

## Competition Bureau Commences Drip Pricing Application Against Cineplex

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May 26, 2023

On May 17, 2023, the Competition Bureau filed a notice of application with the Competition Tribunal commencing legal proceedings against Cineplex, Canada's largest theatre operator, alleging that it has engaged in drip pricing contrary to subsection 74.01(1.1) of the *Competition Act*. Specifically, the Bureau alleges that the price of movie tickets advertised on the Cineplex website and app were unattainable because of the addition of an obligatory \$1.50 online booking fee.

Drip pricing is the practice of advertising a price, which is not actually attainable because of the addition of mandatory fees (other than those imposed by a government, such as a sales tax).

This is the Competition Bureau's first enforcement action under drip pricing provisions which came into effect last year as part of amendments to the *Competition Act* made in June 2022. Section 74.01(1.1) specifically provides that the making of a representation of an unattainable price due to obligatory fees or charges that are not imposed by or under an Act of Parliament or the legislature of a province constitutes a false or misleading representation.

Drip pricing has been an enforcement priority of the Bureau for many years, featuring prominently in Competition Bureau guidance and resulting in several high-profile settlements in the car rental and online sporting and entertainment ticketing industries. Prior to June 2022, the Bureau had to proceed under the *Competition Act's* general civil prohibition against making representations to the public that are false or misleading in a material respect.

The June 2022 amendments also increased the maximum penalty for deceptive marketing practices (including drip pricing) pursued on a civil basis. The maximum fine for corporations is the greater of:

- \$10 million (for an initial violation)
- three times the value of the benefit from drip pricing
- if the benefit cannot be reasonably determined, three percent of annual global revenues

For guidance relating to drip pricing, please contact Jennifer McKenzie, Eric Buist, or any member of the Cassels Competition & Foreign Investment Group.

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