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BUSINESS

Hate it when the final bill is higher than the original price due to surprise fees? Ottawa is now planning to ban the practice

The federal government is amending the Competition Act to include new criminal and civil prohibitions on advertising prices that are not attainable because of extra mandatory fees.

By **Christine Dobby** Business Reporter

Thu., May 5, 2022 | ⌚ 4 min. read

JOIN THE CONVERSATION (4)

That vacation rental is almost yours. You've clicked through multiple web pages on your phone, double-checked your dates, entered your email and address information, even created a username and password.

But at the final step there's an unwelcome surprise. A resort fee maybe, or a charge for cleaning or pets. It all adds up to a lot more than you expected to pay when you first looked at the prices and decided on that booking.

That experience, when mandatory fees over and above the advertised price just keep coming, like drops of water from a tap, is called drip pricing.

Beyond simply being annoying, drip pricing also makes it hard to compare prices, and can lead people to spend more than planned because of the time and effort getting to the checkout page — so why not just click “buy” at that point?

It's also increasingly common in the digital economy, so much so that the federal government now plans to ban drip pricing outright, amending the Competition Act to include new criminal and civil prohibitions on advertising prices that are not attainable because of extra mandatory fees. (It carves out exceptions for government charges such as taxes, which would not have to be included in upfront prices.)

Canada's Competition Bureau has gone after companies in a range of industries for drip pricing in recent years — including StubHub, Ticketmaster, furniture retailers Leon's and the Brick, and numerous car rental companies — and won financial settlements in the millions of dollars.

But in doing so it has had to rely on more general rules against false and deceptive marketing, and earlier this year, in a [submission to a consultation](#) by Sen. Howard Wetston, the bureau said it has to devote significant resources to proving in each case that drip pricing is in fact deceptive.

Experts say the changes, which are contained in the budget implementation act introduced last week, would make it make it easier for the bureau to bring and win drip pricing cases and also send a strong signal to advertisers.

While the Competition Bureau, which is an independent law enforcement agency, has pursued drip pricing cases for several years, Subrata Bhattacharjee, a partner at Borden Ladner Gervais LLP, said the acceleration of online commerce during the pandemic likely drew more political attention to the issue.

“I think the presentation of price offers in e-commerce was really what drove a lot of the consumer — and ultimately the government’s — interest in having a clear provision on drip pricing,” he said.

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“This is becoming a kind of practice that is particularly common in the digital space, where you string people through menus, and the digital interface lends itself to this practice,” said Jennifer Quaid, a civil law professor and vice-dean of research at the University of Ottawa.

She said that with the changes, the bureau “should be able to more readily bring cases where these practices are being used, if they have the evidence that the practice is being used. So you don’t have to have a debate about whether this is a problematic practice. It is.”

Asked about the example of food delivery apps, where extra charges often stack up by the end, Quaid said there will still be some “shades of grey” around what is acceptable. She said the bureau is likely to put out interpretation guidelines to help businesses understand what could lead to enforcement actions.

Julie Soloway, co-chair of the competition law practice group at Blake, Cassels & Graydon LLP, said that by including specific provisions on drip pricing, the government is making “a stronger statement that this is a potential issue,” adding that it highlights the need for businesses to “dust off their compliance programs.”

In an article published Tuesday by the C.D. Howe Institute, Joshua Krane and James Musgrove, partners in the competition law group at McMillan LLP, critique the changes, arguing they introduce new uncertainty for businesses around pricing practices.

Coupled with other changes to competition law, including stiffer penalties that can include a percentage of a company’s worldwide revenues, Krane said international players may pass on doing business here.

“What I’ve been hearing is companies are concerned about what this means and they may decide to (re)-evaluate the extent of their engagement with Canadians,” he said in an interview.

Krane said the competition law changes (the government also plans to make wage-fixing agreements between employers illegal, among other things) are significant and should not have been buried in an omnibus budget bill.

Quaid also raised that concern, saying the government “undermines democratic legitimacy by proceeding this way.”

Innovation, Science and Economic Development Minister François-Philippe Champagne telegraphed the changes in the budget bill in an [interview with the Star in February](#).

Champagne also said that a broader review of the Competition Act would follow, and his spokesperson, Laurie Bouchard, said Tuesday that the government still plans to hold a public consultation.

Robin Shaban, co-founder of Vivic Research, a social justice-oriented economic research firm, said that means groups and individuals who want to see progressive reforms should start working on strong submissions now.

“This requires the community outside of Bay Street to get its ducks in a row.”

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