

**FILED / PRODUIT**

Date: August 7, 2025

CT- 2025-002

Grainne Gannon Dubroy for / pour  
REGISTRAR / REGISTRAIRE

**CT-2025-002**

OTTAWA, ONT.

**# 5**

**THE COMPETITION TRIBUNAL**

**IN THE MATTER OF** the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

**AND IN THE MATTER OF** an application by the Commissioner of Competition for one or more orders pursuant to section 74.1 of the *Competition Act* regarding conduct reviewable under paragraph 74.01(1)(a), subsection 74.01(1.1), and section 74.011 of the Act;

**BETWEEN:**

**COMMISSIONER OF COMPETITION**

**Applicant**

- and -

**DOORDASH, INC. AND DOORDASH TECHNOLOGIES CANADA, INC.**

**Respondents**

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**REPLY OF THE COMMISSIONER OF COMPETITION**

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## **I. OVERVIEW**

1. The core issue in this Application is whether the prices DoorDash represents to consumers are attainable. They are not.
2. DoorDash attempts to deflect from this core issue by pointing to its disclosure of fees. Subsection 74.01(1.1) of the Act specifically addresses the “representation of a price” and prohibits the advertising of prices that are unattainable due to fixed obligatory fees. Fee “disclosures” are irrelevant to the subsection 74.01(1.1) analysis. Parliament recognized that even fully disclosed fixed obligatory fees, when excluded from an advertised price, can distort competition and mislead consumers.
3. In any event, DoorDash’s disclosure of the Obligatory Fees does not cure the deceptive nature of DoorDash’s representations. Its conduct is contrary to sections 74.01(1)(a), 74.01(1.1), and 74.011 of the Act, and the Tribunal should grant the remedies sought by the Commissioner, as it considers appropriate.
4. The Commissioner repeats and relies upon the allegations in his Notice of Application and, except as hereinafter expressly admitted, denies the allegations in the Response. Unless otherwise indicated, defined terms in the Reply have the meaning ascribed to them in the Notice of Application.

## **II. THE ACT PROHIBITS UNATTAINABLE PRICE REPRESENTATIONS**

5. Subsection 74.01(1.1) requires price representations to be attainable. DoorDash’s price representations are not attainable due to Obligatory Fees.
6. DoorDash ignores the plain language of subsection 74.01(1.1), which addresses the “representation of a price”, and instead focuses on “fee representations”, or its disclosures regarding fees. DoorDash’s fee

disclosures do not form part of the “representation of a price” under subsection 74.01(1.1). If Parliament intended for fee disclosures to make up part of the representation at issue in subsection 74.01(1.1), it would have so required in the wording of the provision. It did not.

7. Therefore, contrary to DoorDash’s hyperbolic claim, the Commissioner is not pursuing an unprecedented or unsupported interpretation of the drip pricing provision of the Act. In fact, it is DoorDash’s interpretation of subsection 74.01(1.1) that does not align with the plain language of the provision nor the relevant jurisprudence.
8. In any event, DoorDash’s fee disclosures are entirely inadequate to cure the false or misleading nature of its representations. DoorDash’s disclosures are typically smaller and less prominent than the price representations, only accessible through a hyperlink or tooltip, and/or not displayed in close proximity. Furthermore, while the delivery fee amount is sometimes displayed on the merchant selection page, the applicability and/or amount of other Obligatory Fees is often not displayed until the Cart stage (if the consumer scrolls down past the prominent “Continue” button) or at checkout. It is possible for a consumer to navigate through the purchase process on the Websites and Apps without discovering all the Obligatory Fees that apply to their order until after they pay for the order.

### **III. DOORDASH'S OBLIGATORY FEES APPLY TO THE PROMOTED PRODUCT**

9. The product at issue in this Application is DoorDash’s delivery service. That is the service DoorDash markets – an on-demand online food delivery platform. Although DoorDash also offers a separate pickup option for a subset of merchants, that option is a distinct product that is not typically featured in DoorDash’s promotions.

10. Consumers who choose the default delivery service are required to pay Obligatory Fees. The existence of a separate pickup service for some merchants, which requires consumers to travel to the merchant to collect their order, does not affect the mandatory nature of the fees associated with delivery. Consumers who wish to have their order delivered cannot complete a transaction on the Websites or Apps without paying the Obligatory Fees.

#### **IV. DOORDASH'S OBLIGATORY FEES ARE FIXED AND OBLIGATORY**

11. The amount of DoorDash's delivery fees, by DoorDash's own admission, are known to DoorDash as early as when a consumer enters their address at the start of the purchase process, which is before the Unattainable Price Representations are made. The fact that DoorDash or merchants offer \$0 promotions on delivery fees does not change its fixed nature.
12. DoorDash's service fees are a fixed percentage applied to each item ordered. The fact that DoorDash chooses to impose a minimum or maximum/cap on certain orders does not change their fixed nature.
13. With respect to the expanded range fee, by DoorDash's own admission, DoorDash knows the amount of this fee prior to making its price representations because the amount is fixed and predetermined for each merchant as soon as a consumer enters their delivery address at the start of the purchase process, which is before the Unattainable Price Representations are made.
14. In regard to the BC regulatory response fees, DoorDash's use of different fixed price points does not change that it knows the applicable fee as soon as a consumer enters their address at the start of the purchase process, which is before the Unattainable Price Representations are made.

15. DoorDash admits its small order fees apply to convenience delivery orders that fall below the fixed and predetermined threshold. A consumer who wants to place an order that falls below the threshold is obligated to pay the fixed fee.
16. The fact that a consumer can add more items to their order or select another merchant to avoid the small order fee or expanded range fee, respectively, is irrelevant because the consumer who only wants their selected items or preferred merchant is still obligated to pay the fees. By DoorDash's logic, no fee is ever obligatory when a consumer can change their purchasing decision, such as by adding more items, going to a different merchant, or selecting a different product entirely.
17. The above fees are all fixed and obligatory. Subsection 74.01(1.1) applies to any fixed obligatory charge or fee, whether the fee is assessed on a per-item basis or only once per transaction.

**V. DOORDASH CONTINUES TO MAKE FALSE OR MISLEADING REPRESENTATIONS REGARDING EXAGGERATED DISCOUNTS**

18. DoorDash argues that consumers are alerted to the terms of its discounts. However, as DoorDash admits at paragraphs 40 and 42 of its Response, a consumer on the Websites or Apps must click on a hyperlink to see a disclaimer that negates the general impression originally conveyed by the promotion. The disclaimers are not sufficient to cure the false or misleading nature of its representations.

**VI. DOORDASH CONTINUES TO MAKE FALSE OR MISLEADING REPRESENTATIONS THAT SUGGEST ITS FEES ARE GOVERNMENT-IMPOSED**

19. Contrary to DoorDash's claim, the mere fact of labelling something a "fee" does not suggest that the fee is payable to someone other than a government entity. As shown in Figure 3(a) of DoorDash's Response, DoorDash does charge "Government fees: Other fees such as bag fees,

bottle fees, and eco fees may apply as required by law or charged by the merchant.” DoorDash’s arbitrary grouping of service fees and small order fees with taxes under a single line item of “Estimated Fees and Taxes” is false or misleading.

20. With respect to DoorDash’s BC regulatory response fees, the name itself suggests it is regulatory in nature. As noted above, DoorDash does charge what it calls “Government fees”. The mere fact that the name BC regulatory response fee includes the word “fee” does not negate the general impression that this fee is government-imposed. Furthermore, the “unavoidable one-time message” that DoorDash alleges was displayed for three months when this fee was first introduced is insufficient to cure the false or misleading nature of this representation.

## **VII. THE FALSE OR MISLEADING REPRESENTATIONS ARE MATERIAL**

21. Consumer familiarity with the Obligatory Fees does not cure the misleading nature of DoorDash’s price representations or the potential to influence consumer behaviour. Conflating consumer familiarity with the question of materiality, as DoorDash has done, misunderstands the legal test. The issue is whether the price representation is false or misleading in a material respect – not whether some consumers have come to expect it.
22. DoorDash proposes an improper standard by suggesting that the Tribunal should evaluate its conduct from the perspective of a consumer previously deceived but now more familiar with DoorDash’s misleading practices. The correct lens to evaluate DoorDash’s conduct is not the consumer who has been conditioned by DoorDash’s misconduct.
23. Contrary to DoorDash’s claims, DoorDash’s price representations prevent informed consumer choice by obfuscating the price of products. The fee disclosures DoorDash refers to in its Response consist of a jumble of small, less prominent hyperlinks or tooltips, text that is no

longer visible when you scroll to browse items, and one-time popups. Given the lack of transparency on the Websites and Apps interfaces as well as the tactics DoorDash employs to exploit well-known consumer biases, it is not possible for consumers to make well-informed decisions within the platform.

#### **VIII. DOORDASH CANNOT RELY ON THE DUE DILIGENCE DEFENCE**

24. The due diligence defence is not available to DoorDash. DoorDash has not pled any facts to suggest it took any steps to ensure that its price representations were not unattainable due to fixed obligatory fees, or that its discount representations were not false or misleading, or that its representations did not suggest certain Obligatory Fees were imposed by the government.
25. In fact, after being alerted to specific concerns with DoorDash's representations by way of a letter dated July 19, 2024 from the Deputy Commissioner, DoorDash implemented a further Obligatory Fee, the BC regulatory response fee, that not only raises drip pricing concerns, but also concerns with respect to the false or misleading nature of the name of the fee itself.
26. DoorDash determines what is displayed on its Websites and Apps and is responsible to ensure its representations comply with the Act. DoorDash could have designed its Websites and Apps in a manner that was compliant with the Act but did not to do so.

#### **IX. REMEDIES**

27. DoorDash has repeatedly and continuously engaged in conduct that is contrary to the Act and derived significant benefit from its misconduct. The law is clear and yet DoorDash's misconduct persists.
28. Further, and contrary to DoorDash's claim, the class of persons likely to be adversely affected by DoorDash's conduct are vulnerable, including

those with disabilities, chronic illnesses, mobility issues, or childcare obligations who use DoorDash to meet their weekly food and grocery needs.

29. The Commissioner repeats and relies on his Notice of Application with respect to the remedies requested and the facts discussed above. As outlined in the Notice of Application, the Commissioner has clearly and publicly signaled the types of conduct that are contrary to the Act – in the case of drip pricing, going as far back as 2015.

DATED AT Gatineau, Quebec, this 7<sup>th</sup> day of August, 2025



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