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CT-2023-003

THE COMPETITION TRIBUNAL

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

BETWEEN:

COMMISSIONER OF COMPETITION

Applicant

- and -

CINEPLEX INC.

Respondent

WITNESS STATEMENT OF DANIEL FRANCIS MCGRATH

I Daniel Francis McGrath, of the Town of Oakville, in the Province of Ontario, AFFIRM AS FOLLOWS:

1. I am the Chief Operating Officer (“**COO**”) of Cineplex Inc. (“**Cineplex**”) and make this witness statement in support of Cineplex’s response to the application commenced by the Commissioner of Competition (the “Commissioner”) for an order pursuant to section 74.01 and 74.1 of the *Competition Act*, R.S.C 1985, c. C-34, as amended (the “*Act*”).
2. I have personal knowledge of the matters set out in this witness statement.

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3. In preparing this witness statement, I have obtained and relied upon information from Cineplex's business records, and a number of other Cineplex employees. All of this information is typical of and consistent with the type of information I would use on a routine regular basis to make decisions in the normal course of my duties.

I. Background and Qualifications

4. I have a Bachelor of Business Administration from Brock University and I am a Certified Public Accountant.

5. I joined Cineplex Odeon Corp., a now-defunct Cineplex subsidiary, in 1987 and held various financial and operational roles from 1987 to 2000. In 2000, I joined Galaxy Entertainment, an entity which subsequently merged with Cineplex Odeon Corp, serving as Executive Vice President ("EVP"). In 2005, on the subsequent acquisition of Famous Players, I continued as EVP of the resulting entity, Cineplex Entertainment, a role I held until 2011 when I was appointed to my current role.

6. I have been the COO of Cineplex since 2011. As the COO of Cineplex, I oversee the Exhibition and Location Based Entertainment ("LBE") Department (theatre operations and food service), digital commerce (Cineplex Store), location-based entertainment (The Rec Room and Playdium), real estate, design and construction, strategic planning, Cineplex's media businesses, and Cineplex's amusement gaming business (Player One Amusement Group).

7. The online booking and advance seat reservation fee ("online booking fee"), as I will further describe in this statement, is managed by LBE Department. I therefore oversaw the conceptualization, decision-making, and implementation processes of the online booking fee.

II. Overview

8. Cineplex is a film and entertainment company that is headquartered in Toronto, Ontario, Canada.

9. Cineplex has a website Cineplex.com (the "**Website**") and a mobile app (the "**App**") which provides information to consumers regarding various entertainment products and services,

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including the availability of movies at Cineplex theatres across Canada. The Website and App have supplanted other forms of information such as advertisements in newspapers and have become the predominant source of information for consumers as to:

- what movies are available;
- where those movies are playing;
- when the movies are playing;
- what movie experience is available (3D, IMAX, VIP, 4DX, ScreenX, UltraAVX, D-BOX, Closed Captioning, Described Video etc.); and
- the prices based on these various consumer choices, including whether the movie ticket is purchased at theatres or purchased online.

10. The Website and App also provide the availability for online advanced seat reservations and the online purchase of movie tickets. Once an online seat reservation is made, that seat will be held for the consumer and will not be available to those purchasing tickets at theatres (e.g. box office, theatre concession stand or kiosk).

11. Cineplex is a partner in Scene+, Canada's largest entertainment and lifestyle loyalty program. Scene+ members earn points on a variety of purchases, not only at Cineplex theatres, but also at a large number of retailers or through the use of credit cards that are associated with the Scene+ loyalty program. The Scene+ program is free for members to join. Points collected through the Scene+ loyalty program can be used to purchase various products including tickets for movie theatres.

12. Cineplex offers its guests the opportunity to join CineClub, a paid movie subscription program, which provides members with benefits accessible across Cineplex's businesses nationwide including Cineplex theatres. Currently CineClub members pay a recurring monthly fee of \$9.99 plus tax or an annual fee of \$119.88 plus tax. Together with other benefits such as discounts for concession purchases, CineClub members receive one general admission movie

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ticket per month. As a result, the monthly membership cost is less than the cost of most Cineplex tickets for movie theatres.

13. A consumer must be a Scene+ member to purchase a CineClub membership.

14. The entertainment industry has evolved significantly over the past decade. With respect to the viewing of movies and other entertainment content, consumers have a broad array of choices including movies on demand that are available for rent or download or, most significantly, through online streaming services. As a result, traditional bricks and mortar theatre operators have to innovate and enhance the experience and choices for consumers in order to respond to this competition. There are now a myriad of choices that are available at movie theatres including expansive screens, premium viewing experiences, food and drinks delivered to a consumer's seat, sensory friendly screenings, baby friendly screenings, and indoor playgrounds for children to enjoy before showtime.

15. In addition to the showing of movies, theatres have also expanded to make other entertainment services available such as amusement gaming. Cineplex has also developed other types of entertainment venues such as The Rec Room and Playdium. The Website and App provide information with respect to all of these various products or services.

16. Cineplex determined that there was consumer demand for advance seat reservations. This eventually became the impetus for the online booking fee. This demand became even more apparent during the pandemic when theatres were permitted to resume operations. However, advance seat reservations represented a sunk cost for Cineplex in the sense that, if consumers did not show up for the theatres, the seat would remain empty. As tickets are refundable, Cineplex determined that it would at least partially protect this lost revenue by charging a fee for online reservations which provided also for advance seat reservations. Currently, slightly more than half of Cineplex movie theatres consumers purchase their tickets online and make an advanced seat reservation. The remainder of Cineplex movie goers purchase their tickets at theatres and do not pay the online booking fee.

17. This wide array of consumer choices means that the Website is constructed to provide information and pricing for a wide array of products or services. With respect to tickets for the

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showing of movies at movie theatres there is no one price, but rather a broad array of differentiated prices depending on the choices of the consumer. The Website provides the information that outlines these choices for the consumer and then provides pricing dependent on those choices.

18. The Website and the App have accordingly a dual function. First, they provide access to information about products and services that lead to informed decisions about the choices available online and otherwise. Second, the consumer can use the information available to customize a movie ticket selection and then instantaneously secure that selection by proceeding with the online purchasing process.

19. Fundamental to this case is the final choice that a consumer must make with respect to the purchase of movie tickets. At the end of the information and choices provided to the consumer with respect to date, time, venue and movie experience, the consumer ends up on the page where prices are first displayed on the Website or App (I shall describe this further in my evidence as the "Tickets" page). At this point, the consumer, after customizing their movie going experience based on the choices available to them in the preceding pages, faces an important choice and trade off with respect to pricing and convenience. The consumer has the choice of purchasing the tickets at theatres at the base price, or alternatively, the consumer can select the number of tickets the consumer wishes to purchase online at the online price.

20. Instantaneously, upon selecting the tickets that the consumer wishes to purchase online, the price of the ticket, including the online booking fee (if the online booking fee applies), is displayed prominently and immediately to the left of the "Proceed" button. The consumer cannot proceed to the subsequent page without making a ticket selection. Making the ticket selection causes the online price, which includes the price of the online booking fee (if the online booking fee applies), to be displayed immediately to the left of the "Proceed" button and before the "Proceed" button is operative.

21. The choice between purchasing a ticket at theatres at the base price shown before any selection of tickets is made on the Tickets page and before the consumer can move to the seat reservation page (where the consumer derives the value and convenience of instantaneously securing a seat of their choice for the customized selection made).

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22. The tickets are obtainable, either at the base price or at the online price, based on the consumer choice whether to purchase at theatres or to purchase online. There is no delay or late disclosure. Both prices are instantaneously displayed showing the options available to the consumer.

23. All of the above is expanded upon further in the remainder of my witness statement.

24. Attached as Exhibit A of this Witness Statement is a video which provides an overview of the Website and includes a demonstration of the online purchase flow.

III. The Value of Website and the App: Source of Information and Guaranteed Convenience

25. The Website and App prioritize the user experience and offer two unique services with distinct value: (1) information: easy-to access live information about a myriad of choices regarding Cineplex products and services, and (2) guaranteed convenience: the certainty and instantaneous convenience of securing an advance seat for the selections made based on all the choices for which seats are available. This is important for understanding the context in which consumers move from the plethora of information available to them to making informed choices before embarking on the online purchasing process.

26. The Website and the App have accordingly a dual function. First, the consumer can access information about products and services that lead to informed decisions about the choices available online and otherwise. Second, the consumer can use the information available to customize a ticket selection and then instantaneously lock in that selection by proceeding with the online purchasing process.

A. The Website and the App: Primacy Source of Information

27. Cineplex offers a myriad of products and services including (amongst others) movie and event offerings, amusement gaming, dining offerings, and a digital movie platform.

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28. The Website and the App are the primary source of information about Cineplex products and services. The consumer can turn to the Website and App to gather information on what, when, where and how particular products and services are offered.

29. One of the many services available on the Website and App is the information about the movies and events playing at Cineplex theatres. The multiplicity of choices extends to movie offerings, including titles, dates, time, location, venue, and type of auditorium and viewing experience, as further described in my statement below. The informational component of the Website and App is a valuable resource to Cineplex consumers. According to Cineplex data, about half of consumers purchase their tickets in person, and the other half purchase their tickets online, either via the Website or the App. In 2022, about 52 percent of consumers purchased their tickets online, while 48 percent purchased their tickets in person, at theatres.

30. Before any representation of price is made, both the Website and the App provide the consumer with information regarding movies playing at theatres, the locations, times, experience, and seat availability at a particular theatre.

B. Information, Choices, and Decision Making

31. Consumers can purchase tickets either in person at the theatre or online (using the Website or the App).

32. Due to the many viewing options available at Cineplex's theatres, there is no single price for a movie ticket, whether purchased in person or online.

33. Ticket prices are differentiated in several ways. The Website and the App are both interactive based on the consumer's choices on the plethora information made available. Despite the many choices, other than the online booking fee, the ticket price for identical options is the same whether purchased at a theatre or online.

34. Prices differ by theatre location -and within each location- and vary according to the age of the moviegoer, the theatre experience (e.g. 3D, IMAX, VIP, 4DX, ScreenX, UltraAVX, D-

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BOX, Clubhouse (collectively “**Premium Auditoriums**” or regular, as depicted in the video at Exhibit A), the day of the week, movie release date and whether the moviegoer is a member of CineClub or the Scene+ loyalty.)

35. Prices also vary based on whether the consumer wants to purchase the ticket at the theatre or online with an advance seat reservation.

36. The Website and the App provide the consumer with price representations only after all informational selections are made. The attainable price for purchase at the theatre or purchase online is always prominently shown to the consumer based on the consumer’s choice of purchase.

C. Securing a Choice: The Value and Convenience of Guaranteed Advanced e-Tickets

37. The ability to select and reserve seats in advance is important for moviegoers, and an important aspect of the online purchase process. As such, the importance of securing their preferred seat has become increasingly valuable to consumers.

38. As with other forms of entertainment, the seat location is often a critical determinant of the purchase process and a driver of attendance. Cineplex data shows that consumers who purchase their tickets on the Website spend the greatest amount of time (41.6% of their time) selecting a seat, while consumers who purchase their tickets on the App, spend about 33.4% of their time selecting a seat. This evidence is consistent with Cineplex’s view that instantaneous seat selection is an important value-add service, as is the convenience of buying tickets anywhere and anytime with advance online purchases.

39. Consumers can purchase advance tickets, which come with a guaranteed seat, in more than one way. Consumers can purchase an advance ticket by attending in person at the theatre (at the box office or concession stand or at a kiosk) or through the added convenience of instantaneous access (from anywhere and at anytime) to the advance electronic ticket online, via the Website or the App (“**Advance e-Ticket**”).

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40. By purchasing Advance e-Tickets, consumers can instantly derive the additional benefit, convenience, time savings, and service of a guaranteed seat of choice and avoid a sold-out showing or a poor seat location. In fact, in my experience, for experiences that have limited seating available, consumers particularly value the choice of purchasing in advance. For example, theatres that have limited seating capacity, such as VIP theatres and recliner seating locations, have a larger percentage of consumers who purchase tickets online.

41. An Advance e-Ticket can also be instantly gifted or forwarded digitally without having to incur the cost or time of physically attending at the theatre and can also be used to ensure instant seat selection for groups that wish to sit together. By contrast, tickets purchased in person at the theatre or at a kiosk cannot be digitally shared. An advanced eTicket is accordingly, the second distinct value of the Website and App (after information gathering).

42. There is no equivalent to the online platform. By instantaneously securing a guaranteed seat online, the consumer saves the costs of transportation or other means of attendance as well as the opportunity cost of time and effort in doing so. More importantly, there would be no guarantee for the consumer that their preferred selection of seat would be available by the time the consumer attends the theatre and purchases the ticket.

IV. The Online Booking Fee

Background

43. On June 15, 2022, Cineplex introduced the online booking fee for Advance e-Ticket purchases.

44. The introduction of the online booking fee did not impact the pricing of tickets that could be purchased at theatres. As implied by its name, the online booking fee strictly and only applies to certain purchases made online, i.e. to certain Advance e-Tickets.

The Online Booking Fee is Primarily for the Convenience of Instantaneously Guaranteeing a Seat

45. Securing the experience that the consumer wants, including guaranteed and preferred seating, is an important value-add and convenience offering that the online booking system provides. This is particularly important for sought-after releases.

46. Accordingly, there are two separate products being purchased in the online booking system: the ticket for the show and the guaranteed advance seat reservation for that show. These products have separate value. These products have a separate price. And both are disclosed prominently and together on the very first page (on either Website or App) where prices are shown.

47. The online booking fee is not refundable. The main reason that the online booking fee is non-refundable is as follows: the consumer derives the benefit and utility of an instantaneous guarantee of preferred seat reservation, and the theatres incur the detriment of a seat that is no longer available to anyone else. The consumer buys, through the online booking fee, the instantaneous certainty of securing the customized selection of a preferred seat that follows all of the choices selected by the consumer from the myriad of choices available to the consumer on the Website and App.

48. At all times where a price representation for a selected ticket is made, whether on the Website or App, the disclosure of the price for the online booking fee is always present, prominent, and proximate and on the same page as the price for the offering.

49. There is no secondary payment (other than taxes) subsequently introduced on the pages that follow the very first page where a price representation is made on the Website or App (or at all).

Ticket Prices can be Attained as Advertised

50. As I will be illustrating in my evidence, as well as shown in the video attached as Exhibit A hereto and supporting diagrams further below, a plain review of the ticket purchase flow on

either the Website or the App, unmistakably discloses that each and every price representation made on the Website and App can be realized by the consumer.

51. The first page where a price representation is made is the “Tickets” page. This page displays prices for two distinct products. First, the price for the tickets reflecting the customized selection of the consumer following the choices made in the previous pages of the Website or App. Second, the prices of the online booking fee for the certainty and convenience of an instantaneous guaranteed e-Ticket for the consumer’s seat of choice, should the consumer choose to proceed with the online purchasing process. In addition, the ticket price and online booking fee are displayed next to the “Proceed” button.

52. The base price for the movie ticket can be obtained at theatres. That base price can also be obtained online with a CineClub subscription and/or with the use of certain promotional coupons. The total price for both products, i.e., for the ticket and for the online booking fee (should the consumer choose to proceed with the online purchase process and instantaneously guarantee the consumer’s preferred choice of seat), can be obtained as presented.

53. As I will be explaining in further detail below, before the online purchasing process begins, the consumer is clearly and prominently presented with the full all-inclusive price for the Advanced e-Ticket offering (except taxes).

54. The only other charges that are subsequently added to the price of Advance e-Tickets are taxes.

There is no Single Price for the Online Booking Fee

55. The online booking fee for advanced purchase and advance seat reservation is *contingent* and/or *variable* based on a number of factors.

56. Specifically, consumers who purchase their tickets in a theatre are not charged the online booking fee.

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57. The online booking fee also is contingent because CineClub members are not charged the online booking fee.

58. The online booking fee is also contingent because consumers using certain promotional coupons for a free admission, such as a “buy one – get one free” offer are also not charged the online booking fee.

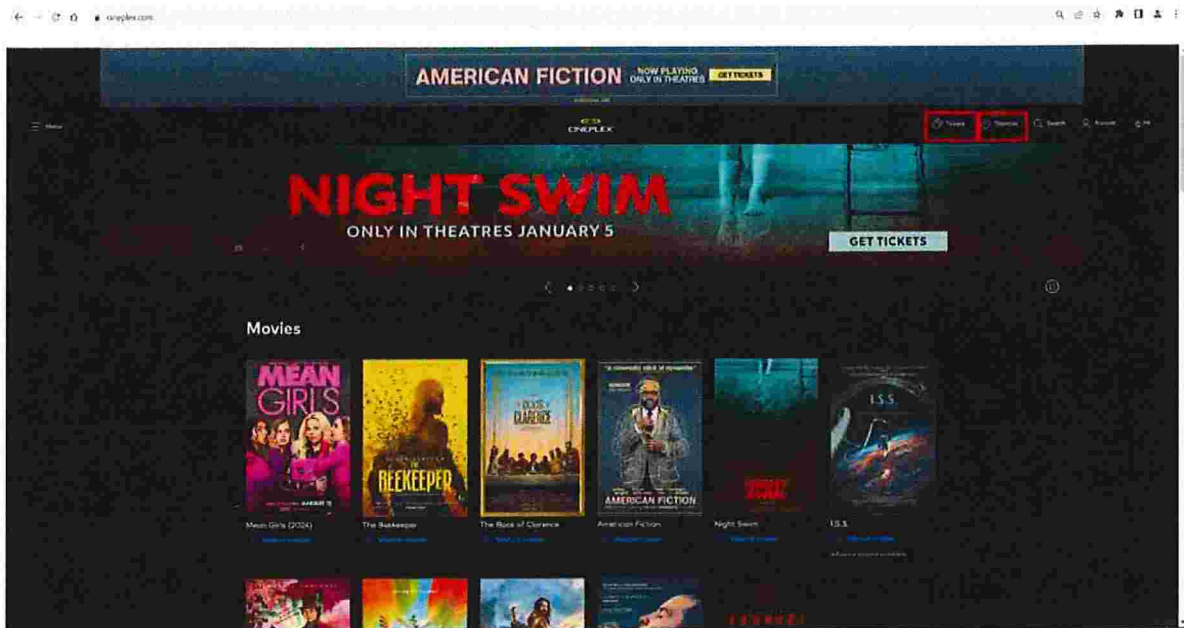
59. The online booking fee is also variable because it is capped at 4 tickets (\$4.00 for Scene+ members and \$6.00 for consumers who are not Scene+ members).

V. The Ticket Purchasing Process: The Flow

60. As I stated before, consumers may purchase movie tickets at theatres or via the advance online purchase process on the Website or through the App. Both latter methods allow consumers to purchase tickets in advance and immediately select and reserve their preferred seats.

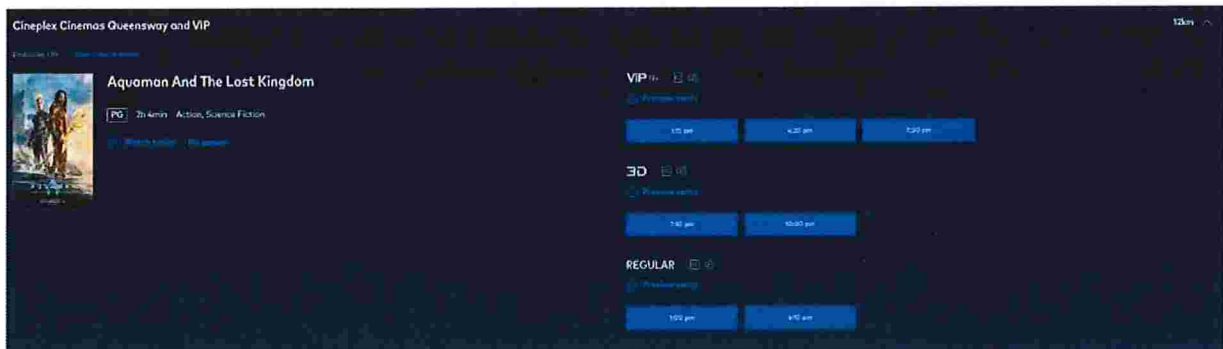
Cineplex’s Website

61. Consumers wishing to view movie availability, pricing and experiences using the Website begin by either selecting a “movie” from the home page or either of the ticket or theatre links at the top right, as shown in Figure 1 and in the video in Exhibit A attached hereto.



[Figure 1]

62. Once consumers select their preferred theatre location, the date and the movie they want to see, they are able to preview seats for each available movie experience and preferred show time as indicated in Figure 2, and in the video in Exhibit A attached hereto.



[Figure 2]

63. Thus, before any price representations are made, the consumer is able to make a number of individual choices that are important to their movie watching experience. Upon selecting the movie, the experience and preferred show time, consumers are asked to sign into their Cineplex account (if they are not already signed in) or create a new account.

The “Tickets” Page: The First Page Where a Price is Shown

64. Immediately after signing in, the consumer is shown the “Tickets” page, which lists the types of tickets available for purchase and their corresponding prices when purchased at the theatre for the applicable date and theatre experience.

65. The three prices shown by the **RED** arrow in the image below, for a particular movie offering (once a title, day, time, venue and auditorium experience are selected) are the same three prices that a consumer would pay for that exact same selection when purchased at theatres.

The screenshot shows the Cineplex website's 'Tickets' page for the movie 'Aquaman And The Lost Kingdom'. The page is divided into several sections: a movie poster, movie details (PG rating, date: Sunday, Jan 14, 2024, time: 1:00 PM, location: Cineplex Cinemas Queensway and VIP), a 'CINECLUB' membership promotion, and a list of ticket types. A large red arrow points to the 'Standard' ticket section, which lists three ticket types: General Admit (\$14.25), Senior (65+) (\$10.25), and Child (3-13) (\$9.00). Each ticket type has an 'ADD' button next to it. Below the 'Standard' section are sections for 'Scene+' (with an 'ADD CARD' button), 'Certificate or Promo code' (with an 'ADD A CODE' button), and 'Online Booking Fee' (\$0.00). At the bottom, there is a 'Subtotal: \$0.00' and a 'PROCEED' button. A '4:24 Time Left' timer is visible in the bottom left corner.

CINEPLEX

TICKETS SEATS PAYMENT

Aquaman And The Lost Kingdom

PG

DATE: Sunday, Jan 14, 2024

TIME: 1:00 PM

LOCATION: Cineplex Cinemas Queensway and VIP

CINECLUB

Instantly save on your ticket

Join CineClub for \$9.99/month. Cancel anytime.

- 1 movie ticket every month
- 20% off on concessions
- No Online Booking Fees

JOIN CINECLUB

Standard

General Admit \$14.25

Senior (65+) \$10.25

Child (3-13) \$9.00

Applicable taxes will be calculated at checkout.

Scene+

Scene+ Members Earn And Redeem Points

ADD CARD

Certificate or Promo code

Add a code from your voucher or promo code to apply to your tickets

ADD A CODE

Online Booking Fee

Booking fee is discounted for Scene+ members and waived when you're a CineClub member.

Applicable taxes will be calculated at checkout.

4:24 Time Left

Subtotal: \$0.00

PROCEED

[Figure 3]

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66. Consumers who want to purchase tickets at the theatre may simply visit the Website to determine movie information, showtimes and determine the price and availability at the theatre of their choice and then exit the Website.

67. According to Cineplex data, out of the 97 million visits to the website in 2022, 11.8 percent proceeded to the “Tickets” page. This suggests that most visits to the Website are for informational purposes only. Out of those 11.8 percent of visits, 42.3 percent completed the ticket purchase transaction; thus only 4.99% of total visitors completed a ticket purchase transaction.

68. A consumer cannot proceed with the online purchase process until the consumer selects a ticket on the “Tickets” page and also clicks “Proceed”. If a consumer clicks the “Proceed” button on the “Tickets” page without making one of the three selections identified in Figure 3, above, an error message is displayed requiring the selection of a ticket (as shown by the message in RED “You must purchase at least 1 ticket” in Figure 4, below) [RED colour in original screenshot].

CINEPLEX

TICKETS SEATS PAYMENT

Aquaman And The Lost Kingdom

PG

DATE: Sunday, Jan 14, 2024

TIME: 1:00 PM

LOCATION: Cineplex Cinemas Queensway and VIP

Standard

General Admit \$14.25

Senior (65+) \$10.25

Child (3-13) \$9.00

Scene+

Scene+ Members Earn And Redeem Points

Certificate or Promo code

Add a code from your voucher or promo code to apply to your tickets.

Online Booking Fee

Booking fee is discounted for Scene+ members and waived when you're a CineClub

CINECLUB

Instantly save on your ticket

Join CineClub for \$9.99/month. Cancel anytime.

- 1 movie ticket every month
- 20% off on concessions
- No Online Booking Fees

PROCEED

3:15 Time Left

Tickets: \$0.00

[Figure 4]

69. The "Tickets" page contains immediate contemporaneous information about the online booking fee *before* any selection is made to begin an online purchase. Specifically, the online booking fee is mentioned at the top and at the bottom of the "Tickets" page. This is also shown in Figure 5 below.

70. To proceed from the "Tickets" page to the next page, one has to select from the three prices shown on Figure 3. In addition, the online booking fee is now clearly shown as \$1.50. Therefore, the resulting price that includes the online booking fee is shown.

CINEPLEX

TICKETS SEATS PAYMENT

Aquaman And The Lost Kingdom

PG

DATE: Sunday, Jan 14, 2024

TIME: 1:00 PM

LOCATION: Cineplex Cinemas Queensway and VIP

CINECLUB

Instantly save on your ticket

Join CineClub for \$9.99/month. Cancel anytime.

- 1 movie ticket every month
- 20% off on concessions
- No Online Booking Fees

Standard

General Admit \$14.25

Senior (65+) \$10.25

Child (3-13) \$9.00

Applicable taxes will be calculated at checkout.

Scene+

Scene+ Members Earn And Redeem Points

Certificate or Promo code

Add a code from your voucher or promo code to apply to your tickets

Online Booking Fee

Booking fee is discounted for Scene+ members and waived when you're a CineClub member.

Applicable taxes will be calculated at checkout.

4:22 Time Left

Subtotal: \$15.75

PROCEED

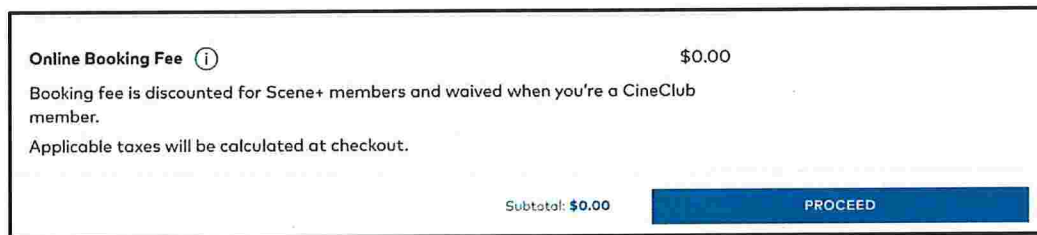
[Figure 5]

71. The Website is laid out so that the total price, including the online booking fee, is *immediately* and *contemporaneously* shown to the consumer, immediately to the left of the “Proceed” button, which when clicked, starts the online purchasing process.

72. No price for online purchases is shown before the consumer makes the selection of the type of ticket they want to purchase. Prior to ticket selection, the subtotal at the bottom of the page is \$0.00, as shown at Figure 3, above. *Immediately upon selection of the number and type of ticket, the subtotal reflects the total cost (other than taxes) that will be charged for an online purchase, as shown in Figure 5, above.*

73. The consumer is therefore made aware of the online booking fee *both before and after* they first select their ticket, allowing the consumer to make an informed choice before proceeding with the online purchase.

74. Further, the “Tickets” page also provides additional information about the online booking fee. Consumers can click on the “i” information icon shown in Figure 6 below. A pop-up window comes up on the screen (as indicated in Figure 7 below), and provides further information on the online booking fee, including a sample calculation of the online booking fee that a consumer will pay based on the number of tickets purchased and whether the consumer has a Scene+ or CineClub membership (CineClub members are immediately identified on sign-in and are accordingly not subject to the online booking.)



[Figure 6]



[Figure 7]

75. Before taking any steps to proceed with an online purchase, the consumer can either choose to purchase a movie ticket at the theatre for the price shown in the ticket category section (see Figure 3 above) or they can choose to proceed with an online purchase with the advantage of an advance seat reservation with the total transaction price, including the online booking fee (if applicable), clearly shown immediately to the left of the "Proceed" button before clicking the button to proceed with the online purchase. There are no subsequent or secondary add-ons to pricing except for taxes.

76. By clicking on the "Proceed" button, the consumer enters the online purchase process and is taken to the "Seats" page, where they are able to make seat selection and reservation in advance, and with the added convenience of doing this online. The total price is shown at the bottom of the page, including the online booking fee (if applicable) and tax, as particularized in Figure 8, below:

The screenshot displays the Cineplex website interface for purchasing movie tickets. At the top, a navigation bar includes 'TICKETS', 'SEATS', and 'PAYMENT'. The main content area features a movie poster for 'Aquaman And The Lost Kingdom' with a 'PG' rating. Below the poster, the date is 'Sunday, Jan 14, 2024' and the time is '1:00 PM'. The location is 'Cineplex Cinemas Queensway and VIP'. A 'Scene+' button is visible with the text 'Scene+ Members Earn And Redeem Points' and an 'ADD CARD' button. The 'Seat(s) Selection: G11' is highlighted in green. A large seat chart is shown with rows labeled AA through K and columns labeled A through K. A red arrow points from the 'G11' seat to the 'PROCEED' button. Below the seat chart, a 'SEAT INFORMATION' section lists 'Standard', 'Selected', 'Occupied', 'Balcony', 'Wheelchair', and 'Wheelchair Companion'. At the bottom, a '4:53 Time Left' timer is shown next to a 'Total: \$17.80' and a 'PROCEED' button.

[Figure 8]

77. Once consumers select their seat, they are taken to the “**Payment**” page, where they are provided with an “Order Summary” that provides a clear breakdown of the purchase price, with the online booking fee clearly shown as a separate line item from the movie tickets (see Figure 9 below). Consumers can then click on the “Proceed” button to select their payment method and enter their payment information.

CINEPLEX

TICKETS SEATS PAYMENT

Aquaman And The Lost Kingdom

PG

DATE: Sunday, Jan 14, 2024

TIME: 1:00 PM

LOCATION: Cineplex Cinemas Queensway and VIP

Scene+ Members Earn And Redeem Points

ADD CARD

Payment Methods

Gift Card

ADD A GIFT CARD

Credit Card

ADD OTHER PAYMENT METHOD

Order Summary

Movie Tickets (1)	\$14.25
Online Booking Fee ⓘ	\$1.50
Taxes	\$2.05
Total	\$17.80

PCI DSS

By continuing past this page, you agree to our [TERMS & CONDITIONS](#).

4:56 Time Left

Total: \$17.80

PROCEED

[Figure 9]

78. Throughout the course of the transaction, *the total cost including the online booking fee is prominently shown on every page next to the “Proceed” button. The consumer has the opportunity to review the purchase price at four separate, consecutive stages.*

Cineplex’s Mobile App

79. The process for purchasing tickets on the App is similar to the process for purchasing on the Website described above. However, in the App, App users select their preferred movie and

show time, they are taken to the “Tickets” page without signing in (where they are already signed into their account). The remainder of the purchasing process is the same as on the Website.

Transparency Throughout the Process: “No Complaints, No Confusion, No Misleading Pricing”

80. I am not aware of any complaints from consumers about confusion or being deceived by the online booking fee. The only complaints that I am aware of indicate that consumers were fully aware of the existence of the fee. I am also not aware of the Commissioner receiving any complaints prior to the filing of the Notice of Application, as produced in this matter.

81. Furthermore, naming the fee the “online booking fee” was intentional by Cineplex to ensure that there would be no confusion that the online booking fee applies only to online purchases and not to purchases made in theatre.

The Layout Prioritizes Clarity and Transparency

CINEPLEX

TICKETS SEATS PAYMENT

Aquaman And The Lost Kingdom

PG

DATE: Sunday, Jan 14, 2024

TIME: 1:00 PM

LOCATION: Cineplex Cinemas Queensway and VIP

CINECLUB

Instantly save on your ticket

Join CineClub for \$9.99/month. Cancel anytime.

- 1 movie ticket every month
- 20% off on concessions
- No Online Booking Fees

Standard

General Admit \$14.25

Senior (65+) \$10.25

Child (3-13) \$9.00

Applicable taxes will be calculated at checkout.

Scene+

Scene+ Members Earn And Redeem Points

Certificate or Promo code

Add a code from your voucher or promo code to apply to your tickets

Online Booking Fee

Booking fee is discounted for Scene+ members and waived when you're a CineClub member.

Applicable taxes will be calculated at checkout.

4:24 Time Left

Subtotal \$0.00

PROCEED

[Figure 10]

82. As I noted earlier, consumers face a range of choices when selecting a ticket type, such as picking a movie, a convenient date and time, a theatre location, and the desired experience. Lines 1-4, in Figure 10 above, follow the order in which users decide what ticket selections to make, whether they are a Scene+ member (to receive benefits), or whether they want to use a certificate or promotional code to redeem for ticket(s).

83. Consumers can customize their order in a number of ways, which may include selecting from the standard list (Line 1), as well as adding their Scene+ account number (Line 2) and

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promotional coupon (Line 3). Once all ticket selections are made, it is only then that the online booking fee (Line 4) can be ascertained to apply or not, and accordingly calculated (along with a determination of the 4-ticket cap) to provide a simultaneous presentation of the price for the ticket(s) immediately to the left of the "Proceed" button. The ordering (Lines 1-4, above) reflects the intuitively appealing order of operations in which a reasonable consumer would add tickets to their order.

84. The information that is presented on the "Tickets" page of the Website is clearly laid out using a large font that is consistent throughout. The layout is both intuitive and user-friendly to consumers. After selecting the number of tickets, consumers can enter their Scene+ Card number (if not already signed in to their Cineplex account) as well as any Certificate or promotional codes. Entering the information will affect the amount of the online booking fee, if any, as also illustrated in the video attached Exhibit A attached hereto. Next in the layout is the description of the online booking fee as indicated in Figure 11 below:

CINEPLEX

TICKETS SEATS PAYMENT

Aquaman And The Lost Kingdom

PG

DATE: Sunday, Jan 14, 2024

TIME: 1:00 PM

LOCATION: Cineplex Cinemas Queensway and VIP

Standard

General Admit \$14.25 **ADD**

Senior (65+) \$10.25 **ADD**

Child (3-13) \$9.00 **ADD**

Applicable taxes will be calculated at checkout.

Scene+ ⓘ

Scene+ Members Earn And Redeem Points

ADD CARD

Certificate or Promo code ⓘ

Add a code from your voucher or promo code to apply to your tickets

ADD A CODE

Online Booking Fee ⓘ \$0.00

Booking fee is discounted for Scene+ members and waived when you're a CineClub member.

Applicable taxes will be calculated at checkout.

CINECLUB

Instantly save on your ticket ⓘ

Join CineClub for \$9.99/month. Cancel anytime.

- 1 movie ticket every month
- 20% off on concessions
- No Online Booking Fees

JOIN CINECLUB

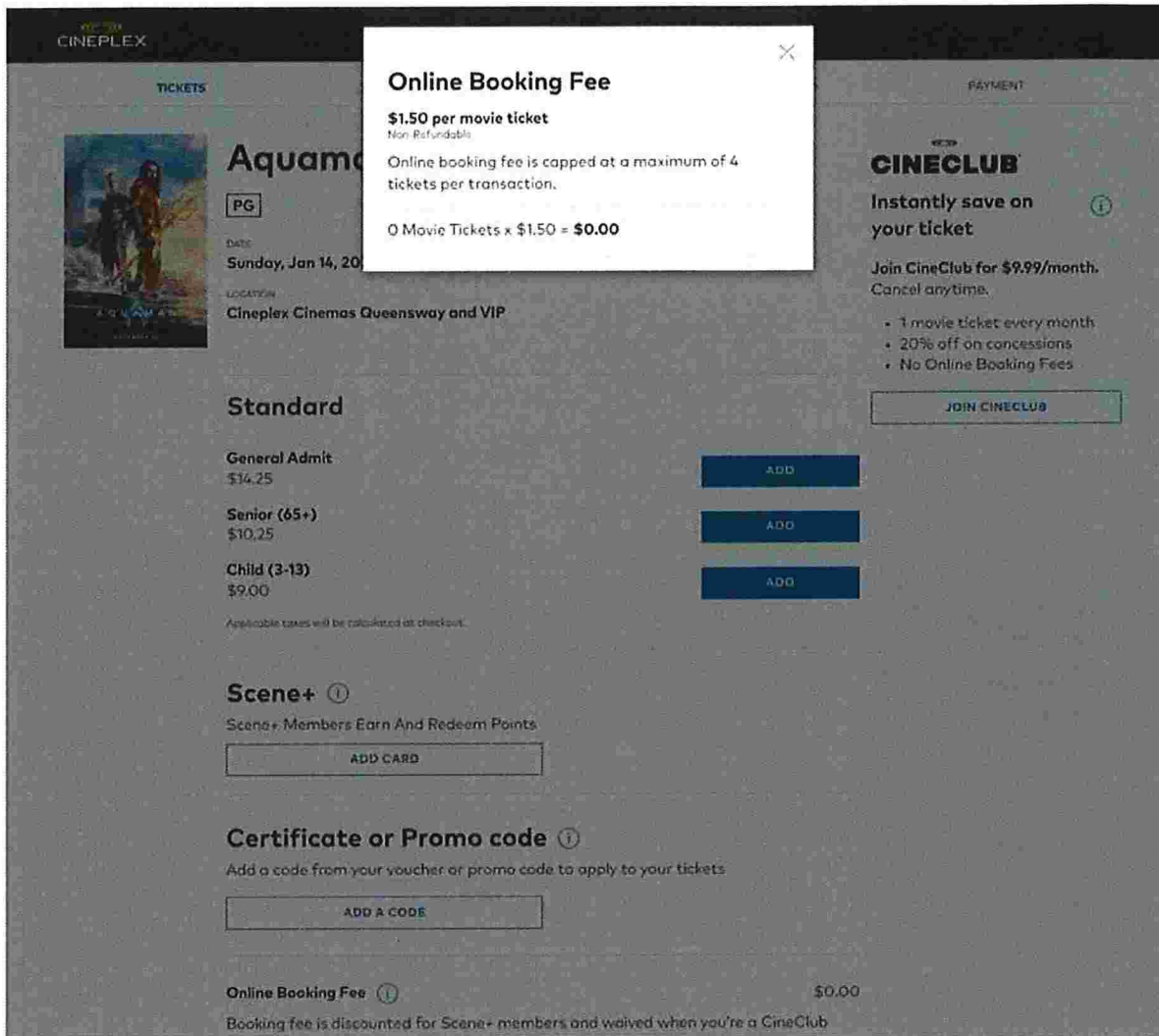
Fee amount is dependant on the number of tickets selected as well as information entered in the "Scene" and/or "Certificate or Promo code" section above.

4:24 Time Left

Subtotal \$0.00 **PROCEED**

[Figure 11]

85. Consumers can see the fee total and are able click on an “i” information icon for additional information on the fee as shown in Figure 12 below and as also illustrated in the video attached as Exhibit A hereto:



[Figure 12]

86. Further, at every step of the online purchase process, the online booking fee is apparent on the face of each page. On both the Website and the App, on the same page or screen at the first point of contact, there is: (a) a specific representation as to the specific price for the specific movie selected, (b) explicit disclosures of the existence and quantum of the online booking fee, and (c) disclosure of the circumstances in which the online booking fee will be charged.

87. Single disclosures of similar kind, allowing the consumer to discern and appreciate the online booking fee (and where or whether applicable) are made on the following two pages or screens; further, comprehensive disclosure is made at the "Payment" page.

88. I have reviewed the Commissioner's allegations at paragraph 22 of the Application. Contrary to the Commissioner's allegations, both the Website and App use *the same font* and font size for pricing throughout the "Tickets" page. Further, the subtotal is shown in a more prominent bold blue font and appears directly beside the prominently displayed "Proceed" button.

89. Further, with respect to paragraph 24 of the Application, the Commissioner alleges that the "Subtotal" is replaced with the "Total" and the online booking fee is not separately shown to consumers before they pay for the purchase. In fact, a breakdown of the entire purchase is shown in an "Order Summary" on the "Payment" Page immediately before consumers are asked to pay for the purchase, as shown below:

CINEPLEX

TICKETS 2 SEATS 2 PAYMENT

Aquaman And The Lost Kingdom

PG

DATE: Sunday, Jan 14, 2024

TIME: 1:00 PM

LOCATION: Cineplex Cinemas Queensway and VIP

Scene+
Scene+ Members Earn And Redeem Points
ADD CARD

Payment Methods

Gift Card
ADD A GIFT CARD

Credit Card
ADD OTHER PAYMENT METHOD

Order Summary

Movie Tickets (1)	\$14.25
Online Booking Fee ⓘ	\$1.50
Taxes	\$2.05
Total	\$17.80

By continuing past this page, you agree to our [TERMS & CONDITIONS](#)

4:56 Time Left Total \$17.80 **PROCEED**

[Figure 13]

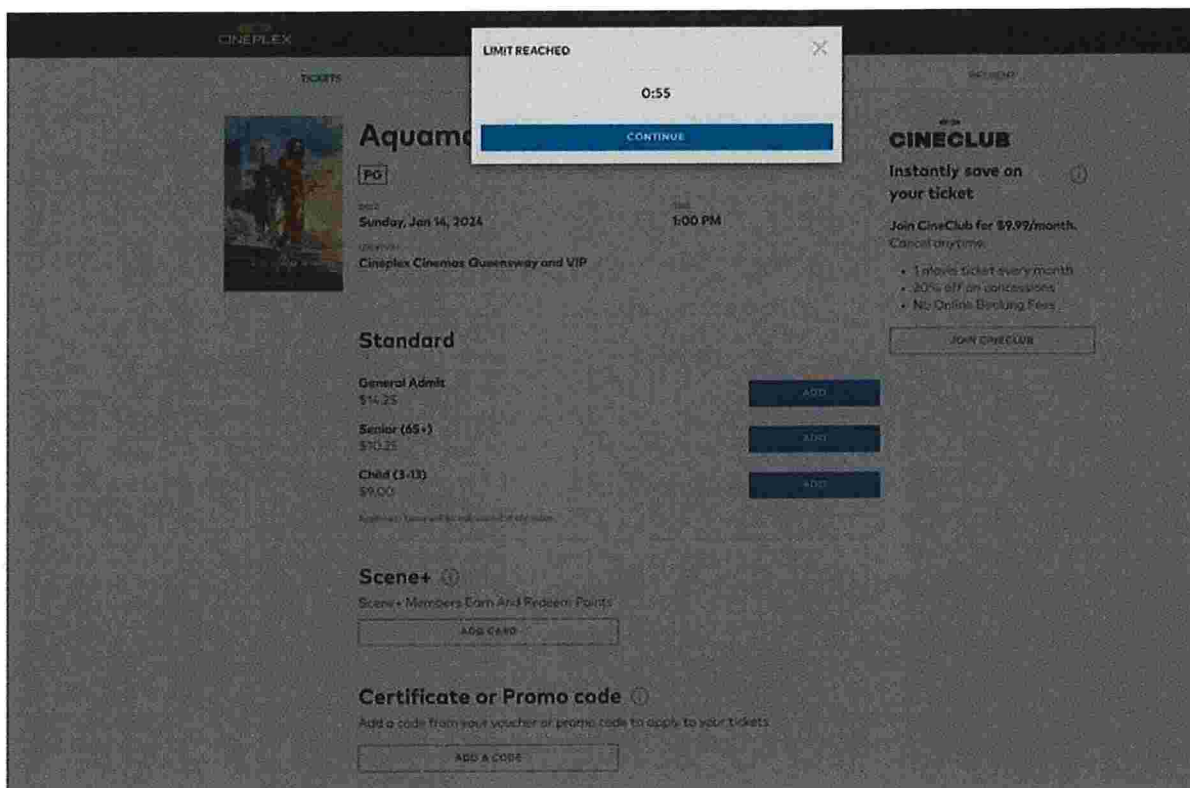
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90. With respect to the countdown timers that the Commissioner mentions in paragraphs 25 of the Application, I note that a timer is part of the underlying architecture of the software Cineplex purchased to drive its online ticketing engine. The countdown timer has been part of the purchase flow long before the introduction of the online booking fee.

91. I also note that a timer is necessary to ensure that all consumers receive access to prime seats. A timer ensures that seats are not being held indefinitely in the purchase process and that they are released if a consumer is no longer interested in continuing with the purchase.

92. The countdown timer is set at 5 minutes beginning on the “Tickets” stage of the process and it re-sets if a consumer needs more time to make their ticket and seat selection. This provides ample opportunity for consumers to complete the task of selecting the number of tickets to purchase and to review the minimal amount of information on the “Tickets” page. According to Cineplex data, from start to finish, it takes consumers an average of 3 minutes and one second to complete a transaction on the Website and 2 minutes and 34 seconds to complete the transaction on the App.

93. Further, on both the Website and the App, consumers are given the opportunity to reset the timer once it reaches the 1-minute mark. This is done by a prominent pop up that appears on the screen, as shown in Figure 14 below:



[Figure 14]

94. When consumers click “Continue”, the time is reset back to five minutes and the consumer is able to return to reviewing the information on the “Tickets” page. There is no limit as to how many times the timer can be reset. The procedure applies to the timer on every subsequent stage of the online purchase process.

AFFIRMED BEFORE ME REMOTELY)
 this 12th day of January, 2024)
 in accordance with Ontario Regulation)
 431/20. The affiant was located in the)
 City of Oakville, in the Province of)
 Ontario, while the commissioner was)
 located in the City of Toronto, in the)
 Province of Ontario.)




Commissioner for Taking Affidavits



Daniel Francis McGrath

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This is Exhibit "A" referred to in the Affidavit
of Daniel Francis McGrath, affirmed before me
this 12th day of January, 2024.



A Commissioner, etc

*Virtually commissioned and electronically signed
pursuant to O. Reg 431/20: Administering Oath or
Declaration Remotely*

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CT-2023-003

THE COMPETITION TRIBUNAL

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.

BETWEEN:

COMMISSIONER OF COMPETITION

Applicant

– and –

CINEPLEX INC.

Respondent

**WITNESS STATEMENT OF DANIEL
FRANCIS MCGRATH**

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