



COMPETITION TRIBUNAL  
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Date: October 22, 2024

CT- 2023-003

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October 22, 2024

## E-FILING

Registrar, Competition Tribunal  
Thomas D'Arcy McGee Building  
90 Sparks Street, Suite 600  
Ottawa, ON K1P 5B4

Dear Registrar:

### **Re: Commissioner of Competition v. Cineplex Inc., CT-2023-003**

We are appellate counsel to the respondent, Cineplex Inc. Please bring this letter to the attention of the Tribunal Chairperson, Justice Little. We write with the consent of counsel for the Commissioner, who have reviewed a draft of this letter and the accompanying affidavit.

We write in accordance with Rule 81 of the *Competition Tribunal Rules*, Rule 398 of the *Federal Courts Rules* and section 8(2) of the *Competition Tribunal Act* to seek an order from the Tribunal staying the portion of its September 23 order in this matter related to the payment of an administrative monetary penalty as well as the Commissioner's costs pending Cineplex's appeal, and staying the portion of the order requiring changes to Cineplex's website until January 2025 to permit Cineplex time to roll out two phases of changes to its website. As detailed below and in the enclosed affidavit, Cineplex is in the process of making certain changes to its website and mobile app to ensure it complies with the Tribunal's order. These changes are in process, and Cineplex requires some additional time to complete them. The Commissioner consents to the requested stay.

### **Changes to the Website**

As a general matter, changes to Cineplex's website that involve only the placement of text are relatively straightforward. Changes that involve revisions to the code base and the way the website and app interact with Cineplex's point of sale system take longer: four weeks for coding, and a further four weeks for testing and then roll out to each of the theatres. Cineplex is working on two sets of changes to the website and app: (1) revising the placement of the disclosure of the Online Booking Fee ("OBF") to move it "above the fold"; and (2) adjusting the ticket price display. The changes to the placement of the OBF disclosure are in the process of being implemented. The revisions to the price display are in progress but will take more time; Cineplex estimates those changes will be completed and fully rolled out by January 31, 2025. Part of the reason for the additional time, as described at paragraph 15 of the enclosed affidavit, is that Cineplex has a "technology black out period" from December 15 through January 4, which means that no changes to its point of sale system are made during this time. This blackout is in place to minimize the risk of information technology-related issues during the busy holiday movie season. The specific changes are described in detail in the enclosed affidavit, paragraphs

15 to 28 and the exhibits described therein.

### **Stay of the Monetary Payments**

On the condition that Cineplex make the above-noted changes to its website and app, the Commissioner has consented to a stay of the monetary payments required by the Tribunal's order. The amount of those payments is sizeable and present a material financial impact for Cineplex. At a high level, as described in the enclosed affidavit, requiring payment of the AMP and costs now would impact Cineplex's ability to meet its 2025 capital plan and invest in upgrades necessary for Cineplex's business.

Cineplex submits that it meets the three-part test for a stay pending appeal. As the Ontario Court of Appeal has put it, the overriding question is whether the moving party has shown that it is in the interests of justice to grant a stay.<sup>1</sup> The factors to be considered by a motion judge are "generally designed to assess the prejudice to the parties if the order sought is granted or refused."<sup>2</sup> Here, since the Commissioner has agreed to a stay, there can be no prejudice to him. As to the well-known three-part test, it is met. There is a serious issue on appeal: as the Tribunal recognized, the interpretation of s. 74.01(1.1) in this case was a matter of first impression. The application of those provisions is a serious issue with consequences for businesses across Canada. Cineplex will also be asking the Court of Appeal to determine the nature of the consumer from whose perspective the representations are to be considered, as well as whether the monetary penalty assessed by the Tribunal was appropriate. In short, its appeal is neither frivolous nor vexatious. With respect to irreparable harm, as detailed in the enclosed affidavit, requiring Cineplex to pay the judgment now will be a disruption to its business. This is sufficient to meet that aspect of the test. Irreparable harm has been established where immediate enforcement of the judgment under appeal would be sufficiently disruptive of the appellant's business.<sup>3</sup> Finally, as to the balance of convenience, given the Commissioner's consent, this factor is also in Cineplex's favour.

We have enclosed a draft order with this letter. If the Tribunal is satisfied that a stay is appropriate in the circumstances, then we would ask that the order be issued before October 23 (the deadline for payment provided in the Order). Should the Tribunal be of the view that a formal motion record is required, we would be pleased to provide one.

Respectfully submitted,



Linda Plumpton

LP

cc Jonathan Hood and Irene Cybulsky – Counsel for the Commissioner of Competition  
James Gotowiec – Torys LLP

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<sup>1</sup> *Louis v. Poitras*, 2020 ONCA 815, [para. 16](#).

<sup>2</sup> *Ibid.*, [para. 17](#), citing *Sopinka and Gelowitz on the Conduct of an Appeal*.

<sup>3</sup> *Livent Inc. v. Deloitte & Touche*, 2016 ONCA 395, [para. 11](#). See also *Kingsgate Property Ltd. v. The Board of Education of School District No. 39*, 2023 BCSC 1266 [para. 56](#)