

FILED / PRODUIT

Date: April 19, 2024

CT- 2023-003

Badih Abboud for / pour
REGISTRAR / REGISTRAIRE

CT-2023-003

OTTAWA, ONT.

74

THE COMEPTITION TIRBUNAL

IN THE MATTER OF an application by the Commissioner of Competition for an order pursuant to sections 74.01 and 74.1 of the *Competition Act*, RSC 1985, c C-34.

BETWEEN:

COMMISSIONER OF COMPETITION

Applicant

– and –

CINEPLEX INC.

Respondent

COSTS SUBMISSIONS OF THE COMMISSIONER OF COMPETITION

Overview

1. On February 28, 2024, Justice Little directed the parties to attempt to come to an agreement on costs related to the application against Cineplex and, if unable to come to an agreement, the Tribunal directed the parties to provide submissions. The parties have agreed that the winning party shall receive \$77,000 plus HST for legal fees. The parties were unable to come to an agreement for disbursement costs, therefore, the Commissioner is filing this written submission for consideration by the Tribunal in making its costs order.
2. The Commissioner submits that a fair and reasonable result when the applicable principles to costs are applied is that the winning party should receive \$160,000 (inclusive of tax) for disbursements¹.

The Commissioner should be awarded \$160,000 (inclusive of tax) for disbursements if he is successful

3. The Commissioner's Bill of Costs for disbursements in this matter is for \$178,961.16. The Bill of Costs provides detailed information and sufficient support to explain the disbursements incurred and the basis for the various claims which were reasonable, necessary, and justified.
4. The vast majority of the Commissioner's disbursements relate to expert fees. These expert fees are reasonable, especially when compared to the expert fees charged by Cineplex's experts, because:
 - a) Prof. Morwitz provided, among other things, a primer on behavioural economics along with the impact on consumer behaviour of drip and partitioned pricing (among other issues), as this was the first time these issues have been considered by the Tribunal; and

¹ The principles applicable to costs are well known to the Tribunal and will not be repeated here. *Commissioner of Competition v Secure Energy Services Inc.*, 2023 Comp Trib 2, Reasons for Order and Order, [para 723](#); *Commissioner of Competition v Parrish & Heimbecker, Limited*, 2022 Comp Trib 18, Reasons for Order and Order, [paras 768-776](#).

- b) Mr. Eckert's expert evidence was highly relevant to multiple issues in dispute with respect to website and user interface design on various devices.
- 5. Given the risk of an adverse outcome, a reduction in the disbursements awarded to \$160,000 from \$178,961.16 is fair to reflect this risk.

Cineplex should receive the same amount for disbursements if the application is dismissed

- 6. If the application is dismissed, awarding Cineplex \$160,000 in disbursements is a fair settlement. There was a broad public interest in bringing this case, which is a factor recognized in Rule 400(3)(h) of the Federal Court Rules. This is the first application to interpret subsection 74.01(1.1) which will provide important guidance to the public on drip pricing.
- 7. The following costs claimed by Cineplex are unreasonable or unnecessary:

Photocopying, Printing, and Binding

- 8. Cineplex is claiming \$24,081.83 in paper production costs which is unreasonable for an electronic hearing. In contrast the Commissioner is claiming \$80.00.

Expert Fees

- 9. Cineplex is claiming \$465,725.91 in expert fees. This amount is unreasonable particularly when contrasted against the Commissioner's experts costs of approximately \$150,000. The Commissioner's experts fees include fees for two experts. In contrast, Cineplex retained one expert. Dr. Amir's reports contain no complex analysis – such as econometric analysis or merger simulation modeling – that justifies such an amount. Dr. Amir also produced a Sur-reply not contemplated by the

scheduling order. In addition, the Commissioner's experts spent nearly two days in testimony compared to one day for Dr. Amir.

DATED at Ottawa, Ontario on the 19th day of April, 2024.



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