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Ticketmaster Pays a Hefty Price for Advertising Unattainably Low Prices

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Ticketmaster's practice of adding non-optional fees to advertised ticket prices will cost the group (consisting of Ticketmaster L.L.C., TNow Entertainment Group, Inc. and Ticketmaster Canada LP) \$4.5 million in a settlement reached with the Competition Bureau.

The Bureau alleged that non-optional fees added to ticket prices by Ticketmaster raised prices by 20-65% in an application filed in the Competition Tribunal in 2018. Ticketmaster has agreed to stop drip pricing and to pay an administrative monetary penalty (fine) of \$4 million plus \$500,000 in costs as part of a settlement.

Drip Pricing

Ticketmaster's non-optional fees are an example of what is called "drip pricing." Drip pricing involves drawing consumers in by offering a low price, then raising that price by adding non-optional charges and fees. The non-optional charges and fees make the initially-advertised low price unattainable.

For example, according to the Bureau, Ticketmaster customers would see a low advertised price for their tickets and decide to make a purchase. As they progressed through the checkout process various non-optional charges such as a "facility charge," an "order processing fee," or a "resale service fee" were added. Some fees are charged on a per-ticket basis while others are charged per order, but in all instances, the price that the customer ultimately paid was much higher than the one they saw advertised.

According to the Bureau, once a customer is drawn in by a low price they are less inclined to look at other options, even as the price increases. In Ticketmaster's case, fees were added at different steps so that the customer was not aware of the actual cost until they had entered a variety of information, clicked through several pages, and were near the end of the check out process. These concerns were heightened by the fact that some Ticketmaster transactions involve a countdown clock which could increase pressure on consumers to finish their purchase or risk losing the tickets.

In July 2017, the Bureau warned ticket vendors to review their marketing practices and ensure the real price of tickets is displayed upfront. The application against Ticketmaster was brought less than a year later. While Ticketmaster began changing how prices are displayed on its website in 2018 to show a price that includes per-ticket fees and a maximum per order fee the first time the price is shown, further changes will likely be required to comply with the settlement.

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In Quebec, Ticketmaster already included all non-optional fees in its prices, because provincial law mandates all-inclusive pricing. The Bureau questioned why this model was not used in the rest of Canada.

The Bureau has been working to shut down drip pricing in a variety of industries for several years. Its settlement with Ticketmaster brings the total fines for drip pricing to over \$20 million. Arguably the first drip pricing case in Canada was the Bureau's 2011 settlement with Bell Canada, in which Bell agreed to pay \$10 million to settle allegations that non-optional fees it added increased the price of its home phone, internet, and television bundles by about 15%. In 2016, internet provider Comwave Networks Inc. agreed to pay \$300,000 to settle allegations that non-optional fees made its advertised prices unattainable. Between 2016 and 2018, four car rental companies, Discount, Avis/Budget, Enterprise and Hertz/Dollar Thrifty, paid a total of \$5.95 million to resolve concerns over non-optional charges added to car rental prices (see our blog post Fixing the Leak). In 2018 the furniture companies Leon's and The Brick each agreed to donate \$750,000 worth of furniture to charity to end proceedings launched by the Bureau in 2013 because of fees associated with "buy now pay later" promotions.

Advertised Prices Must be Attainable

The Bureau's position is simple: consumers should be able to buy a product for the price that is advertised, without any additional non-optional fees or charges. Sales taxes (HST, GST, and provincial sales taxes) do not need to be included as they are imposed on the consumer by the government, even though they are collected by the merchant. Fees for optional goods or services do not need to be included in the price initially shown to the consumer, so long as the consumer can buy the product without the optional goods or services.

While its position has yet to be confirmed by any court, the Bureau has made it clear that it will take action against companies engaging in drip pricing, particularly when it occurs online, as the digital economy is a current Bureau priority. Companies that do not ensure that consumers can actually purchase products for the advertised price face costly Bureau investigations and legal proceedings, and fines of up to \$10 million.

If you have questions about marketing practices, including the rules that apply to advertising, or about any other competition law matters please contact a member of our Competition, International Trade & Foreign Investment Group.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.