

Competition Tribunal



Tribunal de la Concurrence

Citation: *Canada (Commissioner of Competition) v Cineplex Inc*, 2024 Comp Trib 6

File No.: CT-2023-003

Registry Document No.: 87

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

BETWEEN:

Commissioner of Competition
(applicant)

and

Cineplex Inc
(respondent)



Date of hearing: October 23, 2024 (by videoconference)

Before: Justice Andrew D. Little (Chairperson)

Order and Reasons for Order delivered orally on October 23, 2024

ORDER ON RESPONDENT'S URGENT INFORMAL MOTION FOR A STAY PENDING APPEAL

[1] **FURTHER TO** an application filed by the Commissioner of Competition (the “**Commissioner**”) on May 18, 2023 against Cineplex Inc. (“**Cineplex**”) (collectively, the “**Parties**”) for an order under sections 74.01 and 74.1 of the *Competition Act*, RSC 1985, c C-34;

[2] **AND FURTHER TO** the Tribunal’s Order and Reasons for Order dated September 23, 2024 (the “**Order**”), which allowed the Commissioner’s application and ordered as follows at paragraphs 488 through 490:

[488] For a period of ten (10) years, Cineplex:

(a) shall not make representations to the public on its website or App concerning Online Booking Fees that are false or misleading in a material respect, and

(b) shall not engage in substantially similar conduct that constitutes reviewable conduct under paragraph 74.01(1)(a) (including subsection 74.01(1.1)).

[489] Cineplex shall pay an administrative monetary penalty under paragraph 74.1(1)(c) of the *Competition Act* in the amount of \$38,978,000, within 30 days of this Order.

[490] Cineplex shall pay costs to the Commissioner in the amounts of:

(a) \$77,000 plus HST, in respect of legal fees, and

(b) \$160,000 (inclusive of tax) in respect of disbursements.

[3] **AND UPON AN INFORMAL MOTION** sent to the Tribunal by Cineplex at approximately 5:00 p.m. on October 22, 2024, for a stay of paragraph 488 of the Order until January 31, 2025, and for a stay of paragraphs 489-490 of the Order until the final disposition of Cineplex’s appeal of the Order;

[4] **AND CONSIDERING** (i) a letter from counsel for Cineplex dated October 22, 2024, which set out Cineplex’s grounds and submissions for a stay based on certain Ontario case law and the three-step framework for a stay in *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311; and (ii) an affidavit of Daniel Francis McGrath sworn on October 22, 2024;

[5] **AND UPON HEARING** from counsel for Cineplex (who are new counsel for Cineplex’s intended appeal) and counsel for the Commissioner on an urgent basis by videoconference starting at 3:00 p.m. on October 23, 2024;

[6] **AND UNDERSTANDING** that the expiry of the time for Cineplex to file a notice of appeal to the Federal Court of Appeal was the same day, October 23, 2024;

[7] **AND CONSIDERING** that:

- (a) Cineplex’s counsel advised at the hearing of the informal motion that Cineplex had not yet filed its notice of appeal but intended to do so by 4:00 p.m. on October 23, 2024;
- (b) For the jurisdiction of the Tribunal to grant a stay on an informal motion, Cineplex relied on subsection 8(2) of the *Competition Tribunal Act*, Rules 34 and 81 of the *Competition Tribunal Rules*, and Rule 398(1)(a) of the *Federal Courts Rules*;
- (c) Under the provisions mentioned, particularly Rules 398(1)(a) and (b) of the *Federal Courts Rules* (which the Tribunal may follow under Rule 34 of the *Competition Tribunal Rules*), it appeared that the Tribunal’s jurisdiction to grant the requested stay would cease upon Cineplex filing its notice of appeal with the Federal Court of Appeal, and that the Federal Court of Appeal would then have jurisdiction to issue a stay upon Cineplex filing its notice of appeal;
- (d) As of the time of the hearing of the informal motion, the Tribunal was not in a position to determine Cineplex’s motion on the merits in the time available;
- (e) If some form of interim relief were not granted immediately, Cineplex would be in non-compliance with paragraph 489 of the Order as of the following day, October 24, 2024; and
- (f) The Commissioner consented to the terms of the stay requested by Cineplex and to the operative term of this Order;

[8] **AND UPON DETERMINING** that paragraph 489 of the Order should be stayed on an interim interim basis for a period of fifteen (15) days in order for Cineplex’s motion for a stay of paragraphs 488, 489 and 490 of the Order to be heard on its merits by way of motion to the Federal Court of Appeal;

[9] **AND HAVING RENDERED AN ORDER ORALLY** at the hearing at approximately 3:25 p.m. on October 23, 2024, for oral reasons that are contained in the recitals above, and having advised the Parties that the Tribunal would formalize its Order in writing for ease of reference;

THE TRIBUNAL ORDERS THAT:

[10] Paragraph 489 of the Tribunal’s Order dated September 23, 2024, is stayed for a period of fifteen (15) days starting on October 23, 2024.

DATED at Ottawa, this 24th day of October 2024.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Andrew D. Little

COUNSEL OF RECORD:

For the applicant:

Commissioner of Competition

Jonathan Hood
Irene Cybulsky

For the respondent:

Cineplex Inc

Linda Plumpton
James Gotowiec