca and ticketweb.ca.

14   145.           Q.       What price representations that are  
15           at issue in this lawsuit? What representations are  
16           actually made by Live Nation Entertainment Inc., as  
17           opposed to some other respondent?

18                   A.       I don't know that I can distinguish  
19           which price representations on that website are, are  
20           made by Live Nation. The facts that I am aware of  
21           is that Live Nation controls certain IP addresses  
22           that need to be accessed when viewing things on  
23           ticketmaster.ca and ticketweb.ca.

24   146.           Q.       Can you turn over and just have a  
25           look at paragraph 11 of your pleading, please? And

## Public

L. Nikolova - 36

1 let me know when you are refreshed on that and then  
2 I will continue.

3 A. Okay.

4 147. Q. So you will see that you plead that  
5 a different company called Live Nation Worldwide  
6 Inc. controls the domain name ticketmaster.ca and  
7 the associated website. In other words, the  
8 ticketmaster.ca website, right?

9 A. That is correct.

10 148. Q. And if you go back to paragraph 10,  
11 you are not alleging that Live Nation Entertainment  
12 Inc. controls either the domain name or the website,  
13 ticketmaster.ca, correct?

14 A. Well, I am not sure a website...what  
15 exactly a website is, and how it would be accessed.  
16 I mean...

17 149. Q. I didn't ask about how it is  
18 accessed, I am asking about which respondents  
19 control the website, and obviously since price  
20 representations are a content on the website, what I  
21 want to get at in my questions is which respondents  
22 control the content on the websites.

23 A. Well, as I understand, there could  
24 be multiple parties involved in, you know, in a  
25 website.

## Public

L. Nikolova - 37

1       150.           Q.        Sure thing.  What is it that the  
2                   Commissioner says Live Nation Entertainment Inc.  
3                   does to control the content on the ticketmaster.ca  
4                   website, or the ticketweb.ca website, or for  
5                   whatever it matters, the ticketsnow.com website.

6                   MR. KLIPPENSTEIN:     Just to be clear, you  
7                   have taken her to paragraph 11 which deals  
8                   with Worldwide, you are asking her about  
9                   Entertainment?

10       151.           MR. KENT:        And I am have been trying to  
11                   use all the words but, yes, you are right,  
12                   Entertainment.

13                   THE DEPONENT:     Sorry, could you repeat  
14                   the question?

15       152.           MR. KENT:        Sure.

16

17       BY MR. KENT:

18       153.           Q.        What does the Commissioner say Live  
19                   Nation Entertainment Inc. does to control the  
20                   content on ticketmaster.ca, ticketweb.ca, or the  
21                   third website, ticketsnow.com?

22                   A.        So as I understand it, there are  
23                   certain IP addresses registered to Live Nation  
24                   Entertainment Inc. that are associated with the  
25                   domains ticketmaster.ca and ticketweb, which

## Public

L. Nikolova - 38

1 consumers need to access to view the website.

2 154. Q. Okay. I understand that. I would  
3 like to know, but you understand that controlling or  
4 having registered in your name an IP address is not  
5 the same as controlling the content that might be on  
6 a website that one would find if one went to that  
7 address. You understand the difference, right?

8 A. I don't have a technical background  
9 in...

10 155. Q. This isn't a technical question. I  
11 have no technical background either. You understand  
12 that when you go to the Canadian...have you ever  
13 been to the Canadian Tire website?

14 A. I don't know if I have been to the  
15 Canadian Tire website.

16 156. Q. Why don't you tell me a website  
17 for...a retail website you do visit?

18 A. I visit amazon.ca.

19 157. Q. There you go. And you understand  
20 that when you go to the amazon.ca website you see  
21 content, right?

22 A. Yes. I see things on those web  
23 pages.

24 158. Q. Okay. And you know that in order to  
25 get to the amazon.ca website, you have to click on

## Public

L. Nikolova - 39

1 something, whether you enter that name into Google  
2 search, or whether you already have a link loaded  
3 somewhere, you have to click on something to get  
4 there, right?

5 A. Click on something, or type in a web  
6 address, sure.

7 159. Q. And then underlying all of that you  
8 now know there is an IP address for every website at  
9 a technical level?

10 A. My understanding of an IP address is  
11 that it is a series of numbers associated with a  
12 computer. I am not sure how IP addresses relate to  
13 websites generally.

14 160. Q. Then I want you to circle back, now,  
15 and tell me if there is anything the Commissioner  
16 says that Live Nation Entertainment Inc. does to  
17 control the content, or influence the content on  
18 ticketmaster.ca, ticketweb.ca, or ticketsnow.com,  
19 other than having the IP address registered in its  
20 name?

21 A. I am not sure what you mean by  
22 "influence" the website.

23 161. Q. I said the content.

24 A. Influence the content.

25 162. Q. You understand that the price

## Public

L. Nikolova - 40

1           representations had issue relate to the way in which  
2           the various prices and charges associated with the  
3           purchase of the tickets for a variety of events, is  
4           set out and sequenced on the three websites that I  
5           mentioned, plus the mobile app and the mobile  
6           versions, right?

7                   A.       Yes. I understand that.

8    163.           Q.       Okay. Other than having the  
9           relevant IP addresses, these numerals registered in  
10          its name, what does the Commissioner say Live Nation  
11          Entertainment Inc. did to control or influence the  
12          manner in which prices and charges for tickets are  
13          displayed and sequenced on the three websites that  
14          we are talking about?

15                   MR. KLIPPENSTEIN:     In fairness, the  
16                   witness has said that she doesn't have a  
17                   technical background.

18    164.           MR. KENT:        I am not asking a  
19                   single...this is not a technical question.

20                   MR. KLIPPENSTEIN:     She has given some  
21                   factors that the Commissioner relies on in  
22                   respect of controlling the network.

23    165.           MR. KENT:        So, is it the Commissioner's  
24                   position that if you control the network  
25                   but you don't touch the content, you are,

## Public

L. Nikolova - 41

1                   nevertheless, making a price  
2                   representation?

3                   MR. KLIPPENSTEIN:        The witness has given  
4                   factors underlying the pleading at  
5                   paragraph 10.

6        166.           MR. KENT:            But I am asking a question.  
7                   I have heard the witness, I have...that is  
8                   why I am asking more questions. We are  
9                   entitled to know the nature...this is...I  
10                  know this is an application at a formal  
11                  level, but it is in the nature of a  
12                  prosecution at a functional level. The  
13                  penalties and remedies sought are large.

14                  MR. KLIPPENSTEIN:        Well, we...

15        167.           MR. KENT:            These...

16                  MR. KLIPPENSTEIN:        ...will have to agree  
17                  to disagree about that word, but...

18        168.           MR. KENT:            I am not asking you to agree  
19                  with it. But each of these respondents is  
20                  entitled to know the basis upon which it,  
21                  in particular, is said to either make price  
22                  representations, advertise products or  
23                  supply products. Those are the verbs in  
24                  the two provisions that the Commissioner  
25                  relies on, and that is what I am...so, I am

## Public

L. Nikolova - 42

1 entitled to know what the Commissioner  
2 says.

3 MR. KLIPPENSTEIN: Well, the provisional  
4 says "make or permit to be made".

5 169. MR. KENT: We are going to come to  
6 permit, that is a separate section that we  
7 will come to that. I am focusing right now  
8 on make, advertises and supply. And so we  
9 have heard that the Commissioner thinks or  
10 says...well, let's go back a step.

11

12 BY MR. KENT:

13 170. Q. Does the Commissioner say that to  
14 control a computer network through which a consumer  
15 must go to access a website constitutes making a  
16 representation found on that website?

17 MR. KLIPPENSTEIN: So when you are  
18 asking that question, are you not asking  
19 for a legal position? Our position is set  
20 out in the pleadings.

21 171. MR. KENT: Well, whether one makes a  
22 representation...sorry, we can go back a  
23 step. Whether a representation is or is  
24 not misleading or is or is not inconsistent  
25 with either of the statutory provisions

## Public

L. Nikolova - 43

1                   that have been cited is for sure a question  
2                   I am not going to get into. But I am  
3                   entitled to know the facts, based on which  
4                   this application was based.

5                   So, one of the facts that is in  
6                   issue is whether a given respondent made  
7                   impugned representations. We don't deny  
8                   the fact that the representations have been  
9                   made by somebody. It is not an issue and  
10                  we have told you who we thinks make them,  
11                  and we have a dispute about whether other  
12                  parties make them. That is what I am  
13                  exploring. So, I want to know the facts.

14                 MR. KLIPPENSTEIN:        I think where we are  
15                  disagreeing is the witness has given you  
16                  facts related to Live Nation  
17                  Entertainment's involvement in making or  
18                  permitting the representations. When you  
19                  ask which question of law those facts are  
20                  related to, whether they are related to  
21                  this part of the Act or that part of the  
22                  Act, I think that is where we are getting  
23                  into difficulty. That is where I have an  
24                  issue with your questions.

172.

25                 MR. KENT:        Okay so maybe I can try and

## Public

L. Nikolova - 44

1                   come at this another way.

2

3       BY MR. KENT:

4       173.           Q.       Does the Commissioner say that Live  
5                   Nation Entertainment Inc. made representations on  
6                   any of the three websites in question?

7                   A.       The facts that I am aware of is that  
8                   Live Nation...it is these IP addresses which connect  
9                   to the websites so consumers must access Live  
10                  Nation's network to view the representations.

11       174.           Q.       So, does the Commissioner say, then,  
12                   that to control a computer network through which a  
13                   consumer must travel to access a website constitutes  
14                   making a representation on the website?

15                  MR. KLIPPENSTEIN:     Ok, I have a problem  
16                   with the question you are asking, the  
17                   witness has given facts, and you are asking  
18                   the witness to relate facts to a  
19                   particular...a head of liability or a  
20                   particular portion of the statute.

21       175.           MR. KENT:        I am just trying to find out  
22                   which respondent is said to take a factual  
23                   step, which is to make a representation.

24

25       BY MR. KENT:

## Public

L. Nikolova - 45

1 176. Q. So, I asked you a question before  
2 which you didn't answer, right? I asked you, does  
3 the Commissioner say that Live Nation Entertainment  
4 Inc. made representations on any of the three  
5 websites, and you told me about computer networks.  
6 I want to know, does the Commissioner say that Live  
7 Nation Entertainment Inc. made representations on  
8 any of the three websites?

9 MR. KLIPPENSTEIN: I have objected to  
10 that question. I think the answer...I  
11 think the witness has answered what the  
12 facts are, so the refusal will be...because  
13 that question has been answered. /R

14 177. MR. KENT: No, the question wasn't  
15 answered. She didn't answer the question.  
16 You can refuse the question but does that  
17 mean the Commissioner is not going to even  
18 tell us whether or not this respondent is  
19 said to breach section 74.01(1)(a)? And  
20 part of the reason for the question is that  
21 the body of the pleading refers without  
22 distinction to the respondents, as though  
23 they were all doing the same thing, which,  
24 even on the face of the pleading, can't be  
25 true.

## Public

L. Nikolova - 46

1                   So, I am entitled to know which  
2                   respondents are said to have done what, and  
3                   said to have breached what, for starters.

4                   So, the first legal provision relied  
5                   on has to do with making representations.  
6                   I just want to know whether the  
7                   Commissioner says Live Nation Entertainment  
8                   Inc. made representations on any of the  
9                   relevant websites.

10                  MR. KLIPPENSTEIN:       And the Commissioner  
11                  will provide you with the facts that the  
12                  witness is aware of linking each of these  
13                  respondents. Our pleadings are set out,  
14                  facts that link each of the respondents in  
15                  our pleadings also say that Live Nation and  
16                  its subsidiaries act, and have acted  
17                  separately, jointly and/or in concert. And  
18                  so I think you have the Commissioner's  
19                  position that the respondents appeared to  
20                  act together to make these representations.  
21                  We have provided you with some facts  
22                  linking this particular respondent, and the  
23                  witness has also identified that  
24                  information, we hope will continue to come  
25                  in, to allow the Commissioner to refine his

## Public

L. Nikolova - 47

1 understanding in that regard.  
2 178. MR. KENT: Okay, well, I am entitled to  
3 know which respondent is said to be under  
4 attack and pursuant to which of the  
5 provisions that have been cited. So, let's  
6 take it, then, in steps.

7 The pleading says that each of the  
8 respondents acted, separately, jointly or  
9 in concert, correct? "And/or in concert",  
10 I believe is the phrase. And if you want a  
11 place to find that, you can find it at  
12 paragraph 1(a) of the Notice of  
13 Application. Have you seen that?

14 THE DEPONENT: I see that paragraph.  
15

16 BY MR. KENT:

17 179. Q. And paragraph 19 alleges that:  
18 "...The respondents worked together and/or  
19 individually to make or permit each other  
20 to make price reps..."

21 Do you see that?

22 A. I see that.

23 180. Q. And then at paragraph 20 there is a  
24 pleading that:

25 "...The respondents work together and/or

## Public

L. Nikolova - 48

1                   individually to supply our offer to supply  
2                   tickets..."

3                   Do you see that?

4                   A.           I see that.

5       181.           Q.           And then at paragraph 31 the  
6                   Commissioner pleads that:

7                   "...The respondents' practices are  
8                   reviewable pursuant to two provisions of  
9                   the Competition Act..."

10                  Do you see that?

11                  A.           I see that.

12       182.           Q.           So, since all of that has been  
13                   balled up and put into the alternative, I am going  
14                   to ask you questions to pull it apart, so I can see  
15                   what the allegations are with respect to each  
16                   respondent, since there is a pleading that balls  
17                   them all up.

18                  MR. KLIPPENSTEIN:       So, our position is  
19                   you can ask questions on the facts that  
20                   link each respondent to the  
21                   representations, but you can't ask the  
22                   Commissioner on which facts the  
23                   Commissioner relies for one or another part  
24                   of the Commissioner's legal argument.

25

1 BY MR. KENT:

2 183. Q. So let's take this in bits, and we  
3 can work backwards from paragraph 31, if you like.  
4 Paragraph 31 refers to:

5 "...The respondents' deceptive marketing  
6 practices without indicating which  
7 respondents..."

8 Does that include Live Nation Entertainment? I  
9 can't tell, reading it through.

10 MR. KLIPPENSTEIN: The respondents are  
11 identified in the pleading.

12 184. MR. KENT: So, should I read respondents  
13 to mean all eight at all times, through the  
14 pleading?

15 MR. KLIPPENSTEIN: Can we go off the  
16 record?

17 185. MR. KENT: Sure.

18

19 --- upon recessing at 10:35 a.m.

20 --- A BRIEF RECESS

21 --- upon resuming at 10:47 a.m.

22

23 LINA NIKOLOVA, resumed

24 CONTINUED EXAMINATION BY MR. KENT:

25 186. Q. Ms. Nikolova, other than controlling

## Public

L. Nikolova - 50

1 a computer network, having registered to it certain  
2 IP addresses, being the parent of some of other  
3 respondents, having its annual report refer to  
4 Ticketmaster as its "ticketing arm", having its  
5 privacy policy noted among the policies on some  
6 websites, and the possible consultation of Mr.  
7 Rapino by others with respect to fee display, is  
8 there anything else that the Commissioner says  
9 connects Live Nation Entertainment Inc. to the price  
10 representations at issue in this litigation?

11 A. So I just want to clarify. I think  
12 I mentioned the policies earlier in relation to a  
13 similar question. It is not just...that is one  
14 example of the policy that I can think of. There  
15 may be other policies where Live Nation  
16 Entertainment is also named.

17 187. Q. And so can I have an undertaking...I  
18 take it you don't know what those are right now?

19 A. Not off the top of my head.

20 188. MR. KENT: Can I have an undertaking,  
21 please, to be advised of what other  
22 policies Live Nation Entertainment Inc. is  
23 noted among?

24 MR. KLIPPENSTEIN: We will make  
25 reasonable efforts to identify

## Public

L. Nikolova - 51

1 representative examples of policies in the  
2 nature of what Ms. Nikolova identified. U/T

3 189. MR. KENT: Okay, thanks.  
4

5 BY MR. KENT:

6 190. Q. I just want to go back for a minute  
7 to something I forgot about before. It has to do  
8 with the Bureau people who were involved in this  
9 matter. And I forgot about Mr. Greiss. Are you  
10 familiar with him?

11 A. Mr. Rami Greiss?

12 191. Q. Yes.

13 A. Yes.

14 192. Q. And he was here on secondment from  
15 Australia, I guess, for a while, right?

16 A. That is correct.

17 193. Q. And he was involved in this matter  
18 as well, wasn't he?

19 A. Yes, he was involved.

20 194. Q. And where did he fit in in the  
21 reporting order that we went through before?

22 A. He was senior deputy commissioner.

23 195. Q. Yes, and so who reported to him on  
24 this matter, and to whom did he report on this  
25 matter?

## Public

L. Nikolova - 52

1                   A.        Josephine Palumbo would have  
2                   reported to him in relation to this matter, and Mr.  
3                   Greiss would have reported to the Commissioner.

4    196.            Q.        And did Mr. Greiss arrive at the  
5                   Bureau before or after this matter began?

6                   A.        He arrived after this investigation  
7                   began.

8    197.            Q.        Okay. We got sidetracked there for  
9                   a second with the undertaking to look for more  
10                  policies in which Live Nation Entertainment was  
11                  named, but are there any facts relating to Live  
12                  Nation Entertainment's involvement with the price  
13                  representations at issue, other than the list we  
14                  went over a question or two ago?

15                  MR. KLIPPENSTEIN:     We have given an  
16                  undertaking to advise if there is anything  
17                  more that this...or, to give reasonable  
18                  inquiries if there is anything else the  
19                  Commissioner is aware of.

20    198.            MR. KENT:        Go to paragraph 12, please,  
21                   of the Notice of Application.

22

23    BY MR. KENT:

24    199.            Q.        Let me know when you have refreshed  
25                   yourself on this.

## Public

L. Nikolova - 53

1                   A.       Okay.  So, this paragraph of the  
2 pleading relates to Ticketmaster Canada Holdings  
3 ULC.  Do you see that?

4                   A.       I see that.

5       200.           Q.       And you were here for the  
6 discoveries of various Ticketmaster personnel, who  
7 described this company as [REDACTED]  
8 [REDACTED] Do you recall that?

9                   A.       I was there for the discoveries.  I  
10 don't specifically recall which companies they

11 [REDACTED]  
12       201.           Q.       Why...on what basis does the  
13 Commissioner say that Ticketmaster Canada Holdings  
14 controls the domain name ticketweb.ca and the  
15 associated ticketweb.ca website?  That is said in  
16 the middle of the paragraph.

17                   A.       So some facts that I am aware of in  
18 relation to the statement in the middle of that  
19 paragraph are that Ticketmaster Canada Holdings  
20 ULC's previous name was Ticketmaster Canada Ltd.  
21 based on records that I have reviewed.  And either  
22 Ticketmaster Canada Ltd...well, Ticketmaster Canada  
23 Ltd., I have seen on records relating to domain  
24 registrations for ticketweb.ca.

25       202.           Q.       Anything else?

## Public

L. Nikolova - 54

1                   A.       Well, Ticketmaster Canada Ltd., I  
2       recall was also noted as handling consumer  
3       transactions and collecting payments on various  
4       policies found on ticketmaster.ca, and ticketweb.ca.

5   203.            Q.       And Ticketmaster Ltd., you  
6       understand, does not exist under that name, and  
7       hasn't existed under that name since about 2009?

8                   A.       I understand that it is noted as the  
9       previous named Ticketmaster Canada Holdings ULC.

10   204.           Q.       And did you make any...do you know  
11       the circumstances under which the name was changed?

12                  A.       I don't know the specific  
13       circumstances.

14   205.           Q.       Do you know generally that the name  
15       was changed [REDACTED] [REDACTED]

16                  A.       I recall hearing that from witnesses  
17       in discovery in the last couple of weeks.

18   206.           Q.       That is not something that came up  
19       in your investigation?

20                  A.       I don't recall seeing it. I  
21       remember seeing corporate records where Ticketmaster  
22       Canada Ltd. was identified as a previous name to  
23       Ticketmaster Canada Holdings ULC.

24   207.           Q.       Right. So, we have got that down.  
25       I am asking you whether [REDACTED]

## Public

L. Nikolova - 55

1 [REDACTED] [REDACTED]  
2 [REDACTED] [REDACTED]  
3 [REDACTED] [REDACTED] as part of your  
4 investigation?

5 MR. KLIPPENSTEIN: And I am going to  
6 refuse to answer that. Whether or when it  
7 came up in the investigation is not  
8 relevant, although knowledge of facts  
9 related to that we will allow. /R

10 208. MR. KENT: Okay.

11  
12 BY MR. KENT:

13 209. Q. So do you have any awareness of the  
14 fact? Not the details, but the fact of that  
15 [REDACTED] that any time prior to the Notice of  
16 Application being filed on January of '18?

17 MR. KLIPPENSTEIN: I will refuse that as  
18 well, because the timing aspect, I think,  
19 that is not relevant. /R

20  
21 BY MR. KENT:

22 210. Q. Are you aware of there having been a  
23 [REDACTED] other than by sitting in and  
24 listening to discoveries the last two weeks?

25 A. No, I am not aware.



## Public

L. Nikolova - 57

1 process, about the [REDACTED]

2 MR. KLIPPENSTEIN: I am sorry to  
3 interrupt you, but "through this discovery  
4 process", do you mean the examination for  
5 discovery of the respondents'  
6 representatives?

7 216. MR. KENT: And the production of  
8 documents.

9 THE DEPONENT: Sorry, could you repeat  
10 the question?

11 217. MR. KENT: Sure.

12

13 BY MR. KENT:

14 218. Q. Does the Commissioner have any  
15 information about the [REDACTED] and the  
16 [REDACTED] [REDACTED]  
17 [REDACTED] other than anything that has come up in  
18 the oral or documentary discovery?

19 A. I recall we have a corporate record  
20 from the Nova Scotia registry in relation to  
21 Ticketmaster Canada Holdings ULC.

22 219. Q. Yes, and that is what you looked at  
23 to see that its previous name was Ticketmaster Ltd.,  
24 right?

25 A. That is the record that I recall,

## Public

L. Nikolova - 58

1 yes.

2 220. Q. But that doesn't tell you anything  
3 about the responsibilities of the two companies  
4 [REDACTED]...sorry. That doesn't tell you  
5 whether there has been a [REDACTED] does it?

6 A. I don't recall that it does.

7 221. Q. No, it just tells you that it is a  
8 name change, right?

9 A. That is what I recall, yes.

10 222. Q. And it doesn't tell you anything  
11 about [REDACTED] [REDACTED]  
12 [REDACTED] [REDACTED]  
13 [REDACTED], does it?

14 A. I don't recall that that record says  
15 anything about what you just said.

16 223. Q. Well, and the Commissioner doesn't,  
17 other than through the discovery process, have any  
18 information on that subject, right?

19 A. I don't recall that we have any  
20 information on that subject.

21 224. Q. And so in paragraph 12 of the  
22 application where certain inferences are drawn from  
23 the fact that Ticketmaster Canada Holdings' prior  
24 name was Ticketmaster Canada Ltd., those inferences  
25 were drawn without regard for any [REDACTED]

1 [REDACTED]. That is where I get to  
2 it out of that, is that correct?

3 A. So, just so I understand the  
4 question, the inference is drawn in paragraph 12?

5 225. Q. Yes.

6 A. It would be based on what we just  
7 discussed.

8 226. Q. Well, are you telling me that?

9 A. So, the facts that I am aware of is  
10 that there was a name change. I can't recall  
11 anything else in relation to the statements here.

12 227. Q. And, in particular, for the purposes  
13 of the statements in paragraph 12, you are not aware  
14 of the [REDACTED] that came up during the  
15 discoveries, and paragraph 12 is without regard to  
16 [REDACTED] correct?

17 A. I wasn't aware that there was a  
18 [REDACTED]

19 228. Q. So, is my proposition to you  
20 correct?

21 MR. KLIPPENSTEIN: I think she has  
22 answered that.

23 229. MR. KENT: Well, no, she said something  
24 different.

25 MR. KLIPPENSTEIN: Well, I...

## Public

L. Nikolova - 60

1 230. MR. KENT: I asked you to agree with me  
2 on something and you said something  
3 different. You don't have to agree with  
4 me, but if you say something different I am  
5 going to come back and ask my question  
6 again.

7 MR. KLIPPENSTEIN: She said she wasn't  
8 aware of it. How could she take into  
9 account something she wasn't aware of?

10 231. MR. KENT: Okay, so then we are agreed.  
11 I want to get this in my words sometimes.  
12 So, paragraph 12, then, was without regard  
13 to any [REDACTED]  
14 [REDACTED] at around 2009, correct?

15 MR. KLIPPENSTEIN: She has answered that  
16 question.

17 232. MR. KENT: And what was the answer?

18 MR. KLIPPENSTEIN: Well, she has given  
19 an answer on the record.

20 233. MR. KENT: Right, she gave me a  
21 different answer. She gave me a partial  
22 answer. I am entitled to get an answer to  
23 my question. Do you understand my question  
24 or would you like me to repeat it?

25 MR. KLIPPENSTEIN: Well, your question

1 as it relates to facts, is proper. Your  
2 question, as it relates to the drafting of  
3 the pleadings, I think is not proper. The  
4 witness has told you the facts that she is  
5 aware of.

6 234. MR. KENT: Okay, so do your facts that  
7 you are aware of take into account any  
8 [REDACTED] in 2009 or  
9 2010?

10 MR. KLIPPENSTEIN: She has answered that  
11 she has no knowledge of that.

12 235. MR. KENT: So, I can take that as  
13 a...that it does not take into account any  
14 of those [REDACTED]

15 MR. KLIPPENSTEIN: That has been asked  
16 and answered. /R

17

18 BY MR. KENT:

19 236. Q. Other than there being information  
20 on the ticketmaster.ca and ticketweb.ca websites  
21 identifying the old Ticketmaster Canada Ltd. name,  
22 as the company handling consumer transactions, are  
23 there any facts relating to whether Ticketmaster  
24 Canada Holdings ULC handles consumer transactions,  
25 or collects payments for events in Canada?



## Public

L. Nikolova - 63

1 Ticketmaster Canada Holdings ULC controls the  
2 website, ticketweb.ca?

3 A. As I have mentioned, I don't have a  
4 technical background, and so I don't know what goes  
5 into the control of a website.

6 240. Q. Well, it is your word. "You"  
7 meaning the Commissioner's word. I am not making  
8 that word up, and I want you to tell me if there is  
9 any facts associated with that.

10 A. The facts that I am aware of in  
11 relation to the statement is that Ticketmaster  
12 Canada Ltd. was noted on records about domain  
13 registrations in relation to ticketweb.ca.

14 241. Q. And other than that fact, is there  
15 anything else relating to whether that company,  
16 Canada Holdings, controls a website, as opposed to  
17 the domain name? You have said those separately in  
18 your pleading.

19 A. As far as I understand, domain names  
20 link to websites so that consumers can use, that  
21 people can use domain names to get to websites.

22 242. Q. Okay. Anything else?

23 A. Not that I can think of at this  
24 time.

25 243. Q. But again, you will undertake to let

## Public

L. Nikolova - 64

1 me know if something comes to mind? And I don't  
2 mean just for you personally, but you and your  
3 colleagues at the Commissioner...at the Bureau?

4 MR. KLIPPENSTEIN: We will let you know  
5 if there are other facts that come to our  
6 attention...

7

8 BY MR. KENT:

9 244. Q. And what facts are there associated  
10 with whether Ticketmaster Canada Holdings ULC  
11 controls or...

12 MR. KLIPPENSTEIN: Sorry, I don't mean  
13 to interrupt but I was not quite finished  
14 with my...

15 245. MR. KENT: Oh, I am sorry, Paul.

16 MR. KLIPPENSTEIN: Yes. We will let you  
17 know if there are other facts that come to  
18 our attention, that Ticketmaster Canada  
19 Holdings controlled the website associated  
20 with ticketweb.ca. U/T

21 246. MR. KENT: Okay.

22

23 BY MR. KENT:

24 247. Q. And what facts are there associated  
25 with whether Ticketmaster Canada Holdings controls

## Public

L. Nikolova - 65

1 or influences the content? And when I say content,  
2 I mean the display of information including  
3 information and sequencing of pricing information on  
4 ticketweb.ca, ticketmaster.ca or ticketsnow.com,  
5 other than anything you have told me so far?

6 A. At this time, nothing else comes to  
7 mind.

8 248. Q. And you will undertake to advise if  
9 the Commissioner has additional information?

10 MR. KLIPPENSTEIN: So you are asking for  
11 the same...is it...just to make sure I  
12 understand what you are asking for. Are  
13 you asking for the same undertaking but now  
14 with respect to ULC and ticketmaster.ca, or  
15 is it a slightly different thing you are  
16 asking for?

17 249. MR. KENT: So, I am asking about ULC. I  
18 am asking about all three websites. And I  
19 am not asking about controlling a domain  
20 name or a website. I am asking now about  
21 controlling or influencing the content on  
22 those websites.

23 MR. KLIPPENSTEIN: Well, some of the  
24 facts that we...other than what is provided  
25 in the discovery of the respondents, we

## Public

L. Nikolova - 66

1 will let you know of any other facts that  
2 come to our attention in relation to ULC  
3 controlling or influencing the content on  
4 ticketmaster.ca and ticketweb.ca. U/T

5 250. MR. KENT: And ticketsnow.com. Because  
6 later in your pleading you say, "All eight  
7 respondents do bad things on  
8 ticketsnow.com".

9 MR. KLIPPENSTEIN: And we will include  
10 the ticketsnow.com. U/T

11 251. MR. KENT: Thanks. I want to circle  
12 back to a qualification in your  
13 undertaking. I actually do want to know  
14 what facts you say are associated with the  
15 question I just asked, even if they are  
16 facts that arose from our discovery,  
17 including documentary discovery.

18 MR. KLIPPENSTEIN: Well...

19 252. MR. KENT: It was six days of discovery.  
20 There was a lot of information. If you say  
21 that there are facts in there that are  
22 associated with the question that I asked,  
23 then I want to know about them, and  
24 similarly we produced some 70,000 or so  
25 documents. If you say there are facts in

1                   there that are associated with the question  
2                   I asked I want to know about that too.

3                   MR. KLIPPENSTEIN:       And my qualification  
4                   relates to, also, the volume of the  
5                   production.

6           253.       MR. KENT:        Okay, I am not asking you to  
7                   go searching. I am just asking you to tell  
8                   me what the Commissioner says are facts  
9                   associated with the subject matter I just  
10                  referred to.

11                 MR. KLIPPENSTEIN:       So, we will make  
12                   reasonable efforts to identify  
13                   representative examples of facts. I just  
14                   don't want to be agreeing to comb through,  
15                   as I don't think you are asking for it.           U/T

16           254.       MR. KENT:        I am not asking for it, but I  
17                   don't want to hear about something at trial  
18                   that hasn't been disclosed to me as part of  
19                   this undertaking.

20                 MR. KLIPPENSTEIN:       Precisely. That  
21                   makes sense.

22           255.       MR. KENT:        Okay.

23

24           BY MR. KENT:

25           256.       Q.        Okay, let's move to paragraph 15 in

## Public

L. Nikolova - 68

1 the application, please. It deals with the VIP Tour  
2 Company.

3 A. Okay.

4 257. Q. And you will see the activity that  
5 is identified in paragraph 15 is that the VIP Tour  
6 Company controls a certain computer network through  
7 which consumers access the ticketsnow.com website.  
8 Do you see that?

9 A. I see that.

10 258. Q. And what facts are associated with  
11 whether VIP Tour controls such a computer network?

12 A. Based on the records I have  
13 reviewed, VIP Tour is registrant for certain IP  
14 addresses that are associated with ticketsnow.com.

15 259. Q. And are there any facts associating  
16 VIP Tour Company with either ticketmaster.ca or  
17 ticketweb.ca?

18 A. I am not aware of any facts at this  
19 time, but we continue to investigate and proceed  
20 through discoveries.

21 260. Q. Okay. And you will let me know if  
22 any facts come to the Commissioner's attention?

23 MR. KLIPPENSTEIN: Can we go off the  
24 record for a minute?

25 261. MR. KENT: Yes.

1 --- DISCUSSION OFF THE RECORD

2

3 BY MR. KENT:

4 262. MR. KENT: So, off the record we just  
5 agreed to circle back to the undertaking we  
6 were discussing before we went off the  
7 record, and it was an undertaking to let us  
8 know if the Commissioner becomes aware of  
9 any additional facts relating to whether or  
10 how VIP Tour controls computer networks  
11 relevant to this case, other than what the  
12 witness has already told us.

13 MR. KLIPPENSTEIN: We will make  
14 reasonable efforts to provide  
15 representative facts that the Commissioner  
16 becomes aware of, and subject to the  
17 qualifications which we discussed off the  
18 record in relation to the previous  
19 undertaking we gave, the Commissioner will  
20 be...expects to be in receipt of some  
21 information in advance of the Tribunal's  
22 deadline for undertakings, and is  
23 not...should not be taken to  
24 the...committing to review that information  
25 in advance of the undertaking date. So,

## Public

L. Nikolova - 70

1 the undertaking we will be giving will be  
2 as of...the information that we have been  
3 able to review as of that time. U/T

4 263. MR. KENT: Understood.

5 MR. KLIPPENSTEIN: So with all of that,  
6 yes.

7 264. MR. KENT: Okay.

8

9 BY MR. KENT:

10 265. Q. So as we noted earlier, Ms.  
11 Nikolova, the allegation at paragraph 15 with  
12 respect to VIP Tour Company relates to  
13 ticketsnow.com, and I think you told me that there  
14 are no facts of which you are aware linking VIP Tour  
15 Company to ticketmaster.ca, or ticketweb.ca Is that  
16 correct?

17 A. That is correct. I am not aware of  
18 any facts at this time.

19 266. Q. So, help me, then, with the  
20 assertion throughout the pleading that VIP Tour  
21 Company had something to do with the price  
22 representations made on ticketmaster.ca and  
23 ticketweb.ca. What facts are there associated with  
24 the possibility that VIP Tour Company had something  
25 to do with the content on those two websites?

## Public

L. Nikolova - 71

1                   A.       I am not aware of any facts at this  
2 stage that link the VIP Tour Company to  
3 ticketmaster.ca or ticketweb.

4   267.            Q.       And so just for example, for the  
5 paragraph 47 of the application...I sort of picked  
6 this at random. 47 sets out an example of what the  
7 Commissioner says is a misleading price  
8 representation on the ticketmaster.ca website. Is  
9 that right?

10                  A.       So yes, paragraph 47 states there is  
11 an example of the misleading nature of the price  
12 representations on ticketmaster.ca.

13   268.            Q.       Actually, I am going to pick a  
14 different one, sorry, just because it is a little  
15 bit cleaner. Go back to paragraph 43, there is  
16 another example. And this, again, is a  
17 ticketmaster.ca example, is that right?

18                  A.       This is an example of a web page on  
19 ticketmaster.ca.

20   269.            Q.       And it is said in the first  
21 sentence, it is referred to as actually as the  
22 respondents' website via ticketmaster.ca. Do you  
23 see that?

24                  A.       That is what it says.

25   270.            Q.       Can we agree right now that the

## Public

L. Nikolova - 72

1 Commissioner has no facts associating VIP Tour  
2 Company with the ticketmaster.ca website?

3 MR. KLIPPENSTEIN: That is what the  
4 witness has told you.

5

6 BY MR. KENT:

7 271. Q. And so when I read respondents'  
8 website, should I read that down to exclude VIP  
9 Tour?

10 MR. KLIPPENSTEIN: You can interpret the  
11 pleadings how they like, but, you know, the  
12 facts, we have told you the facts.

13

14 BY MR. KENT:

15 272. Q. And, Ms. Nikolova you told me that  
16 you didn't know of any corrections that needed to be  
17 made to the Notice of Application. Are you telling  
18 me that respondents'...notwithstanding what you said  
19 to me so far, you still say that ticketmaster.ca is  
20 a website of the VIP Tour Company?

21 MR. KLIPPENSTEIN: David, I think if you  
22 interpret the paragraph 43 in light of what  
23 we have said in paragraph 12, and with the  
24 facts of the witness...sorry, I am just  
25 quoting you on paragraph 15. Then the

## Public

L. Nikolova - 73

1 Commissioner's position is set out in the  
2 pleadings, and the witness will give you  
3 the facts.

4 273. MR. KENT: Right.

5

6 BY MR. KENT:

7 274. Q. So what facts associate VIP Tour  
8 with the website ticketmaster.ca as set out in  
9 paragraph 43 and as attributed to VIP Tour Company,  
10 among others.

11 MR. KLIPPENSTEIN: I think the witness  
12 has told you that she is not aware of any  
13 such facts.

14 275. MR. KENT: Okay.

15

16 BY MR. KENT:

17 276. Q. So you are not aware of any facts  
18 associating VIP Tour with a website which is pleaded  
19 to be its website. Do I have that right?

20 MR. KLIPPENSTEIN: I think you have the  
21 answer.

22 277. MR. KENT: Do I have that right?

23 MR. KLIPPENSTEIN: Refuse to answer on  
24 the basis that it has been answered. The  
25 witness has provided the relevant facts.

/R

1       278.           MR. KENT:       Okay, let's just stick with  
2                   the example at 43.  What facts, if any, are  
3                   associated with whether VIP Tour acted in  
4                   concert...bad phrasing...in concert with  
5                   other respondents with respect to the  
6                   display set out at paragraph 43 on  
7                   ticketmaster.ca?

8                   THE DEPONENT:       I am not aware of any  
9                   facts at this time linking the VIP Tour  
10                  Company to ticketmaster.ca.

11

12       BY MR. KENT:

13       279.           Q.           And that is whether acting  
14                   individually, jointly or in concert, correct?

15                   A.           I am sorry, could you help me with  
16                   the question?  I am not sure I quite understand it.

17       280.           Q.           I will just break it up.  I am using  
18                   your words.  "You" being the Commissioner's words.  
19                   You told me that you have no facts linking VIP Tour  
20                   Company to the ticketmaster.ca website or to the  
21                   display as set out in paragraph 43, correct?

22                   A.           I am not aware of any facts at this  
23                   time.

24       281.           Q.           It is said elsewhere in the pleading  
25                   that each of the respondents acted...I will

## Public

L. Nikolova - 75

1 paraphrase, "individually, jointly or in concert  
2 with the other respondents". Do you recall that?  
3 We looked at it before.

4 MR. KLIPPENSTEIN: What the pleading  
5 says is "separately, jointly and/or in  
6 concert".

7 282. MR. KENT: "Separately, jointly and/or  
8 in concert".

9

10 BY MR. KENT:

11 283. Q. You are aware that that is an  
12 assertion, right?

13 A. I am aware that that is in the  
14 pleadings.

15 284. Q. Okay. Are any facts associated with  
16 VIP Tour Company acting jointly and/or in concert  
17 with any other respondent with respect to  
18 ticketmaster.ca generally or, with respect to the  
19 display set out at paragraph 43 of the pleading, in  
20 particular?

21 MR. KLIPPENSTEIN: I think the witness  
22 has provided you with the facts that she is  
23 aware of linking VIP Tours with this  
24 website.

25 285. MR. KENT: I know, but now...I have got

1 a different pleading which is that they  
2 acted jointly or in concert. I don't even  
3 know what that...that could mean almost  
4 anything. I am asking whether there are  
5 any facts associated with whether VIP Tour  
6 Company acted jointly or in concert with  
7 somebody else with respect to  
8 ticketmaster.ca or the display set out at  
9 paragraph 43. If there is no facts, there  
10 is no facts, that is fine, but I need to  
11 tie off all these different allegations.  
12 THE DEPONENT: I am not aware of VIP  
13 Tour Company...I am not aware of any facts  
14 linking VIP Tour Company to  
15 ticketmaster.ca.

16

17 BY MR. KENT:

18 286. Q. You said that before, and I take it  
19 when you say that, that includes directly or  
20 indirectly by acting in concert or jointly with  
21 somebody else, correct?

22 MR. KLIPPENSTEIN: I am going to refuse  
23 the question as it relates to the legal  
24 framing of the argument. The witness has  
25 told you the facts that she is aware of. /R

## Public

L. Nikolova - 77

1 287. MR. KENT: Okay.

2 MR. KLIPPENSTEIN: Limited to VIP Tour's  
3 involvement in that website.  
4

5 BY MR. KENT:

6 288. Q. And so you have told me that you are  
7 not aware of them being linked to the website in any  
8 way. Is that right?

9 A. I am not aware of any facts linking  
10 VIP Tour to ticketmaster.ca., that is correct.

11 289. Q. Either directly or through one of  
12 the other respondents, right?

13 A. I am not aware that VIP Tours linked  
14 to the website, whether on its own or through other  
15 respondents. I am just not aware of that being a  
16 fact.

17 290. MR. KENT: Okay. And you will let me  
18 know by undertaking if the Commissioner has  
19 additional or other facts, subject to the  
20 reservation you made before about not  
21 having a chance to review our undertakings?

22 MR. KLIPPENSTEIN: So we will make the  
23 same undertaking as we have just made now,  
24 in relation to VIP Tour and  
25 ticketmaster.ca. Does that make sense?

U/T

## Public

L. Nikolova - 78

1           291.           MR. KENT:        Yes.  Okay, can you turn to  
2                                paragraph 7 of the pleadings, please?

3

4           BY MR. KENT:

5           292.           Q.           And this one deals with the  
6                                respondent, Ticketsnow.com Inc.

7                                A.           Yes.  I see that.

8           293.           Q.           The activity...the only activity  
9                                described here has to do with Ticketsnow providing  
10                              services enabling tickets to be sold from the domain  
11                              name ticketsnow.com, and the associated website.  Do  
12                              you see that?

13                             A.           I see that.

14           294.           Q.           So let's, first of all, carve off  
15                              the extraneous bits.  Is there any information, do  
16                              you have any facts relating to whether  
17                              Ticketsnow.com Inc. has any connection to the  
18                              ticketmaster.ca or ticketweb.ca sites?

19                             A.           I am not aware of any facts at this  
20                              time linking Ticketsnow.com Inc. to ticketmaster.ca  
21                              or ticketweb.ca.

22           295.           Q.           And is that true both for direct  
23                              connections and connections through other  
24                              respondents?

25                             A.           I am not aware of any links at this

## Public

L. Nikolova - 79

1 time, whether direct or indirect.

2 296. MR. KENT: And again, Paul, you will let  
3 me know if the Commissioner has other or  
4 additional facts, subject to the  
5 reservation around the respondents'  
6 undertakings?

7 MR. KLIPPENSTEIN: Subject to the  
8 reservations I gave in the previous two  
9 undertakings, we will.

U/T

10

11 BY MR. KENT:

12 297. Q. So, Ms. Nikolova, I am going to  
13 circle back to what it does say in paragraph 17.  
14 What are the services that Ticketsnow provides that  
15 enable tickets to be sold to consumers from  
16 ticketsnow.com?

17 A. So, I am aware that Ticketsnow  
18 provides services on the basis of a document I've  
19 seen a merger notification filing, where that  
20 statement is made.

21 298. Q. And what filing is that? Is it in  
22 the productions?

23 A. I believe it is in the productions.

24 299. Q. I don't expect you to know the  
25 number of it. Could you let me know, please, by

1           undertaking, the identifier for the document you are  
2           referring to?

3                       MR. KLIPPENSTEIN:       We will make best  
4                       efforts to identify the document that has  
5                       been referred to.

U/T

6

7       BY MR. KENT:

8       300.           Q.       So, if it is a merger notification  
9                       filing, was it back from 2009 or 2010, in there?

10                    A.       That is my recollection.

11       301.           Q.       Do you have any more recent...sorry,  
12                       and what were the services in question?

13                    A.       I don't recall if they were  
14                       described in the filing.

15       302.           Q.       And do you have any more current  
16                       information on that subject?

17                    A.       I am not aware of any other  
18                       information in relation to particular services.

19       303.           Q.       And what information do you have  
20                       with respect to Ticketsnow.com's...sorry, I am going  
21                       to use the name of the company because it is so  
22                       confusing, it is the same as the website. I am  
23                       going to start over.

24                       What information do you have with respect  
25                       to the involvement of Ticketsnow.com Inc. in the

## Public

L. Nikolova - 81

1 display of content on any of ticketsnow.com, the  
2 start of ticketsnow.com?

3 A. The fact that I am aware of is that  
4 there is a statement and merger notification filing  
5 that states Ticketsnow.com Inc. provides services  
6 enabling tickets to be sold to consumers through  
7 ticketsnow.com.

8 304. Q. And that is the sum total of your  
9 information with respect to any involvement of  
10 Ticketsnow.com Inc. in the display of information on  
11 the ticketsnow.com website?

12 A. As far as I am aware of at this  
13 time.

14 305. MR. KENT: And again, Paul, subject to  
15 the reservations from the previous couple  
16 of undertakings, you will let me know if  
17 the Commissioner has additional or  
18 different information?

19 MR. KLIPPENSTEIN: We will, similar to  
20 the previous undertakings, advise if there  
21 is additional facts linking Ticketsow.com  
22 Inc. to the websites in question.

23 306. MR. KENT: Yes.

24 MR. KLIPPENSTEIN: Is it...your  
25 question...I hesitate because your question

## Public

L. Nikolova - 82

1 was about...

2 307. MR. KENT: It is about the content. So,  
3 about the display of content on the  
4 ticketsnow.com website.

5 MR. KLIPPENSTEIN: So we will make  
6 reasonable efforts to identify  
7 representative examples of facts we become  
8 aware of linking Ticketsnow.com Inc. to the  
9 display of content on the three websites  
10 named in the application. U/T

11 308. MR. KENT: Perfect. Why don't we take a  
12 break? I am going to switch gears.

13

14 --- upon recessing at 11:32 a.m.

15 --- A BRIEF RECESS

16 --- upon resuming at 11:43 a.m.

17

18 LINDA NIKOLOVA, resumed

19 CONTINUED EXAMINATION BY MR. KENT:

20 309. MR. KENT: Paul, you indicated that  
21 there was a matter you wanted to raise?

22 MR. KLIPPENSTEIN: So, there is a...your  
23 general question at the outset of to  
24 whether there is any inaccuracies in the  
25 pleadings. There is one that has come to

1           our attention. And I don't know if I get  
2           all of the paragraphs, but paragraph 29 of  
3           the Notice of Application, for example,  
4           says that:

5           "...In Quebec the respondents showed the  
6           consumers the true price of the tickets up  
7           front..."

8           Which was, at our understanding at the time  
9           of the pleadings. It has come to our  
10          attention since that there was a period of  
11          time, at least in Quebec, in which the  
12          price of the tickets was not disclosed up  
13          front. So, I just wanted to make that  
14          correction.

15         310.         MR. KENT:         When you say the price of the  
16                         tickets was not disclosed up front, do you  
17                         mean by some or all of the respondents in  
18                         this case? Or that the legislation just  
19                         didn't require it, because the pleading  
20                         here is talking about provincial law and  
21                         then about what the respondents did. So, I  
22                         am just curious to know whether it was the  
23                         law that didn't require it, or the  
24                         respondents weren't doing it, or both,  
25                         during that period?

1 MR. KLIPPENSTEIN: So, what I mean is  
2 that...well, our understanding is that  
3 Quebec was not doing it for a period.  
4 Sorry, that the respondents were  
5 not...price representations in Quebec for a  
6 period did not disclose the true cost up  
7 front.

8 311. MR. KENT: Then, and I am happy to do  
9 this by undertaking, can you provide us  
10 with a period in question, and some  
11 representative examples of a representation  
12 which, as you say, did not provide the  
13 so-called true price of the tickets up  
14 front?

15 MR. KLIPPENSTEIN: To the extent we can  
16 identify the period in question, we will.  
17 And to the extent we are able to provide  
18 representative examples, we will. U/T

19 312. MR. KENT: Okay, thanks.  
20

21 BY MR. KENT:

22 313. Q. So, Ms. Nikolova, last question  
23 about the respondents in particular. Could you go  
24 back to paragraph 11, please, in the Notice of  
25 Application?

## Public

L. Nikolova - 85

1 A. Okay.

2 314. Q. This one deals with Live Nation  
3 Worldwide, and the operative part alleges that that  
4 company controlled the domain name ticketmaster.ca  
5 and the associated website. Do you see that?

6 A. I see that.

7 315. Q. What are the facts associated with  
8 whether Live Nation Worldwide controlled that domain  
9 name and that website?

10 A. I see in Live Nation Worldwide Inc.  
11 noted on domain registration records, or records  
12 identifying that company as a domain registrant.

13 316. Q. Okay. Anything else?

14 A. For ticketmaster.ca.

15 317. Q. Anything else?

16 A. Pardon me, in relation to  
17 ticketmaster.ca?

18 318. Q. Yes.

19 A. Nothing else comes to mind at this  
20 time.

21 319. Q. And other than what you just told  
22 me, what facts do you have that are associated with  
23 whether Live Nation Worldwide had anything to do  
24 with the content, the display of content, on  
25 ticketmaster.ca?

## Public

L. Nikolova - 86

1                   A.       At this time nothing comes to mind,  
2                   but again, we continue to do discoveries and we  
3                   continue to investigate.

4    320.            Q.       And I take it from your answers that  
5                   you are aware of no facts associated with whether  
6                   Live Nation Worldwide has anything to do with the  
7                   other two websites we have been talking about, being  
8                   ticketsnow.com and ticketweb.ca?

9                   A.       At this time nothing comes to mind  
10                  to associate Live Nation Worldwide Inc. with  
11                  ticketweb.ca or ticketsnow.com.

12   321.           MR. KENT:       And can I have an  
13                   undertaking, then, to let me know if the  
14                   Commissioner is aware of different or  
15                   additional facts with respect to the three  
16                   things we just went over as to which the  
17                   witness just said she had no additional  
18                   information?

19                  MR. KLIPPENSTEIN:       We will make  
20                   reasonable efforts to provide  
21                   representative facts that link Live Nation  
22                   Worldwide to the content, or display of  
23                   content on the three websites.

U/T

24   322.           MR. KENT:       Okay, and in addition any  
25                   additional facts as to Live Nation

## Public

L. Nikolova - 87

1 Worldwide's so-called control of  
2 ticketmaster.ca, other than obviously what  
3 the witness has already told us.

4 MR. KLIPPENSTEIN: Yes, we will do  
5 that.

U/T

6 323. MR. KENT: Thank you.

7

8 BY MR. KENT:

9 324. Q. All right. Let's move on and let's  
10 start by anchoring this conversation in paragraph 32  
11 of the Notice of Application. This is an example of  
12 something that I want to ask you about.

13 A. So I can review that paragraph?

14 325. Q. Yes, if you like, and what I am  
15 going to ask you about is the statement that the  
16 representations at issue have been made at least  
17 since Live Nation took control of the respondents.  
18 Do you see that?

19 A. I see that.

20 326. Q. Okay. Just so we end up all talking  
21 about the same thing, when is it that Live Nation  
22 took control of the respondents?

23 A. I know that Live Nation and  
24 Ticketmaster merged in early 2010.

25 327. Q. And is that what I should understand

## Public

L. Nikolova - 88

1 to be meant by when Live Nation took control of the  
2 respondents? I just am entitled to know when, what  
3 this timing is.

4 A. I don't know the exact time or times  
5 when Live Nation Entertainment Inc. would have taken  
6 control of each of the respondents.

7 328. Q. Okay. Depending on the answer to my  
8 next question, it may not matter. From what date do  
9 you say the relevant representations were made?

10 A. Well, if I could refer to, I believe  
11 it is earlier in the pleading, at paragraph 3 it  
12 states:

13 "...Since at least the time the respondents  
14 were under the control of Live Nation..."

15 329. Q. Right, same language as at 32 where  
16 we just were, right? Correct? "At least since".

17 A. That is right, it is the same  
18 language.

19 330. Q. Okay. So, I will ask my question  
20 again. When did the representations at issue begin?  
21 Do you understand that saying "at least since" is  
22 not an answer to my question?

23 A. I understand your question. I don't  
24 know when the representations began.

25 331. Q. For the purposes of this litigation

## Public

L. Nikolova - 89

1           when are the earliest representations made that are  
2           impugned and said to be inconsistent with the  
3           various provisions of the Competition Act?

4                     A.       Since at least 2009.

5    332.           Q.       That is not an answer to my  
6           question. I want to know from what point forward.

7                     A.       I don't know.

8    333.           MR. KENT:     Will you tell me, please, by  
9           undertaking? I think we are entitled to  
10          know how far back we have to defend  
11          ourselves.

12                    MR. KLIPPENSTEIN:    We will advise of the  
13           date or approximate dates...I should say  
14           approximate time period, when the  
15           representations that are impugned began.           U/T

16    334.           MR. KENT:     Okay, and...

17                    MR. KLIPPENSTEIN:    I am not going to  
18           give you a day of the week.

19    335.           MR. KENT:     No, no, that is fine. And to  
20           be clear, I am partly interested in knowing  
21           when the representations began, but I am  
22           also quite interested in knowing, what is  
23           the effective opening date for this  
24           litigation? In other words, how far back  
25           do we have to examine and respond to

## Public

L. Nikolova - 90

1 criticism of our conduct?

2 Right, so I need an answer to both  
3 of those questions. They are slightly  
4 different. And even if you don't know the  
5 answer to the first, which is when did the  
6 conduct begin, you certainly know the  
7 answer to the second, because it is your  
8 litigation. When does the period under  
9 review, for the purposes of this  
10 litigation, start?

11 MR. KLIPPENSTEIN: So I will note that  
12 the request is a little bit like a request  
13 for particulars of what is in our  
14 pleadings, which are framed with reference  
15 to a time period generally, but we will  
16 advise of the opening time period again for  
17 this litigation. So, we may not set a date  
18 of the week, but we are prepared to advise  
19 you of the time period. It may be a year,  
20 it may be a month. U/T

21 336. MR. KENT: So that I can keep asking  
22 questions in sort of a sensible way, can I  
23 assume it is going to be in or around 2009?  
24 I say that based, in large part, on the way  
25 the questions were framed to our witnesses

## Public

L. Nikolova - 91

1 in their discoveries.

2 MR. KLIPPENSTEIN: I think you can  
3 assume that until I advise otherwise.

4 337. MR. KENT: Okay, thanks.

5

6 BY MR. KENT:

7 338. Q. And I am not going to ask you  
8 questions, Ms. Nikolova, about, you know, whether  
9 the theory of the Commissioner as to why anything is  
10 misleading, at least at this point. But I do want  
11 to ask you this; are there facts associated with the  
12 misconduct alleged and with the quality of the price  
13 representations, that are not evident on the various  
14 websites that are in question? And I will give you  
15 an example. Sometimes when there is a misleading  
16 advertising case, especially if it is about price,  
17 the advertisement will say one thing but you need to  
18 get facts elsewhere, like, what people actually  
19 charge in the store to put two and two together to  
20 realize that the advertisement was misleading. But  
21 I take it the facts that are associated with the  
22 quality of the representations are on the web pages  
23 themselves?

24 MR. KLIPPENSTEIN: Sorry, David, I am  
25 not sure that I understand the question,

## Public

L. Nikolova - 92

1 and if you want to go off the record to  
2 help me understand it, I...

3 339. MR. KENT: Yes, let's go off.  
4

5 --- DISCUSSION OFF THE RECORD  
6

7 BY MR. KENT:

8 340. Q. We have had a very useful discussion  
9 off the record. I will try and reframe the  
10 question, and it is sort of a starting point  
11 question, and we will move on from it. But I take  
12 it the facts associated with the misconduct, if I  
13 can put it that way, alleged against the respondents  
14 has to do with what one sees on their websites?

15 A. That is my understanding, yes.

16 341. Q. So let's try and, I think, get a  
17 starting point, which is why I was asking you what  
18 the starting point was in the litigation.

19 MR. KLIPPENSTEIN: Sorry, can I just  
20 make a clarification? There is a...our  
21 Notice of Application deals with websites  
22 and apps, and I don't think that you were  
23 trying to exclude the apps with your  
24 question, I just wanted to make sure that  
25 that response is understood, that we are

1 talking about websites and apps.

2 342. MR. KENT: Yes, so it has to do with the  
3 conduct that is visible on the website or  
4 app, as the case may be, right?

5 MR. KLIPPENSTEIN: Correct.

6 THE DEPONENT: Yes.

7 MR. KLIPPENSTEIN: I am sorry.

8 343. MR. KENT: I will take it from either  
9 one of you. So that is correct?

10 THE DEPONENT: That is my understanding,  
11 yes.

12 344. MR. KENT: Okay.

13

14 BY MR. KENT:

15 345. Q. So let's just try and put a marker  
16 down at the beginning of the period, which we will  
17 call 2009-ish, subject to any further clarification  
18 that you will get me.

19 What was the nature of the price  
20 representation at that point? Because it goes  
21 through various phases, as we have discussed, with  
22 the respondents' witnesses. But was the nature of  
23 the price representation at that point?

24 A. Maybe you can help me by what you  
25 mean by "nature of the price representation"?

1 346. Q. Well you are aware of the fact that  
2 at different points in time the price  
3 representations are different? In other words, the  
4 information shown on the initial page changes over  
5 time, and the sequencing of information changes over  
6 time on the website's initial...let's just stick  
7 with ticketmaster.ca for the moment. You are aware  
8 of that?

9 A. I am aware that the price is the way  
10 the prices looked on the websites and mobile  
11 applications broadly have changed over time.

12 347. Q. Right, so that is what I am asking.  
13 How did it look in the beginning of the relevant  
14 period? So, call it 2009.

15 A. So, as far as I recall and as far as  
16 I am aware, roughly around 2009...and I am speaking  
17 broadly here, [REDACTED]

18 [REDACTED] [REDACTED] [REDACTED]

19 [REDACTED] [REDACTED]

20 348. Q. And that is one of the variations on  
21 a price display that is at issue in this lawsuit,  
22 right?

23 A. That is one of the variations, yes,  
24 broadly described.

25 349. Q. Broadly described, understood. And

1           that is one of the iterations that is said to be  
2           contrary to the various sections of the Act that  
3           have been mentioned, right?

4                    A.        It is one of the iterations at  
5           issue, again, broadly described.

6   350.            Q.        So, let's look at a document, then,  
7           and this is Commissioner's production  
8           PEJG00479\_00000148.

9                    MR. CHISHOLM:       We will mark the document  
10           bearing the doc ID PEGJ00479\_00000148 as  
11           Exhibit 113.

12

13   ---   EXHIBIT NO. 113:   ██

14                   ████████████████████   ████████████████████

15

16   BY MR. KENT:

17   351.            Q.        And let me know when you have had a  
18           chance to review it.

19                    A.        Okay.

20   352.            Q.        And I take it that this is a record  
21           prepared by somebody at the Bureau in respect of a  
22           communication received from a member of the public.  
23           Is that right?

24                    A.        To me this looks to be a record from  
25           our BIMS system, and the type is noted as complaint.

## Public

L. Nikolova - 96

- 1 353. Q. So what is BIMS?  
2 A. It is the Bureau Information  
3 Management System.
- 4 354. Q. And this is a record, then, that  
5 came out of that system, right?  
6 A. It looks to be.
- 7 355. Q. Well, does it look to be anything  
8 different than that?  
9 A. No, it looks to be from BIMS.
- 10 356. Q. And it references, I take it, a  
11 communication from a member of the public, this Mr.  
12 Radziminski?  
13 A. That is the name noted, yes.
- 14 357. Q. Well, that is how I should  
15 understand this document, right?  
16 A. I am sorry, could you repeat your  
17 characterization?
- 18 358. Q. Sure. Let's just perhaps take this  
19 in smaller steps. The type of matter is listed as a  
20 complaint, top left corner, correct?  
21 A. That is right.
- 22 359. Q. And who fills in that field? Who is  
23 it who describes this type of matter as a complaint?  
24 Somebody at the Bureau?  
25 A. Yes. It would be somebody at the

## Public

L. Nikolova - 97

1 Bureau.

2 360. Q. And there is a number associated  
3 with it, I take it that number is supplied, or  
4 applied, rather, by the Bureau?

5 A. That number is applied by the  
6 Bureau.

7 361. Q. And there's a responsible branch,  
8 which is the fair business practices branch, someone  
9 has assigned this matter to that branch, right?

10 A. I am not sure how the branches are  
11 assigned, but it would be assigned by somebody  
12 within the Bureau.

13 362. Q. And I should understand this  
14 document to be indicating that there is some  
15 information about the complainant, what his name is,  
16 contact information, et cetera, in the big box in  
17 the middle?

18 A. It says "Request description", and  
19 my understanding is that typically with the  
20 documents of this type that I have seen, that this  
21 describes something about the interaction with a  
22 member of the public in the cases of complaints.

23 363. Q. Okay, but the box in the middle of  
24 the first page provides the contact information for  
25 the complainant?

## Public

L. Nikolova - 98

1 A. It looks to be for Mr. Radziminski.

2 364. Q. And he is the complainant?

3 A. I can't know for certain. The type  
4 is a complaint.

5 365. Q. Well, the type is a complaint, and  
6 right above the box with all of the information  
7 about Mr. Radziminski, it says "complainant".

8 A. Oh, yes, that is right. It says  
9 complainant.

10 366. Q. So, the Bureau has put his  
11 information in as being the complainant, right?

12 A. That would be correct.

13 367. Q. Because the member of the public  
14 doesn't fill this form in, do they? This is a  
15 Bureau form.

16 MR. KLIPPENSTEIN: Do you know?

17 THE DEPONENT: This particular record,  
18 as I see it, with the number, the type, is  
19 generated by someone at the Bureau. I  
20 don't know if some of the information here  
21 comes from a member of the public.

22

23 BY MR. KENT:

24 368. Q. And I haven't asked you that, but so  
25 far we know this is a Bureau...this record comes

## Public

L. Nikolova - 99

1 from the Bureau's records, right?

2 A. That is right.

3 369. Q. And it is on a Bureau form, right?

4 A. That is right.

5 370. Q. And as far down as we have gone so  
6 far, which is to the bottom of the complainant's  
7 section, the information is filled in by somebody at  
8 the Bureau, right?

9 A. I don't know that.

10 371. Q. Well, a member of the public doesn't  
11 have access to this form, do they, to fill in the  
12 information?

13 A. So members of the public can access  
14 a form on the website to submit a complaint, and  
15 they may be able to enter information there. And I  
16 don't know if the information written here under  
17 "Complainant" was written by a Bureau person, or if  
18 it was entered in by a complainant and then  
19 transferred onto this form...

20 372. Q. Got it.

21 A. ...for the received process.

22 373. Q. Okay. It indicates that the method  
23 of correspondence was by e-mail, correct? Do I  
24 correctly understand that?

25 A. That is what the record says.

## Public

L. Nikolova - 100

1 374. Q. Okay. So I can assume that that is  
2 true, right?

3 A. I don't have any independent  
4 knowledge other than what it says on the record.

5 375. Q. All right. And then there is a  
6 so-called request information section on the bottom  
7 part of the page, going over to the second page,  
8 right?

9 A. It says "Request description", which  
10 starts on the first page.

11 376. Q. It says "Request information", which  
12 is the...

13 A. Oh, yes.

14 377. Q. ...section above that.

15 A. Yes. That is what it says.

16 378. Q. And if you turn over to the second  
17 page, I believe there is an answer to both of our  
18 questions where it says "Channel web form". Does  
19 that help you sort out how the information came in  
20 that was starting with the complainant section?

21 A. It says "Channel web form". That is  
22 what it says, and again, I am aware that consumers  
23 can enter in information into web forms which then,  
24 I understand, can be transferred to our system.

25 379. Q. And then there is a request

## Public

L. Nikolova - 101

1 description in which [REDACTED] [REDACTED] sets out his  
2 complaint, right?

3 A. I have no personal knowledge as to  
4 who entered the information under "Request  
5 description"

6 380. Q. Okay. Then I will put it in the  
7 passive tense. There is a request description in  
8 which [REDACTED] [REDACTED] complaint is set out.

9 A. I hesitate to agree with you because  
10 I don't know if [REDACTED] [REDACTED] would have been the  
11 one to type in this information.

12 381. Q. That is why I used the passive  
13 tense. You understand how that works, right? I  
14 didn't attribute the typing in of this information  
15 in to anybody. I said that what is set out here is  
16 Mr. Radziminski's complaint.

17 A. It appears to be that.

18 382. Q. And his complaint is about  
19 [REDACTED] [REDACTED] [REDACTED] [REDACTED] in  
20 multiple places on this form, including at the  
21 beginning of the request description.

22 A. Yes. It says that.

23 383. Q. And, in particular, [REDACTED]  
24 right? The first line of the request description.

25 A. It says [REDACTED] there.

1 384. Q. And his complaint is that [REDACTED]

2 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

3 [REDACTED] [REDACTED]

4 [REDACTED] [REDACTED]

5 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

6 A. That is what it says here.

7 385. Q. And that he says his issue is not

8 with [REDACTED] [REDACTED] [REDACTED]

9 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

10 [REDACTED] [REDACTED]

11 [REDACTED]

12 [REDACTED] [REDACTED] [REDACTED]

13 [REDACTED]

14 Do you see all that?

15 A. I see that.

16 386. Q. And that is how you would understand

17 this complaint?

18 A. That is what he says in his

19 complaint.

20 387. Q. And that is how you understand it,

21 as a Bureau officer?

22 A. Yes.

23 388. Q. And so, without putting too fine a

24 point on it, he is complaining about [REDACTED]

25 [REDACTED] for this

1 concert that he references, that is [REDACTED]

2 [REDACTED]

3 [REDACTED]?

4 A. [REDACTED]

5 [REDACTED] [REDACTED]

6 [REDACTED] [REDACTED]

7 [REDACTED]

8 389. Q. Right. Would you like to now answer  
9 my question?

10 A. The Commissioner...I am sorry, could  
11 you repeat your question?

12 390. Q. Sure. I will just add a little bit  
13 more to it. So, he is complaining that [REDACTED] [REDACTED]  
14 [REDACTED] right?

15 To put it in the vernacular?

16 A. That is what he seems to be  
17 complaining about.

18 391. Q. And he says he should have seen the  
19 charges earlier in the process and he is not happy

20 [REDACTED] [REDACTED]

21 [REDACTED] [REDACTED]

22 [REDACTED]

23 A. He doesn't use the words "happy",  
24 but he complains about [REDACTED]

25 [REDACTED]

1 392. Q. So you think maybe [REDACTED] [REDACTED]

2 [REDACTED]

3 A. I can't speak to his state of mind  
4 one way or another.

5 393. Q. He complains that he didn't [REDACTED]

6 [REDACTED] [REDACTED]

7 [REDACTED] [REDACTED]

8 [REDACTED]

9 [REDACTED] correct?

10 A. That is right.

11 394. Q. And I don't think this is a  
12 controversial question, I am just suggesting to you  
13 that his complaints [REDACTED]

14 [REDACTED]

15 MR. KLIPPENSTEIN: Aren't you asking her  
16 to give her opinion on any similarities  
17 between...I mean, the document says what it  
18 says.

19 395. MR. KENT: Right, and I just want to  
20 make sure that we don't have disagreements  
21 later that will surprise me. I don't think  
22 this is a hard question. His complaints  
23 about the [REDACTED]

24 [REDACTED]

25 [REDACTED] in the

1 current application.

2 MR. KLIPPENSTEIN: I will refuse the  
3 question because it asks for the witness to  
4 express her opinion on the similarities  
5 between two documents. /R

6 396. MR. KENT: Can we agree that the  
7 complaints made by [REDACTED], as set  
8 out in this document, are also complaints  
9 made by the Commissioner in the current  
10 application, that is, [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 MR. KLIPPENSTEIN: I think we have  
14 agreed on what the document says, and I  
15 think that is the same refusal.

16 397. MR. KENT: So, you are refusing to  
17 confirm that [REDACTED] complaint is  
18 similar to [REDACTED]

19 [REDACTED] Really?

20 MR. KLIPPENSTEIN: I am refusing to  
21 allow the witness...to require the witness  
22 to provide her opinion on the similarities  
23 between the two document.

24 398. MR. KENT: It is not an opinion. I am  
25 asking you as the...you are the

## Public

L. Nikolova - 106

1 Commissioner for today's purposes. So, if  
2 you are unable to do...and you are also an  
3 investigator and an officer, and you  
4 investigate complaints under misleading  
5 advertising under section 74.01(1)(a). You  
6 do that, that is your job, right?

7 THE DEPONENT: That is part of my  
8 duties.

9 399. MR. KENT: Okay.

10

11 BY MR. KENT:

12 400. Q. And you are able to look at  
13 complaints and think about whether they are a  
14 complaint that falls into the category of being  
15 potentially offside, that provision of the statute.  
16 In other words, being potentially misleading. That  
17 is part of what you do for a living, right?

18 A. As part of my job I review  
19 complaints and I consider how they fit into a  
20 particular investigation.

21 401. Q. And as part of your job you form  
22 opinions and make recommendations to others in the  
23 Bureau as to whether any given conduct that you are  
24 investigating falls offside, the misleading  
25 advertising provisions in the Act. That is part of

1           your job, right?

2                   A.           Those are part of my duties, yes.

3       402.           MR. KENT:        Okay.  So, I think the  
4                   witness is capable of giving an opinion as  
5                   to whether or not this complaint [REDACTED]

6                   [REDACTED]  
7                   [REDACTED]  
8                   [REDACTED]

9                   MR. KLIPPENSTEIN:    With respect, you  
10                   know, as with all refusals, if we look at  
11                   it later and decide that we were wrong we  
12                   will let you know, but with respect the  
13                   refusal is the same.  She may be able to  
14                   give her opinion of the issues whether she  
15                   should be required to in the context of the  
16                   examination for discovery.

17       403.           MR. KENT:        Right.  I have your refusal.  
18                   If you turn to page 2, Ms. Nikolova, there  
19                   is a list of items down the left-hand side  
20                   in the top half of the page.  About halfway  
21                   through it says "the section of the Act".  
22                   Do you see that?

23                   THE DEPONENT:        Yes, I see it.

24

25       BY MR. KENT:

## Public

L. Nikolova - 108

1       404.               Q.       And you will see that someone has  
2       put in section 74.01(1)(a), "misleading  
3       representations"?

4                       A.       That is the section noted in this  
5       document.

6       405.               Q.       Right. And I take it that would be  
7       someone from the Bureau who would fill in that  
8       field, rather than the complainant? That would be  
9       the normal...even if it is a...even it is filled in  
10      on a web form?

11                      A.       I am not certain who fills that in.

12      406.               MR. KENT:        Could you find out for me,  
13      please?

14                      MR. KLIPPENSTEIN:    So, this is a web  
15      form from 2008.

16      407.               MR. KENT:        I want to know whether the  
17      Bureau assigned that section number to this  
18      matter.

19                      MR. KLIPPENSTEIN:    I guess we could  
20      advise if there is any reason to believe  
21      that that is not the case. I hesitate  
22      because I don't know how many people we  
23      have who were around in 2008.

U/T

24      408.               MR. KENT:        Okay. So, we can then work  
25      with the working assumption, then, that

## Public

L. Nikolova - 109

1                   this field was filled in by the Bureau,  
2                   unless you advise me otherwise? Is that  
3                   okay? It would seem remarkable if that  
4                   wasn't the truth, the way it worked.

5                   MR. KLIPPENSTEIN:       Well, also, I have  
6                   given the undertaking and you can proceed  
7                   with your questions.

8

9       BY MR. KENT:

10       409.               Q.       So, if you go to the back, to the  
11                   top of the first page, and the current status says  
12                   that the request was closed. Do you see that, top  
13                   left?

14                   A.       Yes, I see that.

15       410.               Q.       Do you know whether there was any  
16                   investigation into this complaint, or what steps  
17                   were taken in response to this complaint?

18                   MR. KLIPPENSTEIN:       I am going to refuse  
19                   that question on the basis of relevance.               /R

20

21       BY MR. KENT:

22       411.               Q.       If you look to page 2 at the top  
23                   right under the signature, the electronic sign-off,  
24                   the, "Thank you, [REDACTED] you will see he says:

25                   "...Please advise if the complaint that I

## Public

L. Nikolova - 110

1 forwarded falls within the Competition Act,  
2 or if there is another party that I should  
3 contact..."

4 Did anyone at the Bureau ever respond to this  
5 complainant with respect to that request?

6 MR. KLIPPENSTEIN: And it is a refusal  
7 based on relevance. /R

8

9 BY MR. KENT:

10 412. Q. Was a file opened at that time by  
11 the Bureau with respect to how prices were displayed  
12 on ticketmaster.ca?

13 MR. KLIPPENSTEIN: I am going to refuse  
14 that one as well, on the basis of  
15 relevance. /R

16

17 BY MR. KENT:

18 413. Q. You indicated before that the  
19 identification of the responsible branch, in this  
20 case the fair business practices branch, would have  
21 been by someone in the Bureau, correct?

22 A. My understanding generally about  
23 these kinds of forms that I have seen, is that  
24 someone within the Bureau assigns the branch.

25 414. Q. Where does the, or did the fair

## Public

L. Nikolova - 111

1 business practices branch fit within the hierarchy  
2 of the Bureau?

3 MR. KLIPPENSTEIN: What is...I am sorry  
4 to interrupt, David, but what is the  
5 relevance of that question?

6 415. MR. KENT: It is partly because I can't  
7 remember how the Bureau was organized back  
8 in 2009, but how does that relate to the  
9 cartels and deceptive marketing practices  
10 branch? So, I am just trying to get the  
11 names straight, what you told us about  
12 earlier.

13 MR. KLIPPENSTEIN: Do you know how it  
14 was organized in 2009?

15 THE DEPONENT: I don't know how it was  
16 organized in 2009. I think that is before  
17 my time at the Bureau.

18 416. MR. KENT: So, can you let me know? We  
19 are going to have a series of questions  
20 about the fair business practices branch...

21 MR. KLIPPENSTEIN: M'hmm.

22 417. MR. KENT: ...and I just want to know  
23 how that, at that time, lined up with what  
24 is, at least now, the cartels and deceptive  
25 marketing practices branch, because there

## Public

L. Nikolova - 112

1 has been some reorgs along the way.

2 MR. KLIPPENSTEIN: I am going to refuse

3 it at this stage, based on relevance,

4 because I am not satisfied yet at this

5 stage in your questioning that relevance

6 has been established. /R

7 418. MR. KENT: So, all of this is going to

8 estoppel.

9 MR. KLIPPENSTEIN: Do you want to go off

10 record to discuss it, or do you want to

11 keep on...

12 419. MR. KENT: No, I am just going to tell

13 you that...

14 MR. KLIPPENSTEIN: Yes.

15 420. MR. KENT: ...if that helps you with

16 sorting out relevance.

17 MR. KLIPPENSTEIN: Yes. So your

18 position is that this is relevant because

19 the respondents have alleged estoppel, and

20 I suppose I can wait until you ask your

21 questions, but our position is that

22 estoppel is based on reliance, and so the

23 organization of various branches within the

24 Bureau wouldn't be relevant to whether or

25 not the respondents relied on anything.

1 421. MR. KENT: Yes, I am thinking more of  
2 your refusal to answer questions about  
3 whether the Bureau opened a file or did  
4 anything in response to either this  
5 complaint or at that time.

6 MR. KLIPPENSTEIN: Okay. Again, so  
7 whether the Bureau...any facts that go to  
8 the Bureau opening a file or not opening a  
9 file are not relevant to the respondents'  
10 plea of estoppel. And I will also add  
11 there is nothing in the pleadings that  
12 deals with any complaint or anything in  
13 2008. There is a pleading with respect to  
14 a 2010 review.

15 422. MR. KENT: Okay, I hear you. We will  
16 move on and we will see where we get to.  
17 Can you turn next, please, to Bureau  
18 production PHAD000015SC? It should be an  
19 e-mail from Larry Bryenton to Lawrence  
20 Zuker, [REDACTED] [REDACTED]. And the  
21 subject is [REDACTED] [REDACTED].

22 MR. CHISHOLM: In the production I  
23 believe it is just PHAD000015, and we will  
24 be marking that Commissioner's production  
25 as Exhibit 114.

1 MR. KLIPPENSTEIN: My copy says SC at  
2 the end of that.

3 MR. CHISHOLM: I know, and your digital  
4 production in your database does not  
5 include the "SC" in the production number.

6 MR. KLIPPENSTEIN: Okay, so the "SC"  
7 was...as long as we have the same document,  
8 I guess.

9 MR. CHISHOLM: You do.

10

11 --- EXHIBIT NO. 114: [REDACTED]

12 [REDACTED]

13

14 BY MR. KENT:

15 423. Q. So have a read, Ms. Nikolova, and  
16 let me know when you have had a chance to review it.

17 A. Okay.

18 424. Q. Have you seen this e-mail before?

19 Or, e-mail chain before?

20 A. I recall seeing it.

21 425. Q. So let's get a few people in their  
22 places. The starting e-mail is from Andrea Rosen to  
23 Larry Bryenton, [REDACTED] [REDACTED] Andrea Rosen was, at  
24 that time, the deputy commissioner of competition.

25 Is that right?

## Public

L. Nikolova - 115

1                   A.           That is what it appears to say here  
2                   on the record, in this record.

3       426.           Q.           Can I assume that people's titles  
4                   and what they are responsible for, as it shows up on  
5                   the record, are what they are, unless you let me  
6                   know otherwise, and then it will save me a bunch of  
7                   questions?

8                   MR. KLIPPENSTEIN:       Well, let's assume  
9                   that.

10       427.           MR. KENT:           Okay.

11

12       BY MR. KENT:

13       428.           Q.           Now, the person whose title isn't  
14                   here is Larry Bryenton. Who was he at that point?

15                   A.           I have seen his name on documents  
16                   that I have seen, where he was noted as assistant  
17                   deputy commissioner.

18       429.           Q.           Yes, I have some of those too, I  
19                   just can't put my hand on it fast enough. Working  
20                   on the fair business practices side of the Bureau's  
21                   business?

22                   A.           I can't recall that.

23       430.           Q.           Now, Ms. Rosen, you will see, is  
24                   talking about needing archival website information.  
25                   I should say the e-mail back to her refers to the

## Public

L. Nikolova - 116

1 websites, [REDACTED] [REDACTED]. Why  
2 was Ms. Rosen asking for archival website  
3 information?

4 MR. KLIPPENSTEIN: I am going to refuse  
5 that question. I don't think that internal  
6 discussions in the Bureau are relevant. /R

7  
8 BY MR. KENT:

9 431. Q. You will see in the second paragraph  
10 of Ms. Rosen's e-mail that she talks about figuring  
11 out the [REDACTED] [REDACTED]. Do you see that?

12 A. Sorry, which paragraph?

13 432. Q. The second.

14 A. Of Ms. Rosen's e-mail?

15 433. Q. Yes.

16 A. I see that.

17 434. Q. What was the [REDACTED] that she  
18 was referring to?

19 MR. KLIPPENSTEIN: I am going to refuse  
20 that on the basis of relevance. It is,  
21 again, it is a phrase in an internal  
22 communication of the Bureau, which is not  
23 relevant to the respondents' estoppel  
24 plea. /R

25

## Public

L. Nikolova - 117

1 BY MR. KENT:

2 435. Q. You will see in the last paragraph  
3 of Ms. Rosen's e-mail saying she:  
4 "...Wants daily updates as she expects that  
5 Melanie will need to know..."

6 Do you see that?

7 A. I see that.

8 436. Q. And that is Melanie Aitken?

9 MR. KLIPPENSTEIN: Again, I will refuse  
10 that on the basis that this is an internal  
11 communication. Who Melanie...which Melanie  
12 is referred to in any e-mail is not  
13 relevant the estoppel pleading. /R

14

15 BY MR. KENT:

16 437. Q. Was Melanie...I am going to get my  
17 dates wrong, otherwise I would know the answer to  
18 this question. Was Melanie Aitken the Commissioner  
19 in March of 2009?

20 MR. KLIPPENSTEIN: That is a matter of  
21 public knowledge.

22 438. MR. KENT: Right, but it is also within  
23 the Commissioner's knowledge, presumably.

24 MR. KLIPPENSTEIN: Do you know?

25 THE DEPONENT: I don't know.

## Public

L. Nikolova - 118

1 439. MR. KENT: All right, are you going to  
2 get me that answer?

3 MR. KLIPPENSTEIN: We will undertake to  
4 advise whether Melanie Aitken was the  
5 Commissioner in March, 2009. U/T

6 440. MR. KENT: And, if not, what position  
7 she held at that date, okay?

8 MR. KLIPPENSTEIN: And if she was with  
9 the Bureau at the time...

10 441. MR. KENT: Sorry, if she was at the  
11 Bureau at the time.

12 MR. KLIPPENSTEIN: ...what position with  
13 the Bureau she held. That may be a little  
14 less notorious and I will just qualify it  
15 to the extent it is available. U/T

16 442. MR. KENT: That is fine.

17 MR. KLIPPENSTEIN: And, actually, sorry,  
18 my qualifier should be we will make  
19 reasonable inquiries. We are not going to  
20 look into every file cabinet. We will make  
21 reasonable inquiries to try to find that  
22 out.

23 443. MR. KENT: She was high enough up that  
24 she was on the org chart that was on the  
25 website, pretty much at all times...

## Public

L. Nikolova - 119

1 MR. KLIPPENSTEIN: I expect it won't be  
2 difficult.

3 444. MR. KENT: ...with her tour of duty,  
4 so...

5 MR. KLIPPENSTEIN: Yes.

6 445. MR. KENT: Okay.

7

8 BY MR. KENT:

9 446. Q. The top e-mail, the response from  
10 Larry Bryenton, says that he has got somebody doing  
11 current active web captures for those three websites  
12 we mentioned a minute ago. Do you see that?

13 A. I see that it says that.

14 447. Q. And it says:  
15 "...For determining and preserving current  
16 reps..."

17 Do you see that?

18 A. I see that.

19 448. Q. What reps were being determined and  
20 preserved?

21 MR. KLIPPENSTEIN: I am going to refuse  
22 that, again, on the basis of relevance. /R

23 449. MR. KENT: And I would like, please, an  
24 undertaking to provide us with the web  
25 captures that were being compiled as

## Public

L. Nikolova - 120

1 indicated in Mr. Bryenton's e-mail.

2 MR. KLIPPENSTEIN: So you are asking for  
3 web captures for ticketmaster.ca, .com and  
4 ticketsnow.com, for the period of around  
5 March, 2009?

6 450. MR. KENT: I want whatever file was  
7 being compiled of web captures, that, as we  
8 know was being done, because Mr. Bryenton  
9 says it is being done at that moment. I am  
10 not limiting it to that date.

11 MR. KLIPPENSTEIN: M'hmm.

12 451. MR. KENT: But I am just...that is a  
13 reference point to a file that is being  
14 compiled.

15 MR. KLIPPENSTEIN: To the extent that  
16 any web captures relate to the 2010 review  
17 referred to in the pleadings, and to the  
18 extent that any such web captures are still  
19 available, we will make reasonable efforts  
20 to inquire of those and we will advise. U/A

21 452. MR. KENT: Well, to be clear, when you  
22 said the 2010 review you mean at the Bureau  
23 of Ticketmaster matters, right? Because to  
24 be clear, that review starts well before  
25 2010.

## Public

L. Nikolova - 121

1 MR. KLIPPENSTEIN: The qualifier I am  
2 trying to make, David, is not actually  
3 strictly with respect to chronology, it is  
4 with respect to...and as I expect we will  
5 see in some of the other documents you will  
6 bring, [REDACTED]

7 [REDACTED] And so to the extent that they  
8 relate to the review that is alleged, and  
9 as I mentioned, we will make reasonable  
10 inquiries.

453.

11 MR. KENT: You understand that the  
12 estoppel argument does not narrowly confine  
13 to a specific review that the Bureau was  
14 doing so that you can take other reviews  
15 that were going on and say those don't  
16 matter, right? From our perspective  
17 everything the Bureau was doing in looking  
18 at Ticketmaster in and around that time, is  
19 relevant, just so it is on the record. If  
20 you want to keep saying it is not and you  
21 want to refuse, that is your call.

22 MR. KLIPPENSTEIN: To our understanding,  
23 what the Bureau knew at the time is not  
24 relevant. What is relevant is what the  
25 respondents knew the Bureau knew. So, if

## Public

L. Nikolova - 122

1 the respondents provided the Bureau with  
2 something and got something else out, those  
3 could be relevant. But what happened  
4 within the Bureau internally is not  
5 relevant.

6 454. MR. KENT: Well, that is your view of  
7 relevance, right?

8 MR. KLIPPENSTEIN: Correct.

9 455. MR. KENT: So...okay, so we then  
10 disagree on what is relevant to the  
11 estoppel record.  
12

13 BY MR. KENT:

14 456. Q. Ms. Nikolova, back to you. Do you  
15 know is Mr. Bryenton still at the Bureau?

16 A. I don't know.

17 457. MR. KENT: Can you find out for me,  
18 please?

19 MR. KLIPPENSTEIN: We will advise if Mr.  
20 Bryenton is still at the Bureau. U/T  
21

22 BY MR. KENT:

23 458. Q. Is Ms. Rosen still at the Bureau?

24 A. I don't know.

25 459. MR. KENT: Can you find out if she is

## Public

L. Nikolova - 123

1 still there, please, unless you already  
2 know?

3 MR. KLIPPENSTEIN: We will advise. U/T

4

5 BY MR. KENT:

6 460. Q. So, in the last sentence of his e-  
7 mail...sorry, this is Mr. Bryenton to Ms. Rosen, he  
8 says:

9

[REDACTED]

10

[REDACTED] but

11

we will do more fulsome analysis by

12

officers..."

13

Do you see that?

14

A. I see that.

15

461. Q. Was a more fulsome analysis done by

16

officers?

17

MR. KLIPPENSTEIN: I am going to refuse

18

that on the basis of relevance. /R

19

462. MR. KENT: Okay, and I want any analysis

20

that was actually done by officers, please.

21

MR. KLIPPENSTEIN: Same refusal. /R

22

23 BY MR. KENT:

24

463. Q. And what was Mr. Bryenton...what

25

aspects of these websites was Mr. Bryenton



## Public

L. Nikolova - 125

1 MR. KLIPPENSTEIN: ...to interrupt you.  
2 I said relevance, I should also add that  
3 due to the passage of time I may also...it  
4 may also be unduly onerous for the Bureau  
5 to find that even if it were relevant.

6 469. MR. KENT: Okay. We are on to Bureau  
7 document PHAD00777\_00000313. It is an e-  
8 mail dated [REDACTED] [REDACTED] from Steve  
9 Peters to Brent Homan and others.

10 MR. CHISHOLM: The Commissioner's  
11 production with the doc ID  
12 PHAD00777\_00000313 is marked as Exhibit  
13 115.

14

15 --- EXHIBIT NO. 115: E-mail from Steve Peters to Brent  
16 Homan and others, [REDACTED]  
17 [REDACTED]

18

19 BY MR. KENT:

20 470. Q. So again, just to identify a couple  
21 of people. Brent Homan is identified on the second  
22 page. Steve Peters, who is Steve Peters back then?

23 A. I don't know.

24 471. MR. KENT: You will let me know if you  
25 can figure out what Steve Peters' job was

1 back then?

2 MR. KLIPPENSTEIN: We will make

3 reasonable inquiries.

U/T

4

5 BY MR. KENT:

6 472. Q. So the re line, or the subject line,  
7 is "[REDACTED] Do you see that?

8 A. I see it says that.

9 473. Q. And "FBP" means fair business  
10 practices? That is a common acronym internally. Is  
11 that right?

12 A. It is my understanding that "FBP"  
13 means fair business practices.

14 474. Q. Okay. Is it your understanding that  
15 "TMaster", in this context, meant Ticketmaster?

16 A. It looks to me that way.

17 475. Q. Can this...the longer e-mail, which  
18 is the second e-mail on the page from Homan to  
19 Halldor Palsson, speaks of, in the first paragraph:

20 [REDACTED]

21 [REDACTED]

22 And then in the next paragraph:

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 476. Q. And you obviously weren't involved  
7 in those matters back then, right? That was way  
8 before your time?

9 A. That is correct. I wasn't at the  
10 Bureau at the time.

11 477. Q. But have you done something to brief  
12 yourself on those matters, for the purposes of being  
13 here today?

14 A. I have reviewed some records that  
15 come from some of these files.

16 478. Q. Have you reviewed any records that  
17 have not been made productions in this matter?

18 A. I can't recall.

19 479. Q. So what was the [REDACTED]  
20 referred to in these e-mails? It was [REDACTED]  
21 [REDACTED] as to what?

22 A. So my understanding from the  
23 documents is that at the time in and around 2009,  
24 2010, [REDACTED]

25 [REDACTED].

## Public

L. Nikolova - 128

1 480. Q. Okay, that was an [REDACTED] as  
2 to what?

3 A. I understand it concerned a

4 [REDACTED]

5 [REDACTED]

6 481. Q. And when you say that it is your  
7 understanding, I take it that is simply from  
8 reviewing documents?

9 A. I have also spoken with an officer  
10 who was involved [REDACTED] at the time,  
11 as he said to me.

12 482. Q. Who was that?

13 A. That was Ian Roger.

14 483. Q. And what was his position back then?

15 A. I don't know.

16 484. Q. I could be wrong, but I don't see  
17 Ian Roger on the communications, or at least not in  
18 the communications that summarize these things. I  
19 stand corrected.

20 And what did...did you ask Mr. Roger  
21 whether the Bureau looked at anything else besides

22 [REDACTED]

23 MR. KLIPPENSTEIN: That is a refusal. I  
24 think it is irrelevant whether this witness  
25 asked him but, more importantly, I guess

## Public

L. Nikolova - 129

1                   that going to the heart of the matter is I  
2                   think it is irrelevant whether or not the  
3                   Bureau looked at anything else besides what  
4                   is described in the documents.                   /R

5

6           BY MR. KENT:

7           485.           Q.       The document...so, the documents  
8                   don't...okay. What documents are you referring to,  
9                   that you say describe the [REDACTED]  
10                   [REDACTED] at that time, as  
11                   relating to the link that you just described? What  
12                   documents do you say tell you that?

13                   A.       I can't recall the exact documents,  
14                   sitting here today.

15           486.           Q.       Did you see any documents that  
16                   indicated that the Bureau confined its consideration  
17                   to that one issue at that time?

18                   A.       I don't recall what the documents  
19                   specifically said about the issue in the

20

21           487.           Q.       Do you recall whether the documents  
22                   indicated [REDACTED]  
23                   [REDACTED]?

24                   MR. KLIPPENSTEIN:       There are documents  
25                   in our production that speak to this issue.

## Public

L. Nikolova - 130

1 I wonder if it might be more productive to  
2 have the witness have those documents in  
3 front of her, if you are asking about  
4 documents.

5 488. MR. KENT: But I don't know what  
6 documents she is referring to. She is the  
7 one who looked at documents for the  
8 purposes of giving information. I am just  
9 asking about those. So, I don't know what  
10 those are, and the witness doesn't know  
11 what they are. Are you able to recreate  
12 for us a list of what you looked at, that  
13 gives you the basis for saying what you are  
14 saying?

15 MR. KLIPPENSTEIN: I am going to refuse  
16 that undertaking as framed. /R

17 489. MR. KENT: Okay.

18 MR. KLIPPENSTEIN: If you are asking us  
19 to identify representative examples of what  
20 she is referring to, we could do that. U/T

21 490. MR. KENT: Okay, I will take that  
22 undertaking.

23

24 BY MR. KENT:

25 491. Q. Do you have any information, let's

## Public

L. Nikolova - 131

1 put it this way, Ms. Nikolova, to suggest that the  
2 Bureau did not do anything...sorry...yes, sorry, the  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED] Do you understand? So, that it is  
6 one thing to say they looked at the [REDACTED] It  
7 is another thing to say, "and they didn't look at  
8 anything else". So, I am asking you the second part  
9 of that.

10 MR. KLIPPENSTEIN: I am not sure that  
11 I...I am trying...sorry, I am just trying  
12 to understand the question.

13 492. MR. KENT: Well, then I will take it in  
14 pieces.

15  
16 BY MR. KENT:

17 493. Q. So, let's start off with what you  
18 have told me. You have told me that the Bureau  
19 looked at [REDACTED] [REDACTED]  
20 [REDACTED]

21 A. That is my understanding, based on  
22 certain records that I have reviewed, and on the  
23 basis of a conversation that I can recall with Mr.  
24 Roger.

25 494. Q. And do you know whether the Bureau

## Public

L. Nikolova - 132

1 looked at any other aspects of the websites at that  
2 time?

3 MR. KLIPPENSTEIN: I am going to refuse  
4 on the basis of relevance. /R

5 495. MR. KENT: Well, how can you refuse that  
6 on the basis of relevance? I need to know  
7 what the Bureau looked at at the time when  
8 it gave a no action letter.

9 MR. KLIPPENSTEIN: What is relevant is  
10 what...to the extent that things were  
11 communicated to Ticketmaster or the  
12 respondents. That is what relevant.

13 496. MR. KENT: Right, and this goes to  
14 understanding what was communicated. Mr.  
15 Joyal yesterday asked questions to Ms.  
16 Tarlton about what Ticketmaster thought the  
17 Bureau had looked at back in 2009, before  
18 making those communications. It seems a  
19 bit odd that now you are refusing to answer  
20 my questions asking precisely for the same  
21 information.

22 MR. KLIPPENSTEIN: I don't think it is  
23 precisely the same information. I think it  
24 is different. What is relevant is  
25 Ticketmaster's understanding of what was

## Public

L. Nikolova - 133

1 looked at. What Ticketmaster may have  
2 provided and it would have known it  
3 provided to the Bureau, and what  
4 Ticketmaster might have heard from the  
5 Bureau.

6 497. MR. KENT: Right. Let's just continue.  
7 I am not going to argue...

8 MR. KLIPPENSTEIN: Well, I am not...I  
9 will just finish my sentence. What the  
10 Bureau did internally, what it may or may  
11 not have looked at is not relevant, except  
12 if...except to the extent that it was  
13 communicated to Ticketmaster.

14 498. MR. KENT: That is your position, it is  
15 not our position.

16

17 BY MR. KENT:

18 499. Q. Okay, we are at 313. In the second  
19 paragraph Mr. Homan says that he has:

20 "...Spoken with [REDACTED] and he has  
21 indicated that the Bureau has completed its  
22 review and will be closing its file with  
23 respect to the fair business practices  
24 issues..."

25 Do you see that?

## Public

L. Nikolova - 134

1 A. I see that.

2 500. Q. So, what was the file with respect  
3 to [REDACTED] that was  
4 closed?

5 MR. KLIPPENSTEIN: I am going to refuse  
6 that again. /R

7 501. MR. KENT: This is information that it  
8 says right here was [REDACTED]

9 [REDACTED]  
10 MR. KLIPPENSTEIN: Again, what is  
11 relevant is not what Brent Homan might have  
12 meant by those words, but what was...if  
13 that was, in fact, what was communicated to  
14 Ticketmaster, what was communicated to  
15 Ticketmaster and Ticketmaster's  
16 understanding of that information.

17 502. MR. KENT: Well, so if Mr. Homan who, at  
18 that time was the assistant deputy  
19 commissioner of competition, says that he  
20 told [REDACTED] that the Bureau had  
21 completed its review and would be closing  
22 its file with respect to the fair business  
23 practices issues, can we assume that Mr.  
24 Homan did that, in fact? And that he has  
25 accurately captured what he communicated to

## Public

L. Nikolova - 135

1 Mr. Hunter?

2 MR. KLIPPENSTEIN: If you want to ask  
3 that question of the witness, you can.

4 503. MR. KENT: Can I?  
5

6 BY MR. KENT:

7 504. Q. Can I assume that Mr. Homan  
8 accurately captured what he communicated to [REDACTED]  
9 [REDACTED]

10 A. I don't know.

11 505. Q. Do you have any reason to think that  
12 Mr. Homan would make a mistake about that?

13 A. I have no reason to think one way or  
14 another. I am not aware of what...

15 506. Q. So you will...  
16 A. ...was communicated or not.

17 507. MR. KENT: So you will advise me if  
18 there is anything in what Mr. Homan says in  
19 this note that is inaccurate?

20 MR. KLIPPENSTEIN: I can tell you that  
21 as far as I know we have no reason to  
22 believe that this note is inaccurate. Will  
23 that satisfy what you...

24 508. MR. KENT: Sure. So, we are going to go  
25 on the assumption that this note is

## Public

L. Nikolova - 136

1 accurate, and that Mr. Homan told [REDACTED]  
2 [REDACTED] that the Bureau had completed its  
3 review and would be closing its file with  
4 respect to the fair business practices  
5 issue. What was that file?

6 MR. KLIPPENSTEIN: Again, I realize that  
7 it is a fine distinction that I am making,  
8 and I do it respectfully. But the truth of  
9 those, or what those statements refer to,  
10 what Brent Homan was referring to is not  
11 relevant. What he said to [REDACTED]

12 [REDACTED]  
13 [REDACTED] are the relevant facts.

14 509. MR. KENT: Okay. What did he say to

15 [REDACTED]  
16 MR. KLIPPENSTEIN: Well, you have taken  
17 us to a document which we have said we have  
18 no reason to believe that that is not an  
19 accurate characterization...

20 510. MR. KENT: So, if he told [REDACTED]  
21 that he has closed the file with respect to  
22 [REDACTED], I am  
23 entitled to know what file that is.

24 MR. KLIPPENSTEIN: Respectfully we  
25 disagree.

## Public

L. Nikolova - 137

1 511. MR. KENT: Okay. Are you telling me  
2 that the Bureau never explained to [REDACTED]  
3 [REDACTED] what file it had opened?  
4 MR. KLIPPENSTEIN: If you want to ask  
5 the questions of what the Bureau did or did  
6 not explain, those are questions we will  
7 hear.

8

9 BY MR. KENT:

10 512. Q. What did the Bureau tell  
11 [REDACTED] was the file that it had  
12 opened with [REDACTED], which was  
13 apparently closed, so we are talking about the same  
14 file, [REDACTED] [REDACTED]

15 A. I don't know.

16 513. MR. KENT: Will you give me an  
17 undertaking to let me know?

18 MR. KLIPPENSTEIN: Well, we have  
19 produced documents.

20 514. MR. KENT: I am asking for an  
21 undertaking to let me know what the Bureau

22 [REDACTED]

23 [REDACTED]

24 [REDACTED] [REDACTED] [REDACTED]

25 [REDACTED] [REDACTED]

## Public

L. Nikolova - 138

1

[REDACTED]

2

MR. KLIPPENSTEIN: And to our knowledge,

3

the documents that relate to what was said

4

have been produced in our productions.

5

515.

MR. KENT: Okay, will you point me to

6

them, please?

7

MR. KLIPPENSTEIN: So, I will go back to

8

my earlier undertaking, which was to direct

9

you to representative examples, although I

10

suspect...I may be wrong...I suspect that

11

we will probably get to those

12

representative examples later on today.

13

516.

MR. KENT: Well, we might or we might

14

not, but I have...if you are going to take

15

the position that I can't ask about this

16

file, I can only ask about what the [REDACTED]

17

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

18

[REDACTED] You

19

don't know, Madam witness, because you

20

don't know, you weren't there and nobody

21

has told you. So, all I can do is ask for

22

an undertaking. I don't want

23

representative examples, I want to know the

24

answer to my question. Including I want

25

the documents that memorialize that.

## Public

L. Nikolova - 139

1 MR. KLIPPENSTEIN: M'hmm.

2 517. MR. KENT: And especially since the  
3 witness has told us that she only has  
4 information from documents and from a  
5 conversation with Mr. Roger. I want to  
6 know what those documents...what  
7 documents...what the documents are that  
8 inform on this issue.

9 MR. KLIPPENSTEIN: And so our documents  
10 that inform this issue, the relevant  
11 documents that inform this issue, have been  
12 produced in our productions, but we are not  
13 going to redo the process of our  
14 productions. But you do have documents,  
15 but I suspect we will come to it. Or, if  
16 we don't, we will point you towards...and  
17 when I say "representative examples", it is  
18 likely that we would be able to point you  
19 to the bulk of them. I just don't want to  
20 have to point to every last one and be  
21 responsible for omitting. U/T

22 518. MR. KENT: That is fine, I wouldn't ask  
23 you to do a new document search. I just, I  
24 do want you to point me to the documents in  
25 the thousands of documents produced. And

## Public

L. Nikolova - 140

1 we are about to break. I would like that  
2 undertaking to include an inquiry of Mr.  
3 Homan and Ms. Rosen, if they are still  
4 there, or others who were involved, if they  
5 are still at the Bureau, with respect to  
6 what [REDACTED] involved and what  
7 was communicated [REDACTED]

8 MR. KLIPPENSTEIN: Can we narrow it to a  
9 specific individual or individuals? You  
10 said anyone involved. I don't want to...

11 519. MR. KENT: Well, I don't know who is  
12 there anymore and I don't want to pick  
13 three people and find out they are all  
14 gone.

15 MR. KLIPPENSTEIN: M'hmm.

16 520. MR. KENT: So, let's start with Mr.  
17 Roger, Mr. Homan, Ms. Rosen, Mr. Bryenton,  
18 and if none of them are still there then we  
19 can move on from there.

20 MR. KLIPPENSTEIN: And the inquiry, I am  
21 sorry, I missed it.

22 521. MR. KENT: Is about the nature of the  
23 [REDACTED] that is referred to, and the  
24 [REDACTED] with  
25 respect to it.

L. Nikolova - 141

1 MR. KLIPPENSTEIN: Okay, we will give  
 2 that undertaking with respect to the  
 3 communications with Ticketmaster, to make  
 4 reasonable inquiries of those four  
 5 individuals as you, you know, as you framed  
 6 it. We will ask them if they recall  
 7 anything other than what is in the  
 8 documents about communication with respect  
 9 to Ticketmaster.

U/T

10 522. MR. KENT: Okay, and so that wasn't  
 11 quite the same as what I asked. So, is  
 12 there a refusal in there too?

13 MR. KLIPPENSTEIN: There is a refusal  
 14 with respect to the nature of the  
 15 investigation.

/R

16 523. MR. KENT: Okay. Two...I say "okay"  
 17 meaning I have heard you, not that I agree  
 18 with you. Two last questions, then let's  
 19 take a break for lunch. First, [REDACTED]

20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED] [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED] [REDACTED] [REDACTED]  
 5 [REDACTED] [REDACTED] [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]

8 MR. KLIPPENSTEIN: Again, David, this  
 9 may be putting a fine point on it. What is  
 10 relevant, in our view, is not what were the  
 11 investigations, but what was communicated  
 12 and what was understood by Ticketmaster.

13 524. MR. KENT: Okay. What did the Bureau  
 14 advise Ticketmaster [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED] [REDACTED] [REDACTED]  
 17 [REDACTED]

18 MR. KLIPPENSTEIN: Do you know?

19 THE DEPONENT: I don't know.

20 MR. KLIPPENSTEIN: Well, I think the  
 21 answer is that we are not aware of, at this  
 22 time, of facts other than as represented in  
 23 the documents produced.

24 525. MR. KENT: Well, that doesn't really  
 25 tell me anything, because there are roughly

## Public

L. Nikolova - 143

1 80,000 documents between the two sides.

2 MR. KLIPPENSTEIN: M'hmm.

3 526. MR. KENT: So, I think...you are the  
4 Bureau. It was your [REDACTED] back  
5 then. I am not looking for details, I am  
6 just looking for a summary of what those  
7 [REDACTED] were, because there is  
8 a [REDACTED]

9 [REDACTED]  
10 And in case that goes to the scope of any  
11 estoppel that is asserted, I want to know  
12 what those other matters are, just broadly.  
13 I shouldn't have to go and figure it out  
14 for myself.

15 MR. KLIPPENSTEIN: So, we are going to  
16 maintain our refusal subject to going back  
17 and deciding we are wrong about that. But  
18 still, the position is that what they, in  
19 fact, were is not relevant. What is  
20 relevant is what was communicated to  
21 Ticketmaster. There are...

22 527. MR. KENT: Well, what was communicated  
23 to Ticketmaster, according to Mr. Homan, is  
24 that [REDACTED]

25 [REDACTED]

## Public

L. Nikolova - 144

1 [REDACTED] [REDACTED]  
2 [REDACTED]. So,  
3 I want to know what the [REDACTED] are  
4 that presumably [REDACTED]  
5 [REDACTED]

6 MR. KLIPPENSTEIN: M'hmm.

7 528. MR. KENT: That is the communication to  
8 Ticketmaster, so what are those matters?

9 MR. KLIPPENSTEIN: I have heard your  
10 question, and that is a refusal. /R

11 529. MR. KENT: Last question before lunch,  
12 so this will be really easy.

13

14 BY MR. KENT:

15 530. Q. To this point, [REDACTED]  
16 [REDACTED], Ms. Nikolova, had the Bureau ever suggested to  
17 Ticketmaster that there might be a misleading  
18 advertising issue arising from its fee display?

19 A. I don't know.

20 531. MR. KENT: Can you find out for me?

21 MR. KLIPPENSTEIN: So, the undertaking  
22 will be...I am trying to find a way we can  
23 frame it in that we will be able to execute  
24 it. Because there is, you know, a large  
25 number of individuals. There is the

## Public

L. Nikolova - 145

1 passage of time, so I don't think that it  
2 is possible to conclusively...so I will  
3 find that fact. I think that to our  
4 knowledge the relevant documents  
5 memorializing the communications at the  
6 time have been produced.

7 532. MR. KENT: Well, I am not aware of a  
8 document in which there either suggests or  
9 records a suggestion by the Bureau to  
10 Ticketmaster around this time, that there  
11 was an issue with its fee display. So,  
12 maybe we can put the undertaking the other  
13 way around? You will let me know if you  
14 become aware of facts suggesting that the  
15 Bureau communicated to Ticketmaster that  
16 there might be a Competition Act problem  
17 with its fee display, other than this link  
18 matter that we spoke about before.

19 MR. KLIPPENSTEIN: Yes. U/T

20 533. MR. KENT: Okay, lunch.

21 MR. KLIPPENSTEIN: Great, I am starving.

22

23 --- upon recessing at 1:04 p.m.

24 --- A LUNCHEON RECESS

25 --- upon resuming at 2:00 p.m.

## Public

L. Nikolova - 146

1 LINA NIKOLOVA, resumed

2 CONTINUED EXAMINATION BY MR. KENT:

3 534. Q. Welcome back everybody. The next  
4 document is Commissioner's production PHAD000775.

5 MR. CHISHOLM: The Commissioner's  
6 production bearing the doc ID PHAD000775  
7 will be marked as Exhibit 116.

8

9 --- EXHIBIT NO. 116: BIMS Investigation, date opened  
10 2009/03/06

11

12 BY MR. KENT:

13 535. Q. So, we have another document that  
14 appears to come out of the Bureau's BIMS record  
15 system. Why don't you have a brief look and let me  
16 know when you have had a chance to look at it?

17 A. Okay.

18 536. Q. So you will see in the section  
19 marked "Event", it refers to a meeting held?

20 A. Yes, I see that.

21 537. Q. And then under the title "General  
22 Information" it has an [REDACTED]

23 [REDACTED] Do  
24 you see that?

25 A. Yes. I just...I am not sure if the

## Public

L. Nikolova - 147

1 10 month 5 are the month and day. I assume they  
2 are. I assume they are.

3 538. Q. I think they are going to have to  
4 be, because you will see at the top the date opened,  
5 if it was day and month then this meeting would have  
6 happened before the file was opened, which wouldn't  
7 make sense.

8 A. That is right. You are right.

9 539. Q. It is brilliant deductive reasoning.

10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]

16 540. Q. Is there...other than Bureau  
17 personnel...sorry, go back a step. If you look in  
18 the top part on the right-hand side, there is a  
19 button that says "Edit Event". Do you see that?

20 A. I see the button.

21 541. Q. And then you will see below that it  
22 says "Created by R. Snow", and "Updated by R. Snow",  
23 both on the same date, being the 13th of October,  
24 2009?

25 A. I see that it says that.

## Public

L. Nikolova - 148

1       542.               Q.       And do you know who R. Snow is, or  
2                       was?

3                       A.       I suspect that is Raymond Snow.

4       543.               Q.       And that is somebody who works at  
5                       the Bureau, right? Or did then?

6                       A.       He worked at the Bureau during the  
7                       time that I was there. I believe he has since left.

8       544.               Q.       And if you look just above that you  
9                       will see that the primary officer for this matter is  
10                      R. Snow?

11                      A.       I see that it says that.

12       545.               Q.       And so given what you know about  
13                      what sort of jobs he did at the Bureau, would it  
14                      make sense that Raymond Snow could be a primary  
15                      officer on a fair business practices branch  
16                      investigation?

17                      A.       That makes sense to me.

18       546.               Q.       Okay. And do you know who L. Zuker  
19                      is?

20                      A.       I suspect that refers to Lawrence  
21                      Zuker.

22       547.               Q.       And is Lawrence Zuker still at the  
23                      Bureau?

24                      A.       I am not certain. I recall him  
25                      being there during the time that I was there, but I

## Public

L. Nikolova - 149

1 don't know if he has since left.

2 548. Q. So, I take it, based on your  
3 understanding of how these forms work, and the  
4 information we have seen, that this document records  
5 information input by the Bureau as to [REDACTED]

6 [REDACTED]

7 [REDACTED] [REDACTED]

8 A. I am sorry, could you repeat the  
9 question please?

10 549. Q. Sure. Can we agree, just so we  
11 don't have to wonder later, what we are looking at  
12 with this document, that this document records  
13 information input into the document by Bureau  
14 personnel as to [REDACTED]

15 [REDACTED] [REDACTED]

16 [REDACTED] [REDACTED]

17 A. Based on my understanding of how the  
18 BIMS system works, and how these forms work, these  
19 comments...and heard by officers in this instance.

20 550. Q. So what I said is a correct way of  
21 reading the document?

22 A. It would have...based on my  
23 understanding of the forms, the information would  
24 have been recorded by an officer, and it states that  
25 Snow, R., who I assume is Raymond Snow, created the

## Public

L. Nikolova - 150

1 document.

2 551. Q. So, let's just talk for a second  
3 about how the Bureau kind of keeps track of notes  
4 and things. Here are notes of a meeting. Was it  
5 standard practice for officers involved in an  
6 investigation to place notes with respect to events  
7 during the investigation into this BIMS system?

8 MR. KLIPPENSTEIN: You are asking about  
9 the practice in 2009?

10 552. MR. KENT: Yes.

11 THE DEPONENT: I don't know about the  
12 practice in 2009. That was before my time  
13 at the Bureau.

14

15 BY MR. KENT:

16 553. Q. Well, is that the practice today?

17 A. It is practice today for an officer  
18 to record certain items into BIMS.

19 554. Q. What sorts of items?

20 A. Steps taken in the investigation,  
21 for example.

22 555. Q. Okay. Communications with people  
23 outside the department?

24 A. That is one example that could be  
25 recorded into BIMS, typically.

1 556. Q. And I take it we can assume, unless  
 2 you advise us otherwise, that this record of that  
 3 meeting is accurate?

4 MR. KLIPPENSTEIN: We will advise if  
 5 there is any reason to believe it is not  
 6 accurate.

U/T

7 557. [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]

15 BY MR. KENT:

16 558. Q. Right, so I can take it, then, that  
 17 that is, in fact, what actually happened unless  
 18 somebody advises me otherwise, right?

19 A. I have no personal knowledge of what  
 20 happened at the time.

21 559. Q. I know you don't, but you are here  
 22 on behalf of the Bureau, so I am asking whether it  
 23 is safe for me to rely on this document, as being an  
 24 accurate indication of, [REDACTED]  
 25 [REDACTED]





## Public

L. Nikolova - 154

1 567. Q. Sure. If you look at the second  
2 bullet in the first set of bullets, it talks about  
3 placing a currency next to the ticket price, [REDACTED]

4 [REDACTED] [REDACTED]  
5 [REDACTED] [REDACTED] [REDACTED]  
6 [REDACTED]

7 A. Again, I don't have personal  
8 knowledge of this meeting. It says here...

9 568. Q. No, but I am...now I am asking for  
10 the Bureau's knowledge, information and belief. You  
11 understand those are the three categories of  
12 response that we are entitled to?

13 A. I understand.

14 569. Q. I know you weren't there.

15 A. I understand that.

16 570. Q. So you have no information as to  
17 what happened at this meeting, other than what you  
18 read on this page, right?

19 A. That is correct.

20 571. MR. KENT: So, maybe we can just do it  
21 by undertaking then because this witness  
22 won't be able to provide anything in  
23 addition. You will let me know if, at this  
24 meeting, the Bureau representatives were  
25 not shown the ticket price display with the

## Public

L. Nikolova - 155

1 currency next to it, and with respect to  
2 Ticketsnow, you will let me know if the  
3 Bureau attendees were not shown how the  
4 original price is listed, and how the  
5 resale price of the ticket is listed?

6 MR. KLIPPENSTEIN: Okay, we have  
7 undertaken to let you know if there is any  
8 reason to believe these notes aren't  
9 accurate.

10  
11 BY MR. KENT:

12 572. Q. Can we tell from this document who  
13 was at this meeting? Is there any way to tell?  
14 Other than thinking that if Mr. Snow provided the  
15 input in the document, presumably Mr. Snow was  
16 there?

17 A. I can't make that assumption because  
18 I don't have personal knowledge.

19 573. MR. KENT: Okay. Well, can you ask Mr.  
20 Zuker, please, who was at this meeting?  
21 And can you please ask him to confirm that

22 [REDACTED]

23 [REDACTED] [REDACTED]

24 [REDACTED]

25 MR. KLIPPENSTEIN: We will ask Mr. Zuker

## Public

L. Nikolova - 156

1 if he recalls who was at the meeting and  
2 let you know what he says. U/T

3 574. MR. KENT: Okay.

4 MR. KLIPPENSTEIN: We will ask Mr. Zuker  
5 of his recollection of the meetings, other  
6 than what is summarized here. U/T

7 575. MR. KENT: Okay, and now I would like to  
8 ask, have you ask him another thing about  
9 what is not here. I would like you to ask  
10 him whether the Bureau attendees at the  
11 [REDACTED]  
12 [REDACTED] [REDACTED]  
13 [REDACTED]

14 MR. KLIPPENSTEIN: We will ask him if he  
15 recalls anything of that nature. U/T

16 576. MR. KENT: Thank you.

17

18 BY MR. KENT:

19 577. Q. There is an indication at the top of  
20 Exhibit 116 saying that the file is closed. Do you  
21 see that? It is the third line down, "current key  
22 stage".

23 A. I see that.

24 578. MR. KENT: I wonder if you can inquire  
25 for me and determine whether or not this is

## Public

L. Nikolova - 157

1 the same matter as is being discussed and  
2 about which the Bureau made communications

3 [REDACTED]

4 [REDACTED]

5 MR. KLIPPENSTEIN: So, there is two

6 documents summarizing [REDACTED]

7 [REDACTED] You are asking

8 if from the Bureau's perspective they are

9 linked? [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 579. MR. KENT: Well, that is not a task for

13 discovery. I want to know what the Bureau

14 says, but to go back to 115 that we looked

15 at before lunch. There is an internal

16 Bureau note describing [REDACTED]

17 [REDACTED] in which counsel

18 was told that a file had been closed. And

19 I am really just asking, is that the same

20 file as is reflected in Exhibit 116? And I

21 know there is a subsequent meeting here,

22 but I will come to that. I just want to

23 know if it is the same file.

24 MR. KLIPPENSTEIN: Would you give me a

25 moment to think about that?

## Public

L. Nikolova - 158

1       580.           MR. KENT:        Sure.  Let's go off for a  
2                    second.  Just while you think about that,  
3                    this is going to be two consultations.  If  
4                    you go back and look at 114, which is the  
5                    March 6th exchange between Andrea Rosen  
6                    and...  
7                    MR. KLIPPENSTEIN:        M'hmm.  
8       581.           MR. KENT:        ...Larry Bryenton.  You will  
9                    see on 116 it says the file was opened on  
10                   March the 6th.  
11                   MR. KLIPPENSTEIN:        M'hmm.  
12       582.           MR. KENT:        And this other set of e-mails  
13                    is March 6th.  
14                   MR. KLIPPENSTEIN:        M'hmm.  
15       583.           MR. KENT:        And I am going to ask you  
16                    also the same question about March 6th, if  
17                    these are all the same thing, if two out of  
18                    the three of them are the same file.  
19                    Just...or whether they are three different  
20                    matters.  
21                    MR. KLIPPENSTEIN:        M'hmm.  
22       584.           MR. KENT:        It is partly just so I can  
23                    keep the documents relating to each other.  
24  
25       ---   DISCUSSION OFF THE RECORD

1 MR. KLIPPENSTEIN: We will make  
 2 reasonable inquiries to determine, and will  
 3 advise you whether the meeting summarized  
 4 in Exhibit 115 is the same matter as the  
 5 one in Exhibit 116.

6 585. [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]

9 MR. KLIPPENSTEIN: Thank you, I  
 10 misspoke. If the...I guess it says it is  
 11 a...115 refers to a call, so I will say [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED] U/T

14 586. MR. KENT: And then could you do the  
 15 same for me, please, with respect to the  
 16 activities described at 114, the March 6th,  
 17 2009 e-mail which talks about doing a  
 18 series of screen grabs of some kind?  
 19 Whether that is all the same matter,  
 20 whether they are two different matters,  
 21 three matters?

22 MR. KLIPPENSTEIN: No, with respect to  
 23 Exhibit 114, and the reason is relevance.  
 24 114 is an internal discussion to the Bureau  
 25 and therefore it is not relevant. /R

## Public

L. Nikolova - 160

1 587. MR. KENT: I just want to know whether  
2 it relates to the file...

3 MR. KLIPPENSTEIN: M'hmm.

4 588. MR. KENT: ...which is described at  
5 Exhibit 116 as Bureau matter 3103256, which  
6 appears to have been opened on the same  
7 day. But you are not going to tell me?

8 MR. KLIPPENSTEIN: So the refusal is the  
9 same on the basis that 114 is not relevant,  
10 and what is discussed in 114 is not  
11 relevant. /R

12 589. MR. KENT: Let's move on to the next  
13 document, then. It is Bureau production  
14 PHAD00777\_00000258, and it is a letter  
15 dated January 8th, 2010, from Brent Homan  
16 of the Bureau to [REDACTED]

17 [REDACTED]  
18 MR. CHISHOLM: The Commissioner's  
19 production bearing the doc ID  
20 PHAD00777\_00000258 shall be marked as  
21 Exhibit 117.

22

23 --- EXHIBIT NO. 117: E-mail from Brent Homan of the Bureau,  
24 to Lawson Hunter of Stikeman Elliott,  
25 dated January 8, 2010

## Public

L. Nikolova - 161

1 BY MR. KENT:

2 590. Q. Are you familiar with this document?

3 A. I have seen it before.

4 591. Q. And we will go to page 2, top  
5 paragraph, last sentence. Can we agree that this  
6 letter is what gets known in the business as a "no  
7 action: letter?

8 A. Can I just have a moment to read  
9 through the letter?

10 592. Q. Absolutely.

11 A. Okay, thank you.

12 593. Q. Should I ask my question again?

13 A. Yes, please.

14 594. Q. Can we agree that this letter is  
15 what gets known in the business as a "no action"  
16 letter?

17 A. I am not sure what is meant by a no  
18 action letter.

19 595. Q. Can we treat the statements made by  
20 Mr. Homan in this letter on the same basis as  
21 others? That the letter is accurate insofar as it  
22 states facts, and I am entitled to rely on that  
23 unless you advise me of some inaccuracy?

24 MR. KLIPPENSTEIN: Are you referring to  
25 statements, "You will recall that on this

## Public

L. Nikolova - 162

1 date you were advised that"?

2 596. MR. KENT: Or, "The branch has now  
3 concluded the reopened investigation", et  
4 cetera, et cetera. So, at the top of page  
5 2, for example, Mr. Homan says:  
6 "...In our view, the disclosure on the  
7 ticket exchange representation is markedly  
8 different", and it goes on to say some  
9 other things. I can treat all of those as  
10 accurately setting out what the Bureau said  
11 or did or thought?

12 MR. KLIPPENSTEIN: Yes, that is what the  
13 letter says.

14

15 BY MR. KENT:

16 597. Q. Now, if you look at the third  
17 paragraph on page 2, you see Mr. Homan says that:  
18 "...While no further action in the fair  
19 business practices branch is being proposed  
20 at that time, that [he] wished to bring  
21 certain issues to Ticketmaster's  
22 attention..."

23 Do you see that?

24 A. I see that it says that.

25 598. Q. And these issues that Mr. Homan

## Public

L. Nikolova - 163

1 wanted to bring to Ticketmaster's attention were in  
2 order to assist Ticketmaster in avoiding conflict  
3 with the false or misleading representations in  
4 deception marketing practices provisions in the  
5 future. Do you see that?

6 A. That is what it says.

7 599. Q. So I can understand that as Mr.  
8 Homan, on behalf of the Bureau, wanting to give some  
9 guidance as to how to stay on the right side of the  
10 deceptive marketing practices provisions of the  
11 statute?

12 A. I don't know. I don't know that  
13 that is what is being said necessarily.

14 600. Q. What does the Commissioner say Mr.  
15 Homan...sorry, Mr. Homan is still there, isn't he?

16 A. I don't know.

17 601. Q. Okay. And I don't remember myself,  
18 so, are you telling me on behalf of the Commissioner  
19 that Mr. Homan meant something other than what I  
20 just suggested?

21 MR. KLIPPENSTEIN: In fairness to the  
22 witness, the letter says what it says. We  
23 don't know what Mr. Homan meant, nor is it  
24 relevant what he meant to say. /R

25 602. MR. KENT: Well, this is a pretty key

## Public

L. Nikolova - 164

1 communication to Ticketmaster by the  
2 Bureau, by a senior member of the Bureau.  
3 I think we are entitled to know what the  
4 Bureau was trying to communicate there and,  
5 in particular, I am entitled to know if the  
6 Bureau wasn't trying to communicate  
7 something that one would think that those  
8 words meant. So, I am entitled to know  
9 what this letter means from the Bureau's  
10 perspective.

11 MR. KLIPPENSTEIN: And you have brought  
12 the witness to a particular passage in the  
13 letter. She has confirmed that that is  
14 what it says, and you have asked her to  
15 agree with your characterization that it is  
16 guidance, and she has...

17 603. MR. KENT: She says she doesn't know.

18 MR. KLIPPENSTEIN: So that is what it  
19 says.

20 604. MR. KENT: So, if she agrees with me  
21 then we don't have a problem.

22 MR. KLIPPENSTEIN: No, she...sorry, I  
23 misspoke. I wasn't meaning to characterize  
24 her answer that way. What I heard her say  
25 is that this letter says what it says.



1 the basis of relevance. I am not sure that  
 2 the intent behind the letter is relevant.  
 3 What is relevant is what was communicated  
 4 and what the respondents understood by  
 5 that.

/R

6

7 BY MR. KENT:

8 609. Q. Ms. Nikolova, there are two matters  
 9 that Mr. Homan raises with Ticketmaster after saying  
 10 that he wants to bring to them to their attention to  
 11 assist them in avoiding conflict with the false or  
 12 misleading representations and deceptive marketing  
 13 practices provisions in the Competition Act. The  
 14 first you will see summarized in the fourth  
 15 paragraph on page 2. [REDACTED]

16 [REDACTED]  
 17 [REDACTED] Do you else that? It says  
 18 "first".

19 A. I am sorry, could you...the fourth  
 20 paragraph?

21 610. Q. The fourth paragraph.

22 A. Yes. [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

## Public

L. Nikolova - 167

1 611. Q. And if you turn over the page you  
2 will see that Mr. Homan then has a second item that  
3 he is bringing to Ticketmaster's attention so that  
4 it can avoid putting their foot wrong. [REDACTED]

5 [REDACTED] [REDACTED] [REDACTED]  
6 [REDACTED] [REDACTED]  
7 [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
8 [REDACTED] [REDACTED]

9 612. Q. And you could read the letter again  
10 if you like, but I will tell you that Mr. Homan does  
11 not bring to Ticketmaster's attention anything to do  
12 with fee displays so that Ticketmaster might avoid  
13 conflict with the false and misleading  
14 representations and deceptive marketing practices  
15 provisions of the Competition Act in the future. And  
16 I would like you to tell me why not.

17 MR. KLIPPENSTEIN: That is refused on  
18 the basis of relevance. I thought you were  
19 going to have her confirm that is that what  
20 the letter says, but the reason why not is  
21 irrelevant. /R

22 613. MR. KENT: Well, this is kind of central  
23 to the estoppel argument, which is that if  
24 you tell people to watch out for items 1  
25 and 2, and you don't say anything that

## Public

L. Nikolova - 168

1 suggests that item 3 is a problem, then  
2 there is an inference that can reasonably  
3 be drawn that item 3 is not a problem.

4 So, I am not going to argue with  
5 you. I just want to make sure that the  
6 nature of our position is clear so that you  
7 can consider relevance, you know, in light  
8 of that.

9 MR. KLIPPENSTEIN: Right, and the nature  
10 of our position, as I mentioned earlier, is  
11 that our communications are relevant, and  
12 what Ticketmaster understood, or the  
13 respondents understood about those  
14 communications as well. But the reasons  
15 why certain items were or were not included  
16 in our communications is not. /R

17  
18 BY MR. KENT:

19 614. Q. So we are now at January 8th, 2010.  
20 To this point, having gone through all of these  
21 investigative steps and having issued this no action  
22 letter, had the Bureau ever indicated to  
23 Ticketmaster that its fee display practices at that  
24 time were, in any way, in contravention of the  
25 Competition Act?



## Public

L. Nikolova - 170

1 know about it then we won't be bringing it  
2 to trial.

3 619. MR. KENT: I just don't want to have to  
4 prove the negative. I take it we are  
5 agreed that if you don't know about it, it  
6 didn't happen, unless somebody on our side  
7 comes up with a different piece of  
8 information.

9 MR. KLIPPENSTEIN: I mean, I am not  
10 going to agree to the effects of it, but it  
11 seems that the inference would be open for  
12 you to invite the Tribunal to make.

13 620. MR. KENT: Okay, let's move on the last  
14 document along this line. It is  
15 PHAD00777\_00000300.

16 MR. CHISHOLM: The Commissioner's  
17 production the doc ID PHAD000777\_00000300  
18 is marked as Exhibit 118.

19

20 --- EXHIBIT NO. 118: Memo from Bryan Cowell re meeting of  
21 March 16, 2010, dated April 6, 2010

22

23 BY MR. KENT:

24 621. Q. And here we have a memo, a fair  
25 business practices branch memo dated April 6th, 2010

## Public

L. Nikolova - 171

1 from [REDACTED] [REDACTED]  
2 [REDACTED] [REDACTED]  
3 [REDACTED] Are you familiar  
4 with this file memo?

5 A. I have seen this document before.

6 622. Q. And where does Bryan Cowell fit in?

7 A. During the time that I was at the  
8 Bureau he was an officer. I am not sure what his  
9 role would have been at the time at April 6th of  
10 2010.

11 623. Q. And he indicates that the Bureau  
12 personnel at the meeting were Brent Homan, we have  
13 already talked about him, Lawrence Zuker...that is  
14 the L. Zuker we talked about before I think, is it?

15 A. That is my understanding.

16 624. Q. Okay. Mr. Cowell and Steve Sansom.  
17 Do you know who Steve Sansom was...is?

18 A. I believe he is currently a lawyer  
19 with CVLS. I don't know what his role at the time  
20 would have been.

21 625. Q. I have always known him as a lawyer,  
22 so probably the same. And now, even though there  
23 was this letter that went out on January 8th saying  
24 "no further action would be taken. [REDACTED]  
25 [REDACTED]

## Public

L. Nikolova - 172

1           says"...well, [REDACTED]

2           [REDACTED]

3                   MR. KLIPPENSTEIN:        Is that relevant,  
4    why?

5       626.           MR. KENT:        Is that a refusal?

6                   MR. KLIPPENSTEIN:        Yes.   /R

7       627.           MR. KENT:        Okay.

8

9       BY MR. KENT:

10      628.           Q.        It says you are going to discuss

11      [REDACTED]

12      [REDACTED].    So, was there still a file open  
13      at the Fair Practices branch as to Ticketmaster at  
14      this time?

15                   MR. KLIPPENSTEIN:        I don't think that is  
16    relevant.    The relevance is the meeting.   /R

17      629.           MR. KENT:        Okay, so if you turn to page  
18    2...

19                   MR. KLIPPENSTEIN:        If I may...

20      630.           MR. KENT:        Oh, sorry.

21                   MR. KLIPPENSTEIN:        ...may I have a  
22    moment to read through the...

23      631.           MR. KENT:        Absolutely, yes.

24                   THE DEPONENT:        Yes, I will take a moment  
25    to read it as well, if that is all right?



## Public

L. Nikolova - 174

1 A. I see that.

2 636. Q. So, first, could you please find out  
3 and tell me [REDACTED]

4 [REDACTED]  
5 [REDACTED] Presumably you don't know anything about  
6 that?

7 A. I don't know anything about this  
8 statement.

9 MR. KLIPPENSTEIN: So I am starting from  
10 the understanding that Bureau has produced  
11 irrelevant documents, so without going  
12 through everything again, is there a way  
13 that you would like us to...I mean, there  
14 is is nothing in this that indicates when  
15 those discussions would have taken place,  
16 or even with whom. I mean, presumably it  
17 might be the same individual, but is  
18 there...

19 637. MR. KENT: I don't know, but the author  
20 of the note was Bryan Cowell. Is he still  
21 there?

22 MR. KLIPPENSTEIN: Do you know?

23 THE DEPONENT: I don't know.

24 638. MR. KENT: So, I guess you would start  
25 with Mr. Cowell, you would check with Mr.

## Public

L. Nikolova - 175

1 Homan, who seems to be the person having  
2 that conversation at the meeting. You  
3 were checking with Sansom and Zuker. I  
4 think that is where you would start,  
5 depending on who is still there. But it is  
6 obviously an issue that comes up in the  
7 litigation.

8 MR. KLIPPENSTEIN: You are asking us to  
9 the extent that they are still with the  
10 Bureau, to make inquiries of Messrs.  
11 Cowell, Homan and Zuker, to see what  
12 recollection they have of a discussing with

13 [REDACTED]

14 [REDACTED] prior to March 16th, 2010?

15 639. MR. KENT: Yes, we might as well roll  
16 whatever was discussed at the meeting on  
17 March 16th, 2010 into that, rather than  
18 treat it separately.

19 MR. KLIPPENSTEIN: Well, that is not  
20 our...I will just start with the first part  
21 of that. So, with the first part, yes, we  
22 will do that. And then the second part,  
23 sorry, was?

U/T

24 640. MR. KENT: The same question but what  
25 was discussed about [REDACTED]

## Public

L. Nikolova - 176

1 [REDACTED] [REDACTED] except  
2 what is listed here in this memo to file.

3 MR. KLIPPENSTEIN: If we ask them if  
4 their recollection is other than what is  
5 reported?

6 641. MR. KENT: If there is anything in  
7 addition to what is reported. They are  
8 obviously different. And then the third  
9 part also relates to this meeting.

10 Actually, it doesn't just relate to this  
11 meeting. Did anyone from the Bureau  
12 indicate to Ticketmaster that there was  
13 something [REDACTED]

14 [REDACTED] that either violated or  
15 aggravated the violation of the misleading  
16 or deceptive practices provisions of the  
17 Competition Act?

18 MR. KLIPPENSTEIN: So yes to part two. U/T

19 642. MR. KENT: Okay.

20 MR. KLIPPENSTEIN: And I...sorry, I  
21 forget how you framed part three, but we  
22 will advise, or we will ask them if they  
23 are aware of anyone at the Bureau. U/T

24 643. MR. KENT: Yes, and that is broader than  
25 just asking them. I want to know if...I

## Public

L. Nikolova - 177

1 really want to know if the Commissioner  
2 says that the Bureau ever advised, prior to  
3 the litigation and the letters leading up  
4 to the litigation, but back in the 2010  
5 time, if the Bureau ever advised  
6 Ticketmaster that there was anything about  
7 [REDACTED] that  
8 violated or aggravated a violation of the  
9 Competition Act?

10 MR. KLIPPENSTEIN: We will let you know  
11 if we become aware of any such  
12 communication in the 2010 time period that  
13 we are talking about. U/T

14 644. MR. KENT: Okay, that is it for that  
15 topic. So, let's move up to...let's start  
16 to drag ourselves into the present day.  
17 The fee display, as it stood at the time of  
18 the fair business practices inquiries that  
19 we have just been discussing, which were  
20 the latter part of...well, running through  
21 2009 and then into 2010. I take it the  
22 Ticketmaster fee displays, as of that time,  
23 are part of the current application, right?  
24 Because you told me they went back in 209.

25 THE DEPONENT: That is my understanding,



## Public

L. Nikolova - 179

1 MR. KLIPPENSTEIN: Well, I guess I have  
2 to refuse because I am...I don't  
3 understand the question. I will try again  
4 if you..

5 649. MR. KENT: Sure. Is the Bureau...

6 MR. KLIPPENSTEIN: Can we go off the  
7 record?

8 650. MR. KENT: Yes, sure.

9

10 --- DISCUSSION OFF THE RECORD

11

12 MR. KLIPPENSTEIN: I am going to refuse  
13 the question as it is framed. /R

14 651. MR. KENT: Okay.

15

16 BY MR. KENT:

17 652. Q. Ms. Nikolova, based on the documents  
18 we have looked at, I think we can agree that the  
19 Bureau had access to the 2009 Ticketmaster fee  
20 display back in 2009 or 2010?

21 A. Based on my review of documents I  
22 have seen captures from the Bureau 2009, 2010 file  
23 of Ticketmaster websites.

24 653. Q. You are agreeing with me? You  
25 didn't say yes or no in any of that.

## Public

L. Nikolova - 180

1                   A.        Could you restate your question,  
2                   please?

3       654.           Q.        Sure.  Can we agree, based on what  
4                   you have looked at and what you know, how much you  
5                   have been advised about, that back on 2009 and 2010  
6                   the Bureau had access to the Ticketmaster fee  
7                   display as it was in 2009?

8                   A.        I have no personal knowledge of what  
9                   was in...

10       655.          Q.        I didn't ask you if you had personal  
11                   knowledge.  You are sitting here and you have got to  
12                   provide me with the Bureau's knowledge, information  
13                   and...sorry, your knowledge, information and belief  
14                   on behalf of the Bureau.  This is really just a  
15                   set-up question so I can ask the question, because  
16                   it is controversial.

17                   Can we agree that the Bureau had access to  
18                   Ticketmaster's 2009 fee display back in 2009 and  
19                   2010?

20                   MR. KLIPPENSTEIN:        I am going to refuse  
21                   that question.  I think it is overly broad  
22                   in the sense of characterizing what we have  
23                   seen.  We have seen that there were  
24                   meetings where things were looked at.  You  
25                   have asked whether the Bureau had access at

## Public

L. Nikolova - 181

1 large to fee display, and I don't think  
2 that is a fair question.

3 656. MR. KENT: Is there some reason why the  
4 Bureau didn't have access to the  
5 Ticketmaster fee display? So, the Bureau  
6 was doing an investigation into  
7 Ticketmaster's websites and ticketing,  
8 right? You saw that, correct?

9 THE DEPONENT: I am aware of an  
10 investigation in 2009, 2010, relating to  
11 Ticketmaster's websites.  
12

13 BY MR. KENT:

14 657. Q. And, in particular, into misleading  
15 and deceptive advertising practices on its websites.  
16 That is what the documents indicate, right?

17 A. The documents state that there was  
18 an investigation .

19 658. Q. With respect to false or misleading  
20 representations and deceptive marketing practices.

21 A. That is what is in the...the  
22 documents state. Because I see...

23 659. Q. Right, and...

24 A. ...that from reading them.

25 660. Q. And we can agree that this document,

## Public

L. Nikolova - 182

1           which is a letter from the Bureau which says that,  
2           means that? So, I can take that as true, right? I  
3           am really just trying to set up my next question,  
4           but I don't know why you are resisting.

5                     A.       That is what the documents say.

6   661.               Q.       You are here on behalf of the  
7           Bureau. Are you telling me that you have got some  
8           reason to think that there was not such an  
9           investigation? I know that is what the documents  
10          say. I am asking you to confirm that this statement  
11          of fact is true.

12                    MR. KLIPPENSTEIN:     David, we  
13                    have...sorry, Mr. Kent, we have agreed to  
14                    advise with respect to some of the  
15                    documents whether we become aware that they  
16                    are not accurate representations of what  
17                    was said.

18   662.               MR. KENT:        Okay.

19  
20   BY MR. KENT:

21   663.               Q.       So the Bureau was doing an  
22           investigation into ticketmaster.ca, ticketweb.ca,  
23           and it was with respect to false and misleading  
24           representations and deceptive marketing practices  
25           under Section 52 and paragraph 74.01(1)(a) of the

## Public

L. Nikolova - 183

1 Competition Act according to the no action letter,  
2 which is Exhibit 117. So, I assume I can use that  
3 as my starting point? I will assume that the Bureau  
4 saw the relevant web pages which included the price  
5 representations at that time. So, work with me on  
6 that assumption. Are there any facts that you are  
7 aware of relating to the quality of the  
8 representations as they were in 2009, that have come  
9 to light after 2010?

10 A. I am sorry, I am not sure I  
11 understand the question.

12 664. Q. Sure. You and I are going to assume  
13 that the Bureau saw the ticketmaster.ca web page as  
14 it stood in 2009, back in 2009. With me so far?

15 A. Based on captures I see from that  
16 file or I have seen captures from that file of  
17 Ticketmaster websites.

18 665. MR. KENT: So I don't think we have ever  
19 seen most of that. I asked before for web  
20 captures. I don't remember whether you  
21 gave an undertaking or not, but I would  
22 like the web captures the witness is  
23 talking about, please.

24 MR. KLIPPENSTEIN: Give me a second to  
25 look at my notes.

## Public

L. Nikolova - 184

1 --- DISCUSSION OFF THE RECORD

2

3 MR. KLIPPENSTEIN: Just looking at my  
4 notes, I believe we did give an undertaking  
5 related to it.

6 666. MR. KENT: So, it is...I really just  
7 want to make sure that we get what we need,  
8 that...I think the original undertaking was  
9 in reference to Exhibit 114, which was that  
10 e-mail exchange between Larry Bryenton and  
11 Andrea Rosen, and it referred to a campaign  
12 to captures web images. And it may be that  
13 that is the set, but in case the witness is  
14 referring to other web captures, that is  
15 what I would like included.

16 MR. KLIPPENSTEIN: So I have in my notes  
17 that we undertook to make reasonable  
18 inquiries as to whether there were web  
19 captures related to the 2010 review and, if  
20 so, to produce them.

21 667. MR. KENT: Okay, well, then it may be  
22 that the last Q&A will assist in that, as  
23 the witness is clearly...sorry, pause for a  
24 second.

25

## Public

L. Nikolova - 185

1 BY MR. KENT:

2 668. Q. Ms. Nikolova, when you mentioned  
3 reviewing some web captures, was that for the  
4 purposes of preparing for today?

5 A. Not specifically that, just  
6 seeing...

7 669. Q. Recently, a long time ago?

8 A. I suppose in the last few months, as  
9 far as I can recall.

10 670. Q. And did you see them in your, what I  
11 am going to loosely call your file at work?

12 MR. KLIPPENSTEIN: I don't think that is  
13 relevant where she saw them. We have given  
14 the undertaking to make reasonable  
15 inquiries.

16 671. MR. KENT: I just want to see whether  
17 she had thought she had seen them in the  
18 production set or...

19 MR. KLIPPENSTEIN: No. /R

20 672. MR. KENT: ...elsewhere.

21 MR. KLIPPENSTEIN: Well, I mean, as part  
22 of the undertaking if we come across them  
23 and they are in the production set, we can  
24 point you to them. U/T

25 673. MR. KENT: Okay, and you will work with

## Public

L. Nikolova - 186

1 the witness, obviously, to go look for the  
2 ones she saw?

3 MR. KLIPPENSTEIN: Of course.

4 674. MR. KENT: Okay.

5

6 BY MR. KENT:

7 675. Q. I am really just trying to zero in  
8 on this. Is there information the Commissioner says  
9 relates to the nature or quality of the 2009 version  
10 of the fee display which only arose after 2010?

11 MR. KLIPPENSTEIN: I don't think the  
12 question is relevant because to me it goes  
13 to the Commissioner's knowledge at a  
14 particular point in time. And what is  
15 relevant for your estoppel argument is what  
16 was communicated, and what Ticketmaster  
17 made of those communications. What is  
18 relevant for the misleading issue is  
19 whether or not the reps at issue are  
20 misleading. So, I am going to refuse that  
21 on the basis of relevance. /R

22 676. MR. KENT: Okay. Well, we are also  
23 relying on what wasn't said. It is the dog  
24 that didn't bark, from the Sherlock Holmes  
25 story. But I have your refusal.

## Public

L. Nikolova - 187

1 BY MR. KENT:

2 677. Q. When did the Bureau first consider  
3 that the 2009 fee displays were misleading?

4 MR. KLIPPENSTEIN: That is refused on  
5 substantially the same basis of relevance. /R

6

7 BY MR. KENT:

8 678. Q. When did the Bureau open its file as  
9 to whether or not the fee displays were misleading  
10 on the ticketmaster.ca, the ticketsnow site or the  
11 ticketweb site?

12 MR. KLIPPENSTEIN: That is refused on  
13 the basis of relevance. /R

14

15 BY MR. KENT:

16 679. Q. Has anything changed since 2010 as  
17 to whether or not the 2009 or 2010 fee display was  
18 misleading?

19 MR. KLIPPENSTEIN: That is refused on  
20 the basis of relevance. /R

21

22 BY MR. KENT:

23 680. Q. What triggered the Bureau to open a  
24 file into whether the fee display is misleading?

25 MR. KLIPPENSTEIN: It is the same

1 refusal. /R

2

3 BY MR. KENT:

4 681. Q. Can you confirm that the first time  
5 the Bureau indicated to Ticketmaster that the Bureau  
6 believed the fee displays were misleading was in [REDACTED]  
7 [REDACTED] the middle part of 2017?

8 MR. KLIPPENSTEIN: Do you know?

9 THE DEONENT: I am sorry, could you  
10 please restate the question?

11 682. MR. KENT: Sure.

12

13 BY MR. KENT:

14 683. Q. I don't have it handy, [REDACTED]  
15 [REDACTED] [REDACTED] [REDACTED]  
16 [REDACTED] [REDACTED]  
17 [REDACTED] [REDACTED]  
18 [REDACTED]  
19 [REDACTED] [REDACTED] did the Bureau  
20 indicate to Ticketmaster that its fee displays were  
21 misleading [REDACTED] We can just use  
22 that as the marker.

23 A. Just one clarification, I am aware  
24 of [REDACTED] [REDACTED], and subject to that  
25 clarification I don't know the answer to the rest of

1 your question.

2 684. MR. KENT: Okay. So, May, 2017. So, I  
3 guess I would like an undertaking as to  
4 whether that as the first communication, I  
5 mean, ever, or whether there were prior  
6 communications to Ticketmaster with respect  
7 to the fee display.

8 MR. KLIPPENSTEIN: We will let you know  
9 if we become aware of any prior  
10 communications on that topic /R

11 MR. CHISHOLM: And for clarity, I  
12 believe the date is May 12, 2017, [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]

17 MR. KLIPPENSTEIN: Thanks. So we will  
18 use that date as the pont of reference,  
19 then.

20  
21 BY MR. KENT:

22 685. Q. So that is a little over eight years  
23 after Ms. Rosen got a screen capture campaign  
24 running, as described in Exhibit 114. Why did the  
25 Bureau take eight years to raise this complaint with

## Public

L. Nikolova - 190

1 Ticketmaster?

2 MR. KLIPPENSTEIN: That is refused on

3 the basis of relevance. /R

4 686. MR. KENT: Okay, let's look ta a couple

5 of items in the Notice of Application. If

6 we could put that back in front of the

7 witness, please?

8 MR. KLIPPENSTEIN: Just off the record

9 for a second.

10 687. MR. KENT: Yes.

11

12 --- upon recessing at 3:05 p.m.

13 --- A BRIEF RECESS

14 --- upon resuming at 3:15 p.m.

15

16 LINA NIKOLOVA, resumed

17 CONTINUED EXAMINATION BY MR. KENT:

18 688. Q. Okay, Ms. Nikolova, we are going to

19 take a look at a few new items, many of which will

20 come out of the Notice of Application. So, while we

21 were on break I directed you to paragraph 25 of the

22 Notice of application. Have you had a chance to

23 look at that?

24 A. I have looked at it, yes.

25 689. Q. Okay. This is really just a

## Public

L. Nikolova - 191

1 platform for me asking a question. You will see  
2 that the allegation here is that the so-called  
3 non-optional fees often increase the cost of tickets  
4 by certain percentages. I think the allegation here  
5 is by over 20 percent and then in some cases over 65  
6 percent. Do you see that?

7 A. I see that.

8 690. Q. And what I would like to know is  
9 whether the absolute amount or, alternatively, the  
10 percentage of the so-called non-optional fees  
11 compared to the face value of the ticket, is part  
12 what is said to be misleading? In other words, is  
13 it the size of the non-optional fees that matters,  
14 or is that just information but not part of what is  
15 misleading? And it may be that your counsel will  
16 want to help you with this. I don't know.

17 MR. KLIPPENSTEIN: Our position is that  
18 the amount of the proportionate increase to  
19 the cost by fees is part of what makes it  
20 misleading.

21 691. MR. KENT: So, different events have  
22 different fees that, at different times,  
23 have been disclosed later in the process,  
24 as opposed to with the face value. What  
25 proportion increase caused by the

## Public

L. Nikolova - 192

1 non-optional fees is it that amount to a  
2 misleading statement? In other words, how  
3 do I know whether a...what size of  
4 non-optional fee is misleading?

5 MR. KLIPPENSTEIN: Well, the  
6 Commissioner refers to that as "drip  
7 pricing". I am not sure that the  
8 Commissioner has a position on any amount  
9 of drip pricing, or any particular amount  
10 of drip pricing that would be permitted  
11 under the Act.

12 692. MR. KENT: Okay, but I need to know what  
13 I am defending myself against, what I am  
14 defending my client against. So, does the  
15 Commissioner say that any amount of drip  
16 pricing is misleading within the meaning of  
17 the provisions of the Act that are pleaded?  
18 And, if not, what is the threshold?

19 MR. KLIPPENSTEIN: The short answer is  
20 there is no threshold.

21 693. MR. KENT: So is the other short answer,  
22 then, that all drip pricing is offside,  
23 regardless of the percentage of the total  
24 represented by the so-called "dripped"  
25 portion of the pricing?

## Public

L. Nikolova - 193

1 MR. KLIPPENSTEIN: We are getting a  
2 little bit into argument here. I mean,  
3 there is not threshold...

4 694. MR. KENT: I just want to know the  
5 position that I have to meet.

6 MR. KLIPPENSTEIN: Yes.

7 695. MR. KENT: I don't propose to get into  
8 an argument about whether the position is  
9 good, based or indifferent. I just need to  
10 know what I am meeting.

11 MR. KLIPPENSTEIN: M'hmm.

12 696. MR. KENT: And because percentages have  
13 been pleaded, I wanted to know if that was  
14 just for recolour? And I don't need that  
15 in a negative way, but just whether that  
16 was colour, or whether that is part of the  
17 misconduct that is pleaded.

18 MR. KLIPPENSTEIN: Yes, and you have our  
19 pleadings, and I don't think the  
20 Commissioner...I don't think there is an  
21 amount of fees that can be dripped that the  
22 Commissioner would say is okay.

23 697. MR. KENT: The expression "drip pricing"  
24 where does that come from? It is in your  
25 pleading. Do you know?

## Public

L. Nikolova - 194

1 MR. KLIPPENSTEIN: Is that relevant,  
2 where certain phrases come from?

3 698. MR. KENT: Yes, because I want...I would  
4 like to know whether that is thought to be  
5 some sort of industry phrase. It is a  
6 pejorative phrase. I want to know whether  
7 it is an industry phrase, in the  
8 Commissioner's view.

9 MR. KLIPPENSTEIN: You can ask the  
10 witness what she understands by the term  
11 "drip pricing".

12 699. MR. KENT: No, that is not what I want  
13 to know, but I will ask the witness  
14 anyways.

15

16 BY MR. KENT:

17 700. Q. Ms. Nikolova, do you know where the  
18 expression drip...have you heard the expression  
19 "drip pricing" before"?

20 A. I have heard of the expression "drip  
21 pricing" before.

22 701. Q. Had you ever heard of it before  
23 getting involved in the file that has led to the  
24 current application?

25 A. I can't recall hearing it before

## Public

L. Nikolova - 195

1 being involved with this investigation.

2 702. Q. What is your understanding as to the  
3 prominence of that phrase? Where did it come from?

4 MR. KLIPPENSTEIN: What is the relevance  
5 of prominence of phrases used in the  
6 pleadings?

7 703. MR. KENT: Well, there is various  
8 assertions by the Commissioner as to what  
9 goes on in the ticketing industry, and the  
10 Commissioner uses this phrase "drip  
11 pricing" in his pleading. And I would like  
12 to know whether that phrase is said to be a  
13 phrase in terms of use in the ticketing  
14 industry, or does that come from some other  
15 place?

16 MR. KLIPPENSTEIN: I don't think it is  
17 relevant where a phrase in the pleading  
18 comes from. So, it is refused on that  
19 basis.

/R

20 704. MR. KENT: Is it said that that phrase  
21 is in general use in the ticketing  
22 industry?

23 MR. KLIPPENSTEIN: I don't think that is  
24 relevant, what...how a practice...the word  
25 used to describe a practice...

## Public

L. Nikolova - 196

1       705.           MR. KENT:       Right.  But you put a label  
2                    on the practice.  I am just wanting to know  
3                    whether you say that label is in common use  
4                    in the ticketing industry?

5                    MR. KLIPPENSTEIN:       Okay, and I have  
6                    refused.  I don't think it is relevant.           /R

7       706.           MR. KENT:       Okay.  I want to get a feel,  
8                    then, for the scope of the allegations of  
9                    misconduct before we moved forward.  I  
10                   asked you a long time ago about the start  
11                   date for the purposes of litigation, and we  
12                   have got 2009 or so, and I know I have got  
13                   an undertaking on that.  Things have  
14                   changed somewhat since the Notice of  
15                   Application was filed, so I need to ask  
16                   about what the end date is, if any, for the  
17                   matters the Commissioner says are at issue  
18                   in this application.  Do you know?

19                   THE DEPONENT:       Can you restate your  
20                   question to make sure I understand it.  The  
21                   end date for the allegations in the  
22                   application?

23

24       BY MR. KENT:

25       707.           Q.           What is the end date for the

## Public

L. Nikolova - 197

1 practices that the Commissioner says in this  
2 application are offside the Competition Act, if any?  
3 Or does the Commissioner say that practices are  
4 still offside? Do you know the answer?

5 A. I don't know that there is an end  
6 date.

7 708. Q. You don't know one way or the other?

8 A. I don't believe there is an end  
9 date.

10 709. Q. Okay. So, then let me ask this the  
11 other way around, to make sure I have got this  
12 straight. Does the Commissioner say that the fee  
13 display as currently shown on the three  
14 websites...and whenever I say that I include the  
15 mobile versions and the apps...are still in  
16 contravention to the Competition Act?

17 MR. KLIPPENSTEIN: Do you have an image  
18 of what those websites currently look like?

19 710. MR. KENT: Well, I mean, you know what  
20 the current version...in other words, the  
21 post-July 1st, 2018 version looks like.  
22 Does the Commissioner says the post-July  
23 1st, 2018 version is offside? Is it part  
24 of this application? I am going to call  
25 it, perhaps, inspirationally the

## Public

L. Nikolova - 198

1 Ontario-complaint version.

2 MR. KLIPPENSTEIN: Can I look at it?

3 711. MR. KENT: Yes.

4 MR. KLIPPENSTEIN: Okay, so the answer

5 is there is no end date to the

6 Commissioner's application but if you are

7 asking for an undertaking to advise whether

8 the Commissioner's position has changed

9 with respect to the display currently, we

10 would be prepared to give that

11 undertaking. U/T

12 712. MR. KENT: Yes, I would like the

13 undertaking, thank you. And if the current

14 version of the display is not included

15 within the allegations of misconduct that

16 are in the Notice of Application, if you

17 could just confirm at what point from the

18 Commissioner's perspective the so-called

19 problems stopped? I would appreciate that.

20 MR. KLIPPENSTEIN: We will do that. U/T

21 713. MR. KENT: Thank you. And if the

22 post-July 1st, 2018 manner of display turns

23 out still to be within the behaviour that

24 the Commissioner says is...contravenes the

25 Act, since it postdates the Notice of

## Public

L. Nikolova - 199

1 Application, if you could advise in what  
2 respect it contravenes the Act, because it  
3 is obviously quite different from previous  
4 displays.

5 MR. KLIPPENSTEIN: We will do so. U/T

6 714. MR. KENT: Thank you. Quebec, as we  
7 have talked about a little bit, the law has  
8 been different in Quebec than in the other  
9 provinces for some time, and the display  
10 has been different in Quebec than in the  
11 other provinces for some time. Is the,  
12 what I will call the Quebec fee display  
13 included within the Commissioner's  
14 allegations of misconduct in this notice?

15 MR. KLIPPENSTEIN: Well, the order the  
16 Commissioner is looking for, which you will  
17 see in 1A is a declaration...I am sorry, 1B  
18 of the Notice of Application.

19 715. MR. KENT: Yes?

20 MR. KLIPPENSTEIN: It includes an order  
21 prohibiting each respondent from engaging  
22 in the reviewable conduct or substantially  
23 similar review of conduct in Canada. And  
24 so that is still the order that the  
25 Commissioner is seeking.

## Public

L. Nikolova - 200

1                   As I mentioned earlier, at the time  
2                   of drafting the pleadings, the  
3                   Commissioner's understanding was that the  
4                   model...that in Quebec fees were displayed  
5                   upfront. Since then it has come to the  
6                   Commissioner's attention that for at least  
7                   a period that was not the case. So the  
8                   order the Commissioner is seeking would  
9                   cover Quebec as well.

10       716.           MR. KENT:       For that period where there  
11                   was a blip, or for the entire period where  
12                   there was conformity with Quebec provincial  
13                   law?

14                   MR. KLIPPENSTEIN:       For the period.

15       717.           MR. KENT:       Thank you. I have some  
16                   questions now about the pleading, and we  
17                   will just take it in sequence. I think I  
18                   have got my questions more or less in  
19                   sequence. Through the Notice of  
20                   Application and then a couple of questions  
21                   in the reply afterwards. But just to step  
22                   back for a second.

24       BY MR. KENT:

25       718.           Q.           Ms. Nikolova, either from your work

## Public

L. Nikolova - 201

1 on this file, or from listening to the examination  
2 for discovery that you sat in on, I take it you are  
3 aware that there have been various kinds of fee  
4 presentation by Ticketmaster on these sites over the  
5 period in question?

6 A. I am aware that there have been  
7 various fee presentations on the respondents'  
8 websites and mobile platforms over the time period.

9 719. Q. And that some of these, you know,  
10 have had their own little labels or buzzwords  
11 associated with them to describe them, right?

12 A. I am familiar with some of these  
13 buzzwords used to describe some of these fee  
14 displays.

15 720. Q. So, for instance, [REDACTED]

16 [REDACTED]

17 A. That is right.

18 721. Q. You have heard about that?

19 A. I have heard about that.

20 722. Q. And you have heard that that was

21 [REDACTED]

22 [REDACTED]

23 A. Those dates sounds correct to me on  
24 the basis of documents that I have reviewed, and my  
25 knowledge of the file, approximately.

## Public

L. Nikolova - 202

1 723. Q. And you are familiar that there was  
2 subsequently [REDACTED] [REDACTED]  
3 [REDACTED]

4 A. I am aware of that phrase for a  
5 particular fee display.

6 724. Q. And that after that there was a  
7 period, and it gets various names, but it sometimes  
8 gets described, including by Mr. Joyal in his  
9 questions, as [REDACTED]

10 A. I am familiar with that term  
11 generally.

12 725. Q. And then there was a period that  
13 sometimes gets called [REDACTED] [REDACTED]

14 A. I am aware that that is also a word  
15 used to describe a particular fee display.

16 726. Q. And I won't hold you to the  
17 particular start and stop dates, or to exactly which  
18 one followed which one, but these are things that  
19 you are aware that rolled out more or less in  
20 sequence? They weren't all running all the same  
21 time?

22 A. Generally, yes. I am not sure that  
23 i recall the exact differences, both in substance  
24 and in timing, [REDACTED]  
25 [REDACTED] I think...

## Public

L. Nikolova - 203

1 727. Q. Okay.

2 A. ...I can't recall, right now, recall  
3 that distinction precisely.

4 728. Q. So, you were the...you are the  
5 primary officer on this file. Were you aware of the  
6 fact that there were different kinds of fee  
7 representations that rolled out and succeeded each  
8 other from time to time on the Ticketmaster sites  
9 over the period in question, prior to the discovery  
10 phase of this case?

11 MR. KLIPPENSTEIN: What is the relevance  
12 of when the knowledge was obtained?

13 729. MR. KENT: Well, it is going to come to  
14 how the pleadings are prepared. Was the  
15 Bureau of these phrases prior to the  
16 discovery phase of this case? Prior to  
17 filing this Notice of Application, let's  
18 put it that way.

19 MR. KLIPPENSTEIN: I am going to refuse  
20 on the basis of relevance. /R

21 730. MR. KENT: Just turn to paragraph 26 of  
22 the Notice of Application, please. And at  
23 the very end there is a reference to a  
24 countdown clock, and I am going to have a  
25 question for you about that when you are

1                   ready.

2                   THE DEPONENT:       Okay, I am done paragraph

3                   26.

4

5       BY MR. KENT:

6       731.               Q.       And the countdown clock, just so are  
7                   agreed on what this thing is, the Commissioner  
8                   refers to is the timer that shows up on the website  
9                   and that informs a consumer of how much time they  
10                  have left to complete the transaction.

11                  A.       So my understanding of the timer is  
12                  that...I have seen it on various web pages, and  
13                  the...and on the websites and yes, as I recall, it  
14                  appears in the checkout pages.

15       732.               Q.       Right, but I didn't ask you where it  
16                  appears. I asked you to agree with me that what is  
17                  being referred to in the pleading is a timer that  
18                  tells a consumer how much time she has left to  
19                  complete her transaction.

20                  A.       As I recall, the timer is specific  
21                  to the different web pages. If the consumer is on a  
22                  particular web page there is a countdown clock for  
23                  how long she or he has to complete that particular  
24                  web page.

25       733.               Q.       Page, okay. And in the meantime the

1 ticket choices that the consumer has provisionally  
2 made are kind of notionally reserved for them,  
3 right? That is the point of the timer? "You have  
4 this much time to complete this page, during which  
5 we will hold your tickets for you, and no one else  
6 can get them while you are figuring things out". Is  
7 that your understanding of how it works?

8 A. I don't know the rationale for why  
9 the time clock is there. My understanding is that  
10 once tickets have been, as you put, "reserved" and  
11 someone is in checkout, the timer counts down how  
12 much time that person has to complete that web page.

13 734. Q. But you are aware though, that in  
14 the meantime, some other consumer who is on his own  
15 website cannot access those particular tickets that  
16 the first consumer has identified as something they  
17 are interested in buying. That is one of the points  
18 of the timer?

19 A. My understanding is that, yes, once  
20 a consumer has reserved tickets and is in checkout,  
21 those particular tickets, that those tickets are  
22 held for them.

23 735. Q. And the timer tells them how long  
24 they have, how long that reserved period will last,  
25 page by page?

## Public

L. Nikolova - 206

1                   A.       By inference, I...that is my  
2 understanding that would be true.

3       736.           Q.       Is the Commissioner saying that the  
4 existence of a timer or a countdown clock is a price  
5 representation?

6                   A.       I don't know that I would describe  
7 it as a price representation. It appears on web  
8 pages in checkout.

9       737.           Q.       Is the existence...does the  
10 Commissioner take the position that the existence of  
11 a timer is misleading or deceptive to consumers?

12                   MR. KLIPPENSTEIN:     You have our  
13 pleading. It says...

14       738.           MR. KENT:       I don't understand...no, I am  
15 trying to figure out what the pleading  
16 means. So, does...I see the allegation of  
17 increasing pressure. Does the Commissioner  
18 take the position that increasing pressure  
19 on consumers to complete a purchase to  
20 quote from the pleading, constitutes a  
21 misleading or deceptive...

22                   MR. KLIPPENSTEIN:     Yes, I am going to  
23 refuse that question. Our position is set  
24 out in our pleadings, and we are not going  
25 to interpret...

## Public

L. Nikolova - 207

1       739.           MR. KENT:       Well...

2                   MR. KLIPPENSTEIN:     ..the witness is not

3                   going to interpret the pleadings.                   /R

4       740.           MR. KENT:       With respect, the pleading

5                   does not explain whether the countdown

6                   clock, which is said to increase pressure,

7                   is or is not part of what is offside the

8                   Competition Act.  So, I am just trying to

9                   find out...again, I need to know what the

10                  case is that I am meeting.

11                 MR. KLIPPENSTEIN:     Yes.  I mean, I guess

12                   I am saying you have our pleadings where

13                   price representations is defined at

14                   paragraph 3, and then the impact the

15                   Commissioner says the countdown clock, I

16                   think, is set out clearly in the paragraph

17                   that you have taken us to.

18       741.           MR. KENT:       Is there any remedy that the

19                   Commissioner seeks with respect to the

20                   countdown clock?

21                 MR. KLIPPENSTEIN:     Well, you have the

22                   remedies set out in paragraph 1 that are

23                   sought.

24       742.           MR. KENT:       I do and they are...this is

25                   not a criticism, but they are spectacularly

## Public

L. Nikolova - 208

1                   unhelpful, because all they say is "it  
2                   should comply with the law", but I want to  
3                   know whether the Commissioner takes the  
4                   position that any part of the remedies  
5                   sought affects the countdown clock?

6                   MR. KLIPPENSTEIN:        So in our discovery  
7                   we have asked for certain facts in relation  
8                   to the countdown clock. Once we have that  
9                   information we can provide our position  
10                  whether the countdown clock is part of the  
11                  relief sought.

12         743.       MR. KENT:        But you are refusing to tell  
13                  me whether the existence of a countdown  
14                  clock is...violates the provisions of the  
15                  Competition Act that have been raised in  
16                  this case?

17                  MR. KLIPPENSTEIN:        Well, our allegations  
18                  are as set out. I am not giving you a  
19                  legal opinion in the abstract, or...

20         744.       MR. KENT:        I am not asking for a legal  
21                  opinion. I want to know the Commissioner's  
22                  position so that I know what I need to  
23                  respond to. If this is sizzle and not  
24                  stink, if it is extraneous information but  
25                  it is not the misconduct, then that gives

## Public

L. Nikolova - 209

1 me information I need in order to prepare  
2 my response but I am entitled to know how  
3 to respond.

4 MR. KLIPPENSTEIN: And we are still  
5 awaiting information from the  
6 Commissioner's discovery, and so we will  
7 review our position in the light of that  
8 information and reply. U/T

9 745. MR. KENT: Okay, but as we sit here  
10 today what is the position? This is...the  
11 Commissioner thought to put it in a  
12 pleading so I am entitled to know, sitting  
13 here today, how to start preparing.

14 MR. KLIPPENSTEIN: So my answer, as we  
15 sit here today, is that the pleading sets  
16 out the Commissioner's position, and we are  
17 not going to sit here and interpret the  
18 pleadings. /R

19 746. MR. KENT: Does it matter how long a  
20 countdown clock is with respect to the  
21 misleadingness or not of representations?  
22 In other words, if there is a problem with  
23 the countdown clock is it the fact of the  
24 clock, or is it the duration of the clock?  
25 And if it is the latter, what is the

## Public

L. Nikolova - 210

1 duration that would be completed?

2 MR. KLIPPENSTEIN: I mean, I think the  
3 pleadings make it clear that the countdown  
4 clock exists in a certain set of  
5 circumstances, and that we are not  
6 prepared, as we sit here, to give an  
7 opinion on any particular duration in a  
8 particular set of circumstances where a  
9 countdown clock would or would not be  
10 acceptable to the Commissioner.

11 747. MR. KENT: Okay, and you are not going  
12 to give me the Commissioner's current  
13 position on whether the countdown clock  
14 violates the Competition Act?

15 MR. KLIPPENSTEIN: Well, as I have said,  
16 we have asked for certain facts to be  
17 provided. Once those facts have been  
18 provided we expect to be in a position to  
19 provide that position.

20 748. MR. KENT: So then your undertaking to  
21 give me the Commissioner's position once  
22 you get our undertakings, is that the  
23 answer?

24 MR. KLIPPENSTEIN: Once we have had a  
25 chance to review the facts, yes.

## Public

L. Nikolova - 211

1       749.               MR. KENT:       Well, I don't accept that as  
2                               sufficient, but I take it for what it is.  
3                               Go to paragraph 27, please. Let me know  
4                               when you have had a chance to review that.

5                               THE DEPONENT:       I have reviewed paragraph  
6                               27.

7       750.               MR. KENT:       Okay.  
8

9       BY MR. KENT:

10      751.               Q.       What facts are you aware of relating  
11                               to the basis on which consumers make their  
12                               purchasing decisions as mentioned beginning in the  
13                               fourth line of this paragraph?

14                               A.       That, for instance, thinking back  
15                               to...this is with the respondents' websites, when  
16                               they are on the what I will call the "event details  
17                               page", there are prices that appear that often do  
18                               not include non-optional fees, and consumers make  
19                               ticket selections from that page.

20      752.               Q.       Okay. And what information are you  
21                               aware of as to the basis on which those consumers  
22                               make their purchasing decisions? You have told me  
23                               that there is an EDP on which there is an initial  
24                               price presented, but I would like to know what  
25                               information you are aware of as to the basis on

## Public

L. Nikolova - 212

1           which the consumers who hit that page actually make  
2           their purchasing decisions.

3                     A.       Well, in order to proceed through  
4           checkout and buy the tickets, people have to select  
5           tickets from the event details page, where prices, I  
6           will say typically exclude non-optional fees.

7       753.           Q.       Yes, I hear that, but I would like  
8           to know what information you have as to the basis on  
9           which consumers make their purchasing decisions.  
10          You can simply describe to me the way the EDP looks.

11                    A.       Well, as part of making their  
12          purchasing decisions, consumers navigate through the  
13          purchase process, and as part of navigating through  
14          that purchase process, they start on an event  
15          details page where the prices basically don't  
16          include fees.

17       754.           Q.       Okay. And to go through that  
18          process you have described, they actually have to go  
19          through more pages as well that...

20                    A.       Consumers have to go through various  
21          pages to...

22       755.           Q.       Right.

23                    A.       ...buy tickets, that is right.

24       756.           Q.       And at the ultimate page they input  
25          their credit card information and their e-mail

## Public

L. Nikolova - 213

1 address, or whatever else it is they have to do to  
2 complete the purchase, right?

3 A. At the very last page consumers have  
4 to enter in credit card details, that's right.

5 757. Q. And I think it is not controversial  
6 and that, at minimum, by the time you get there the  
7 consumer has seen all of the charges at some point  
8 or another in the process, before they complete by  
9 putting in the credit card information, right?

10 A. It is hard to speak, generally, for  
11 what consumers have seen or don't see.

12 758. Q. They have...they will have been  
13 shown, how about if I put it that way?

14 A. Non-optional fees are shown at the  
15 very end of the process of checkout, that is right.

16 759. Q. Well, I don't want to get hung up on  
17 any particular fee display because you and I agree  
18 that the fee displays have changed over time, and  
19 where the fees are shown has changed over time,  
20 correct?

21 A. That is right.

22 760. Q. So let's...

23 A. I am thinking of a particular  
24 instance.

25 761. Q. You are. And so let's be more

## Public

L. Nikolova - 214

1 generic. In all of the fee displays across the  
2 period, by the time the consumer gets to the end and  
3 puts in her payment information and completes the  
4 acquisition of the tickets, that purchaser has been  
5 shown all of the various fees and charges and  
6 prices, and must have a total in hand, right?

7 A. I am not aware of any instances  
8 where that is not the case.

9 762. Q. Okay. Well, I will work with that.  
10 So, given that a purchaser must go through several  
11 steps, and given that at the end of the piece the  
12 purchaser will have been shown all of the relevant  
13 fees and charges, leaving aside where and when and  
14 how, I would like to come back to my question. What  
15 information do you have as to the basis for  
16 consumers' purchasing decisions? You simply,  
17 before, described to me what the first page looks  
18 like. We have now just had a discussion about what  
19 the last page looks like. I would like to know what  
20 information you are aware of as to the basis on  
21 which consumers make purchasing decisions.

22 A. Well, as I understand...or, based on  
23 my understanding, there are many factors that can go  
24 into, I will call it purchasing decision.

25 763. Q. Okay.

## Public

L. Nikolova - 215

1                   A.       One of which presumably as consumers  
2                   start to navigate through the process, the first  
3                   prices they would see would often exclude  
4                   non-optional fees.

5       764.           Q.       That may be factually true, but you  
6                   still have not addressed my question, which is the  
7                   basis for the decision to purchase. I am just keep  
8                   on repeating the words right in front of me here.  
9                   Do you have any information that you are aware of,  
10                  as to the basis on which consumers make their  
11                  purchasing decisions?

12                  MR. KLIPPENSTEIN:       Mr. Kent, just so I  
13                  understand the question, is the question  
14                  you are asking what is the Commissioner's  
15                  basis for alleging the consumers have made  
16                  their purchasing decision?

17       765.           MR. KENT:        No, I am looking for the  
18                   facts. So...that might be factual, but  
19                   yes, the factual basis.

20                  MR. KLIPPENSTEIN:       Not the basis, but  
21                  the facts that the Commissioner was aware  
22                  of with respect to consumers having made  
23                  their purchasing decision that wasn't on  
24                  the basis as set out?

25       766.           MR. KENT:        Yes, that is right. So, I am

## Public

L. Nikolova - 216

1 just sort of saying, okay, if there is a  
2 reference here to the basis on which  
3 consumers make their purchasing decisions,  
4 I would like to know all of the information  
5 that the Commissioner has with respect to  
6 the basis on which consumers make their  
7 purchasing decision.

8 THE DEPONENT: It is hard to speak for  
9 consumers generally and all of the bases on  
10 which they make purchasing decisions. An  
11 example, a factor, or a fact, would be that  
12 when consumers land on the event details  
13 page of various websites, again, the prices  
14 they see wouldn't include non-optional fees  
15 and that is...

16  
17 BY MR. KENT:

18 767. Q. So, that is something they see, but  
19 they might also see the colour orange, depending on  
20 which team's website it is, and you wouldn't  
21 necessarily say that the purchase decision was based  
22 on the colour orange, without knowing more about the  
23 basis. So, I am asking you not what do they see,  
24 but on what basis do they decide? Or do you know?  
25 Do you have information on that subject?

## Public

L. Nikolova - 217

1                   A.       It is hard for me to say  
2                   comprehensively on what basis consumers generally  
3                   make decisions.

4       768.           Q.       Well, that is what is pleaded here  
5                   so that is why I am asking. It says generally  
6                   consumer, and it says dogmatically. "Consumers make  
7                   their purchasing decisions on the basis of", et  
8                   cetera. So I am asking you, what information does  
9                   the Commissioner have with respect to the basis on  
10                  which consumers make their purchasing decisions? If  
11                  the answer is you are not aware of any, so be it,  
12                  but...or if the answer is you have got some  
13                  information, I am all ears.

14                  A.       I don't recall...I am not aware of  
15                  any facts related to that particular statement,  
16                  other than what I have said, at least at this time.

17                  MR. KLIPPENSTEIN:     Paul, could we have a  
18                  second?

19       769.           MR. KENT:        Yes.

20

21       ---   upon recessing at 3:52 p.m.

22       ---   A BRIEF RECESS

23       ---   upon resuming at 3:59 p.m.

24

25       LINA NIKOLOVA, resumed

## Public

L. Nikolova - 218

1 CONTINUED EXAMINATION BY MR. KENT:

2 MR. KLIPPENSTEIN: So, David, if I may?

3 Two things; one thing is I am not...I am

4 just concerned that Ms. Nikolova hasn't

5 understood the question that you are

6 asking, so I will, perhaps, try to see if I

7 can rephrase it. Is that okay?

8 770. MR. KENT: Sure.

9 MR. KLIPPENSTEIN: So, what you want to

10 know is if there is any facts the

11 Commissioner knows in relation to consumers

12 making their buying...purchasing decision

13 essentially on the EDP...

14 771. MR. KENT: That would...

15 MR. KLIPPENSTEIN: ...as opposed

16 broadly.

17 772. MR. KENT: That would be an aspect of

18 it.

19 MR. KLIPPENSTEIN: Yes.

20 773. MR. KENT: But I would like to more

21 generally the facts the Commissioner has

22 with respect to how purchasers make their

23 purchasing decisions. Now, that might

24 include...

25 MR. KLIPPENSTEIN: M'hmm.

## Public

L. Nikolova - 219

1 774. MR. KENT: ...the relationship of those  
2 decisions to the EDP, but it was a bit  
3 broader.

4 MR. KLIPPENSTEIN: And just so it  
5 doesn't come as a surprise, I think that  
6 you can expect that some of these facts  
7 will be the subject of expert evidence that  
8 we will, of course, provide in accordance  
9 with the Rules and the Schedule. Of  
10 course, today you are asking about the  
11 facts, so...

12 775. MR. KENT: Yes. So, ultimately I think  
13 the witness has said she is not aware of  
14 any, so I would ask for an undertaking as  
15 to what the Commissioner has that this  
16 witness just might not know about.

17 MR. KLIPPENSTEIN: Okay, we will provide  
18 that undertaking, subject to any privilege  
19 that might apply.

U/T

20 776. MR. KENT: Okay.

21

22 BY MR. KENT:

23 777. Q. Okay, Ms. Nikolova, same paragraph  
24 in the next phrase in the same sentence there is a  
25 reference to consumers not wishing...sorry:

## Public

L. Nikolova - 220

1                    "...Often do not wish to lose their tickets  
2                    once they learn the truth..."

3                    Are you aware of any information that the  
4                    Commissioner has as to the wishes of consumers not  
5                    to lose their tickets, so to speak?

6                    A.            Well, my understanding in relation  
7                    to this phrase is that once consumers get to sort of  
8                    the last page of the purchasing process, they feel  
9                    like they have something that they don't want to  
10                   give up. That is my understanding.

11            778.            Q.            All right. And what is your  
12                   understanding based on?

13                   A.            Well, for example, I have reviewed  
14                   some academic papers that speak about some of these  
15                   effects, perhaps described in other words.

16            779.            Q.            Which academic papers?

17                   A.            I can't recall the names off the top  
18                   of my head.

19            780.            Q.            Does it include a paper called "The  
20                   Framing Effect of Price Format" by Marco Bertini and  
21                   Luc Wathieu?

22                   A.            I can't recall the exact names and  
23                   authors.

24            781.            Q.            If I showed it to you, would you  
25                   have a shot at recognizing it, or do you think you

## Public

L. Nikolova - 221

1 just won't?

2 A. I wouldn't know until I looked at  
3 the document, I suppose.

4 782. Q. If you recognize it then I will read  
5 the number out, and if you don't recognize it, I  
6 won't. At least not right away.

7 A. I don't recall what papers or  
8 articles I would have reviewed in the course of the  
9 investigation.

10 783. Q. Okay. For the record I was showing  
11 the witness Bureau production PEJG00479\_00000318.  
12 It is an article dated 2006 by Marco Bertini and Luc  
13 Wathieu, called "The Framing Effect of Price  
14 Format", and it is 24 pages long. This came out of  
15 the Bureau's files, and do you know, as part of your  
16 work as the principal officer on this matter, were  
17 academic...or, sorry, was the academic literature  
18 being canvassed as part of the investigation?

19 A. I don't recall that we did a...as  
20 you put it, a canvassing of academic literature.  
21 No, I don't recall if we had done that.

22 784. Q. Well, then in what context did you  
23 look at academic literature, in order to generate  
24 the understanding that you described to me earlier?

25 A. I would have done research.

## Public

L. Nikolova - 222

- 1       785.               Q.       In your role as a principal  
2                        investigator on this file?
- 3                        A.       As a primary officer, yes.
- 4       786.               Q.       I am sorry, primary officer on this  
5                        file.
- 6                        A.       On this file, yes.
- 7       787.               Q.       Okay.
- 8                        A.       But I don't know that I would call  
9                        that a canvassing of literature.
- 10      788.               Q.       Okay. But you did some research  
11                        designed to find out if people had written about  
12                        this subject, right?
- 13                        A.       I did research to understand some of  
14                        the issues.
- 15      789.               Q.       And did you keep track of the  
16                        results of your research? In other words, what you  
17                        found and what you reviewed?
- 18                        A.       I don't recall that I kept track of  
19                        that.
- 20      790.               Q.       Did you keep copies of the articles  
21                        that you found and read?
- 22                        A.       I believe I would have copies.
- 23      791.               Q.       And without telling me the contents,  
24                        is it normal course to a note to file, or a note to  
25                        BIMS or a note to some place of your research and

## Public

L. Nikolova - 223

1           what you found?

2                   A.       In this investigation I wouldn't  
3           have made a note of the...in BIMS of the articles I  
4           would have reviewed.

5   792.           Q.       Well, a note of any kind to keep  
6           track of what you were finding?

7                   A.       I wouldn't have taken notes on it,  
8           no.

9   793.           Q.       Would you have recorded in any way  
10          the research done, or the impressions formed from  
11          the research?

12                   A.       I haven't recorded impressions of  
13          research.

14   794.           Q.       You just keep repeating my words  
15          back to me. I want to make sure you are not locking  
16          in on my words. Is there any way in which you have  
17          recorded or reported any of your research, or what  
18          you found by it, or any other aspect of the research  
19          that you just described?

20                   A.       I would have saved copies of the  
21          research, probably, on our shared drive.

22   795.           Q.       When you say "the research", do you  
23          mean the articles that you found, or your  
24          distillation of it in some way, your synthesis?

25                   A.       Copies of the articles.

## Public

L. Nikolova - 224

1 796. Q. And were there certain articles,  
2 then, that animated your understanding, as you  
3 describe it, that consumers feel like they are  
4 losing something?

5 A. Sorry, could you repeat the  
6 question?

7 797. Q. Sure. We started this line of  
8 questions by looking at the assertion that consumers  
9 often do not wish to lose their tickets, remember?

10 A. Yes.

11 798. Q. And you told me you had an  
12 understanding to that effect, and then we started to  
13 discuss what your understanding was based on.

14 A. That is right.

15 799. Q. So your understanding that consumers  
16 do not wish to lose their tickets, was that  
17 informed, in part, by the research that you have now  
18 described to me?

19 A. My understanding of the idea that  
20 consumers feel like they have something partly comes  
21 from the exact kind of papers that I would have  
22 looked at.

23 800. Q. Okay. Does the Commissioner have  
24 information other than the research that has been  
25 described, with respect to whether consumers, in

## Public

L. Nikolova - 225

1 fact, have this feeling like they will lose their  
2 tickets, to use that phrase?

3 A. I recall seeing complaints where  
4 consumers broadly talk about the idea of wanting  
5 tickets, and really should be going through the  
6 purchase flow.

7 801. Q. And did these consumers suggest that  
8 they would not have bought the tickets, or would not  
9 have bought them at that price had they known the  
10 total price on the first page?

11 A. I don't recall the exact substance  
12 of the complaints of...to that great of a detail, to  
13 be able to answer that question.

14 802. Q. Okay. Up to the extent those  
15 complaints are in the productions, could you  
16 identify them, or at least a representative number  
17 of them? And to the extent they are not in the  
18 productions, perhaps you could...

19 A. Perhaps I could clarify. When I say  
20 complaints, I mean, both complaints that I  
21 have...like, Bureau complaints that I have looked  
22 at, but also I have seen some complaints in the  
23 respondents' production.

24 803. MR. KENT: Okay. Could you go to the  
25 end of this paragraph? There is an



## Public

L. Nikolova - 227

1                                   privileges.                                   U/T

2       807.                   MR. KENT:       Thank you.

3

4       BY MR. KENT:

5       808.                   Q.       The second last sentence in the

6                           paragraph 27 of the application says that:

7                           "...Tripping prices in this fashion tends

8                           to mislead consumers about the true cost of

9                           the tickets..."

10                   And then here is the part I am focusing on:

11                           "...Because it results in consumers

12                           underestimating the total price..."

13                   And I wonder if you could help me with what

14                   information the Commissioner has with respect to

15                   whether consumers, in fact, underestimate the total

16                   price?

17                           A.       So some examples, again, as I

18                           mentioned, I have looked at some academic articles

19                           that speak to consumers underestimating total price

20                           in instances where initial prices do not include

21                           fees.

22       809.                   Q.       And is that because they assume that

23                           the first price they see is the total price, or is

24                           that because they just don't pay enough attention as

25                           they work their way through the process to the end

## Public

L. Nikolova - 228

1 where...by which point, of course, all the prices  
2 have been displayed. In other words, is it a  
3 processing problem for the consumer, or is it just  
4 that they stop thinking about the price after they  
5 see the first number?

6 A. I am not sure.

7 810. Q. Do you understand the distinction I  
8 am drawing?

9 A. Maybe you could rephrase one more  
10 time for me?

11 811. Q. Sure, let's work from the back...go  
12 back to something we read on before. By the time  
13 you get to the end of the process as a consumer, and  
14 punch in your credit card information and pay, you  
15 have, at that point, seen all of the charges, right?  
16 We are not aware of a situation where that isn't  
17 true?

18 A. That is right.

19 812. Q. And so by the time you punch  
20 out...it's colloquial, I know, sorry. But by the  
21 time you punch out you have been shown the total  
22 price?

23 A. Yes. I was going to say we have  
24 been shown the total price. I am not sure what  
25 consumers see or don't see.

## Public

L. Nikolova - 229

1 813. Q. Let's just worry about been shown.

2 So, by the time you check out at the end of the  
3 piece, you have been shown the total price, right?

4 A. Yes.

5 814. Q. And yet, the assertion is that  
6 consumers underestimate the total price, and so  
7 presumably that is underestimate the total price,  
8 even though the total price is, in fact, shown to  
9 them before they pay, right? That is what that must  
10 mean?

11 A. My understanding is that that is an  
12 effect that happens. When consumers see one price  
13 at the start of a process, subsequent to which there  
14 are fees added, they tend to underestimate the total  
15 price.

16 815. Q. Even though they are shown the total  
17 price at the end?

18 A. Even though they are shown the total  
19 price at the end, is my understanding.

20 816. Q. And is that based on the same  
21 research you described to me before when we were  
22 talking about the previous sentence? Or the same  
23 body of...

24 A. The same body basically, so yes,  
25 this body of articles that I have looked at, and my

## Public

L. Nikolova - 230

1 statements in respect of your questions, the last  
2 few questions, relate to the same set of articles.

3 817. MR. KENT: Okay. And we already have an  
4 undertaking on the research, so that is  
5 great. Thank you. And I take it with all  
6 these questions I am asking the witness of  
7 what she is aware, the Commissioner  
8 has...and there is, you know, limits to  
9 what she is aware of. I take it to the  
10 extent that the Commissioner has any  
11 additional or different information on  
12 these subjects, that you will let me know?  
13 I don't want to have to ask for an  
14 undertaking every single time, but I will  
15 if I...

16 MR. KLIPPENSTEIN: Right.

17 818. MR. KENT: ...if it will be simpler.

18 MR. KLIPPENSTEIN: We have undertaken to  
19 provide representative examples, but if  
20 there are other...and I guess in making  
21 that undertaking we won't restrict it to  
22 only representative examples that Ms.  
23 Nikolova personally is aware of.

24 819. MR. KENT: Yes, and I am not just  
25 restricting that to research. Just any

## Public

L. Nikolova - 231

1 information the Commissioner has as to  
2 whether or not consumers underestimate the  
3 total price when they are shown what I will  
4 call not the total price at the very  
5 beginning...obviously, like that.

6 MR. KLIPPENSTEIN: And it shouldn't  
7 surprise you that this is part of the  
8 Commissioner's case that may also be  
9 subject to expert evidence.

10 820. MR. KENT: No, no, and I understand it  
11 is going to be subject to any kinds of  
12 privilege, and whether it is an expert  
13 report that comes out when it comes out.  
14 Okay, can you turn with me now to page 11,  
15 paragraph 34 of the Notice of Application?

16

17 BY MR. KENT:

18 821. Q. Right ahead of paragraph 24 there is  
19 a title...sorry, 34, my mistake. So, if you go up  
20 towards the top of the page, you have got part 4,  
21 which are examples. That is the title, and then  
22 within that, you have got the next subtitle, the  
23 first subtitle, example. So, "Review the conduct  
24 before September, 2017". And my question is why  
25 September, 2017 was used as a before and after date?



## Public

L. Nikolova - 233

1                   there weren't just two periods.

2       825.           MR. KENT:       And so does the Commissioner  
3                   intend to make any amendments to this part  
4                   of the Notice of Application to take that  
5                   into account?

6                   MR. KLIPPENSTEIN:    I guess that is  
7                   something we can discuss offline, whether  
8                   that is required or not.

9

10       BY MR. KENT:

11       826.           Q.       So, if we look at paragraph 34, that  
12                   is some text describing an example for which there  
13                   is a visual on the following page, page 12, just  
14                   before 35, if I read how this works properly?

15                   A.       Do you mind if I have a quick look  
16                   at it?

17       827.           Q.       Absolutely, go right ahead.

18                   A.       Okay, I have looked at that  
19                   paragraph and the image on the next page.

20       828.           Q.       And they go together, right?

21                   A.       That is my understanding, yes.

22       829.           Q.       Okay. Paragraph 34 says:

23                   "...The respondents promoted a OneRepublic  
24                   Concert..."

25                   And that is the concert for which the visual is

## Public

L. Nikolova - 234

1 provided on page 12, I think, isn't it?

2 A. Yes.

3 830. Q. Which respondents? This is on  
4 ticketmaster.ca.

5 A. So I am not sure for this particular  
6 image or concert, but broadly, as we discussed this  
7 morning, the facts that I am aware of relating to  
8 certain respondents, ticketmaster.ca, we discussed  
9 some of those.

10 831. Q. We did, in the abstract. And here  
11 we have a specific example that the Commissioner has  
12 chosen to put in is Notice of Application, and the  
13 generic word the "respondents" is used to describe  
14 who did the things in this example, and I would like  
15 to know which respondents?

16 MR. KLIPPENSTEIN: I think you could  
17 interpret the pleadings to mean the  
18 Commissioner is referring to those  
19 respondents who are identified as having  
20 involvement in this website,  
21 ticketmaster.ca.

22 832. MR. KENT: Okay, and so that we don't  
23 have disagreements later, which ones are  
24 those?

25 MR. KLIPPENSTEIN: Well, it is

## Public

L. Nikolova - 235

1 identified in the pleadings which ones have  
2 connection to ticketmaster.ca. We have  
3 gone over that before.

4 833. MR. KENT: Okay, let's go through them.  
5 Does the Commissioner says Live Nation  
6 Entertainment Inc. promoted the OneRepublic  
7 concert at paragraph 34, and made the price  
8 representations that are discussed there in  
9 paragraph 35?

10 MR. KLIPPENSTEIN: I think our position  
11 is that Live Nation was involved in making  
12 or permitting, made those price  
13 representations, yes.

14 834. MR. KENT: Okay, which did they make or  
15 permit?

16 MR. KLIPPENSTEIN: Well, that gets back  
17 to my objection this morning about  
18 requiring us to characterize facts in  
19 relation to a legal argument.

20 835. MR. KENT: Okay, and...

21 MR. KLIPPENSTEIN: The facts are there,  
22 and we spoke about the facts this morning.

23 836. MR. KENT: Tell me the facts, then.  
24 What are the facts that tie Live Nation  
25 Entertainment Inc. to this OneRepublic

## Public

L. Nikolova - 236

1 concert? And it is shown on  
2 ticketmaster.ca.

3 MR. KLIPPENSTEIN: The facts are the  
4 same as those that were elaborated this  
5 morning by Ms. Nikolova.

6 837. MR. KENT: And so that means, then, that  
7 Live Nation Entertainment Inc. is said to  
8 control a computer network through which a  
9 Canadian fan would need to go in order to  
10 purchase a ticket from the ticketmaster.ca  
11 website?

12 MR. KLIPPENSTEIN: Well, it is on the  
13 record which facts were identified, and I  
14 think we made some undertakings for some of  
15 the respondents to advise if there are any  
16 other facts. So, rather than repeating  
17 what we did this morning...

18 838. MR. KENT: I just want to get straight,  
19 again, if you are going to use specific  
20 examples and use generic words like  
21 "respondents", which don't differentiate  
22 among the respondents, I am entitled to  
23 know which respondents are in play in a  
24 given example. So, I take it from what you  
25 have said that you say Live Nation

## Public

L. Nikolova - 237

1 Entertainment Inc. was one of the  
2 respondents who promoted the OneRepublic  
3 concert, paragraph 34, that made a price  
4 representation or...sorry, it is a price  
5 representation of Live Nation Entertainment  
6 Inc. at paragraph 35, charged an amount for  
7 tickets, paragraph 35, and included a cost  
8 of tickets that was known to Live Nation  
9 Entertainment Inc., paragraph 36, and that  
10 Live Nation Entertainment Inc. revealed the  
11 non-optional fees and true costs at a  
12 certain point in the purchasing process.  
13 So each time it says "respondents", it  
14 includes Live Nation Entertainment Inc. on  
15 this example?

16 MR. KLIPPENSTEIN: Well, you have the  
17 pleadings, and the respondents, if there  
18 were particulars lacking in the pleadings,  
19 the respondent had an opportunity to make a  
20 motion for the particulars.

21 839. MR. KENT: You are not required...

22 MR. KLIPPENSTEIN: The respondent did  
23 not do so.

24 840. MR. KENT: You are not required to make  
25 a motion for particulars if you don't need

## Public

L. Nikolova - 238

1                   them to plead. We didn't plead. Sorry, we  
2                   didn't need them to plead. But now we are  
3                   on discovery, and I am asking for the  
4                   information. So, where you have used  
5                   opaque words like "respondents", I am  
6                   entitled to know which respondents.

7                   MR. KLIPPENSTEIN:       Right, and we say  
8                   that is set out in the pleadings.

9                   841.           MR. KENT:        It is not. I can't tell  
10                   which respondents are referred to in  
11                   paragraphs 34, 35 and 36 unless you tell  
12                   me. The way it is frame is "respondents"  
13                   is a defined term and it means all eight.

14                   MR. KLIPPENSTEIN:       And there are some of  
15                   those respondents that are...where we have  
16                   identified facts connecting them to  
17                   ticketmaster.ca. And the pleading says  
18                   that they have acted "separately, jointly  
19                   and/or in concert".

20                   842.           MR. KENT:        Okay. I am entitled to know  
21                   which it is. Are you telling me that, just  
22                   to pick an example, Live Nation  
23                   Entertainment Inc. is one of the  
24                   respondents referred to in 34 through 36?  
25                   And then second, I am entitled to know in

## Public

L. Nikolova - 239

1 what respect.

2 MR. KLIPPENSTEIN: And we have provided  
3 the facts. The representations are made  
4 separately, together and/or in concert.  
5 Sorry, I misstated that.

6 843. MR. KENT: That is a conclusion of fact,  
7 and I am entitled to know what that is  
8 based on.

9 MR. KLIPPENSTEIN: And we have provided  
10 facts this morning.

11 844. MR. KENT: No. In what ways do you  
12 say...what facts do you say are associated  
13 with Live Nation Entertainment Inc. acting  
14 jointly with another respondent in respect  
15 of this OneRepublic concert?

16 MR. KLIPPENSTEIN: I am going to refuse  
17 on the basis that that question has been  
18 asked and answered. /R

19 845. MR. KENT: And what facts does the  
20 Commissioner have in association with  
21 whether Live Nation Entertainment Inc.  
22 acted in concert with another respondent in  
23 respect of this OneRepublic concert?

24 MR. KLIPPENSTEIN: Same refusal. /R

25 846. MR. KENT: And what facts or information

## Public

L. Nikolova - 240

1 is the Commissioner aware of with respect  
2 to whether Live Nation Entertainment Inc.  
3 acted separately, in any way, with respect  
4 to this OneRepublic concert?

5 MR. KLIPPENSTEIN: Same refusal. /R

6 847. MR. KENT: And what information does the  
7 Commissioner have, or is the Commissioner  
8 aware of with respect to, or in connection  
9 with, whether Live Nation Entertainment  
10 Inc. permitted some other respondent to act  
11 in any particular way with respect to this  
12 OneRepublic concert?

13 MR. KLIPPENSTEIN: Same refusal. /R

14 848. MR. KENT: And is it the same refusal if  
15 I ask those questions with respect to the  
16 other seven respondents?

17 MR. KLIPPENSTEIN: Yes. We have  
18 identified with respect to the seven other  
19 respondents which of them were involved in  
20 making or permitting price representations  
21 with respect to ticketmaster.ca. /R

22 849. MR. KENT: Okay. So, then to come at  
23 this slightly differently, when the Notice  
24 of Application uses the term "respondents"  
25 without distinguishing among them with

## Public

L. Nikolova - 241

1                   respect to any of the examples that are  
2                   given in the pleading, that I should read  
3                   respondents to be those respondents in the  
4                   initial paragraphs of the pleading who are  
5                   identified as being connected in some way  
6                   to the website that is the topic of the  
7                   example?

8                   MR. KLIPPENSTEIN:        Yes.

9       850.           MR. KENT:        Okay, so that I understand  
10                   this example, this...at paragraph...let me  
11                   just find what I am looking for here.

12

13       BY MR. KENT:

14       851.           Q.        The text I am looking for is at  
15                   paragraph 36.  And again, just within the context of  
16                   this example, you see four lines down there is a  
17                   reference to the true cost of the tickets in the  
18                   example?  Do you see that?

19                   A.        I am just going to review paragraph  
20                   36.

21       852.           Q.        Yes, go ahead.

22                   A.        Okay.

23       853.           Q.        Okay.  Again, just using this  
24                   example, what is the so-called true cost of the  
25                   tickets?



## Public

L. Nikolova - 243

1 Do you see that?

2 A. I see that in paragraph 34.

3 857. Q. Okay. And so then if we tie that to  
4 the images, I take it in this example one gets there  
5 by looking at the image on page 12, which is a big  
6 seat map, and you see popped out in the middle:

7 "...Section 116, row 5, seat 105, standard  
8 ticket, CA \$84.50..."

9 A. I see that.

10 858. Q. Is that what you understand to be  
11 the visual to which the text in paragraph 34 is  
12 referring?

13 A. So, I believe that the pop-up  
14 message referenced in paragraph 34 is this, I will  
15 call it the box in the middle of the screenshot.

16 859. Q. Which is the one I just took you  
17 too, right?

18 A. Yes.

19 860. Q. Okay.

20 A. As I understood you, yes.

21 861. Q. Yes. And so in this example that  
22 would be the price representation, and as it notes  
23 at the end of 34, there is then a button inviting  
24 the consumer to buy tickets. So, that ties into  
25 this visual, right?

## Public

L. Nikolova - 244

1                   A.        So, what is contained in this box  
2                   would be one of the price representations in this  
3                   particular example.

4       862.           Q.        Well, it is the only...this example  
5                   only has one price representation.

6                   A.        Well, based on my understanding of  
7                   price representations generally, there is 80...so  
8                   there is, in this image, there is the \$84.50 within  
9                   the box...

10       863.           Q.        M'hmm.

11                   A.        ...and then next to the "buy  
12                   tickets" button, immediately to its left, it also  
13                   reads "CA 84.50".

14       864.           Q.        And you see at the bottom, right  
15                   underneath the "buy tickets" reference that you just  
16                   made on page 12, there is text that says:

17                               "...additional fees are applied at checkout  
18                               per order delivery and order processing  
19                               fees are added where applicable..."

20                   Do you see that?

21                   A.        I see that text.

22       865.           Q.        Okay. And that is immediately  
23                   adjacent to what you just described as the price  
24                   representation of \$84.50? That is where it is  
25                   physically?

## Public

L. Nikolova - 245

1                   A.       So, that small print is below the  
2                   84.50, below the "buy tickets" button.

3     866.            Q.       Right. And I take it then the  
4                   Commissioner's position is that the price  
5                   representation excludes that text, as I read the  
6                   example? Because the price representation seems to  
7                   have neglected to mention it in the pleading.

8                   All right, so for the purposes of this  
9                   example the Commissioner is omitting the text from  
10                  what the Commissioner describes as the price  
11                  representation. Do I understand that correctly? Am  
12                  I reading this properly?

13                  A.       I am trying to understand your  
14                  question. Are you asking me to interpret the price  
15                  representation for this particular example would be?

16     867.            Q.       Take a look at paragraph 34. It  
17                   says the price representation for the tickets  
18                   selected in this instance is \$84.50. And price  
19                   representation...am I correct so far?

20                  A.       That is what this says, yes.

21     868.            Q.       And we know price representation is  
22                   a defined term which bundles up the alleged  
23                   misleading or deceptive nature of the  
24                   representations?

25                  A.       I am just going to look at the

## Public

L. Nikolova - 246

1 defined terms, if that is all right?

2 869. Q. Go right ahead. It is the  
3 impugned...

4 MR. KLIPPENSTEIN: It is in paragraph 3.

5 THE DEPONENT: And I am very sorry to  
6 ask you to repeat the question.

7 870. MR. KENT: No, no, that is no problem.  
8 You should always ask me to repeat if we  
9 have had a pause or you are not sure.

10

11 BY MR. KENT:

12 871. Q. So, in this case what the  
13 Commissioner says is to use the defined term, the  
14 price representation, in the example is the \$84.50,  
15 and I am looking at the bottom of 34.

16 A. That would be my understanding, yes.

17 872. Q. Okay, and that is actually just what  
18 it says in paragraph 34, right?

19 A. Yes.

20 873. Q. Okay. And in saying that, the  
21 Commissioner has chosen to omit the language  
22 immediately below the dollars, which refer  
23 to...twice, to additional fees, correct?

24 MR. KLIPPENSTEIN: With respect, I don't  
25 think the Commissioner has omitted

## Public

L. Nikolova - 247

1 everything. You have the image here  
2 included in the pleading.

3 874. MR. KENT: Yes.  
4

5 BY MR. KENT:

6 875. Q. So the Commissioner, Ms. Nikolova,  
7 thought it would be useful to not just put in an  
8 image, but also to describe what is going on in the  
9 image in three paragraphs of text, right?

10 A. Yes. The three paragraphs talk  
11 about this particular example at paragraphs 34, 35  
12 and 36, yes.

13 876. Q. And cross-references the image on  
14 page 12 and the image on page 13, right?

15 A. It talks about both of those images.

16 877. Q. Right. And paragraph 34 describes  
17 the image on page 12, right?

18 A. That is right.

19 878. Q. And paragraph 34, the Commissioner  
20 says the price representation is, in this case,  
21 \$84.50, correct?

22 A. That is what it says, yes.

23 879. Q. And even though we could all have  
24 read that by going to page 12, the Commissioner  
25 thought it useful to explain that that number

## Public

L. Nikolova - 248

1 \$84.50, is what the Commissioner says is the price  
2 representation, correct?

3 A. That is what paragraph 34 says.

4 880. Q. And the Commissioner has not thought  
5 it useful to also explain that there is text right  
6 adjacent to that number which twice describes the  
7 fees that will be added as one proceeds through the  
8 process, correct?

9 MR. KLIPPENSTEIN: Mr. Kent, we have no  
10 disagreement that the text at paragraph 34  
11 doesn't mention the fees which are shown in  
12 the image...I am sorry, the small print  
13 text, that is shown in the image at the  
14 bottom on page 12.

15 881. MR. KENT: So, is it the Commissioner's  
16 position, then, that text associated with a  
17 number is not part of the price  
18 representation to which the number relates?

19 MR. KLIPPENSTEIN: If you are asking if  
20 the Commissioner is taking the position  
21 that all the consumer sees is the numbers  
22 84.50, that is not the Commissioner's  
23 position.

24 882. MR. KENT: No, I didn't ask that  
25 question, though. I asked whether it is

## Public

L. Nikolova - 249

1 the Commissioner's position that a price  
2 representation where there is both a number  
3 and associated text consists only of the  
4 number?

5 MR. KLIPPENSTEIN: I mean, I don't think  
6 it will be a surprise to you that the  
7 Commissioner's position is that you have to  
8 look at the general impression and literal  
9 meaning of the representations.

10 883. MR. KENT: I have, but price  
11 representation is a defined term, which is  
12 defined as the deceptive marketing  
13 practices attributed to the respondents,  
14 and then when you get to an example, that  
15 deceptive practice is said to be the  
16 number, and all of the text adjacent to the  
17 number is excluded. So, I think I am  
18 entitled to know whether, in the  
19 Commissioner's view, the price  
20 representation can be...that one examines,  
21 can be limited to the number to the  
22 exclusion of the associated text?

23 MR. KLIPPENSTEIN: Can we go off the  
24 record for a moment?

25 884. MR. KENT: Yes, sure.

## Public

L. Nikolova - 250

1 --- DISCUSSION OFF THE RECORD

2

3 885. MR. KENT: Okay, we have had a useful  
4 conversation off the record, and I have  
5 been directed to paragraph 28, in which the  
6 pleading is that disclaimers, when present,  
7 do nothing to alter the false or misleading  
8 general impression created by the price  
9 representations that consumers can buy  
10 tickets for less than what the respondents  
11 actually charge.

12 And so do I understand from that,  
13 then, that the Commissioner's position is  
14 that it is the number that matters, and  
15 that what is described here as the "fine  
16 print disclaimer", doesn't mitigate any  
17 deception that is found in the number?

18 MR. KLIPPENSTEIN: The Commissioner's  
19 position is that those fine print  
20 disclaimers do not alter the false or  
21 misleading general impression.

22 886. MR. KENT: And the Commissioner  
23 understands that that will be a point of  
24 debate, whether or not the disclaimers do  
25 or don't affect the understanding of the

## Public

L. Nikolova - 251

1 number?

2 MR. KLIPPENSTEIN: The respondents have  
3 referred to obvious fee signals. I think  
4 that will be central to the debate.

5 887. MR. KENT: But the Commissioner knew  
6 that that would be part of the debate when  
7 the Notice of Application was filed,  
8 otherwise there wouldn't be a paragraph 28.

9 MR. KLIPPENSTEIN: I am not sure if it  
10 is relevant what the Commissioner  
11 anticipated the respondents' argument to  
12 be, but the Commissioner's position is that  
13 the disclaimers, such as are seen above, or  
14 as part of paragraph 34...

15 888. MR. KENT: 34.

16 MR. KLIPPENSTEIN: ...do not alter the  
17 misleading impression.

18 889. MR. KENT: So, speaking of impressions,  
19 is it the Commissioner's position that a  
20 description of a very detailed screenshot,  
21 which omits all of the disclaimer language,  
22 presents a fair summary of what is on that  
23 screenshot?

24 MR. KLIPPENSTEIN: Well, I feel like we  
25 are getting into, again the drafting of the

## Public

L. Nikolova - 252

1 pleadings. And the pleadings, they are  
2 drafted as they are. And the pleadings do,  
3 in fact, have the image of what the  
4 Commissioner is describing. So, if you are  
5 suggesting that the Commissioner is trying  
6 to mislead the tribunal by pleading as he  
7 does, I don't think that is a fair  
8 characterization of what has happened here.

9 890. MR. KENT: And, no, I am not saying  
10 mislead. I am saying it is a little under  
11 described, perhaps.

12

13 BY MR. KENT:

14 891. Q. Let's move over to paragraph 39, and  
15 then we will quit. It is actually 39 and 40,  
16 because they deal with another example on  
17 Ticketmaster's mobile app. Just take a second to  
18 remind yourself what is there, and then I have a  
19 couple of questions.

20 A. Okay, I have looked at those two  
21 paragraphs.

22 892. Q. Okay. One of my questions, I think  
23 we may have sorted out, a passive tense is used in  
24 39, so these price representations aren't actually  
25 attributed to anybody. I take it, though, based on

## Public

L. Nikolova - 253

1           our previous conversation, I should assume that  
2           whichever of the respondents is said towards the  
3           beginning to be tied up in ticketmaster.ca would be  
4           the respondents who are responsible for this example  
5           on the mobile app? Do I have that right?

6                   MR. KLIPPENSTEIN:       To the extent, and we  
7                   may be still waiting for this information,  
8                   but to the extent that the mobile app is  
9                   tied...itself tied to ticketweb.ca, I think  
10                  that would be a contextual reading of the  
11                  pleading.

12       893.           MR. KENT:        Okay.

14       BY MR. KENT:

15       894.           Q.       Beginning at paragraph 40 at the  
16           end, it refers to the amount by which the fees  
17           increased the original advertised price as being  
18           significant, and so it comes back to an earlier  
19           undertaking, and I need to know whether that is  
20           significant to the case, or just significant in that  
21           it is not nothing?

22                   MR. KLIPPENSTEIN:       Well, I think we  
23                   are...I think which is significant, that is  
24                   an argument the Commissioner...that is a  
25                   position that the Commissioner is taking.

## Public

L. Nikolova - 254

1 I am a little bit concerned that we are  
2 straying a little bit from the purpose of  
3 discovery of just talking about facts, and  
4 we are getting into a little bit more of  
5 the argument and characterization that each  
6 party might give to the facts.

7 So, certainly the Commissioner's  
8 position is that 19 percent increase is  
9 significant, as in this example.

10 895. MR. KENT: Okay, for each of these  
11 examples...let's just start with the first  
12 example and take them separately.

13  
14 BY MR. KENT:

15 896. Q. If you look at the second screenshot  
16 for the first example, that is the screenshot in  
17 paragraph 36, it appears to be on the...under the  
18 "Payment" tab. Am I reading that correctly, as far  
19 as you can tell?

20 A. I am sorry, what appears to be under  
21 the "Payment" tab?

22 897. Q. The screenshot under paragraph 36  
23 appears to be from the "Payment" tab?

24 A. Oh, yes.

25 898. Q. And there is earlier tabs, "Sign

## Public

L. Nikolova - 255

1 In", "Delivery" and "Review", reading backwards?

2 A. I see those tabs.

3 899. MR. KENT: Okay. Could you please  
4 provide me with the complete set of  
5 screenshots for this example that run from  
6 the initial page through to the final page  
7 of the process? Because I think you have  
8 just provided an early page and a late page  
9 in the example. Is that okay?

10 MR. KLIPPENSTEIN: We will provide that,  
11 assuming we have it.

U/T

12 900. MR. KENT: Okay. And the same for the  
13 second example at paragraphs 39 and 40. I  
14 am not sure if there is any intermediate  
15 steps, but if you could just let me know if  
16 there are any intermediate steps between  
17 the first image and the second image and,  
18 if so, provide me with images of them?

19 MR. KLIPPENSTEIN: We will do so, to the  
20 extent available.

U/T

21 901. MR. KENT: Thanks. And obviously in  
22 sequence and not out of order?

23 THE DEPONENT: Can I provide a  
24 clarification? So, it is possible that  
25 these were taken from a video capture.

## Public

L. Nikolova - 256

1 MR. KLIPPENSTEIN: If that is the case  
2 then we will do our best to point you to  
3 the video capture. U/T  
4 902. MR. KENT: Right.  
5 MR. KLIPPENSTEIN: And I am assuming it  
6 is in our productions.  
7 903. MR. KENT: And that is fine. If you can  
8 point me to something that already exists,  
9 I am obviously okay with that. Why don't  
10 we call it a day now?  
11  
12 --- upon adjourning at 4:51 p.m.

## Public

L. Nikolova - 257

## INDEX OF EXHIBITS

EXHIBIT NUMBER	DESCRIPTION	PAGE NUMBER
113	BIMS complaint re Fair Business Practice branch, dated 2008/03/12	95
114	E-mail from Larry Bryenton to Lawrence Zuker, dated March 6, 2009	114
115	E-mail from Steve Peters to Brent Homan and others, dated September 25, 2009	125
116	BIMS Investigation, date opened 2009/03/06	146
117	E-mail from Brent Homan of the Bureau, to Lawson Hunter of Stikeman Elliott, dated January 8, 2010	160
118	Memo from Bryan Cowell re meeting of March 16, 2010, dated April 6, 2010	170

## Public

L. Nikolova - 258

	INDEX OF UNDERTAKINGS		
	REFERENCE NUMBER	PAGE NUMBER	QUESTION NUMBER
1			
2			
3			
4			
5			
6			
7			
8	1	23	99
9	2	26	111
10	3	26	112
11	4	27	113
12	5	34	139
13	6	34	140
14	7	51	188
15	8	62	237
16	9	64	245
17	10	66	249
18	11	66	250
19	12	67	253
20	13	70	262
21	14	78	290
22	15	79	296
23	16	80	299
24	17	82	307
25	18	84	311
26	19	86	321
27	20	87	322
28	21	89	333

## Public

L. Nikolova - 259

## INDEX OF UNDERTAKINGS (Cont'd)

REFERENCE NUMBER	PAGE NUMBER	QUESTION NUMBER	
1	22	90	335
2	23	108	407
3	24	118	439
4	25	118	441
5	26	122	457
6	27	123	459
7	28	126	471
8	29	130	489
9	30	139	517
10	31	141	521
11	32	145	532
12	33	151	556
13	34	156	573
14	35	156	574
15	36	156	575
16	37	159	585
17	38	169	617
18	39	175	639
19	40	176	641
20	41	176	642
21	42	177	643

Public

L. Nikolova - 260

INDEX OF UNDERTAKINGS (Cont'd)

	REFERENCE NUMBER	PAGE NUMBER	QUESTION NUMBER
1	43	185	672
2	44	198	711
3	45	198	712
4	46	199	713
5	47	209	744
6	48	219	775
7	49	226	803
8	50	227	806
9	51	255	899
10	52	255	900
11	53	256	901

Public

L. Nikolova - 261

1 INDEX OF UNDER ADVISEMENTS

2	3	4	5	6	7	8	9
	REFERENCE		PAGE		QUESTION		
	NUMBER		NUMBER		NUMBER		
	1		25		108		
	2		120		451		

## Public

L. Nikolova - 262

## INDEX OF REFUSALS

	REFERENCE NUMBER	PAGE NUMBER	QUESTION NUMBER
1			
2			
3			
4			
5			
6			
7			
8	1	14	58
9	2	15	64
10	3	16	69
11	4	16	70
12	5	17	71
13	6	17	73
14	7	17	75
15	8	18	76
16	9	19	79
17	10	45	176
18	11	55	207
19	12	55	209
20	13	56	212
21	14	61	235
22	15	74	277
23	16	77	286
24	17	105	395
25	18	109	410
26	19	110	411
27	20	110	412
28	21	112	417

## Public

L. Nikolova - 263

## INDEX OF REFUSALS (Cont'd)

REFERENCE NUMBER	PAGE NUMBER	QUESTION NUMBER
1	22	430
2	23	434
3	24	436
4	25	448
5	26	461
6	27	462
7	28	463
8	29	465
9	30	484
10	31	488
11	32	494
12	33	500
13	34	522
14	35	528
15	36	586
16	37	588
17	38	601
18	39	608
19	40	612
20	41	613
21	42	626

## Public

L. Nikolova - 264

## INDEX OF REFUSALS (Cont'd)

REFERENCE NUMBER	PAGE NUMBER	QUESTION NUMBER	
1	43	172	628
2	44	179	650
3	45	185	671
4	46	186	675
5	47	187	677
6	48	187	678
7	49	187	679
8	50	188	680
9	51	189	684
10	52	190	685
11	53	195	703
12	54	196	705
13	55	203	729
14	56	207	739
15	57	209	745
16	58	239	844
17	59	239	845
18	60	240	846
19	61	240	847
20	62	240	848



Public

Public

# Exhibit “C”

Public

This is Exhibit "C" referred to in the  
Affidavit of Deborah Pouliot  
sworn before me, this 19th day of  
March, 2019.



---

A Commissioner for Taking Affidavits

**Nicole Rozario**  
Barrister and Solicitor  
in the Province of Ontario

Public

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 by the Commissioner of  
Competition for orders pursuant to section 74.1 of the  
Competition Act regarding conduct reviewable pursuant to  
paragraph 74.01(1)(a) and section 74.05 of the Competition  
Act;

VP/ias

B E T W E E N:

COMMISSIONER OF COMPETITION

Applicant

- and -

LIVE NATION ENTERTAINMENT, INC., LIVE NATION WORLDWIDE,  
INC., TICKETMASTER CANADA HOLDINGS ULC, TICKETMASTER CANADA  
LP, TICKETMASTER L.L.C., THE V.I.P. TOUR COMPANY,  
TICKETSNOW.COM, INC., and TNOW ENTERTAINMENT GROUP, INC.

Respondents

- - - - -

This is the Continued Examination for Discovery of LINA  
NIKOLOVA, produced and examined on behalf of the Applicant  
herein, taken at the offices of VICTORY VERBATIM REPORTING  
SERVICES INC., Suite 900, Ernst & Young Tower, 222 Bay  
Street, Toronto, Ontario, on the 1st day of February, 2019.

- - - - -

Public

APPEARANCES:

PAUL KLIPPENSTEIN  
FRANCOIS JOYAL  
RYAN CARON  
DAVID KENT  
ADAM CHISOLM  
JOSHUA CHAD  
MARK OPASHINOV

-- for the Applicant

-- for the Respondents

ALSO PRESENT:  
Laura DiMarco

Public

L. Nikolova - 268

INDEX OF PROCEEDINGS

	PAGE NUMBER
LINA NIKOLOVA, resumed	
Continued Examination by MR. KENT	269 - 384
Index of Exhibits	385 - 386
Index of Under Advisements	387
Index of Refusals	388
Certificate	389

## Public

L. Nikolova - 269

1 --- upon convening at 9:30 a.m.

2 --- upon commencing at 9:36 a.m.

3

4 LINA NIKOLOVA, resumed

5 CONTINUED EXAMINATION BY MR. KENT:

6 904. Q. Good morning, Ms. Nikolova. You  
7 understand you're still under the oath you took  
8 yesterday?

9 A. I understand, yes.

10 905. Q. All right. So, I have a couple of  
11 housekeeping items, which is code for, there is a  
12 couple of things I forgot yesterday that I'm going  
13 to do before we move on from where we stopped. So,  
14 first of all, if we could go back to paragraph 36 of  
15 the Notice of Application...this is some of the  
16 discussion of the OneRepublic example that is in the  
17 images at paragraphs 34 and 36, do you see that?

18 A. I see that, yes.

19 906. Q. And yesterday, just to tee up my  
20 question...yesterday, you confirmed that the phrase  
21 in the middle of paragraph 36, "The true cost", do  
22 you see that?

23 A. Yes.

24 907. Q. That the true cost for these  
25 purposes meant the total charges in the image under

## Public

L. Nikolova - 270

1 paragraph 36 of \$214.80 for two tickets, correct?

2 A. So...yes, I believe the reference  
3 was the total charges of \$214.80 would be what the  
4 consumer would pay for these tickets.

5 908. Q. But I'm just trying to get the  
6 language in 36 to line up with something. So, the  
7 language in paragraph 36 refers to something as  
8 being the true cost, and within this example, I take  
9 it the true cost is the total charges up \$214.80?

10 A. As I understand, that is what the  
11 consumer would be charged.

12 909. Q. All right, so notionally put one  
13 finger there, and I'm going to now notionally get  
14 your other finger in another place and ask you to  
15 compare two things. The price representations, this  
16 defined term, for the purposes of this example, we  
17 also agreed yesterday was the amount of \$84.50 per  
18 ticket that is shown in a couple of places in the  
19 image in paragraph 34, right?

20 A. We talked about the \$84.50 as being  
21 a price noted in this image.

22 910. Q. Right, but that's not my question.  
23 The text refers to a Price Representation...  
24 capital-P, capital-R...in this example, and I take  
25 it for the purposes of this example, the so-called

## Public

L. Nikolova - 271

1 price representation is the amount \$84.50 as shown  
2 in the image on page 12? We went through this  
3 yesterday.

4 A. That's how I read paragraph 34, yes,  
5 we discussed that.

6 911. Q. Okay, now here's my actual question.  
7 Paragraph 36 says, in the third sentence, that,  
8 "...the true cost of the tickets in the  
9 example were known to the respondents when  
10 the price representations were made..."

11 Do you see that?

12 A. I see that, yes.

13 912. Q. And I would like you to explain to  
14 me how it is that the total charges of \$214.80 for  
15 two tickets, which we agreed is the true cost in  
16 this example, could be known to a respondent at the  
17 time that the image on page 12 is reached in the  
18 process, during which it is disclosed that a ticket  
19 costs \$84.50?

20 A. So, the way that I understand it is  
21 that the respondents would know what the order  
22 processing fee would be for this particular event.  
23 The facility charge would be known to the  
24 respondents, the service fee per ticket would be  
25 known to the respondents for this particular event.

## Public

L. Nikolova - 272

1 913. Q. But at the step that is shown on  
2 page 12, which is the so-called "Price  
3 Representation", the consumer has yet to identify  
4 the number of tickets, right?

5 A. Sorry, could you repeat your  
6 question, please?

7 914. Q. Sure. At the stage at which the  
8 price representation is said to have been made,  
9 which is the image on page 12, as we have already  
10 discussed, the consumer has yet to choose how many  
11 tickets she would like to purchase, right?

12 A. So, I see in this image that one  
13 ticket is selected.

14 915. Q. But the checkout in your example is  
15 two tickets, so clearly the consumer has yet to  
16 indicate that she wants two tickets in your example.

17 A. In this particular image on page 12,  
18 there is one ticket selected, and if I look very  
19 closely, it looks to me like the mouse is hovered  
20 over a second seat.

21 916. Q. Okay, where does it say that the  
22 tickets are selected?

23 A. In this image, it says that...as I  
24 read it...selected seats is "1".

25 917. Q. Okay. So, clearly, because your

## Public

L. Nikolova - 273

1 example show someone checking out with two seats,  
2 that person has yet to decide how many seats they  
3 would like, right?

4 A. I'm sorry, are you referring to...

5 918. Q. This is your example, meaning the  
6 commissioner's example. The image on page 13 is  
7 part of the same example as the image on page 12,  
8 correct?

9 A. That is my understanding, yes.

10 919. Q. And the image on page 13 shows  
11 someone checking out the two seats, correct?

12 A. That's right.

13 920. Q. And the image on page 12 does not  
14 show somebody having yet selected the number "2" as  
15 the number of tickets they would like to purchase,  
16 correct?

17 A. That's right, it says so. I can see  
18 it is "1".

19 921. Q. So, the person in question in your  
20 example has yet to determine how many seats they  
21 would like in the image on page 12, right?

22 A. In the image on page 12, they have  
23 yet to select two tickets.

24 922. Q. And yet it's the image on page 12  
25 that you say is where the price representation is

## Public

L. Nikolova - 274

1 made, right?

2 A. It's where a price representation...

3 923. Q. It doesn't say "a price  
4 representation", read your pleading. The price  
5 promoted in "the price representation", top of  
6 paragraph 36.

7 A. I was referring to paragraph 34,  
8 which I understand is associated with the image on  
9 page 12, as I read it...

10 924. Q. Yes.

11 A. ...and I believe in that context, as  
12 I read it, it says the website popped up a message  
13 that made a price representation, which in this  
14 instance was \$84.50.

15 925. Q. And then if you read paragraph 36,  
16 it says,

17 "...The price promoted in the price  
18 representation is unattainable..."

19 So, which price representation is it you're talking  
20 about in this example?

21 A. I'm just going to read paragraph 36  
22 to make sure I can answer your question.

23 926. Q. Yes.

24 A. And I'm sorry, if I could ask you to  
25 please repeat the question?

## Public

L. Nikolova - 275

1 927. Q. Sure, why don't I come at this  
2 another way? The price representation in question  
3 is a price per ticket, correct?

4 A. I'm not sure. It says \$84.50 here,  
5 I don't see an indication in this image. I don't  
6 see the words "per ticket" in this image.

7 928. Q. Well, what are you telling me this  
8 example shows? What is the \$84.50 for?

9 A. Well, when the mouse is hovered,  
10 there is a price indicated of \$84.50.

11 929. Q. For one seat, right? That's what it  
12 says in the call-out box, a very particular seat,  
13 seat 105, row 5 of section 116.

14 A. The text reads "section 115, row 5,  
15 seat 105".

16 930. Q. And that adds up to how many seats?

17 A. It says "seat 105" and there's a  
18 price included there.

19 931. Q. Right, so that's one seat, correct?

20 A. It's hovered over one seat as far as  
21 I can tell, yes.

22 932. Q. So, I guess what I want to know is  
23 for you to tell me...I'm going to pause there. Do  
24 you understand that the order processing fee is per  
25 order regardless of the number of tickets?

## Public

L. Nikolova - 276

1                   A.       That's my general understanding of  
2       the order processing fee in the instances that I've  
3       seen.

4       933.           Q.       So, I want you to tell me how  
5       Ticketmaster can know the so-called true cost of a  
6       ticket...which you've already told me is the total  
7       charge which would include the order processing  
8       fee...of a given ticket before it knows how many  
9       tickets will be in an order?

10                   MR. KLIPPENSTEIN:       Mr. Kent, I'm going  
11                   to intervene. I think I have the same  
12                   concern that I expressed yesterday, which  
13                   is that the witness is here to speak about  
14                   facts and not to interpret our pleadings.  
15                   As I understand it, the point that you're  
16                   making is that our pleadings might be able  
17                   to be interpreted different ways, but the  
18                   witness has testified that her  
19                   understanding is that the facility charge,  
20                   service fee and order processing fee would  
21                   be known to the respondents at the time the  
22                   price representation is made. I don't  
23                   think there is any dispute that the order  
24                   processing fee is levied per order rather  
25                   than per ticket.

## Public

L. Nikolova - 277

1 BY MR. KENT:

2 934. Q. Well, the commissioner has made a  
3 factual allegation that the true cost, which the  
4 witness has confirmed means the total cost inclusive  
5 of order processing fee, is known to the respondents  
6 when a price representation is made. And the  
7 witness has told us that the price representation,  
8 or a price representation in question, is the price  
9 for a single ticket on the first page of the  
10 example. And so I get to test that factual  
11 assertion, which is I think self-evidently wrong, by  
12 asking these questions.

13 So, I'm asking what facts you're aware of  
14 that would permit Ticketmaster to know that  
15 so-called true cost, which you've told me is the  
16 total charge per ticket, before it knows how many  
17 tickets will be included in an order?

18 A. My understanding is that when  
19 setting up these events, Ticketmaster in advance is  
20 aware of the service charges and fees that would  
21 apply to particular tickets for a particular event.

22 935. Q. Right, but you understand the order  
23 processing fee is not per ticket. You know that,  
24 right?

25 A. I understand that the order

## Public

L. Nikolova - 278

1 processing fee is what we would call a "per order"  
2 charge.

3 936. Q. Right, and you've already told me  
4 the order processing fee is included in the total  
5 charge, which the commissioner calls the so-called  
6 "true cost" in this pleading, right? You've already  
7 told me that, I'm setting up my next question.

8 A. The total charges of \$214.80  
9 include, as I understand, the order processing fee  
10 of six dollars in this example.

11 937. Q. And that's not a per-ticket charge,  
12 that order processing fee? You understand that.

13 A. Not in this instance, that's right.

14 938. Q. Is it in any instance?

15 A. I have not seen the order processing  
16 fee be a per-ticket charge in any instance that I  
17 recall.

18 939. Q. So, I go back to my question. I  
19 want you to tell me all facts available to the  
20 commissioner which would indicate that Ticketmaster  
21 knows, at the original stage where a ticket price is  
22 disclosed, what the total cost of that ticket will  
23 be. In other words, before it knows how many  
24 tickets will be in the order. To put it  
25 differently, what does the commissioner say...sorry,

## Public

L. Nikolova - 279

1 that's a bad way of putting it. What facts does the  
2 commissioner have that suggests that Ticketmaster  
3 knows in advance, knowing the number of tickets,  
4 what the per-ticket assessment of the order  
5 processing fee will be?

6 A. Well, as I've mentioned, I am aware  
7 that the respondents contracts with clients, for  
8 example, for particular events, or particular  
9 venues, to set out the amount of the fees for a  
10 particular event in advance of that event being  
11 offered on the website. For example, such that the  
12 respondents would know the per-ticket charges and  
13 the per-order charges that would apply for the  
14 particular event.

15 940. Q. But for a given fan's order, how  
16 does Ticketmaster know what the cost per ticket of  
17 the order processing fee will be until it knows the  
18 number of tickets in the order?

19 A. Well, as I have mentioned, the order  
20 processing fee is a per-order charge.

21 941. Q. So, help me then with how  
22 Ticketmaster knows what the order processing fee  
23 will amount to per ticket before it knows how many  
24 tickets are in the order? Do you have any  
25 information to share with me as to how Ticketmaster

## Public

L. Nikolova - 280

1           could possibly know that?

2                     A.       I'm not sure what the respondents  
3           would or would not know in particular instances.  
4           I'm generally aware that they would have contracts  
5           with venues that would...or with other clients that  
6           would outline the particular fees that would apply  
7           to particular events, such that my understanding is  
8           if a consumer were to select a particular ticket,  
9           that Ticketmaster, in advance of that selection,  
10          would know for that particular event what the  
11          per-ticket fee would be and what the per-order  
12          charge would be.

13       942.            Q.       Yes, I'm not sure you're listening  
14          to my question.

15                   MR. KLIPPENSTEIN:       Mr. Kent, sorry to  
16           interrupt you. I think we disagree on that  
17           point. I'm going to refuse that question  
18           on the basis that it's been answered. The  
19           witness has given you facts that the  
20           respondents are aware of. I don't think  
21           there's any dispute as between the parties  
22           that the respondents choose to levy some  
23           fees per order. If there is a logical  
24           inference that you are trying to make  
25           that's available for you to make, I think,

## Public

L. Nikolova - 281

1 properly, in argument.

2 943. MR. KENT: Well, the commissioner has  
3 asserted it as a fact. So, you're telling  
4 me that I am not allowed to ask any more  
5 questions about that factual assertion that  
6 there is some way that Ticketmaster knows  
7 what the per-order charge is going to be  
8 per ticket before it knows the number of  
9 tickets?

10 MR. KLIPPENSTEIN: You can ask  
11 questions, but the question that you've  
12 been asking I think has been answered  
13 already. /R

14 MR. KENT: I'm going to show you a  
15 different document from your productions.

16 MR. CHISHOLM: It's bearing doc ID  
17 PHAD00000010. That should be six zeroes  
18 for the ten. I'm continuing from yesterday  
19 so this will be marked Exhibit 119.

20

21 --- EXHIBIT NO. 119: Ticket Master screen captures  
22 Electronic Evidence unit, March 6,  
23 2009

24

25 BY MR. KENT:

## Public

L. Nikolova - 282

1 944. Q. Ms. Nikolova, this is a question  
2 I'll direct to you, but I'll take an answer from  
3 anybody who knows it. We were provided with  
4 photocopies of the covers of some CDs. This is an  
5 example. Do we also in the productions have the  
6 contents of the CDs? That's the question.

7 MR. KLIPPENSTEIN: Do you know the  
8 answer?

9 THE DEPONENT: I don't know that.

10 MR. KLIPPENSTEIN: And so I presume  
11 you're going to ask for an undertaking,  
12 then? I think that's logical. We'll  
13 provide that.

14 945. MR. KENT: Thank you, yes.

15 MR. KLIPPENSTEIN: So, just to make sure  
16 that we're clear, do you want...well, you  
17 ask me what you want us to find out for  
18 you.

19 946. MR. KENT: Yes, I want to ensure that we  
20 have the contents of the CDs. This is an  
21 example, but the contents of the CDs, and I  
22 would like to know what the contents were.  
23 So, if they've already been produced,  
24 that's great. If you could point us to the  
25 productions and let us know that they

## Public

L. Nikolova - 283

1 relate to something with this label, I'm  
2 just trying to get the label on the  
3 document associated with the documents.  
4 MR. KLIPPENSTEIN: Give me one second.  
5 So, we will look into whether these  
6 documents that would have been on that CD  
7 are in the productions, and make reasonable  
8 efforts to point you to those documents.  
9 And if they're not in the productions, we  
10 will make reasonable inquiries to determine  
11 whether they still exist, and if so, to  
12 produce them. U/T

13 947. MR. KENT: As I mentioned, this is an  
14 example. We didn't pull all the  
15 photocopies that are the same as this.  
16 There is another one at PHAD, many zeroes,  
17 11. So, I would like the same undertaking  
18 for each of these CD covers that we got.

19 MR. KLIPPENSTEIN: Okay, so you're  
20 telling me that this other one is also a  
21 photocopy of the cover of a CD?

22 948. MR. KENT: Yes, and there may be more  
23 than that, but the other one that I know of  
24 has an 11 at the end of zeroes.

25 MR. KLIPPENSTEIN: Okay, you'll have to

## Public

L. Nikolova - 284

1 provide me with the number of zeroes,  
2 because I will be searching for it  
3 electronically.

4 949. MR. KENT: Six.

5 MR. KLIPPENSTEIN: Six zeroes?

6 950. MR. KENT: Same number as Exhibit 119,  
7 except it's an 11 at the end instead of a  
8 10.

9 MR. KLIPPENSTEIN: We will do that, and  
10 it occurs to me that I ought to, out of  
11 prudence, because I don't know what is on  
12 these CDs, make the undertaking subject to  
13 relevance, although certainly there are  
14 some indications that it might be relevant,  
15 and to privilege.

16 951. MR. KENT: Fair enough.

17 MR. KLIPPENSTEIN: Just because I don't  
18 know if these contents have not been  
19 disclosed already, I don't know what they  
20 are.

U/T

21 952. MR. KENT: Okay, and for convenience,  
22 I'm going to assume all your undertakings  
23 to go look for things and provide them are  
24 subject to privilege and relevance, because  
25 I think they have to be.

## Public

L. Nikolova - 285

1 MR. KLIPPENSTEIN: Okay, perfect. So, I  
2 don't have to restate that, then.

3

4 BY MR. KENT:

5 953. Q. Just one question for the witness,  
6 then. You mentioned yesterday that you had seen  
7 screenshots from previous iterations of various of  
8 the relevant websites. Are they on CDs? Like, how  
9 did...does this document 119, which is the photocopy  
10 of the cover of a CD, look like something you've  
11 seen before?

12 A. I haven't seen CDs like this before.

13 954. Q. Have you seen CDs like something  
14 else before?

15 A. I haven't seen CDs in relation to  
16 this in the course of my duties on this  
17 investigation.

18 955. Q. And when you were looking at  
19 screenshots, were you looking at some sort of an  
20 electronic file that you accessed online?

21 A. I accessed an electronic file.

22 956. Q. Within the bureau's system  
23 somewhere?

24 A. Yes, when you said "online", I  
25 wasn't sure if you meant the internet. It wasn't on

## Public

L. Nikolova - 286

1 the internet, it was on my computer.

2 957. Q. Okay, so I take it there is a bureau  
3 file accessible in which there are screen captures?

4 A. So, I'll clarify, I'm not sure if it  
5 was within the productions.

6 958. Q. I'm just asking you if there was a  
7 file at the bureau that has screen captures that  
8 you're aware of.

9 A. I'm aware of screen captures in  
10 connection with our file. I've seen them in the  
11 context of my review of documents.

12 959. Q. Are they organized in some way? Is  
13 there a subfile of screen captures? And don't focus  
14 on my specific words, is there some way in which  
15 screen captures are organized so you can go find  
16 them within the bureau's system?

17 A. The screen captures I'm thinking of  
18 would be in our document management system.

19 960. Q. Okay. And are they in some way  
20 tagged or organized so that if what one wanted to do  
21 was find all the other screen captures relating to  
22 this matter in your document management system, you  
23 could do that?

24 A. I don't know if we could do that.

25 961. MR. KENT: Well, I know that there was

## Public

L. Nikolova - 287

1 an undertaking yesterday as well to go look  
2 for screen captures. We'll just fold the  
3 information we just heard into your...as  
4 guidance as you do your search in order to  
5 satisfy the undertaking.

6 MR. KLIPPENSTEIN: We'll consider that  
7 when satisfying the undertaking.

U/T

8 962. MR. KENT: Next document to show you is  
9 commissioner's production PHAD000044SC.

10 MR. CHISHOLM: And in the production we  
11 received, there was no "SC" at the end, and  
12 there were six zeroes. The document as  
13 marked as is PHAD000044, which will be  
14 marked as Exhibit 120 to this examination.

15

16 --- EXHIBIT NO. 120: Ticket Master webpage, Toronto  
17 Raptors vs. Philadelphia  
18 76ers-Sunday, April 12, 2009

19

20 BY MR. KENT:

21 963. Q. So, have a flip through to the 120,  
22 Ms. Nikolova, but I'm not going to ask you specific  
23 questions, I'm just going to ask you a couple of  
24 higher level questions about this package.

25 A. I have briefly looked through it.

## Public

L. Nikolova - 288

1 964. Q. Okay, so it's a series of screen  
2 captures of ticketmaster.ca events, all of which on  
3 my quick review are in 2009.

4 MR. KLIPPENSTEIN: Sorry, David, I'm  
5 sorry to interrupt you. I'm just flipping  
6 through. We identified the production  
7 number on the first page, but it appears to  
8 me that there are multiple sequential  
9 production numbers. I presume that these  
10 are actually different documents? I mean,  
11 I guess there is a housekeeping...do we  
12 want to read all of the sequence into the  
13 record, and then also, just to be clear, it  
14 appears that these are different documents.

15 MR. CHISHOLM: So, the answer to that  
16 question is these are not separate  
17 productions insofar as how they've been  
18 produced by the commissioner to the  
19 respondents. They have all been produced  
20 as one document bearing the document ID  
21 PHAD0000044, which is marked on the cover  
22 of the front page of this document as  
23 PHAD0000044, and therefore, as is often done  
24 in an electronic discovery, I think what  
25 has happened is the Bates number, the doc

## Public

L. Nikolova - 289

1 ID assigned to the document is the Bates  
2 number assigned to the very first page of  
3 the document and maybe other documents have  
4 been marked based on the first page of  
5 these documents.

6 MR. KLIPPENSTEIN: Okay.

7 MR. CHISHOLM: But this is not a  
8 compilation of different productions by the  
9 commissioner into one.

10 MR. KLIPPENSTEIN: We gave these to you  
11 as a bunch, essentially, yes.

12 MR. CHISHOLM: This is one production,  
13 yes.

14 965. MR. KENT: But Paul, just for ID  
15 purposes, the first page ends with the  
16 digits 44 and the last page ends with the  
17 digit 60, if there is ever an issue later  
18 about what is in the package.

19 MR. KLIPPENSTEIN: Can I take a minute  
20 to finish going through it?

21

22 --- DISCUSSION OFF THE RECORD

23

24 966. MR. KENT: So, just for housekeeping,  
25 let's mark the second document I handed

## Public

L. Nikolova - 290

1 over during the break, which is stamped at  
2 any rate as PHAD000120SC, and it's a series  
3 of pages that goes through to a page marked  
4 PHAD000145SF.

5 MR. CHISHOLM: That production from the  
6 commissioner bearing the electronic doc ID  
7 of PHAD00000120 will be marked as Exhibit  
8 121.

9

10 --- EXHIBIT NO. 121: Screen Captures from Tickets Now  
11 Webpage

12

13 BY MR. KENT:

14 967. Q. I actually have the same question  
15 about both, so I'll just ask them together. Exhibit  
16 121 appears to be some screen captures from  
17 ticketsnow.com, also from 2009. Now, the  
18 ticketsnow.com package, Exhibit 121, indicates at  
19 the bottom it was created by Raymond Snow on March  
20 11, 2009. Do you see that on the front page?

21 A. I see that on the front page.  
22 Should I just...I want to clarify, because when I  
23 read this document, I also saw some other websites  
24 near the end of the series.

25 968. Q. Yes. The top one, though, is

## Public

L. Nikolova - 291

1 ticketsnow.com, and then there is others behind it.

2 A. That's right.

3 969. Q. And they're all marked as having  
4 been created by Mr. Snow on March 11, 2009.

5 A. That's what it says.

6 970. Q. And that's the Mr. Snow we discussed  
7 yesterday as a case officer at the bureau?

8 A. He was a case officer at the bureau  
9 during my time.

10 971. Q. And do you recall that yesterday we  
11 looked at documents from the bureau's file from  
12 2009, including some e-mails back and forth with  
13 Andrea Rosen about a program to capture web images  
14 from Ticketmaster sites, and that e-mail exchange  
15 was March 6, 2009, do you remember that?

16 A. I recall we looked at a couple...we  
17 looked at an e-mail exchange. I don't recall  
18 everything that was stated, I'm sorry.

19 972. Q. So, I guess here's my question.  
20 Exhibits 120 and 121, these come from the bureau's  
21 files, correct?

22 A. They appear to, but just looking at  
23 the PHAD designation.

24 973. Q. Okay. That's a qualification in  
25 your answer. Is there some reason I should

## Public

L. Nikolova - 292

1 understand that they didn't come from the bureau's  
2 files? You said they appear to, which suggests that  
3 maybe they don't. So, I have to ask.

4 A. I have no reason to believe that  
5 they don't come from the bureau file.

6 974. Q. I would like to know what bureau  
7 file did they come from? They are associated with  
8 what bureau file from 2009 when they were created?

9 MR. KLIPPENSTEIN: Help me with the  
10 relevance of that question?

11 975. MR. KENT: It goes back to our estoppel  
12 discussion. Our position is that what the  
13 bureau communicated and what it did not  
14 communicate in the context of what it did  
15 communicate and what it was looking at are  
16 relevant to estoppel. Here, we have a  
17 series of screen captures of the ticket  
18 platform that is at issue today that were  
19 taken back in 2009, and I would like to  
20 know the investigation or file with respect  
21 to which these images were collected. And  
22 one of the ways of getting at that is to  
23 find out where they came from, where you  
24 found them, what they were associated with.

25 MR. KLIPPENSTEIN: I'm going to refuse

## Public

L. Nikolova - 293

1                   that on the basis of relevance. We've  
2                   stated our view of relevance, and as I  
3                   mentioned before, I will think about that,  
4                   as parties do, and we'll advise you if that  
5                   position changes. /R

6

7 BY MR. KENT:

8 976.               Q.       Are these screen captures among  
9                   those referred to in the March 6th, 2009 e-mail  
10                  exchange with Ms. Rosen?

11                   MR. KLIPPENSTEIN:     I'll refuse that as  
12                   well on the basis of relevance. /R

13

14 BY MR. KENT:

15 977.               Q.       So, I will just ask one more  
16                   question about this, and I will just use Exhibit 120  
17                   as an example, and you can look at the top page as  
18                   an example. It's for a Raptors game in April of  
19                   2009 that was in the ACC, and it indicates on this  
20                   front page a ticket price of \$70 Canadian. Do you  
21                   see that, in the "search for tickets" section?

22                   A.       The second box down, there is a  
23                   price in a box of CA\$70.

24 978.               Q.       And if you turn over the page, same  
25                   game, do you see there is a reference to "your

## Public

L. Nikolova - 294

1 tickets", presumably meaning the purchaser's  
2 tickets, there is two seats in the bench section in  
3 the Raptors row, and when you go down to the bottom,  
4 you see the ticket price is \$642 times two, and a  
5 convenience charge of \$7.50 times two, do you see  
6 that?

7 A. I see that it says that.

8 979. Q. And what I would like to know is  
9 whether the bureau in 2009 or 2010 gave any  
10 indication to Ticketmaster or its representatives  
11 that the bureau had any concern with respect to  
12 whether these screens we have just looked at could  
13 be deceptive or misleading, or indicate an  
14 unattainable price, contrary to the Competition Act.

15 MR. KLIPPENSTEIN: Do you know?

16 THE DEPONENT: I don't know.

17 980. MR. KENT: So, will you give me an  
18 undertaking then to let me know if the  
19 bureau has any indication that it...or any  
20 information to the effect that it gave any  
21 such indication to Ticketmaster or its  
22 representatives?

23 MR. KLIPPENSTEIN: I'm just looking  
24 through my notes, because I think we gave a  
25 similar undertaking yesterday.

## Public

L. Nikolova - 295

1 981. MR. KENT: You did, and I'm just trying  
2 to crystallize it into an example here.

3 MR. KLIPPENSTEIN: Okay, the undertaking  
4 is to advise if you have any indication  
5 that...sorry, could you repeat your  
6 phrasing?

7 982. MR. KENT: Sure, whether the bureau gave  
8 any indication to Ticketmaster or its  
9 representatives that, in this particular  
10 example, the screenshots in the first  
11 couple of pages of Exhibit 120 gave rise to  
12 any potential deceptive or misleading  
13 representations, or the representation of  
14 an unattainable price contrary to the  
15 Competition Act.

16 MR. KLIPPENSTEIN: Well, the issue is  
17 fee display. So, we'll advise whether we  
18 become aware of any communication from the  
19 Competition Bureau to Ticketmaster or its  
20 representatives that it had an issue with  
21 respect to fee display, having regard to  
22 Exhibit 120.

U/T

23

24 BY MR. KENT:

25 983. Q. Okay, last catch-up from yesterday.

Public

L. Nikolova - 296

1           Could you pull out Exhibit 118 from yesterday,  
2           please? [REDACTED] [REDACTED] [REDACTED]

3           [REDACTED]

4           [REDACTED] 118, yes. And I just have one  
5           question...general question about the second  
6           paragraph on page 2.

7                   A.       I'm just going to take a second to  
8           read it if that's all right.

9           984.           Q.       Yes, okay, go right ahead and then  
10          I'll tell you what the question is.

11                   A.       Okay, thank you.

12          985.          [REDACTED] [REDACTED] [REDACTED]

13          [REDACTED] [REDACTED]

14          [REDACTED] [REDACTED] [REDACTED]

15          [REDACTED] [REDACTED]

16                   [REDACTED]

17                   [REDACTED]

18                   [REDACTED]

19          Do you see a reference to that discussion?

20                   A.       I see that it says that.

21          986.           Q.       So then you see the reference to  
22          that discussion?

23                   A.       There is a discussion referenced,  
24          yes.

25          987.           Q.       I would like to know whether the

Public

L. Nikolova - 297

1 [REDACTED] [REDACTED]  
 2 [REDACTED] [REDACTED]  
 3 [REDACTED] [REDACTED]  
 4 [REDACTED] [REDACTED] [REDACTED]  
 5 [REDACTED] [REDACTED] [REDACTED]  
 6 [REDACTED]

7 A. I don't know.

8 988. MR. KENT: So, can I get an undertaking,  
 9 please?

10 [REDACTED] [REDACTED] [REDACTED]  
 11 [REDACTED] [REDACTED]  
 12 [REDACTED]

13 989. [REDACTED] [REDACTED] [REDACTED]  
 14 [REDACTED] [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED] [REDACTED] [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED] [REDACTED]  
 20 [REDACTED] [REDACTED] [REDACTED]  
 21 [REDACTED]

22 990. MR. KENT: Yes.

23 [REDACTED] [REDACTED] [REDACTED]

24 991. MR. KENT: Yes.

25 [REDACTED] [REDACTED] [REDACTED]

## Public

L. Nikolova - 298

1 is to advise whether we are aware of  
2 communication from the Competition Bureau  
3 to Ticketmaster in that regard?

4 992. MR. KENT: Yes.

5 MR. KLIPPENSTEIN: We'll give that. U/T

6

7 BY MR. KENT:

8 993. Q. So, we're back to the Notice of  
9 Application, you can put that document away. I'm on  
10 now to the next example in the Notice of  
11 Application, which is the post-September 2017  
12 section. That section begins at paragraph 41, and  
13 the first example has images at paragraphs 43 and  
14 44, and I haven't...so, read around this if you like  
15 for this example, but I have a question for you at  
16 44. Just let me know when you're ready.

17 A. Sure, I'll take a minute just to  
18 read it.

19 994. Q. Have you had a chance to review it  
20 now?

21 A. Yes, thank you.

22 995. Q. Okay. So, if we start at 43, we see  
23 that this is a ticketmaster.ca sample, right?  
24 That's what it says on the second line?

25 A. That's what it says, yes.

## Public

L. Nikolova - 299

1           996.           Q.       And then it goes on...the  
2                    commissioner goes on in paragraph 43 in this  
3                    example, two sentences down from that, to indicate  
4                    from this example, the price representation is  
5                    quote, "\$50 plus fees", do you see that?

6                    A.       I see that.

7           997.           Q.       And then if you go over to paragraph  
8                    44, the first four words say,  
9                    "...The price representation is  
10                   unattainable..."

11                   Do you see that?

12                   A.       I see that, yes.

13           998.           Q.       So, I would like you to explain to  
14                    me how the price representation of \$50 plus fees was  
15                    unattainable in this example chosen by the  
16                    commissioner?

17                   A.       Well, the idea here, as I understand  
18                    it, is...

19           999.           Q.       I didn't ask you about the...well,  
20                    you can tell me what the idea, but I would like to  
21                    know how it is, and I'm just reading, that the price  
22                    representation is unattainable when the price  
23                    representation, and I'm just reading, was \$50 plus  
24                    fees?

25                   A.       So, as I understand it, looking at

## Public

L. Nikolova - 300

1           this example here, \$50 plus fees is the price stated  
2           at the beginning. In fact, there are non-optional  
3           fees added at the payment page on paragraph 17, and  
4           so consumers, people who would have looked at  
5           prices, \$50 plus fees on the EDP wouldn't know the  
6           amount of the fees coming up, and so that price  
7           would be unattainable in that instance.

8    1000.           Q.       So, I think you're conflating two  
9           things, and I'm going to ask you what a consumer  
10          might know or not know, but the total price is shown  
11          in the image underneath paragraph 44, correct?

12                   A.       There is a total of \$140.60 for  
13          those two tickets shown in this image.

14    1001.           Q.       Right, and that's...as I read down  
15          this image that the commissioner has chosen to  
16          insert...that's two tickets at \$50, that's the  
17          starting point of the calculation, correct?

18                   A.       On page 17 in the image, it says  
19          "two standard ticket", and to the right of it it  
20          says "50x2".

21    1002.           Q.       So, the answer to my question was  
22          yes? The image that you've chosen to display starts  
23          the calculation with two tickets at \$50 each?

24                   A.       I'm not sure what you mean by  
25          "starts the calculation", that's what it states in

## Public

L. Nikolova - 301

1 the image.

2 1003. Q. And that's the first number in a  
3 series of numbers that are one beneath the other  
4 which total to the final number.

5 A. That's right, yes.

6 1004. Q. And then the next section adds three  
7 kinds of fee, correct? Under the title "fees"?

8 A. There is three kinds, yes. There is  
9 a service fee, a facility charge, and order  
10 processing fee.

11 1005. Q. Each of which is under the title  
12 "fees"?

13 A. That's right.

14 1006. Q. And then there is a delivery charge  
15 section, but the delivery in this case is free,  
16 right?

17 A. That's what it says, yes.

18 1007. Q. And then it totals up to be \$140.60  
19 for two tickets?

20 A. That's right.

21 1008. Q. So, that \$140.60 for two tickets, on  
22 the face of this example that you have chosen to  
23 insert, is the \$50 per ticket plus three fees,  
24 correct?

25 A. It says "two standard ticket, 50x2",

## Public

L. Nikolova - 302

1           there is statements about fees, and then there is a  
2           total stated at the bottom.

3       1009.           Q.       So, can you agree with what I just  
4           said, then? The total price is the \$50 per ticket  
5           plus three fees?

6                    A.       It doesn't say per ticket, it says  
7           "two standard ticket, 50x2".

8       1010.           Q.       Are you having trouble reading that  
9           as \$50 per ticket times two tickets?

10                   A.       It says "two standard ticket".

11       1011.           Q.       And then beside that it says  
12           "\$50x2".

13                   A.       That's right.

14       1012.           Q.       So, that would be \$50 per ticket,  
15           right?

16                   A.       Again, it doesn't say "per ticket",  
17           I mean...

18       1013.           Q.       Are you not able to interpret this  
19           as meaning it's \$50 per ticket? Is that...are you  
20           concerned that it might mean something different  
21           than that?

22                   A.       Well, again, I think per ticket, I'm  
23           having trouble...the cost per ticket is not  
24           necessarily 50 times 2, it says "Two standard  
25           ticket, 50x2".

## Public

L. Nikolova - 303

1 1014. Q. So, it says 50 times 2, but you're  
2 saying the cost may not be 50 times 2? Is there  
3 some other cost that you think this could possibly  
4 mean?

5 A. Well, the total for the two tickets  
6 is \$140.60.

7 1015. Q. Right, and it shows you how you get  
8 to that.

9 A. Yes, it says "Two standard ticket,  
10 50x2". There is a list of fees, where it says  
11 "14.80", which I presume applies to a ticket. It's  
12 at least part of the total for the two tickets.

13 1016. Q. So, what this screenshot shows is a  
14 ticket charge of 50x2 plus three fees, the first two  
15 of which are times 2 and the third of which is an  
16 order processing fee, and then there is a total  
17 amount to be paid, correct?

18 A. Again, as I read this, it says, "Two  
19 standard ticket", there is "50x2", there is a number  
20 of fees, "14.30x2", \$3 facility charge times 2, \$6  
21 order processing fee, with a total for the two  
22 tickets of \$140.60.

23 1017. Q. So, let me come at this a different  
24 way. I'm sorry this is being so difficult. The  
25 total cost in this example is the ticket charge plus

## Public

L. Nikolova - 304

1 the three fees in question, right? There is no  
2 other element to the total shown in your example?

3 A. The numbers on the page add  
4 up...well, I haven't done the math in my head, but  
5 the total stated is \$140.60, and it looks to be  
6 comprised of all of the numbers on the page.

7 1018. Q. And on the page, the only numbers  
8 are those associated with the ticket price and the  
9 fees, right? It's your example.

10 A. The fees are part of the ticket  
11 price because the ticket price for the two tickets  
12 is \$140.60.

13 1019. Q. Is there anything in that \$140 that  
14 is shown here that isn't the ticket price or the  
15 three fees?

16 MR. KLIPPENSTEIN: Mr. Kent, if I may, I  
17 think the difficulty we're having here is  
18 the same issue I alluded to earlier, which  
19 I think we're straying a little bit into  
20 argument. But if I can help clarify, I  
21 don't think you need to take this paragraph  
22 as saying the commissioner is saying there  
23 is anything other than fees that are added  
24 to the \$50 times 2 to get us to \$140. The  
25 commissioner's position on why this is

## Public

L. Nikolova - 305

1 still an issue is set out in the remainder  
2 of paragraph 44.

3 1020. MR. KENT: Understood. And really, I  
4 thought I was asking one question in order  
5 to ask my real question, and I'm really  
6 surprised that I'm getting the resistance  
7 that I'm getting to what is a pretty  
8 self-evident proposition, which is that the  
9 total cost of the tickets in this example  
10 consists of a ticket price at \$50 a ticket  
11 plus three fees, as indicated. We're  
12 agreed on that, aren't we? Like, surely  
13 that can't be hard.

14 MR. KLIPPENSTEIN: I agree with you  
15 there is no dispute on that point. I think  
16 where we are running into difficulty in the  
17 discovery is that those are arguments that  
18 you will be able to make. And I see the  
19 argument that you want to be able to make  
20 to the tribunal, but my concern is that we  
21 are straying away from facts into  
22 characterizing those facts.

23

24 BY MR. KENT:

25 1021. Q. I'm just trying to set up facts.

## Public

L. Nikolova - 306

1 So, those are the facts relating to this example.  
2 Now, Ms. Nikolova, that we see that the total price  
3 in this example consists of ticket price plus fees,  
4 there isn't anything else there. We've got that now  
5 sorted out. I would like you to explain to me how a  
6 price representation, which was \$50 plus fees, is  
7 unattainable, given that the total price payable is  
8 \$50 plus fees? I would like to understand the  
9 factual allegation in the first five words of  
10 paragraph 44 where the commissioner asserts as a  
11 fact that \$50 plus fees was an unattainable price.  
12 So, help me out.

13 A. So, my understanding, looking at  
14 these screenshots, the total price of the two  
15 tickets is \$140.60, and on the first page here, it  
16 says \$50 plus fees, it doesn't indicate the amount  
17 of any fees. And so just looking at the EDP  
18 personally, without looking at what's on page 17, I  
19 personally wouldn't know that the charge for two  
20 tickets would be \$140.60.

21 1022. Q. Right, but you would also know it  
22 wasn't \$50 for one ticket?

23 A. It states \$50 plus fees.

24 1023. Q. So, you would know it's going to be  
25 \$50 plus something, correct?

## Public

L. Nikolova - 307

- 1                   A.        I wouldn't know the amount.
- 2    1024.           Q.        You've got to listen to my question.
- 3                    You would know that it was \$50 plus something,
- 4                    right?
- 5                   A.        That's what it says there...
- 6    1025.           Q.        And that's how you would understand
- 7                    it, right?
- 8                   A.        It's \$50 plus fees, that's what it
- 9                    says.
- 10   1026.           Q.        I understand what it says. You
- 11                    started to tell me your understanding and now you're
- 12                    refusing to tell me your understanding. You, as a
- 13                    person, reading that phrase, would understand that
- 14                    the price would be more than \$50, whether you knew
- 15                    how much more or not, correct?
- 16                   A.        So, looking at \$50 plus fees, I
- 17                    would understand that it would be \$50 plus fees, but
- 18                    I wouldn't know the amount of the fees.
- 19   1027.           Q.        But you would know something would
- 20                    have to happen for you to find out that amount? You
- 21                    would...right.
- 22                   A.        Maybe you can help me with the
- 23                    question.
- 24   1028.           Q.        Well, you would know that there is
- 25                    an unknown amount that would be added to the \$50,

## Public

L. Nikolova - 308

1           you would notice that much on the EDP?

2                   A.       It says \$50 plus fees, I wouldn't  
3           know what is meant by "plus fees", what the amount  
4           of the "plus fees" would be.

5   1029.           Q.       You just know it would be a positive  
6           amount?

7                   A.       It says "plus fees".

8   1030.           Q.       So, you know it would be a positive  
9           amount of money added to the \$50?

10                  A.       It would be more than zero, I would  
11           personally presume.

12   1031.           Q.       And if you cared how much it was,  
13           what would you do?

14                  A.       I'm not sure what you mean by "cared  
15           how much".

16   1032.           Q.       Well, you can be indifferent to how  
17           much the fees are, or you can care how much those  
18           fees are. Do you understand that distinction?

19                  A.       Yes, I understand the distinction  
20           you mean.

21   1033.           Q.       So, if you care how much the fees  
22           are on top of the \$50, what would you understand you  
23           could do about that?

24                  A.       Well, so, from my personal knowledge  
25           of the website look as it's portrayed here, I recall

## Public

L. Nikolova - 309

1           that the "plus fees" link, for example, would be  
2           clickable.

3       1034.           Q.       So...

4                    A.       And so that's...yes. And the  
5           instances where it is clicked, I recall that it  
6           takes me to a different page where the fees are not  
7           displayed.

8       1035.           Q.       You also know that you can progress  
9           through the process and find out the fees, right?

10                   A.       Based on my investigative experience  
11           going through Ticketmaster's websites, I know that  
12           if I proceed through the purchase process, at the  
13           end, the fees would be shown, yes.

14       1036.           Q.       But you would know on page 1 that  
15           there was an uncertain element to the total price,  
16           which is these fees of an undisclosed amount, right?

17                   A.       I'm sorry, could you repeat the  
18           question, please?

19       1037.           Q.       You would know on the EDP that there  
20           was an unknown aspect to the total price, being  
21           these fees which were not quantified?

22                   A.       Based on my investigative  
23           experience...

24       1038.           Q.       No, just based on reading this  
25           example.

## Public

L. Nikolova - 310

1 A. It says "\$50 plus fees".

2 1039. Q. We've already gone over the fact  
3 that you would understand that to mean that the  
4 total price would be more than \$50, you just don't  
5 know how much more.

6 A. That would be my personal  
7 understanding looking at "\$50 plus fees", if I was  
8 to read that text.

9 1040. Q. And does the commissioner have any  
10 information to suggest that any consumer would fail  
11 to understand what you just told me?

12 A. I don't know that I can speak for...

13 1041. Q. I'm asking whether the commissioner  
14 has any facts that would suggest that any consumer  
15 would fail to understand what you just told me.

16 A. I'm aware of consumer complaints,  
17 I've seen documents in the respondents' production  
18 what consumers complain about being surprised by  
19 fees.

20 1042. Q. Did you get complaints that said, "I  
21 read \$50 plus fees and I was surprised that there  
22 was a fee"?

23 A. I can't recall seeing those exact  
24 words.

25 1043. Q. No, I didn't ask you about those

## Public

L. Nikolova - 311

1 exact words. Did you get any complaints or see any  
2 complaints that suggested that people read a price  
3 representation like this and failed to understand  
4 that that meant that there would be fees added to  
5 the \$50, to use this example?

6 A. I can't recall the exact wording of  
7 the complaints or the timing that would be  
8 associated with these particular representations.

9 1044. Q. So, when I want exact wording, I'll  
10 ask you for it, and I'm asking whether you ever got  
11 a complaint along those lines.

12 A. I recall seeing complaints where  
13 people said they were surprised by seeing fees at  
14 the end of the process.

15 1045. Q. And was that in the context of being  
16 told up front that there would be fees?

17 A. I don't recall the exact context. I  
18 know that the representations have varied over time.

19 1046. MR. KENT: So, what I would like then  
20 are copies of these complaints that you are  
21 describing.

22 MR. KLIPPENSTEIN: We'll give  
23 representative examples of the types of  
24 complaints Ms. Nikolova described.

U/T

25 1047. MR. KENT: And in particular, complaints

## Public

L. Nikolova - 312

1 focused not so much on the size of the  
2 fees, that's one issue, you're going to  
3 tell me if the size of the fees is material  
4 to this case, but where people were  
5 surprised, to use the witness' phrase, by  
6 fees notwithstanding there being a display  
7 that says "plus fees" on the EDP. Paul,  
8 just to wrap this thing up, we've got two  
9 screenshots from an example at paragraphs  
10 43 and 44, could we just get whatever the  
11 complete set of screenshots is for this  
12 particular by-flow?

13 MR. KLIPPENSTEIN: Do you know if it's  
14 screenshots or if it's video?

15 THE DEPONENT: This would have been a  
16 video.

17 MR. KLIPPENSTEIN: So, we will  
18 undertake...we'll try to identify which it  
19 is, I'm assuming it's in our productions...

20 1048. MR. KENT: Yes.

21 MR. KLIPPENSTEIN: ...and let you know  
22 which one it is.

U/T

23

24 BY MR. KENT:

25 1049. Q. Thanks, that would be terrific.

## Public

L. Nikolova - 313

1           Okay, I think the last of the examples is that  
2           screenshot, sir, on paragraphs 47 and 48 of the  
3           Notice of Application. Just let me know when you've  
4           had a chance to...

5                     A.       Sorry, what were the paragraphs?

6   1050.           MR. KENT:       47 and 48, and I think 49 and  
7                     maybe 50 are also refer back up to the same  
8                     example. So, this example is a shoutout  
9                     for Nickelback. Again, Paul, can you  
10                    either direct us to the video capture, if  
11                    that's what this was, or the relevant  
12                    images for the complete checkout process or  
13                    by-flow process for this example?

14                   MR. KLIPPENSTEIN:     I'll try to identify  
15                    it in the productions and let you know.           U/T

16

17   BY MR. KENT:

18   1051.           Q.       Thank you. I just have one question  
19                    about this, and it's with respect of something at  
20                    paragraph 50. In paragraph 50...and there is at the  
21                    very end of the paragraph an assertion of fact,  
22                    which is the so-called true cost of the ticket,  
23                    which I take it to be the total cost based on all  
24                    previous questions, is unknowable for the consumer.  
25                    Do you see that?

## Public

L. Nikolova - 314

1 A. I see that.

2 1052. Q. And just so we're clear as to what  
3 fact the commissioner is asserting here, I take it  
4 that what the commissioner calls the true cost is  
5 known to the consumer before the consumer buys the  
6 ticket, correct? Because it's shown in the screen  
7 capture, paragraph 48.

8 A. And I think I mentioned this  
9 yesterday, I'm not aware of any instances where the  
10 total at the very last stage of the process is not  
11 what is charged to the consumer's credit card.

12 1053. Q. Okay, so we can agree that the  
13 so-called true cost of the tickets is known to the  
14 consumer before she finishes checkout, as far as in  
15 every example you've seen?

16 A. At the "place order" stage, the  
17 total cost for the tickets is shown for all examples  
18 that I'm aware of.

19 1054. Q. And that's part of the checkout,  
20 right?

21 A. The last page, yes, is part of the  
22 checkout.

23 1055. Q. So, you'll agree with me then that  
24 the true cost of the tickets is known to the  
25 consumer before she checks out?

## Public

L. Nikolova - 315

1 A. At the very end of the process, yes.

2 1056. Q. And so at paragraph 50, where the  
3 commissioner asserts as a fact that the true cost of  
4 the tickets is unknowable for the consumer, I take  
5 it that means at the EDP stage of the process, is  
6 that how I should understand that assertion here?  
7 Because this assertion, you just agreed, cannot be  
8 true as at the end of the checkout process.

9 A. So, my understanding is that yes, at  
10 certain stages of the purchase process, the true  
11 cost would be, as it states, "unknowable".

12 1057. Q. Okay, and that "certain stages"  
13 means at the EDP stage, or at least until the  
14 various service charges...the amounts of the various  
15 service charges are disclosed?

16 A. That's right, up until the amounts  
17 of the service charges are shown.

18 1058. Q. And this assertion that something is  
19 unknowable, I take it that the consumer can learn  
20 the true cost by checking into the checkout phase of  
21 the process? We just agreed that that's where you  
22 can find it out.

23 A. So, as a consumer navigates through  
24 the EDP throughout the checkout process, at the very  
25 end, they are shown all of the fees and the total

## Public

L. Nikolova - 316

1 cost, as far as I'm aware.

2 1059. Q. So, we can agree that the true cost  
3 is not so much unknowable, because you and I just  
4 discussed how you can learn it, it's more that the  
5 commissioner says that the true cost is unknown at  
6 the EDP stage?

7 A. My understanding is that it is  
8 unknowable at least at the EDP stage, because for  
9 certain looks at the website, certain  
10 representations on the website, there is no way to  
11 find out the amount of the non-optional fees on the  
12 EDP, for example.

13 1060. Q. Okay, so it's not possible to find  
14 out the amount without leaving that page?

15 A. That's correct.

16 1061. Q. And progressing into the next series  
17 of pages in the process?

18 A. So, yes, from the EDP, in certain  
19 instances, the amount of the fees can't be  
20 discovered.

21 1062. Q. So, we can agree that this factual  
22 assertion should be read as the so-called true cost  
23 of the tickets is unknowable for the consumer at the  
24 EDP stage, and if the consumer does not progress  
25 beyond the EDP stage?

## Public

L. Nikolova - 317

1 A. For the instances that I'm aware of,  
2 yes.

3 1063. MR. KENT: Stop me if I've asked you  
4 this before. Have I already asked you for  
5 the video capture or screenshots for the  
6 47, 48 example?

7 MR. KLIPPENSTEIN: You did at the  
8 beginning this time.

9

10 BY MR. KENT:

11 1064. Q. Okay, can you have a look at  
12 paragraph 51, please?

13 A. Sorry, I'm looking at paragraph 51?

14 1065. Q. Yes. Just let me know when you're  
15 ready.

16 A. Okay.

17 1066. MR. KENT: You'll see in the middle of  
18 the paragraph an assertion that a consumer  
19 could be misled into selecting what are  
20 described as the respondents' low,  
21 unavailable prices, and here is where I  
22 want to focus, in comparison with another  
23 supplier who could, for example, display a  
24 seemingly higher, but in reality lower,  
25 all-inclusive price. I would like you to

## Public

L. Nikolova - 318

1 provide me with all of the facts by which  
2 the commissioner is aware with respect to  
3 other ticket suppliers providing tickets in  
4 Canada at all-inclusive prices, outside the  
5 province of Quebec.

6 MR. KLIPPENSTEIN: That question is  
7 quite broad.

8 1067. MR. KENT: If it will help, and I'm  
9 happy to take the answer from you, Paul, as  
10 well from the witness, paragraph 5 from the  
11 reply is on the same subject, I just didn't  
12 bother going to both places at once.

13 Paragraph 5 asserts as a fact that some  
14 online ticket vendors, including some of  
15 the respondents' competitors, have marketed  
16 and sold tickets using attainable prices  
17 inclusive of any mandatory fees, so it's a  
18 similar proposition. And really, I will  
19 ask a combination question arising from  
20 both paragraphs. I would like to have all  
21 of the information known to the  
22 commissioner as to what online ticket  
23 vendors do so, in particular what  
24 competitors to the respondents do so, where  
25 in Canada they do it, on what platforms,

## Public

L. Nikolova - 319

1                   for what kinds of tickets, that is primary  
2                   and resale, and in what time periods, and  
3                   if there is a geographical element to it as  
4                   opposed to a cross-Canada element, where in  
5                   Canada.

6                   MR. KLIPPENSTEIN:       And you said you'll  
7                   ask the witness or...it sounds like you're  
8                   asking for an undertaking.

9

10       BY MR. KENT:

11       1068.           Q.       If the witness knows the answer to  
12                   my question, I'm all ears, but I was thinking it  
13                   would end up being an undertaking, so that's why I  
14                   was trying to frame the whole question to make it  
15                   easier for us to keep track.

16                   A.       I'm aware of some examples that I  
17                   can speak to.

18       1069.           Q.       Okay, by all means.

19                   A.       I don't know that I'll recall an  
20                   exhaustive list of all of the various things that  
21                   you mentioned.

22       1070.           Q.       Okay, so why don't you start off as  
23                   best you can?

24                   A.       Sure. I'm aware of some ticket  
25                   vendors, online ticket vendors who present

## Public

L. Nikolova - 320

1           attainable prices to consumers from the start of the  
2           purchase process.

3       1071.           Q.       When you say attainable, what do you  
4           mean?

5                    A.       That those prices are in fact the  
6           prices consumers pay for the tickets that they get.

7       1072.           Q.       When they ultimately check out?

8                    A.       That's right.

9       1073.           Q.       Okay, so who?

10                   A.       So, some companies that come to  
11           mind, for example a website called TickPick.

12       1074.           Q.       Just spell that?

13                   A.       T-I-C-K-P-I-C-K, TickPick. I  
14           believe that's the spelling. Yes, I believe that's  
15           the spelling.

16       1075.           Q.       And do they sell in Canada?

17                   A.       I believe that they sell in Canada,  
18           yes.

19       1076.           Q.       And across what time period, based  
20           on the time period for this litigation, has TickPick  
21           been operating on that basis?

22                   A.       I've seen the website in the course  
23           of my duties on the investigation. I can't recall  
24           the exact dates.

25       1077.           MR. KENT:       So, I think the simplest way

## Public

L. Nikolova - 321

1 to do the undertakings would be to pick up  
2 the items I've asked for to the extent that  
3 the witness isn't able to provide an  
4 answer.

5 MR. KLIPPENSTEIN: Yes, we'll certainly  
6 be able to provide representative  
7 examples...

8 1078. MR. KENT: Well, in this case, I think I  
9 want all the examples that the commissioner  
10 is aware of...that the commissioner has in  
11 mind in making the assertions in 51 of the  
12 application and 5 of the reply.

13 MR. KLIPPENSTEIN: As you're aware,  
14 there is a long time period in issue, and  
15 Canada is a big country. We'll give the  
16 undertaking to provide representative  
17 examples. We'll refuse the request to, you  
18 know, represent that that's an exhaustive  
19 search of all such ticket vendors in  
20 Canada.

21 1079. MR. KENT: I hear you, okay. So, just  
22 to be clear, I want all the information  
23 that the commissioner has, which is a  
24 little bit different than asking you to do  
25 a cross-Canada survey. So, if the

## Public

L. Nikolova - 322

1 commissioner has information on this front,  
2 I think we're entitled to it.

3 MR. KLIPPENSTEIN: I appreciate the  
4 distinction. We'll provide representative  
5 examples.

6 1080. MR. KENT: All right, and you're  
7 refusing to go beyond that, then? It's a  
8 refusal as to my request that you go beyond  
9 that to give me whatever the commissioner  
10 has?

11 MR. KLIPPENSTEIN: Well...

12 1081. MR. KENT: I just want the record to be  
13 clear that there is an undertaking to go so  
14 far and then a refusal to go farther.

15 MR. KLIPPENSTEIN: Okay, we will...and I  
16 guess my hesitation is, we will find what  
17 we find, but I will broaden it say that we  
18 will undertake to provide all examples  
19 we're aware of. U/T

20

21 BY MR. KENT:

22 1082. Q. Okay. So, we heard about TickPick?

23 A. Yes.

24 1083. Q. Yes. Do you have any information as  
25 to their size, volume?

## Public

L. Nikolova - 323

1 A. I don't know.

2 1084. Q. Any other examples that you can  
3 remember?

4 A. SeatGeek, I've seen some examples  
5 from their website where the first price I've seen  
6 in the purchase flow included fees.

7 1085. Q. For SeatGeek and TickPick, are these  
8 examples you found by going onto the internet, or  
9 were these images that you saw on bureau files?

10 A. These are examples I would have  
11 accessed through the internet.

12 1086. Q. So, just doing your own primary  
13 research?

14 A. I don't recall if I was the officer  
15 to actually make those captures and access that  
16 information, but I reviewed videos of those websites  
17 captured by other officers, but I can't recall if I  
18 was the one to do the video capture.

19 1087. Q. So, there exists somewhere a video  
20 or printouts of screen grabs of the various sites  
21 that you're referring to?

22 A. Of TickPick and SeatGeek, yes.

23 1088. MR. KENT: Okay, and so I would like you  
24 to direct us to those if they have been  
25 produced, or to have them if they haven't.

## Public

L. Nikolova - 324

1 MR. KLIPPENSTEIN: We will try...I  
2 believe they're in our productions, I will  
3 try to point you to where they are, and if  
4 there are relevant examples that for  
5 whatever reason didn't make it into our  
6 productions, we'll provide them. U/T

7

8 BY MR. KENT:

9 1089. Q. Thank you. Okay, so TickPick,  
10 SeatGeek, any others?

11 A. Another one which comes to mind  
12 right now is StubHub. For a period of time I'm  
13 aware of based on review of some documents that they  
14 presented all-in pricing for a period of time.

15 1090. Q. And what is the commissioner's  
16 information as to why StubHub stopped doing that?

17 A. I can't recall the exact details. I  
18 am aware that there is articles on the subject. I  
19 have seen mentions of StubHub's move away from  
20 all-in pricing in some of the documents I've  
21 reviewed in the respondents' production.

22 1091. Q. Do you have video capture of  
23 StubHub, do you remember, during the relevant  
24 period?

25 A. And the relevant period, do you mean

## Public

L. Nikolova - 325

1 the period that I'm aware of when they would have  
2 done all-in pricing?

3 1092. Q. Yes.

4 A. I'm not aware of any captures.

5 1093. Q. Okay, so any others?

6 A. I just want to clarify, you're  
7 asking outside Quebec?

8 1094. Q. Yes.

9 A. No examples currently come to mind  
10 other than the ones I've mentioned so far.

11 1095. MR. KENT: Okay. In other words, Paul  
12 would have that wrapped around undertaking  
13 from before?

14 MR. KLIPPENSTEIN: We have the  
15 undertaking, yes.

16

17 BY MR. KENT:

18 1096. Q. So, in 51, which is where we're  
19 anchored right now, the Notice of Application, I  
20 take it the concern expressed by the commissioner is  
21 that a consumer might mistake what I'm going to call  
22 a not all-in price as being lower than a competing  
23 all-in price, and ultimately pay at the end of the  
24 checkout process a higher price than they might  
25 otherwise have paid.



## Public

L. Nikolova - 327

1 another supplier that would display a  
2 seemingly higher all-inclusive price, but  
3 also suppliers who might impose lower,  
4 non-optional fees.  
5

6 BY MR. KENT:

7 1101. Q. Yes, I'm just focusing on the first  
8 part of it for these purposes...that that's one of  
9 the concerns expressed. Really, I just want to make  
10 sure we're speaking the same language so that I can  
11 ask you the next question.

12 A. The concern you outlined is one of  
13 the concerns mentioned in this paragraph.

14 1102. Q. Okay, and that's a concern focused  
15 on whether the consumer might be worse off as a  
16 result of that misunderstanding, right? That's a  
17 focus on the consumer?

18 A. It talks about a consumer  
19 potentially being misled.

20 1103. Q. And you'll agree with me that the  
21 website operator, the ticket seller in this example,  
22 who is doing all-in, might also suffer by losing a  
23 sale to the other supplier in this example who does  
24 not do all-in pricing?

25 A. I supposed that's a possibility,

## Public

L. Nikolova - 328

1 depending on the consumer's choice.

2 1104. Q. That is the choice that the  
3 commissioner posits in this example. This example  
4 posits a consumer going to the not all-in price  
5 rather than the all-in price.

6 A. In certain instances, it posits that  
7 as a possibility.

8 1105. Q. And if then that possibility arises,  
9 not only will the consumer be worse off, but the  
10 all-in ticket vendor will have lost a sale, correct?

11 A. As I understand it in cases  
12 where...based on this...cases where consumers are  
13 comparing two suppliers...it says "another  
14 supplier", but let's say two suppliers for example,  
15 they choose to go with the supplier who does not  
16 present fees in its first prices, then it's possible  
17 that they will choose a seemingly lower, but in  
18 reality higher, price than if they were to go with  
19 the all-inclusive price from another vendor.

20 1106. Q. In which case the all-in vendor will  
21 have lost that sale. This is the commissioner's  
22 example, and I'm just trying to focus on the vendor  
23 as opposed to the purchaser.

24 MR. KLIPPENSTEIN: If it may assist, Mr.  
25 Kent, in fairness to the witness, I think

## Public

L. Nikolova - 329

1                   that the thing you're positing is an  
2                   inference that can fairly be said to flow  
3                   from the commissioner's argument.

4       1107.           MR. KENT:        Can fairly be said?  Yes, I  
5                   thought so.  All right, let's take a break.

6

7       ---    upon recessing at 11:07 a.m.

8       ---    A BRIEF RECESS

9       ---    upon resuming at 11:18 a.m.

10

11       LINA NIKOLOVA, resumed

12       CONTINUED EXAMINATION BY MR. KENT:

13       1108.           Q.       Ms. Nikolova, just before the break,  
14                   we were talking briefly about these other suppliers  
15                   who you had come across as providing all-in pricing,  
16                   and you mentioned TickPick and SeatGeek.  When you  
17                   looked at them, was that with respect to their  
18                   activities before July of 2018, or after July 1st of  
19                   2018?

20                   A.       For TickPick, I can recall that it  
21                   was before July 2018.  For SeatGeek, I'm not sure, I  
22                   would have to...I don't recall.

23       1109.           Q.       Okay, but is there some way you can  
24                   figure that out?

25                   A.       There would be video captures that



## Public

L. Nikolova - 331

1 get the information that the commissioner  
2 has in respect of whether each of those  
3 companies carries on business in Canada?  
4 In other words, the second half is only for  
5 those companies which the commissioner says  
6 carry on business in Canada.

7 MR. KLIPPENSTEIN: I'm afraid you lost  
8 me.

9 1113. MR. KENT: Sure, let's take it in two  
10 parts. Undertaking is, which of the  
11 respondents are said to carry out business  
12 in Canada? Will you give me that  
13 undertaking?

14 MR. KLIPPENSTEIN: We'll give you the  
15 commissioner's information, yes.

U/T

16 1114. MR. KENT: And the second part is, for  
17 those companies, for those respondents,  
18 rather, which the commissioner says are  
19 carrying on business in Canada, what is the  
20 commissioner's information as to the way in  
21 which those companies are carrying on  
22 business in Canada? Just so I can see what  
23 the connection is said to be.

24 MR. KLIPPENSTEIN: Yes.

U/T

25 1115. MR. KENT: So, keep your finger at

## Public

L. Nikolova - 332

1 paragraph 58...

2 MR. KLIPPENSTEIN: I'm sorry, David, the  
3 proviso that we...I'm sorry to interrupt  
4 you.

5 1116. MR. KENT: Yes.

6 MR. KLIPPENSTEIN: The proviso we talked  
7 about yesterday, which is that some of the  
8 commissioner's information of course will  
9 come out close to the date of the  
10 respondents providing their undertakings,  
11 so we'll frame it accordingly.

12 1117. MR. KENT: That's fine.

13 MR. KLIPPENSTEIN: Yes.

14

15 BY MR. KENT:

16 1118. Q. Can you just keep a finger at 58 but  
17 flip back to paragraph 19 of the Notice of  
18 Application, please? This is where it is pleaded in  
19 part that the respondents,

20 "...make or permit each other to make price  
21 representations..."

22 I'm leaving out for the sake of this question the  
23 "together and and/or individually" part1. Do you  
24 see that?

25 A. I see that at paragraph 19.

## Public

L. Nikolova - 333

1 1119. MR. KENT: So, I'm focused here on "make  
2 or permit", which is framed disjunctively  
3 here. For the price representations in  
4 Canada that are said by the commissioner to  
5 be contrary to the Competition Act, with  
6 respect to each of the three websites at  
7 issue and the associated mobile apps, I  
8 would like to know which respondents are  
9 said to make the price representations in  
10 question, and which respondents are said to  
11 permit others to make the price  
12 representation in question? It's framed  
13 disjunctively, and I need to know how to  
14 understand that as against each respondent.

15 MR. KLIPPENSTEIN: We're going to refuse  
16 that question, and the basis is that as I  
17 understand it, that question requires us to  
18 identify facts that are associated with a  
19 particular argument. So, it's in the  
20 nature of facts we would rely on for each  
21 argument. And that's the basis for the  
22 refusal. /R

23 1120. MR. KENT: Okay, this is a statement of  
24 fact, "the respondents...permit each other"  
25 to do something. I would like to have the

## Public

L. Nikolova - 334

1 commissioner's information with respect to  
2 the manner in which each of the respondents  
3 permits another respondent to make price  
4 representations.

5 MR. KLIPPENSTEIN: Yes, same refusal. /R

6 1121. MR. KENT: Just so the refusals are  
7 clear, I would also like the commissioner's  
8 information as to the manner in which each  
9 respondent makes, as opposed to permits  
10 another respondent to make...the manner in  
11 which each respondent makes the price  
12 representations that are the subject of the  
13 application.

14 MR. KLIPPENSTEIN: Okay, same refusal. /R

15

16 BY MR. KENT:

17 1122. Q. I told you before I only had one  
18 question about 58, but I had not turned enough pages  
19 in my notes. So, I'm sorry, I've got a couple of  
20 more questions about paragraph 58. In particular,  
21 (b), (d) and (f), but read the whole thing and just  
22 let me know when you're up to speed.

23 A. Okay, that's...

24 1123. Q. So, first the question on  
25 subparagraph 58(b) like Bob, and it's really just to

## Public

L. Nikolova - 335

1 make sure we're using the same language. And I  
2 was...there is a reference here to the respondents  
3 earning gross revenue from sales, do you see that?

4 A. Yes.

5 1124. Q. And for these purposes, does gross  
6 revenue mean the total price paid for each ticket?  
7 Or does it mean something different? Because the  
8 word "earned" kind of threw me there.

9 A. So, based on my review of financial  
10 documents in the respondents' production, I  
11 understand that they collect revenue from ticket  
12 sales.

13 MR. KLIPPENSTEIN: I think his question  
14 is, though, which is it that is the several  
15 hundred million dollars a year, is that...

16 1125. MR. KENT: Yes, so is...without worrying  
17 too much about how many millions of dollars  
18 it is, does gross revenue, in this  
19 paragraph, mean the total ticket prices  
20 collected, or some smaller amount?

21 MR. KLIPPENSTEIN: Right.

22 1126. MR. KENT: That's all I'm trying to sort  
23 out.

24 MR. KLIPPENSTEIN: But, we've said  
25 something is several hundred million

## Public

L. Nikolova - 336

1                   dollars. The way I understand your  
2                   question is, what is that something that  
3                   we're referring to?  
4

5       BY MR. KENT:

6       1127.           Q.       I would like to come at it both  
7                   ways, because it might be that you come back and say  
8                   actually it's more than that or less than that, but  
9                   I want to know, first of all, what category of money  
10                  are we even talking about before we worry about how  
11                  many dollars go into the category. So what does,  
12                  for the purposes of the commissioner's statement  
13                  here, is gross revenue meant to refer to that total  
14                  ticket price of all the tickets sold?

15                  A.       I know that...again, from the  
16                  respondents' production, I have seen financials  
17                  where they state figures of...

18       1128.           Q.       I'm not asking you how much. I just  
19                   want to know what this phrase means. What portion  
20                   of the total ticket price does gross revenue refer  
21                   to in subparagraph (b)? It could be all of it, it  
22                   could be less than all of it, I just need to know  
23                   what proportion it is.

24                   MR. KLIPPENSTEIN:       Go ahead.

25                   THE DEPONENT:       From financial, I know

## Public

L. Nikolova - 337

1                   that the respondents collect gross  
2                   transaction value and subsequently pay out  
3                   some royalties to clients and keep some  
4                   revenue.

5

6       BY MR. KENT:

7       1129.           Q.       We also know because you were here  
8                   and you heard it that the, what I'll just call for  
9                   this purpose, [REDACTED] [REDACTED]  
10                   [REDACTED] [REDACTED]  
11                   [REDACTED] [REDACTED]  
12                   [REDACTED] I just need to know,  
13                   what does the commissioner mean by "gross revenue"?  
14                   What category of revenue collected does that term  
15                   mean to encompass? And if you're not sure, just say  
16                   you're not sure, and I'll get an undertaking.

17                   A.       I'm not sure what exactly gross  
18                   revenue refers to. I mean, I've mentioned I've seen  
19                   revenue figures in the respondents' production.

20       1130.           Q.       I know. This is your pleading. I  
21                   just want to know what you mean in your pleading by  
22                   using the term "gross revenue".

23                   MR. KLIPPENSTEIN:       Do you know?

24                   THE DEPONENT:        I don't know.

25                   MR. KLIPPENSTEIN:       We'll let you know

## Public

L. Nikolova - 338

1                   what the commissioner is saying is in  
2                   excess of several hundred million dollars.  
3       1131.       MR. KENT:       Okay, and in particular, I  
4                   want to know whether the several hundred  
5                   million dollars is the correct or incorrect  
6                   number, what does "gross revenue" mean to  
7                   capture?

8                   MR. KLIPPENSTEIN:       We'll advise.                   U/T  
9

10       BY MR. KENT:

11       1132.       Q.       Thank you.    Subparagraph (d) says  
12                   that,  
13                   "...The respondents engaged in the  
14                   deceptive conduct frequently and over a  
15                   long duration..."

16                   Do you see that?

17                   A.       I see that.

18       1133.       Q.       And can we agree that the bureau has  
19                   had available to it and in its files at least some  
20                   iterations of the respondents' websites, by-flows  
21                   and price representations over at least the same  
22                   period?

23                   A.       I've seen documents from...well,  
24                   some of the documents that we've looked at that show  
25                   there were files, or I'll say screen captures, from

## Public

L. Nikolova - 339

1           2009, 2010, appeared to be from the bureau file from  
2           that time.

3       1134.           Q.       And that is also the time period of  
4           this litigation, correct? Since 2009?

5                    A.       That's my understanding, that it's  
6           since at least 2009.

7       1135.           Q.       Well...

8                    MR. KLIPPENSTEIN:       We have an  
9           undertaking to clarify that for you.

10       1136.           MR. KENT:       The working basis for this  
11           discovery was that it was 2009.

12                    MR. KLIPPENSTEIN:       That is correct.

13

14       BY MR. KENT:

15       1137.           Q.       Okay. So, we know that the relevant  
16           period for the litigation is 2009, right?

17                    A.       Yes.

18       1138.           Q.       And we know that the bureau had the  
19           screen captures of Ticketmaster's websites and its  
20           fee displays since 2009, right?

21                    A.       I've seen certain screen captures.  
22           I can't remember if the exact fee display was shown  
23           on the screen captures.

24       1139.           Q.       So, we can agree that the bureau has  
25           had those screen captures for the same period that

## Public

L. Nikolova - 340

1 is engaged by this litigation? It's not that hard,  
2 is it?

3 A. The screen captures that I've looked  
4 at from 2009, yes, presumably would have been in the  
5 file at the time.

6 1140. Q. So, we can agree that the bureau has  
7 had screen captures showing the Ticketmaster site in  
8 its file for as long as the period of alleged  
9 deceptive conduct alleged by the commissioner at  
10 paragraph 58(d)?

11 A. Yes. Certain screen captures from  
12 Ticketmaster's website, yes.

13 1141. Q. Last item on 58, if you could just  
14 take a look at paragraph (f), it says that,

15 "...The respondent's conduct has had a  
16 material effect on consumer purchasing  
17 behaviour..."

18 And then it has a dash and it identifies in two  
19 ways,

20 "...It increases the likelihood that a  
21 consumer would purchase a ticket from the  
22 respondents and the amount of money a  
23 consumer would likely spend..."

24 Do you see that?

25 A. I see that.

## Public

L. Nikolova - 341

1 1142. Q. Okay, what information does the  
2 commissioner have to the effect that a consumer  
3 would likely spend...sorry, the amount of money a  
4 consumer would likely spend is affected by the  
5 respondents' conduct?

6 A. So, I'll speak about my general  
7 understanding of the phenomenon as I understand it.  
8 So, yesterday I mentioned some articles, some  
9 academic articles, there is also some other articles  
10 or materials published by foreign agencies, for  
11 example, that speak to effects of presenting initial  
12 prices and subsequently adding fees such that in  
13 the...generally, consumers would purchase or spend a  
14 higher amount than they otherwise would have, or  
15 that they would purchase a product when they  
16 otherwise might not have. And the  
17 respondents... [REDACTED] [REDACTED]

18 [REDACTED] [REDACTED]  
19 [REDACTED]

20 1143. MR. KENT: There is an undertaking  
21 existing already around the research...or  
22 the academic articles that you just  
23 referred to, but I don't think I heard  
24 before about the foreign agencies  
25 publishing thing, so I wonder if I could

## Public

L. Nikolova - 342

1 get an undertaking, please, to provide me  
2 with whatever foreign agency guidance,  
3 analysis, whatever bears on the subject.

4 MR. KLIPPENSTEIN: We'll provide what is  
5 in our knowledge, yes.

U/T

6

7 BY MR. KENT:

8 1144. Q. When you say you saw foreign agency  
9 things, would those items be in the bureau's files?

10 A. They would be in the bureau's files,  
11 the ones that I'm thinking of.

12 1145. MR. KENT: Okay, so if we could produce  
13 those, please? Sorry, if you could produce  
14 those, please?

15 MR. KLIPPENSTEIN: My colleague is  
16 reminding, to the extent that we haven't  
17 already produced them. If we've produced,  
18 we'll do our best to point you to them.

U/T

19 1146. MR. KENT: Absolutely. No, any time  
20 you've already produced something, I'm  
21 happy just to take the number and to go  
22 find it ourselves. Okay, I have a few  
23 questions about the reply.

24 MR. KLIPPENSTEIN: Are we going to be  
25 referring back and forth at all?

## Public

L. Nikolova - 343

1 1147. MR. KENT: I think we're done. I  
2 think...give me one second.  
3 MR. KLIPPENSTEIN: It's okay, I'll just  
4 keep it close by.  
5

6 BY MR. KENT:

7 1148. Q. I think you can put it away, but  
8 don't put it too far away. My first question, have  
9 you had a chance to review the reply in order to  
10 prepare yourself for coming here as a witness today?

11 A. Yes, I looked at the reply.

12 1149. Q. Okay, so let's look...I have a  
13 question for you, at paragraph 21, which is in a  
14 section called, "The response mischaracterizes  
15 consumers and how they behave". While you're  
16 getting yourself oriented, Ms. Nikolova, did you  
17 have any involvement in the preparation of the  
18 reply, the commissioner's reply document?

19 MR. KLIPPENSTEIN: I think that's going  
20 to be refused, I think it's irrelevant,  
21 questions that go to the preparation of  
22 the pleadings. /R  
23

24 BY MR. KENT:

25 1150. Q. Did you see the reply before it was

## Public

L. Nikolova - 344

1 finalized and filed?

2 MR. KLIPPENSTEIN: I think that's

3 refused, same basis. /R

4

5 BY MR. KENT:

6 1151. Q. Did you have an opportunity to  
7 comment on the reply before it was finalized and  
8 filed?

9 MR. KLIPPENSTEIN: Refused on the same  
10 basis. /R

11

12 BY MR. KENT:

13 1152. Q. I have a question for you at  
14 paragraph 21, so let me know when you've reviewed  
15 it.

16 A. I've reviewed paragraph 21.

17 1153. Q. What information does the  
18 commissioner have with respect to whether consumers  
19 form the impression that what are described as the  
20 price representations represent the actual price of  
21 a ticket.

22 A. Well, for example, generally  
23 thinking about first prices that consumers...that  
24 I've seen on the websites and mobile applications,  
25 generally they would exclude non-optional fees from

## Public

L. Nikolova - 345

1 prices shown on first pages.

2 1154. Q. Sorry, they being who?

3 A. The prices shown on first pages  
4 through the checkout process typically would not  
5 include non-optional fees. And as consumers go  
6 through the process, they would have looked at those  
7 prices first.

8 1155. Q. So, I understand about the sequence,  
9 which is what I think you've told me about. I want  
10 to know what information the commissioner has with  
11 respect to whether consumers form an impression that  
12 that initial price representation represents the  
13 actual price of the ticket, which is what is  
14 asserted here. You've told me the sequence in which  
15 some things happened, but all you're telling me is a  
16 sequence. Now, I'm asking for something slightly  
17 more on point to this paragraph.

18 A. Well, for example, on the first  
19 pages of the purchase flow, the prices stated,  
20 "exclude non-optional fees", and so when the  
21 consumers looked at those prices, the non-optional  
22 fees are not included in them.

23 1156. Q. And you and I earlier today looked  
24 at a price representation where what was pleaded to  
25 be the price representation was \$50 plus fees, do

## Public

L. Nikolova - 346

1           you remember that example?

2                   A.       I remember we talked about \$50 plus  
3           fees.

4    1157.           Q.       Do you remember that example? It  
5           was an example in your pleading.

6                   A.       I remember the example.

7    1158.           Q.       And so in that case, what  
8           information does the commissioner have as to whether  
9           a consumer faced with that price representation  
10          would form the impression that \$50 was the actual  
11          price of a ticket?

12                   A.       Well, the ticket is not available  
13          for \$50, for example.

14   1159.           Q.       Right.

15                   A.       In that example.

16   1160.           Q.       I know that. That's not my  
17          question, though. The price representation in the  
18          example was \$50 plus fees. That was the quote,  
19          right? Around that?

20                   A.       There was a quote.

21   1161.           Q.       So, I'm asking you what information  
22          the commissioner has with respect to whether a  
23          consumer, faced with a representation that says "50  
24          plus fees", would form the impression that the  
25          ticket price was \$50, period.

## Public

L. Nikolova - 347

1                   A.     Okay, could I just have a look at  
2     that example...

3     1162.           Q.     Absolutely.

4                   A.     ...in the Notice of Application?

5     1163.           Q.     But understand, I'm not limiting my  
6     question to that example, I'm just using that  
7     example as a way of asking you my question. But you  
8     should take a look at it. And in particular, you  
9     can find it...yes, paragraph 43.

10                  A.     So, I just want to clarify something  
11     which I don't think I noted at the time of our  
12     discussion, if that's all right.

13     1164.           Q.     Sure.

14                  A.     So, I see what it says in paragraph  
15     43, but in paragraph 44 it reads, the only  
16     difference between the earlier example, refers to 30  
17     examples prior to September 2017. So, the only  
18     difference between the earlier example and this  
19     example, which I take to mean the example in  
20     paragraph 43 and 44, is that the website now has the  
21     words "plus fees" beside the price representation.

22     1165.           Q.     Yes.

23                  A.     Which I would take to read that the  
24     price representation is \$50.

25     1166.           Q.     That's not what it says expressly at

## Public

L. Nikolova - 348

1 paragraph 43 in the second-last sentence. But I  
2 think you're missing the point of my question, and  
3 I'll just leave off the word "price representation".  
4 So, we're back to paragraph 21 of the reply. What  
5 information does the commissioner have with respect  
6 to whether a consumer faced with the words "\$50 plus  
7 fees" would form the impression that \$50 was the  
8 actual price of the ticket?

9 MR. KLIPPENSTEIN: May I, David?  
10

11 BY MR. KENT:

12 1167. Q. Well, let's start with the witness,  
13 and then over to you.

14 A. I'm sorry, could you please repeat  
15 your question?

16 MR. KLIPPENSTEIN: I was going to...if I  
17 can maybe rephrase your question...

18 1168. MR. KENT: Sure.

19 MR. KLIPPENSTEIN: ...I'll try to  
20 capture it. I understand his question to  
21 be that he is asking us what facts we know  
22 that consumers form that general  
23 impression. Is that a fair...

24 1169. MR. KENT: Yes.

25 MR. KLIPPENSTEIN: ...way of saying your

## Public

L. Nikolova - 349

1 question?

2 1170. MR. KENT: That's the broad version.

3 MR. KLIPPENSTEIN: What facts?

4

5 BY MR. KENT:

6 1171. Q. Then I have a specific version.

7 Yes.

8 A. Well, for example, in certain  
9 instances I can think of, the first price is shown  
10 to not include the non-optional fees. There may be  
11 detail links or fine print disclaimers elsewhere on  
12 the page, but the price representations...or I  
13 should say the prices on the first pages consumers  
14 do not include non-optional fees unless consumers  
15 progress through this process, so then shown to them  
16 later. And I've mentioned some literature and some  
17 articles from foreign agencies which speak to a kind  
18 of incurring effect, as I'll call it, which I think  
19 is also referenced elsewhere in our pleadings, that  
20 consumers remember those first prices, and don't  
21 adequately address for the total price that they  
22 would see at the end of the process.

23 1172. Q. So, thank you for that, you have  
24 told me that before, and I'm asking you a slightly  
25 different question, because paragraph 21, in the

## Public

L. Nikolova - 350

1 first bit that I'm talking about, is not talking  
2 about anchoring or failing to fully process the  
3 total price as you work your way through the  
4 checkout. That's referred to later on in paragraph  
5 21. I'm in the first part of 21, where there is an  
6 assertion that price representations will  
7 be...sorry, consumers will form a general impression  
8 that that initial price representation represents  
9 the actual price of the ticket, do you see that  
10 assertion?

11 A. I see that.

12 1173. Q. Okay, that's all I'm focusing on  
13 right now. And so I'm asking you, is there anything  
14 else that you know of that the commissioner has by  
15 way of facts with respect to whether a consumer  
16 forms that impression? In other words, that that  
17 initial number is the actual price of a ticket. I'm  
18 not talking here about the layout, I'm talking about  
19 what the consumer's impression is derived from that  
20 layout. That's what's being discussed.

21 A. It's hard for me to speak of  
22 consumer impressions generally. The facts, as I'm  
23 aware of them, is that in many instances on the  
24 respondents' websites and mobile application, the  
25 first prices that are disclosed, for example, once

## Public

L. Nikolova - 351

1           you hover over a seat, or let to buy tickets, one of  
2           the examples we looked at, those prices shown to not  
3           include non-optional fees.

4   1174.           Q.       So, you're describing the website,  
5           but I'm asking you what consumers' impressions are  
6           based on the website. You understand the difference  
7           between those two, right?

8                   A.       Yes, I understand the difference.

9   1175.           Q.       And what I'm asking about is the  
10           commissioner's assertion as to what that general  
11           impression is by consumers. Understand I'm asking  
12           about that.

13                   A.       I understand you're asking about  
14           impression, yes.

15   1176.           Q.       So, I'm not asking about how the  
16           website is laid out; we have been over that. I'm  
17           asking about any facts the commissioner has with  
18           respect to what impression consumers form from  
19           viewing those websites. And do you have any  
20           information on that, you being the commissioner?

21                   MR. KLIPPENSTEIN:       In fairness to the  
22                   witness, she has referred you to literature  
23                   and articles.

24   1177.           MR. KENT:       Okay, so I know we've had an  
25           undertaking on that, but let's tie the

## Public

L. Nikolova - 352

1                   undertaking also to this question.  If it's  
2                   the same body of literature, that's fine,  
3                   and if it's different, that's fine, too.  
4                   Is that okay?

5                   MR. KLIPPENSTEIN:       We will do so.                   U/T

6

7       BY MR. KENT:

8       1178.           Q.       And then in particular, Ms.  
9                   Nikolova, as you know, many of the prices...let's  
10                  get away from the phrase "price  
11                  representation"...many of the prices shown in the  
12                  EDP are accompanied by the words "+ fees", correct?  
13                  You've seen those examples of that?

14                  A.       There are examples of prices  
15                  accompanied with "+ fees" language.

16       1179.           Q.       And so I'd like to know what facts  
17                  the commissioner has with respect to whether  
18                  consumers form the impression that the price beside  
19                  the word "+ fees" is nevertheless the actual price  
20                  of the ticket.

21                  A.       Sorry, could you repeat the  
22                  question, please?

23       1180.           Q.       Sure, and I'll use an example, but  
24                  it's just an example.  Let's say the display on the  
25                  EDP says "\$50 + fees" for a ticket.  I'd like to

## Public

L. Nikolova - 353

1 know what information the commissioner has with  
2 respect to a consumer facing that information on the  
3 EDP would form the impression that \$50 was the  
4 actual price of a ticket, notwithstanding the words  
5 "+ fees" beside it.

6 A. I'm not sure I have anything  
7 additional, other than the articles and the studies  
8 that...

9 1181. Q. And your articles, do they say that  
10 somebody faced with the words "\$50 + fees" forms the  
11 impression that the actual price is \$50 and ignores  
12 the words "+ fees"?

13 A. No, we talk about the phenomenon  
14 generally of the practice of presenting an initial  
15 price and then adding non-optional...or fees later  
16 on in the purchase process.

17 1182. Q. Could you go to paragraph 24,  
18 please? I have a question here, if you could just  
19 let me know when you've had a chance to review it.

20 A: I've read paragraph 24.

21 1183. Q. Okay, it refers to...makes a  
22 statement of fact about consumers expending  
23 "substantial time and effort on a ticket-by-ticket  
24 basis to ultimately learn the true cost. Do you see  
25 that?

## Public

L. Nikolova - 354

1                   A.       Yes, it says,  
2                   "...The purchase process requires consumers  
3                   to expend substantial time and effort on a  
4                   ticket-by-ticket basis to ultimately learn  
5                   the true cost..."

6       1184.       Q.       And in paragraph 23 above, there is  
7                   a similar phrase. At the end, it says,  
8                   "...The respondents impose material costs  
9                   on consumers in terms of time and  
10                  effort..."

11                Do you see that?

12                A.       I see that.

13       1185.       Q.       So that I don't have to ask my  
14                   questions twice, I assume that's referring to the  
15                   same thing, those two paragraphs, this time and  
16                   effort?

17                MR. KLIPPENSTEIN:     Yes.

18

19       BY MR. KENT:

20       1186.       Q.       Okay, so how much time and effort?

21                A.       It's hard to speak for consumers,  
22                   but generally, as I understand the purchase  
23                   processes, there are various stages from the initial  
24                   page, you know, how to spend time to find tickets,  
25                   potentially navigate through a list, choose various

## Public

L. Nikolova - 355

1 options. If you choose from a map, you have to  
2 click on a section, for example, select a particular  
3 ticket, after which you would choose to proceed  
4 further on, and there are several pages throughout  
5 the checkout process.

6 1187. Q. So, you've described a process, but  
7 I'm looking at a pleading that pleads material, and  
8 in another place, substantial time and effort. So,  
9 I'm asking you, how much time and effort?

10 A. Well, that would depend on the  
11 particular instance and the particular purchase flow  
12 that a consumer is going through, and as I have  
13 mentioned, there are various stages.

14 1188. Q. No, I understand the stages. I'm  
15 asking you, how much time and effort? You say it's  
16 material and you say it's substantial. I'm entitled  
17 to know as a matter of fact how much time and  
18 effort. I mean, someone else will decide whether  
19 it's material or substantial.

20 A. As I'm aware of the facts, the time  
21 and effort is that which is incurred in the  
22 process...

23 1189. Q. I understand where the time and  
24 effort is said to arise, and I understand how the  
25 time and effort is said to arise, I'm asking you how

## Public

L. Nikolova - 356

1 much. How much time? How much effort?

2 A. Well, that would depend on the  
3 particular process the consumer is going through,  
4 and...

5 1190. Q. I don't doubt it, but how much is  
6 it? What's the range, then?

7 A. Well, it would depend on how much  
8 time a consumer takes on a particular page, and  
9 we've talked about the timed, pages and checkout...

10 1191. Q. No, but you understand it doesn't do  
11 me any good when I ask you how much time and you say  
12 "it depends on the time". I want to know how much  
13 time and effort consumers put into navigating  
14 through the system to find what the commissioner  
15 describes as the true cost of his or her options?

16 MR. KLIPPENSTEIN: Do you know?

17 THE DEPONENT: I don't know generally  
18 how much time consumers spend going through  
19 the purchase flow.

20 1192. MR. KENT: Does the commissioner have  
21 some information on that front?

22 MR. KLIPPENSTEIN: You're looking for a  
23 range or an average?

24 1193. MR. KENT: I'm looking for the  
25 commissioner's information. The

## Public

L. Nikolova - 357

1 commissioner pleaded it in two successive  
2 paragraphs, and I think it might be in  
3 other places as well, and the commissioner  
4 says that it's material and substantial, so  
5 I assume the commissioner knows how much it  
6 is.

7 MR. KLIPPENSTEIN: Are you asking for an  
8 undertaking to provide if there is any  
9 information beyond what the witness has  
10 said?

11 1194. MR. KENT: The witness hasn't said  
12 anything, right? She said she doesn't know  
13 when I asked the quantitative question.  
14 So, we can say what the witness says is  
15 fine. But yes, I would like to know what  
16 the commissioner's information is as to how  
17 much time or effort is invested or  
18 required...I'm just picking up verbs from  
19 the pleading...of consumers to...again, to  
20 pick up the language of the pleading,  
21 ultimately learn the true cost of a  
22 consumer's options. And if it's different,  
23 the time and effort, again, to pick up  
24 paragraph 24, that would be wasted if a  
25 consumer abandons the transaction.

## Public

L. Nikolova - 358

1 MR. KLIPPENSTEIN: Okay. U/T

2

3 BY MR. KENT:

4 1195. Q. Okay, thank you. Paragraph 25. I'm  
5 not going to ask you about the significant time and  
6 effort in this paragraph. Just let me know when  
7 you've had a chance to review.

8 A. Thanks, I've reviewed it.

9 1196. Q. Okay. So, you'll see in the second  
10 paragraph, the commissioner says that having done  
11 so, that means having invested what is said to be  
12 significant time and effort into the purchase of  
13 tickets...having done so, consumers think of the  
14 tickets they select as theirs and at the price they  
15 were initially attracted to. I don't want you to  
16 repeat things you've already told me, but is there  
17 anything beyond what you've already told me that  
18 you're aware of as being facts related to these  
19 conclusions or assertions?

20 A. I have talked about a general  
21 understanding of the phenomena as I understand it on  
22 the basis of articles and literature that I have  
23 looked at that consumers initially select tickets,  
24 and as they proceed through the purchase flow, my  
25 understanding is they feel they have those tickets.

1 [REDACTED]  
 2 [REDACTED]  
 3 1197. [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]

7 1198. [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]

10 1199. [REDACTED]

11 [REDACTED] Why didn't the  
 12 commissioner do anything about it back then?

13 MR. KLIPPENSTEIN: That's refused on the  
 14 basis of relevance. [REDACTED]

16 BY MR. KENT:

17 1200. Q. But you're telling me now that  
 18 consumer complaints along those lines are material,  
 19 are part of the facts that support that assertion?

20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

## Public

L. Nikolova - 360

1 1201. Q. And other than what...really, I'm  
2 just trying to wrap it up. Other than what you've  
3 already told me...are there any other facts or  
4 information that you're aware of that the  
5 commissioner has with respect to this business of  
6 the consumer expending the time and effort but  
7 thinking the price was what they were initially  
8 shown?

9 A. Sorry, could you please repeat your  
10 question?

11 1202. Q. Sure. The commissioner's statement  
12 here is that having invested significant time and  
13 effort into the purchase of tickets, consumers think  
14 of the tickets they have selected as theirs and at  
15 the price they were initially attracted to. Do you  
16 see that assertion?

17 A. I see that.

18 1203. Q. And I'm asking whether there is any  
19 additional information that we haven't discussed yet  
20 with respect to whether, having invested significant  
21 time and effort into the purchase of tickets,  
22 consumers think of those tickets as being theirs at  
23 the price they were initially attracted to.

24 A. So, I'm not sure that the second  
25 part of that, the consumers think of the tickets

## Public

L. Nikolova - 361

1           they select as theirs, is necessarily in all cases  
2           related to the significant time or effort they would  
3           have expended. I mean, I understand that those two  
4           phenomena as stated to be related in this instance,  
5           but I don't recall that it's limited to such  
6           instances.

7       1204.           Q.       Okay, so that...thank you, but that  
8           wasn't my question. This says that having invested  
9           all that time and effort, which we know from earlier  
10          on in the pleading means working your way through  
11          the process to find the true cost of the ticket,  
12          right? That's what it says in 24. This assertion  
13          is, that having done all that, consumers think of  
14          the tickets as being at the price they were  
15          originally...initially attracted to.

16                 I'm not worried, for these purposes, about  
17          the part of the assertion where the consumers think  
18          of the tickets as theirs. And I'm just wondering if  
19          there's anything in addition to what you've already  
20          talked about that the commissioner has, by way of  
21          facts or information, about what consumers think  
22          about the price of the tickets at the stage where  
23          they've already invested the significant time and  
24          effort.

25                 A.       Well, again, based on what some of

## Public

L. Nikolova - 362

1 the literature and some of the reports that I got  
2 from other agencies that are...in addition to time  
3 and effort, there might be other effects happening  
4 to make consumers think that the tickets they've  
5 selected are theirs.

6 1205. Q. Great. Once again, you're focusing  
7 on something different from what I asked you. But  
8 do you have anything additional to add other than  
9 what you've already told me in previous?

10 A. Nothing else comes to mind at this  
11 time.

12 1206. Q. Okay, can you look just a little bit  
13 further down, 25? It says...the commissioner says,  
14 "...When the respondents reveal their  
15 non-optional fees, the consumer realizes  
16 for the first time if at all, late in the  
17 process, that the initial price is not  
18 attainable..."

19 Do you see that assertion?

20 A. I see that.

21 1207. Q. And can we agree that a consumer who  
22 was shown the information, say, "\$50 plus fees",  
23 would not realize for the first time late in the  
24 process that the initial \$50 price was not  
25 attainable? We can agree on that, can't we?

## Public

L. Nikolova - 363

1                   A.     I'm sorry, could you please restate  
2     that?

3     1208.           Q.     Sure.  Where someone is shown the  
4     information on the EDP...and I'm just going to use  
5     the example we've been working with, but it's a real  
6     life example, because it's the commissioner's  
7     example...where the consumer is shown the initial  
8     information, "\$50 plus fees", you're familiar with  
9     that form of representation?

10                  A.     Yes, we looked at that particular  
11     kind of representation earlier.

12     1209.           Q.     We did.  We can agree that someone  
13     who is shown that representation on the first page  
14     would not realize for the first time, if at all late  
15     in the process, that the initial \$50 price was not  
16     attainable?  We can agree that that statement in  
17     here would not apply in that scenario?

18                  A.     I think it's hard to say for  
19     particular people what they would or wouldn't  
20     realize in the moment.

21     1210.           Q.     Okay, would it make sense to you  
22     that someone...we've come through this with  
23     you...someone shown the phrase "\$50 plus fees" knows  
24     that the price, the ultimate price, is going to be  
25     more than \$50, it's going to be different than \$50?

## Public

L. Nikolova - 364

1                   A.       I think it's fair to say that in the  
2 cases where they notice the language "\$50 plus  
3 fees", that that's a possibility that they  
4 would...they would see that it's \$50 plus fees.

5 1211.            Q.       And they would know that that means  
6 the ultimate price is going to be over \$50, right?

7                   A.       I think I spoke about how I,  
8 personally, if I was to look at "\$50 plus fees" and  
9 process that information, then yes...

10 1212.           Q.       So, does the commissioner have any  
11 information that would suggest that a consumer would  
12 read the phrase "\$50 plus fees" and fail to  
13 comprehend that that meant that the ultimate price  
14 would be higher than \$50?

15                   A.       I think it's hard to speak about  
16 comprehension, I could...

17 1213.           Q.       I'm asking you about what  
18 information the commissioner has.

19                   A.       So, I've mentioned articles and  
20 other studies that I can recall that talk about  
21 consumers anchoring onto first prices they see. A  
22 price stated in "\$50 plus fees" is \$50. And so...

23 1214.           Q.       Is that what the studies say, a  
24 price just says "\$50 plus fees" would be understood  
25 as \$50, period?

## Public

L. Nikolova - 365

1           A.     As I recall, the studies, they  
2     didn't use that language, they talk about generally,  
3     when people see initial prices that do not include  
4     fees and later on those fees are revealed, they tend  
5     to underestimate the total price, and they would  
6     anchor onto that first price.

7     1215.        Q.     And do those studies include  
8     situations where the initial price included the  
9     words "plus fees"?

10           A.     I don't recall the studies talking  
11     about particular language to the effect of "plus  
12     fees" as...in the representations.

13     1216.        MR. KENT:     But you'll let me know, then,  
14     if the commissioner has any information  
15     that suggests that where language along the  
16     lines of "plus fees" is placed beside the  
17     price that consumers fail to realize that  
18     the ultimate price would be in excess of  
19     \$50? And I use \$50 just as an example.

20           MR. KLIPPENSTEIN:     We'll let you know if  
21     there is additional information that is not  
22     covered by the previous undertaking.                   U/T

23     1217.        MR. KENT:     Okay. A couple of somewhat  
24     random questions. Delivery charges,  
25     would...

## Public

L. Nikolova - 366

1 MR. KLIPPENSTEIN: I'm sorry, would this  
2 be an okay time to interrupt and ask...

3 1218. MR. KENT: No, but if we could break in  
4 five minutes, then that would be a good  
5 time. Delivery charges, does the  
6 commissioner take issue with the disclosure  
7 of delivery charges in the checkout stage  
8 as opposed to on the EDP in this  
9 litigation?

10 MR. KLIPPENSTEIN: I see you're looking  
11 at me, and I'll...

12 1219. MR. KENT: I'm assuming it's a question  
13 for you, Paul, as counsel.

14 MR. KLIPPENSTEIN: So, to the extent  
15 that delivery charges are optional, then  
16 no.

17 1220. MR. KENT: Okay.

18 MR. KLIPPENSTEIN: It's the non-optional  
19 fees as defined in the pleadings that are  
20 at issue.

21 1221. MR. KENT: And if the charge is  
22 non-optional but there is in fact a  
23 delivery, I take it there's an issue taken  
24 with that? Let's go off the record for a  
25 second.

## Public

L. Nikolova - 367

1 --- DISCUSSION OFF THE RECORD

2

3 1222. MR. KENT: So, off the record we had a  
4 little discussion about delivery charges.  
5 So, let me suggest three scenarios and you  
6 can let me know which are at issue in this  
7 litigation, if any. One is where delivery  
8 fees are optional in the sense that there  
9 might be a delivery fee or there might not  
10 be a delivery fee depending on consumer  
11 choice at that stage of the process. The  
12 second is where there is going to be a  
13 delivery fee but the level of the fee  
14 depends on a choice made by the consumer as  
15 to the mode of delivery. And the third  
16 would be where there is simply a delivery  
17 fee that will be imposed, but there is no  
18 consumer choice involved in figuring out  
19 how much that delivery fee would be.

20 MR. KLIPPENSTEIN: I'll answer within  
21 the context of what's at issue in this  
22 litigation so you'll know what is at issue  
23 here. The commissioner has defined in his  
24 pleadings non-optional fees, and at  
25 paragraph 24, of course, you noticed the

## Public

L. Nikolova - 368

1 word "including the following" where we've  
2 identified some fees there. To my  
3 knowledge, and we'll advise if otherwise,  
4 the commissioner hasn't come across  
5 examples of delivery fees in the  
6 respondents' ticket by-flow that would be  
7 included in the non-optional fees with  
8 which the commissioner takes issue.

U/T

9

10 BY MR. KENT:

11 1223. Q. Okay. Second random question for  
12 you, Ms. Nikolova, if you know. Has the bureau ever  
13 received a complaint relating to the budget tool?  
14 Do you know what I mean by the budget tool, the  
15 slider?

16 A. I just want to make sure we're on  
17 the same page. I think it's referenced in our  
18 pleadings...

19 1224. Q. It is.

20 A. ...as the budget tool.

21 1225. Q. And it's a slider by which a  
22 consumer can pick the high and low prices of a range  
23 within which the website then looks for tickets for  
24 them. Are you and I speaking about the same thing?

25 A. I believe we're referring to the

## Public

L. Nikolova - 369

1 same thing generally described.

2 MR. KLIPPENSTEIN: I just opened to the  
3 pleadings in case you need to...

4

5 BY MR. KENT:

6 1226. Q. Yes, it's at 52, there's an  
7 example...

8 A. Yes. Perhaps I could have a look at  
9 that, actually.

10 1227. Q. So, in the screenshot at 52, we see  
11 what I'm calling a budget tool beside the words  
12 "what's your budget per ticket?". In this case, it  
13 looks like it is set at a range of 79 to 101  
14 dollars, or perhaps that is the range that's  
15 available to be chosen within. Without regard for  
16 the numbers, that's the tool I want to ask about.

17 A. So, this is an image of the budget  
18 tool.

19 MR. KLIPPENSTEIN: I just took it out.  
20 I was the one who insisted on taking out  
21 the pleadings. I just took it out so we  
22 would have a reference in front of us, what  
23 Mr. Kent means when he's asking about the  
24 budget tool.

25

## Public

L. Nikolova - 370

1 BY MR. KENT:

2 1228. Q. Yes, that's very useful. "Budget  
3 tool" is a defined term in the commissioner's  
4 pleading. So, Ms. Nikolova, now having reviewed  
5 paragraph 52 and the associated image, you  
6 understand what the commissioner refers to when he  
7 refers to a budget tool?

8 A. Yes, I understand what it refers to.

9 1229. Q. Has the commissioner received any  
10 consumer complaints relating to the budget tool?

11 A. I can't recall specifically.

12 1230. MR. KENT: You'll let me know?

13 MR. KLIPPENSTEIN: We will. U/T

14 1231. MR. KENT: And provide me, obviously,  
15 with copies of any...of notes or...

16 MR. KLIPPENSTEIN: Or represent  
17 examples...

18 1232. MR. KENT: The representation of them?

19 Okay, so let's take a break now.  
20

21 --- upon recessing at 12:13 p.m.

22 --- A BRIEF RECESS

23 --- upon resuming at 12:33 p.m.  
24

25 LINA NIKOLOVA, resumed

## Public

L. Nikolova - 371

1 CONTINUED EXAMINATION BY MR. KENT:

2 1233. Q. I have a few tidy-up questions, then  
3 we can finish up. First of all, I have a few  
4 questions about TickPick and SeatGeek that we spoke  
5 of earlier. And I forgot to ask you what markets  
6 TickPick and SeatGeek were in across the relevant  
7 period. In other words, in the primary market,  
8 secondary market, or both?

9 A. I can't recall specifically.

10 1234. Q. Do you recall generally?

11 A. SeatGeek sold...I've seen SeatGeek  
12 offer resale tickets, I can't recall if they also  
13 offered primary tickets.

14 1235. Q. So, I think of SeatGeek as more of  
15 an aggregator of tickets being sold by others, and  
16 through which you can then acquire those tickets.  
17 Does that conform to your understanding of how they  
18 operated during the relevant period?

19 A. I can't recall without having a look  
20 back to the captures that I have seen.

21 1236. MR. KENT: Okay, can you take a look,  
22 then, at your file, let us know what market  
23 TickPick and SeatGeek were operating in  
24 during the relevant periods, and whether my  
25 description of how SeatGeek functions is

## Public

L. Nikolova - 372

1 more or less accurate?

2 MR. KLIPPENSTEIN: We will. U/T

3

4 BY MR. KENT:

5 1237. Q. Did you make contact with either  
6 TickPick or SeatGeek?

7 A. No.

8 1238. Q. Did you make...and when I say "you",  
9 I mean anybody on the team dealing with this matter?

10 A. Just to clarify, you mean calling  
11 the particular company in charge of...

12 1239. Q. I mean make contact with them to  
13 seek information.

14 A. Not that I'm aware of.

15 1240. Q. Okay, and that means nobody on the  
16 team, right?

17 A. I'm not aware of anybody having made  
18 contact with those companies.

19 1241. MR. KENT: Okay, and if the commissioner  
20 has other information, you'll let me know?

21 MR. KLIPPENSTEIN: I let the questions  
22 go, but what's the relevance?

23 1242. MR. KENT: Well, I'm interested in  
24 information the commissioner may have about  
25 the relevant market.

## Public

L. Nikolova - 373

1 MR. KLIPPENSTEIN: Okay. I'm not sure  
2 of the relevance myself, and so on that  
3 basis, I'll refuse. /R  
4

5 BY MR. KENT:

6 1243. Q. Another tidy-up question, and it's  
7 really because I don't have a good enough note of  
8 the undertaking for which I apologize. There was a  
9 reference this morning to reports from foreign  
10 agencies. You recall you talking about some of the  
11 research you had done and some of the academic  
12 articles and things you looked at from foreign  
13 agencies. Do you recall that discussion generally?

14 A. I recall us talking about that, yes.

15 1244. Q. And I think you indicated that part  
16 of what you looked at were reports from foreign  
17 agencies, is that right?

18 A. Generally of reports, yes, and  
19 publications.

20 1245. MR. KENT: Okay, so in case I didn't  
21 frame the request widely enough earlier  
22 when you gave an undertaking as to that,  
23 could include reports or publications among  
24 the foreign agency information that will be  
25 looked for and produced?

Public

L. Nikolova - 374

1 MR. KLIPPENSTEIN: Yes. U/T

2

3 BY MR. KENT:

4 1246. Q. The last couple of questions come  
5 from the reply, so if you could have the reply  
6 handy, please. I have a question at paragraph 3  
7 that is particular, and a question at paragraph 4  
8 that is general.

9 A. I'm sorry, it was 3 and 4?

10 1247. Q. Yes, I have separate questions on  
11 each.

12 A. Okay, I've reread those paragraphs.

13 1248. Q. Paragraph 3 asserts that the  
14 respondents' own records demonstrate certain things  
15 that, the respondents' own records reveal certain  
16 things, and I wonder if you could tell me, please,  
17 which of the respondents' records are being referred  
18 to with respect to those two assertions in paragraph  
19 3?

20 A. I can think of examples, the  
21 respondents' records. [REDACTED]

22 [REDACTED] [REDACTED] [REDACTED]

23 [REDACTED] [REDACTED]

24 1249. Q. Do you know which documents, though?

25 A. Not specifically at the top of my

## Public

L. Nikolova - 375

1 mind, there are quite a few documents I can think  
2 of.

3 1250. Q. Okay, but you're not sure which  
4 specific documents those are so that I can go find  
5 them myself?

6 A. There are quite a few documents. I  
7 mean, I've reviewed many documents, and generally, I  
8 remember seeing documents that speak to what's  
9 stated in this paragraph.

10 1251. MR. KENT: Okay, could I get an  
11 undertaking then to let me know what  
12 documents the commissioner says, first of  
13 all, demonstrate that the respondents are  
14 fully aware of the effect that their  
15 pricing practices have on these consumers,  
16 and second, that the commissioner says  
17 reveal that when consumers are faced with  
18 lower prices and then face fees that are  
19 later dripped, consumers remember the base  
20 price, don't want to do the math, and will  
21 not rationally combine different prices to  
22 work out bundle costs?

23 MR. KLIPPENSTEIN: We will identify  
24 representative examples, and with respect  
25 to the two phrases which appear in quotes,

## Public

L. Nikolova - 376

1                   which I would imagine come from specific  
2                   documents, we'll try to identify those and  
3                   point them out to you.

U/T

4

5       BY MR. KENT:

6       1252.           Q.       Thank you.  Okay, paragraph 4 of the  
7                   reply addresses what is standard in e-commerce, do  
8                   you see that?

9                   A.       It states that a practice of  
10                   obscuring the true price is not standard in  
11                   e-commerce.

12       1253.           Q.       So, I would like to know what the  
13                   commissioner's information is, please, as to what  
14                   practices with respect to the presentation of prices  
15                   is standard in e-commerce across the period in  
16                   question.

17                   A.       That's hard to...I'm aware of  
18                   examples of e-commerce companies that show that the  
19                   true price of a product from the start of a purchase  
20                   process.

21       1254.           Q.       Yes, no, you've told us that, but  
22                   those are examples.  In paragraph 4, the  
23                   commissioner is now discussing what is and is not  
24                   standard, and has made an assertion.  So, I would  
25                   like to know what information the commissioner has

## Public

L. Nikolova - 377

1 as to what is standard in e-commerce, and across the  
2 period, and if it varies from time to time during  
3 the period, I would like to know.

4 MR. KLIPPENSTEIN: That's not exactly  
5 what the pleading says. The pleading says  
6 that a particular practice is not standard.

7 1255. MR. KENT: No, I understand.

8 MR. KLIPPENSTEIN: And your question  
9 assumes that there is a standard.

10 1256. MR. KENT: Well, I'm just...and maybe  
11 there is, maybe there isn't, I'm asking for  
12 what information the commissioner has as to  
13 what is standard. If the answer is there  
14 is no standard, so be it. But I want to  
15 know, given that the issue of what is  
16 standard is raised in the commissioner's  
17 reply, I would like to know what  
18 information the commissioner has as to what  
19 e-commerce standards are, or were, across  
20 the relevant period.

21 MR. KLIPPENSTEIN: And what you have is  
22 the rest of paragraph 4, which says many  
23 other e-commerce companies present prices  
24 that are in fact obtainable.

25 1257. MR. KENT: So, is that the answer to my

## Public

L. Nikolova - 378

1 question?

2 MR. KLIPPENSTEIN: I think paragraph 4  
3 of the reply simply puts forward the  
4 commissioner's position that the  
5 commissioner does not agree with  
6 respondents' proposition that drip pricing  
7 is standard, and points to examples of  
8 companies that don't choose that practice.

9 1258. MR. KENT: Well, the commissioner has  
10 made a statement that something isn't  
11 standard, so that begs the question, what  
12 is standard, if anything? I would like to  
13 know what information the commissioner has  
14 as to what, if anything, was standard in  
15 e-commerce across the period relevant to  
16 this litigation.

17 MR. KLIPPENSTEIN: Okay, I'm going to  
18 refuse that question, I think it's broad,  
19 and I think that the pleading speaks for  
20 itself.

21 1259. MR. KENT: The pleading, by definition,  
22 is not meant to be...the pleading doesn't  
23 have all the information that I'm asking  
24 for. The pleading is a statement, or  
25 assertion of fact, but I'm entitled to the

## Public

L. Nikolova - 379

1 information behind it. Telling me the  
2 pleading speaks for itself is not a  
3 response to an undertaking.

4 MR. KLIPPENSTEIN: Well, the question  
5 you asked goes to the commissioner's  
6 position.

7 1260. MR. KENT: No, it doesn't. I'm asking  
8 for the information relating to a statement  
9 of fact, which is that something is or is  
10 not a standard. I just want to know, does  
11 the commissioner have information relating  
12 to what is standard in e-commerce?

13 MR. KLIPPENSTEIN: And the  
14 commissioner's position is refuting what  
15 the respondent's position is, which is that  
16 there is a standard, and that the standard  
17 is to engage in what the commissioner calls  
18 "drip pricing".

19 1261. MR. KENT: So, you're refusing to  
20 undertake to answer the question as to what  
21 information the commissioner has as to what  
22 is standard in e-commerce across the period  
23 relevant to this litigation, do I  
24 understand that properly?

25 MR. KLIPPENSTEIN: I mean, the

## Public

L. Nikolova - 380

1 commissioner is saying that the remainder  
2 of paragraph 4 are the facts that the  
3 commissioner puts forward to say that it's  
4 not standard.

5 1262. MR. KENT: And are those all the facts  
6 or information that the commissioner has on  
7 this subject?

8 MR. KLIPPENSTEIN: If there are others,  
9 we will advise.

10 1263. MR. KENT: So, you're undertaking to let  
11 me know and to provide me with any other  
12 facts the commissioner has as to what is  
13 standard in e-commerce across this period,  
14 other than what is said in the last  
15 sentence of paragraph 4?

16 MR. KLIPPENSTEIN: We'll let you know if  
17 the commissioner has other facts that go to  
18 the respondents' practice not being  
19 standard.

U/T

20 1264. MR. KENT: Okay, you know, that's not my  
21 undertaking request. So, I hear you, I'll  
22 accept your undertaking, but let's get  
23 straight what the refusal is, because there  
24 are consequences to a refusal. I take it  
25 you're refusing to make inquiries and

## Public

L. Nikolova - 381

1 provide me with the commissioner's  
2 information beyond what you just undertook,  
3 the commissioner's information as to what  
4 is the standard, or was the standard,  
5 across the relevant time period?

6 MR. KLIPPENSTEIN: Yes, that's a  
7 refusal. /R

8

9 BY MR. KENT:

10 1265. Q. Okay, so let's just look at that  
11 last sentence of paragraph 4 just to tidy this up.  
12 What are the many other e-commerce companies  
13 referred to in that paragraph?

14 MR. KLIPPENSTEIN: Go ahead.

15 THE DEPONENT: I can name some examples  
16 of what I can think of...

17

18 BY MR. KENT:

19 1266. Q. Okay.

20 A. ...sitting here right now. For  
21 example, airlines...

22 1267. Q. Which airlines?

23 A. The one that comes to mind is Air  
24 Canada, WestJet...thinking other broadly categories  
25 of retailers...

## Public

L. Nikolova - 382

1 1268. Q. What is your understanding as to the  
2 regulatory obligations on airlines in Canada with  
3 respect to how they display prices?

4 A. I recall that there are regulations,  
5 I'm not aware of particulars.

6 1269. Q. So, we've got Air Canada and  
7 WestJet. Anybody else?

8 A. Other e-commerce retailers I can  
9 think of, for example, Amazon.ca...I'm trying to  
10 think of websites for which I've seen video  
11 captures, Lowe's, Canadian Tire, a website called  
12 Audible.com...

13 1270. Q. E-books, right?

14 A. I believe they sell e-books, I can't  
15 recall precisely.

16 1271. Q. I doesn't matter.

17 A. I believe it is e-books, actually,  
18 yes. There are other examples, I mean.

19 1272. MR. KENT: Okay, so I would like to know  
20 all of the so-called many other e-commerce  
21 companies referred to in paragraph 4 of the  
22 reply, please.

23 MR. KLIPPENSTEIN: We'll let you know  
24 the ones the commissioner is aware of.

U/T

25 1273. MR. KENT: Okay, and to the extent the

## Public

L. Nikolova - 383

1 commissioner has screen grabs or video of  
2 any of their websites or byflows, we would  
3 like to either have copies or be directed  
4 to where we can find them in the  
5 productions, please.

6 MR. KLIPPENSTEIN: So, my understanding  
7 is that the relevant ones have been  
8 produced, so we'll direct you to at least  
9 examples in the productions. U/T

10

11 BY MR. KENT:

12 1274. Q. Thank you. I asked you before,  
13 because the names had come up, whether you had  
14 contacted TickPick or SeatGeek, and you said you  
15 were unaware of any contact. Have you or your team  
16 contacted StubHub?

17 MR. KLIPPENSTEIN: I'll refuse that on  
18 the basis of relevance. /R

19

20 BY MR. KENT:

21 1275. Q. Have you or your team contacted any  
22 other participant in the ticket sale or resale  
23 market in Canada?

24 MR. KLIPPENSTEIN: Same refusal. /R

25

## Public

L. Nikolova - 384

1 BY MR. KENT:

2 1276. Q. Has the bureau gathered or received  
3 information from market participants in the ticket  
4 sale or resale business in Canada?

5 MR. KLIPPENSTEIN: Same refusal. /R

6

7 BY MR. KENT:

8 1277. Q. Does the commissioner have any  
9 information about the market for online sales or  
10 resales of tickets in Canada other than what we've  
11 discussed so far?

12 MR. KLIPPENSTEIN: Same refusal. /R

13 1278. MR. KENT: Okay then, well, subject to  
14 the undertakings and refusals, that's the  
15 examination. Thank you very much.

16

17 --- upon recessing at 12:52 p.m.

1 INDEX OF EXHIBITS

2

3

4	EXHIBIT	DESCRIPTION	PAGE
	NUMBER		NUMBER
8	119	Ticket Master screen captures Electronic Evidence unit, March 6, 2009	281
12	120	Ticket Master webpage, Toronto Raptors vs. Philadelphia 76ers-Sunday, April 12, 2009	287
16	121	Screen Captures from Tickets Now Webpage	290

17

## Public

L. Nikolova - 386

	INDEX OF UNDERTAKINGS		
	REFERENCE	PAGE	QUESTION
	NUMBER	NUMBER	NUMBER
1			
2			
3			
4			
5			
6			
7			
8	1	283	946
9	2	284	951
10	3	287	961
11	4	295	982
12	5	298	992
13	6	311	1046
14	7	312	1048
15	8	313	1050
16	9	322	1081
17	10	324	1088
18	11	331	1113
19	12	331	1114
20	13	338	1131
21	14	342	1143
22	15	342	1145
23	16	352	1177
24	17	358	1194
25	18	365	1216
26	19	368	1222
27	20	370	1230
28	21	372	1236

Public

L. Nikolova - 387

INDEX OF UNDERTAKINGS (Cont'd)

	REFERENCE NUMBER	PAGE NUMBER	QUESTION NUMBER
1	22	374	1245
2	23	376	1251
3	24	380	1263
4	25	382	1272
5	26	383	1273

## Public

L. Nikolova - 388

	INDEX OF REFUSALS		
	REFERENCE NUMBER	PAGE NUMBER	QUESTION NUMBER
1			
2			
3			
4			
5			
6			
7			
8	1	281	943
9	2	293	975
10	3	293	976
11	4	333	1119
12	5	334	1120
13	6	334	1121
14	7	343	1149
15	8	344	1150
16	9	344	1151
17	10	359	1199
18	11	373	1242
19	12	381	1264
20	13	383	1274
21	14	383	1275
22	15	384	1276
23	16	384	1277

1  
2  
3  
4  
5  
6  
under  
7  
counsel, for  
8  
or  
9  
10  
11  
12  
13  
14  
15  
16  
the  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

REPORTER'S NOTE:

Please be advised that any undertakings, objections, advisements and refusals are provided as a service to all their guidance only, and do not purport to be legally binding necessarily accurate and are not binding upon Victory Verbatim Reporting Services Inc.

I hereby certify the foregoing to be a true and accurate transcription of the above-noted proceedings held before me on the 1st DAY OF FEBRUARY, 2019, and taken to the best of my skill, ability and understanding.

Certified Correct:

\_\_\_\_\_  
Vanessa Perpetuo  
Verbatim Reporter

CT-2018-005

**THE COMPETITION TRIBUNAL  
IN THE MATTER OF the *Competition Act*,  
RSC 1985, c C-34, as amended;  
AND IN THE MATTER OF an application by  
the Commissioner of Competition for orders  
pursuant to section 74.1 of the *Competition Act*  
regarding conduct reviewable pursuant to  
paragraph 74.01(1)(a) and section 74.05 of the  
*Competition Act*;**

**BETWEEN:  
THE COMMISSIONER OF COMPETITION  
Applicant**

**- and -**

**LIVE NATION ENTERTAINMENT, INC.,  
LIVE NATION WORLDWIDE, INC.,  
TICKETMASTER CANADA HOLDINGS  
ULC, TICKETMASTER CANADA LP,  
TICKETMASTER L.L.C., THE V.I.P. TOUR  
COMPANY, TICKETSNOW.COM, INC.,  
and TNOW ENTERTAINMENT GROUP,  
INC.**

**Respondents**

---

**MOTION RECORD OF THE RESPONDENTS  
(Respondents' Motion on Commissioner's Refusals)  
(Returnable April 2, 2019)**

**VOLUME I OF II**

---

**McMILLAN LLP**  
Brookfield Place  
181 Bay Street, Suite 4400  
Toronto, Ontario M5J 2T3

Tel: (416) 865-7000  
Fax: (416) 865-7048

David W. Kent  
Mark Opashinov  
Guy Pinsonnault  
Adam D.H. Chisholm  
Joshua Chad  
Nicole Rozario

Lawyers to Live Nation Entertainment, Inc., Live  
Nation Worldwide, Inc., Ticketmaster Canada  
Holdings ULC, Ticketmaster Canada LP,  
Ticketmaster L.L.C., The V.I.P. Tour Company,  
Ticketsnow.Com, Inc. and Tnow Entertainment  
Group, Inc.