



Commissioner of Competition v Cineplex Inc (CT-2023-003)

INFORMATION NOTE: September 23, 2024

Today, the Competition Tribunal granted an application brought by the Commissioner of Competition against Cineplex Inc under the deceptive marketing provisions of the *Competition Act*, RSC 1985, c C-34, as amended.

In the application, the Commissioner alleged that Cineplex engaged in reviewable conduct by making representations to the public that were false or misleading in a material respect. According to the Commissioner, starting in June 2022, Cineplex made false or misleading representations about the price of movie tickets on its website and its mobile application, because consumers who buy tickets in those channels must pay a fixed obligatory fee – the Online Booking Fee – on top of the prices Cineplex represents for movie tickets. As its name suggests, the Online Booking Fee does not apply to tickets purchased in-person at a Cineplex theatre.

This is the first case in which the Tribunal has applied the recently enacted subsection 74.01(1.1) of the *Competition Act*, which concerns so-called “drip” pricing. In general, “drip” pricing can be described as making a representation about the price of a product or service that is not attainable due to fixed obligatory charges or fees that the consumer must pay in addition to the represented price. The provision excludes obligatory charges or fees that represent only an amount imposed by or under federal or provincial legislation.

The Tribunal concluded that subsection 74.01(1.1) does not create a separate reviewable practice under the statute. Rather, subsection 74.01(1.1) contemplates that if certain factual conditions are met – essentially, that the represented price is not attainable due to fixed obligatory charges or fees – then the making of that representation constitutes a false or misleading representation under paragraph 74.01(1)(a).

In this case, the Tribunal concluded that Cineplex engaged in reviewable conduct under subsection 74.01(1.1) and paragraph 74.01(1)(a) of the *Competition Act*.

The Tribunal found, based on the evidence, that the price representations made on the tickets page of Cineplex’s website and mobile application met the criteria in subsection 74.01(1.1) – the represented ticket prices were not attainable on the website and the mobile application due to the requirement to pay Online Booking Fees.

The Tribunal also examined whether Cineplex’s representations to the public about movie ticket prices were false or misleading under paragraph 74.01(1)(a) owing to the Online Booking Fees without an analysis under subsection 74.01(1.1). The Tribunal concluded that the movie ticket prices displayed on Cineplex’s website and mobile application were not accurate because more

must be paid, in the form of the Online Booking Fees, than Cineplex initially represented. The consumer is deceived or led astray by the contradictory and incomplete information on Cineplex's tickets page, which obfuscates the existence and quantum of the Online Booking Fee.

The Tribunal ordered two remedies against Cineplex. First, the Tribunal ordered Cineplex not to engage in the reviewable conduct or substantially similar reviewable conduct for a period of 10 years, under paragraph 74.1(1)(a) of the *Competition Act*.

Second, after considering numerous factors set out in the *Competition Act*, the Tribunal imposed an administrative monetary penalty in the amount of \$38,978,000 under paragraph 74.1(1)(c) of the *Competition Act*. This amount is equivalent to the amount Cineplex collected from consumers from the introduction of the Online Booking Fees on June 15, 2022, until December 31, 2023.

The Tribunal also ordered Cineplex to pay amounts representing a proportion of the Commissioner's legal fees and disbursements.

The full reasons for the Tribunal's order are currently confidential. The Tribunal is working with the Commissioner and Cineplex to identify confidential or competitively sensitive information in its confidential reasons that will be redacted from the public version. That public version is expected to be released within the next week.