

FILED / PRODUIT

Date: January 22, 2024
CT- 2023-003

Annie Ruhlmann for / pour
REGISTRAR / REGISTRARE

CT-2023-003

OTTAWA, ONT.

39

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 an order pursuant to section 74.1 of the *Competition Act* and subsection 74.01(1.1) of the *Competition Act*;

BETWEEN:

COMMISSIONER OF COMPETITION

Applicant

– and –

CINEPLEX INC.

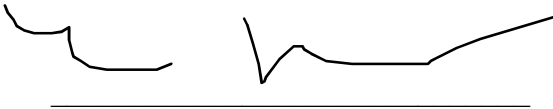
Respondent

AFFIDAVIT OF DR. ON AMIR

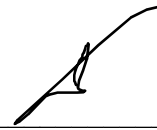
(AFFIRMED JANUARY 12, 2024)

1. My name is On Amir. I am the Wolfe Family Presidential Endowed Chair in Life Sciences, Innovation, and Entrepreneurship, and Professor of Marketing at the Rady School of Management, University of California, San Diego.
2. I have been retained by Borden Ladner Gervais LLP on behalf of Cineplex to provide, within my area of expertise, particularly with regard to consumer behavior, website design interface, and online purchase decision making, an independent expert opinion report for use as evidence, to assist the Competition Tribunal, in respect of matters raised in this proceeding.
3. I attached as Exhibit “A” to this affidavit my report setting out my opinion, findings, and conclusions.
4. I attached as Exhibit “B” to this affidavit my Acknowledgment of Expert Witness.

Affirmed remotely by On Amir)
Stated as being located in the City of)
La Jolla in the State of California, before me)
At the City of Toronto in the Province of)
Ontario on January 12, 2024 in accordance)
with O. Reg. 431/20, Administering Oath)
or Declaration Remotely)



Commissioner for Taking Affidavits)



On Amir)

A handwritten signature in black ink, consisting of a series of connected loops and lines, positioned above a horizontal line.

This is Exhibit “A” to the affidavit of On Amir,
affirmed remotely as being located
in the city of La Jolla in the State of California,
before me in the city of Toronto in the Province of Ontario,
on January 12, 2024, in accordance with
O. Reg 431/20, Administering Oath or Declaration Remotely.

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BETWEEN:

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– and –

CINEPLEX INC.

Respondent

EXPERT REPORT OF DR. ON AMIR

JANUARY 12, 2024

CONTENTS

I.	Qualifications	6
II.	Case Background and Assignment	7
III.	Summary of Opinions	8
IV.	The Consumer Flow for Cineplex Consumers	9
V.	The Design of Cineplex’s Online Ticket Sale Process Is Consistent with Optimizing for Consumer Satisfaction.	17
A.	Firms Are Incentivized to Design Seamless and Transparent User Experiences.	17
B.	The Cineplex User Experience Reflects User Design Best Practices.....	19
C.	A <i>De Minimis</i> Number of Consumers Registered Formal Complaints Regarding the Online Booking Fee.....	22
VI.	Principles of Marketing Support that The Cineplex Ticket Consumer Flow Is Transparent and Efficient.....	22
A.	The Online Booking Fee Is Presented Openly and Simultaneously with Ticket Price Information.	22
B.	Cineplex’s Consumer Flow Provides Searching Consumers with Valuable Information and Its Numerous Options Allow Consumers to Self-Select into Various Prices, which Increases Consumer Welfare.....	26
VII.	Response to the Morwitz Report.....	30
A.	Dr. Morwitz Fails to Show that the Cineplex Consumer Flow Involves Drip Pricing, Obscured Pricing, or Shrouded Attributes.	31
B.	Dr. Morwitz Fails to Empirically Test or Otherwise Support Her Various Theoretical Hypotheses.....	33
VIII.	Response to the Eckert Report.....	38
A.	Mr. Eckert Fails to Adapt His Analysis To the Cineplex Consumer Flow and Fails to Consider Numerous Factors that Influence the Consumer Experience.	39
B.	Mr. Eckert’s Own Analysis of the Cineplex Ticketing Page Shows that Consumer Attention Would Be Guided Towards Indications of the Online Booking Fee.	40
C.	Mr. Eckert Ignores Best Practices for Designing to Accommodate the Consumer Choice Process.	41

I. QUALIFICATIONS

1. I am the Wolfe Family Presidential Endowed Chair in Life Sciences, Innovation, and Entrepreneurship, and Professor of Marketing at the Rady School of Management, University of California, San Diego. I have been a professor of marketing for the past two decades. I received my PhD in Management Science and Marketing from the Massachusetts Institute of Technology in 2003. From 2003 to 2005, I was an Assistant Professor of Marketing at Yale University. In 2005, I moved to help found the Rady School of Management at UC San Diego, where I was the first founding member of the marketing department and have served as an associate dean of academic programs.
2. I have taught Marketing Management, Pricing, Consumer Behavior, Business Analytics, Marketing Strategy, Market Research, Applied Market Research, Lab to Market, and Data Driven Decision Making at the MBA and Executive levels, as well as many specific programs for major corporations (both nationally and internationally). I have also taught MBA Marketing Management courses at Northwestern University's Kellogg School of Management, Yale School of Management, Recanati School of Business of Tel Aviv University, IDC Herzelia, and Cheung Kong Graduate School of Business in Shanghai, China.
3. I have consulted with numerous companies in many industries on topics relating to market analysis, market research, business strategy, consumer insights, branding, consumer analysis, new product launches, pricing, promotions, and customer relationship management. I am also the Chief Behavioral Science Officer at Fiverr, Inc. and serve on the advisory board of several companies.
4. I have published numerous highly cited and award-winning articles in leading marketing, management, and psychology journals, and I am often invited to lecture in leading business school and professional meetings. I have also designed and conducted hundreds of consumer surveys, both for my academic research and consulting work. My Curriculum Vitae, which includes a complete listing of my academic publications and expert witness testimony over the past five years, is attached as **Appendix A: Curriculum Vitae**.

II. CASE BACKGROUND AND ASSIGNMENT

5. This matter (the “Matter”) arises out of a Notice of Application (the “Application”) for an order pursuant to Section 74.1 of the Competition Act, R.S.C1985, c. C-34 as amended.¹ The Application alleges (an allegation that Cineplex denies) that Cineplex has engaged in reviewable conduct contrary to Paragraph 74.01(1)(a) and Subsection 74.01(1.1) of the Act. Specifically, the Application focuses on purchases that are made on the Cineplex website (cineplex.com) (the “Website”) and the Cineplex Mobile App (the “Mobile App”) and the application of an online booking fee (the “Online Booking Fee”).²
6. I have been retained by Borden Ladner Gervais LLP on behalf of Cineplex. I have been asked, within my area of expertise, particularly with regard to consumer behavior, website design interface, and online purchase decision making, to provide an independent expert opinion report for use as evidence, to assist the Competition Tribunal, that contains the following: (i) the facts, findings, and conclusions of my evaluation and analysis relating to the information and the price presentation in the Cineplex Website and Mobile App; and (ii) comments and responses to any reports filed by the Commissioner in this Matter.

¹ Notice of Application and Application. *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 an order pursuant to section 74.1 of the Competition Act regarding conduct reviewable pursuant to paragraph 74.01(1)(a) and as clarified for greater certainty by subsection 74.01(1.1) of the Competition Act* (Competition Tribunal No. CT-2023-003) (May 18, 2023).

² *Id.* ¶¶ 1-5; Response. *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 an order pursuant to section 74.1 of the Competition Act regarding conduct reviewable pursuant to paragraph 74.01(1)(a) and as clarified for greater certainty by subsection 74.01(1.1) of the Competition Act* (Competition Tribunal No. CT-2023-003) (June 30, 2023) ¶ 2.

7. On January 8, 2024, the Commissioner disclosed the expert reports of Dr. Vicki Morwitz (the “Morwitz Report”)³ and Jay Eckert (the “Eckert Report”)⁴ “relating to the Commissioner’s Notice of Application against Cineplex, Inc.”⁵
8. A complete list of the documents and data that I rely upon in reaching my conclusions in this Matter is provided in **Appendix B: Materials Reviewed**.
9. The opinions stated in this report are based on the information available to me at the time of writing this report. I reserve the right to amend or supplement my opinions and report, if appropriate, based on any additional information, facts, or in response to opinions or reports of other experts in this Matter.

III. SUMMARY OF OPINIONS

10. Based on my review of the information available to me, my experience, and my professional judgment, I conclude that:
 - Principles of marketing dictate that firms are incentivized to design transparent and user-friendly online interfaces to enhance the consumer experience and gain consumer loyalty. My review of the Cineplex Website and Mobile App found that Cineplex’s ticket buying experience was clear and streamlined, reflecting these user design best practices.
 - I have reviewed the complaints said to be about the Online Booking Fee, as produced by the Competition Bureau in this Matter. There were 97 million consumer visits to the Cineplex Website in the last year. Only seven complaints were submitted to the Competition Bureau, all of those dated after the Application was filed in this Matter, approximately one year after the

³ Affidavit of Dr. Vicki Morwitz (Affirmed January 5, 2024). *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 an order pursuant to section 74.1 of the Competition Act regarding conduct reviewable pursuant to paragraph 74.01(1)(a) and as clarified for greater certainty by subsection 74.01(1.1) of the Competition Act* (Competition Tribunal No. CT-2023-003) (Jan. 5, 2024) and Exhibits (Exhibit A, the “Morwitz Report”).

⁴ Affidavit of Jay Eckert (Affirmed January 5, 2024). *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 an order pursuant to section 74.1 of the Competition Act regarding conduct reviewable pursuant to paragraph 74.01(1)(a) and as clarified for greater certainty by subsection 74.01(1.1) of the Competition Act* (Competition Tribunal No. CT-2023-003) (Jan. 5, 2024) and Exhibits (Exhibit A, the “Eckert Report”).

⁵ Affidavit of Dr. Vicki Morwitz (Affirmed January 5, 2024). *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 an order pursuant to section 74.1 of the Competition Act regarding conduct reviewable pursuant to paragraph 74.01(1)(a) and as clarified for greater certainty by subsection 74.01(1.1) of the Competition Act* (Competition Tribunal No. CT-2023-003) (Jan. 5, 2024) ¶ 2; Affidavit of Jay Eckert (Affirmed January 5, 2024). *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 an order pursuant to section 74.1 of the Competition Act regarding conduct reviewable pursuant to paragraph 74.01(1)(a) and as clarified for greater certainty by subsection 74.01(1.1) of the Competition Act* (Competition Tribunal No. CT-2023-003) (Jan. 5, 2024) ¶ 2.

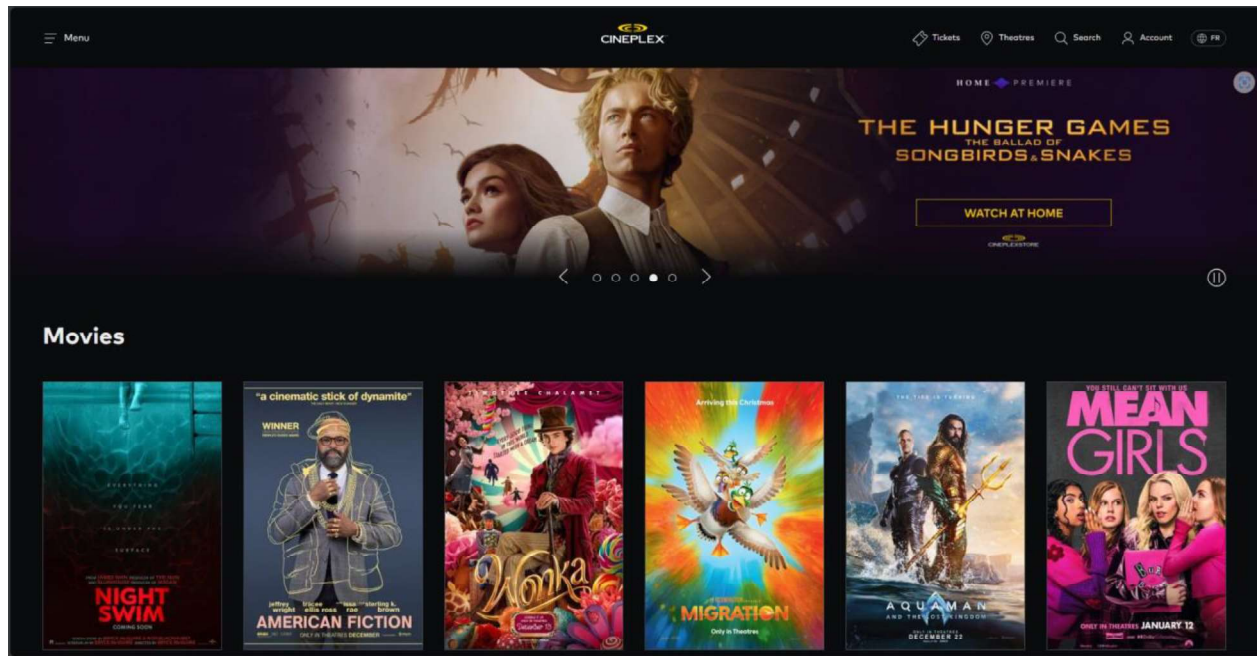
introduction of the Online Booking Fee, suggesting that, from a scientific perspective, virtually all consumers of the Cineplex Website did not find the Online Booking Fee misleading.

- My analysis of user cues integrated with the ticket buying process found that the Online Booking Fee is presented clearly and shown at the same time as other ticket price information.
 - The current presentation of the Online Booking Fee in the ticket buying process allows consumers to effectively choose between differently priced ticket options. Such self-sorting by consumers is welfare-enhancing.
 - The Morwitz Report fails to support or empirically confirm Dr. Morwitz's assertion that the presentation of the Online Booking Fee involves drip pricing, obscured pricing, or constitutes a shrouded attribute as those terms are defined in the academic literature, including Dr. Morwitz's own definitions.
 - Dr. Morwitz's conclusions are unsupported. Despite presenting multiple empirically testable hypotheses, Dr. Morwitz does not test or support them using the necessary data yet continues to draw conclusions.
 - The Eckert Report is similarly fundamentally flawed. Mr. Eckert presents general statements but fails to support them in fundamental ways. Mr. Eckert does not attempt to test any of his claims. Moreover, Mr. Eckert's analysis of the information on the ticketing page actually supports the opposite hypothesis, that consumers would see multiple items referencing the Online Booking Fee before proceeding with the transaction.
11. This report contains my full findings and conclusions in respect of this Matter based on present information.

IV. THE CONSUMER FLOW FOR CINEPLEX CONSUMERS

12. In this section I describe the sequence of steps that would be followed by consumers who wish to gather information and purchase a ticket for a movie showing at a Cineplex theater online. I refer to this sequence of steps as the "Consumer Flow" of a movie ticket. I note that for certain figures I have included illustrative annotations marked in a red overlay.
13. A consumer who is interested in finding information or viewing a movie at a Cineplex theater can go to its website, www.cineplex.com. A view of the landing page is shown in **Figure 1: Cineplex Home Page**.

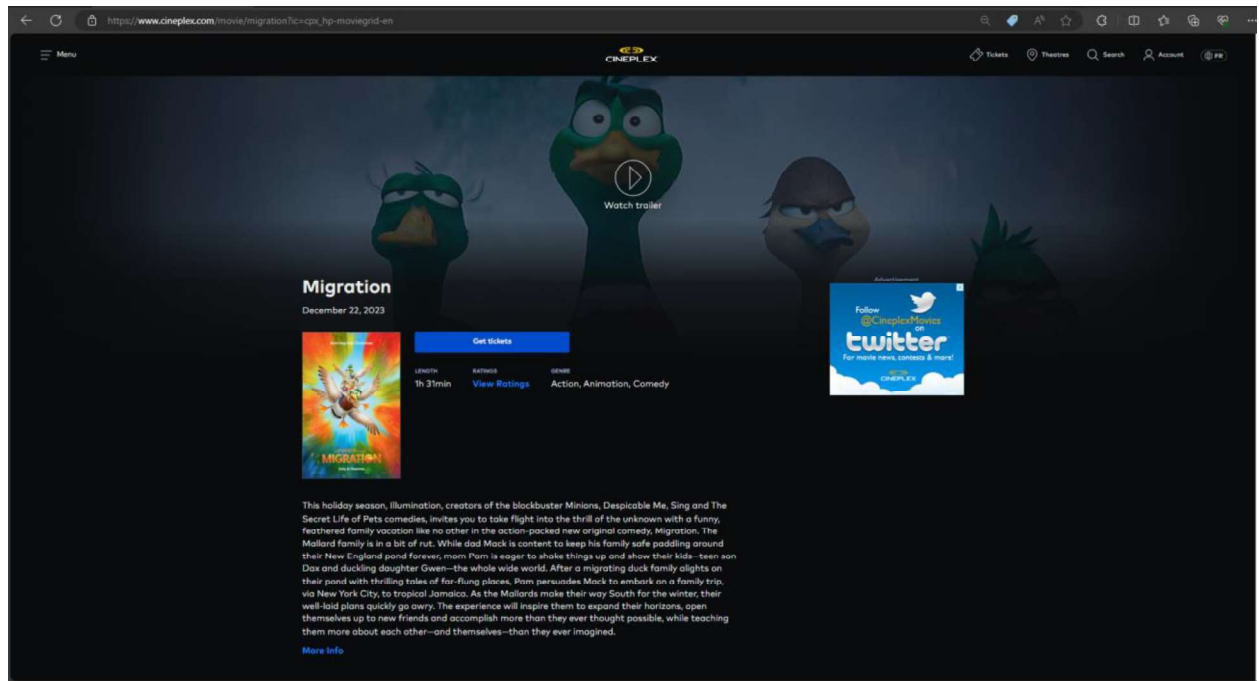
Figure 1: Cineplex Home Page⁶



14. The Cineplex landing page lists movies showing at Cineplex theaters. From this page, consumers may select a movie that they are interested in seeing.⁷ This leads to pages displaying more detailed information about that movie, including the length, genre, ratings, theater locations, dates and showtimes, viewing experiences, seating structure and availability at a selected theater, and a brief summary and trailer. See **Figure 2: Movie Detail**.

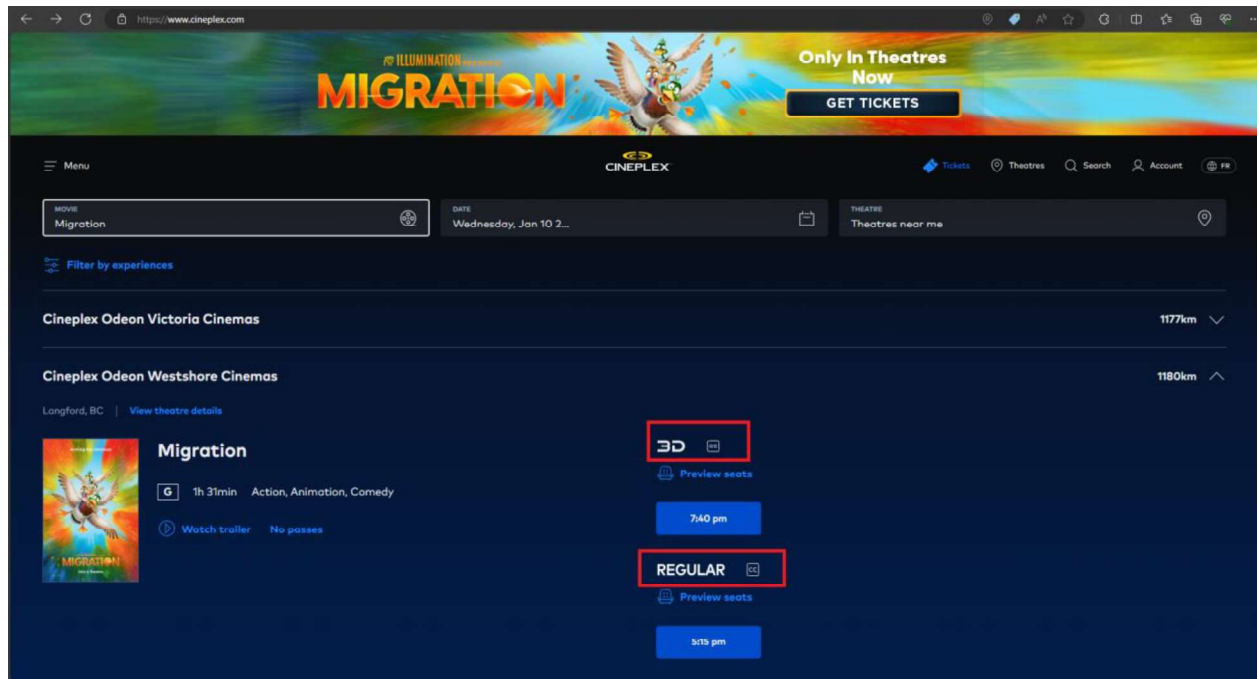
⁶ “Home.” *Cineplex*. <<https://www.cineplex.com>> (accessed Jan. 3, 2024).

⁷ There are options for consumers to deviate from this exact Consumer Flow by selecting “Tickets,” “Theatres,” or “Search” from the ribbon at the top of the Website home page, which allows for different searching or filtering methods. However, these options all eventually direct consumers to a page displaying showtimes for particular movies at one or more theatres, described below in paragraph 15. As such, these options within the Consumer Flow do not impact my later discussion on the display of pricing information.

Figure 2: Movie Detail⁸

15. If consumers are interested in this movie, they can click a blue button marked “Get Tickets,” which brings up a list of theaters that are showing that movie, alongside information on the times that the movie is playing and the possible viewer experiences, such as Regular, 3D, VIP, UltraAVX, D-Box, and Full Recliner. See **Figure 3: Showtime Information**. Additionally, consumers can elect to “Preview Seats” and see a map of the seat structure and availability for a particular showtime they are interested in. That is, consumers can see the demand for a particular movie, screening time, and viewing experience.

⁸ “Migration.” Cineplex. <https://www.cineplex.com/movie/migration?ic=cpx_hp-moviegrid-en> (accessed Jan. 3, 2024).

Figure 3: Showtime Information⁹

16. Through this point in the Consumer Flow, the consumer has not been presented with any information regarding *any* pricing information. At this point, a consumer can progress to learning pricing information by clicking movie showing time for the theater and experience they desire, which brings them to a page on which they can select the number and type of ticket they would like to purchase, which is referred as the Tickets Page.
17. Notably, this page displays the prices for tickets for the selections made on the preceding pages, the Online Booking Fee, a five-minute countdown timer, and also the availability of the Scene+ and CineClub membership programs. Scene+ is a loyalty program that offers consumers perks and points when they spend with those businesses.¹⁰ There is no cost to join Scene+.¹¹ The Online Booking Fee is discounted for Scene+ members.¹² The Online Booking Fee is not charged for certain promotional

⁹ "Migration." *Cineplex*. <https://www.cineplex.com/movie/migration?ic=cpx_hp-moviegrid-en> (accessed Jan. 3, 2024).

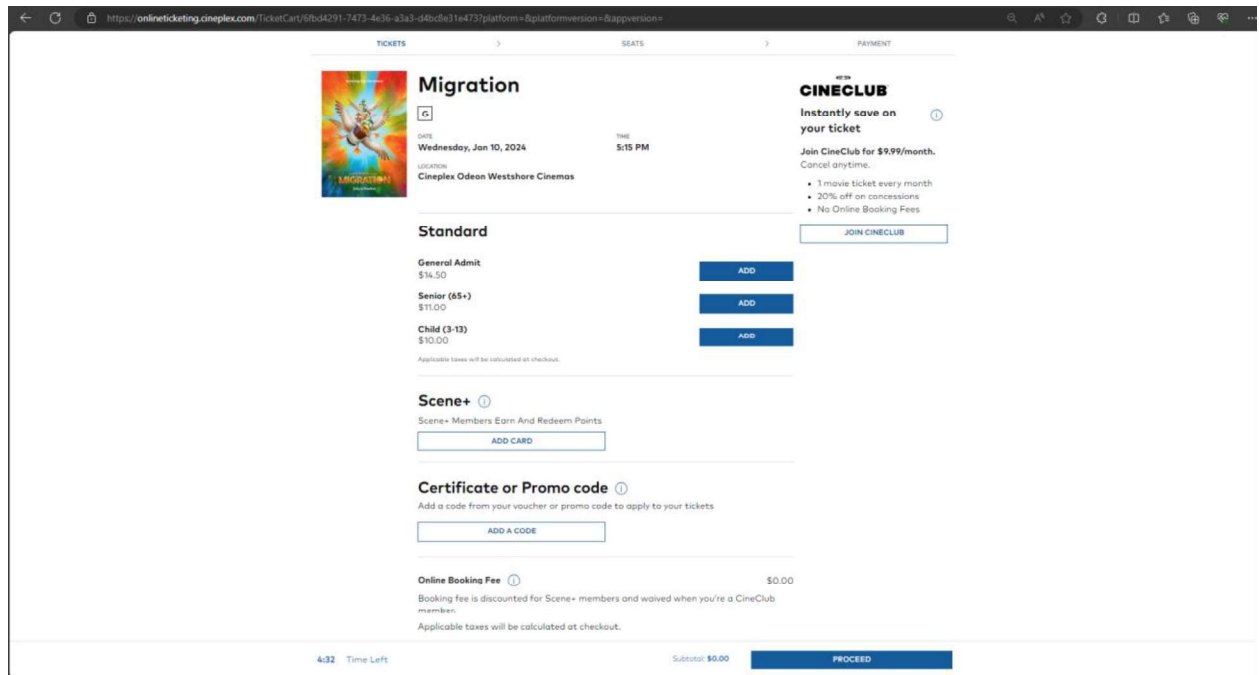
¹⁰ "How It Works." *Scene+*. <<https://www.sceneplus.ca/how-it-works>> (accessed Jan. 3, 2024).

¹¹ "Terms & Conditions." *Scene+*. <<https://www.sceneplus.ca/terms-and-conditions>> (accessed Jan. 10, 2024) ("Membership is free and no purchase is required to become a Member and maintain your Membership.")

¹² **Figure 4:** *Ticketing Page* ("Booking fee is discounted for Scene+ members").

coupons.¹³ CineClub is Cineplex’s subscription service, priced at \$9.99 per month, that gives members one movie ticket each month as well as the option to buy additional tickets priced at \$9.99, a 20 percent discount on concessions, and other perks.¹⁴ Membership in CineClub waives the Online Booking Fees completely.¹⁵ For consumers that are not already part of the CineClub program, the ticketing page clearly advertises that the Online Booking Fee is waived for members of the CineClub subscription service.¹⁶ For an example of the ticketing page before tickets are added, see **Figure 4: Ticketing Page**, below.

Figure 4: Ticketing Page¹⁷



18. Once tickets are added to the consumer’s cart, the page updates to show the Online Booking Fee applied and the subtotal, including both the base ticket price and the Online Booking Fee before taxes. This display at the bottom of the screen is a “floating display” such that no matter where the consumer is on the page or wherever the consumer scrolls, the subtotal is always available to see at

¹³ “Cineplex Promotions.” *Cineplex*. <<https://www.cineplex.com/promotions>> (accessed Jan. 11, 2024) (stating for some promotions that “The online booking fee is not charged when this promo code is redeemed online”).

¹⁴ “CineClub.” *Cineplex*. <https://www.cineplex.com/cineclub?ic=cpx_globalnav-en_cineclub> (accessed Jan. 3, 2024).

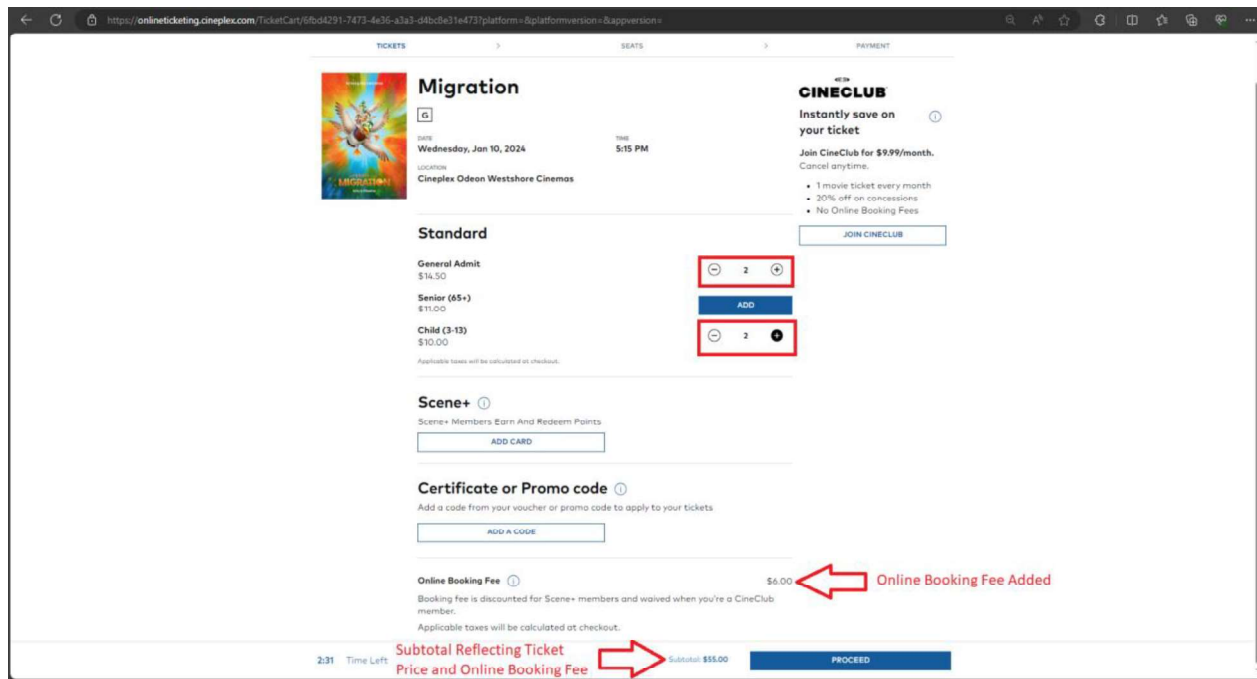
¹⁵ *Id.*

¹⁶ See **Figure 4: Ticketing Page** (“Booking fee is ... waived when you’re a CineClub member”).

¹⁷ “Tickets.” *Cineplex*. <<https://onlineticketing.cineplex.com/TicketCart/6fbd4291-7473-4e36-a3a3-d4bc8e31e473?platform=&platformversion=&appversion=>>> (accessed Jan. 3, 2024).

the bottom of the screen next to the major call to action (“CTA”)¹⁸ button to make a purchase. See **Figure 5: Updated Ticketing Page**. Consumers can also add multiple tickets to their purchase, and, as they do so, both the amount of the Online Booking Fee and the subtotal update in increments to reflect the increased amount. This update is displayed for each ticket added (e.g., if a consumer adds three tickets, the displayed Online Booking Fee increases from \$1.50 to \$3.00 to \$4.50) in independent increments.

Figure 5: Updated Ticketing Page¹⁹

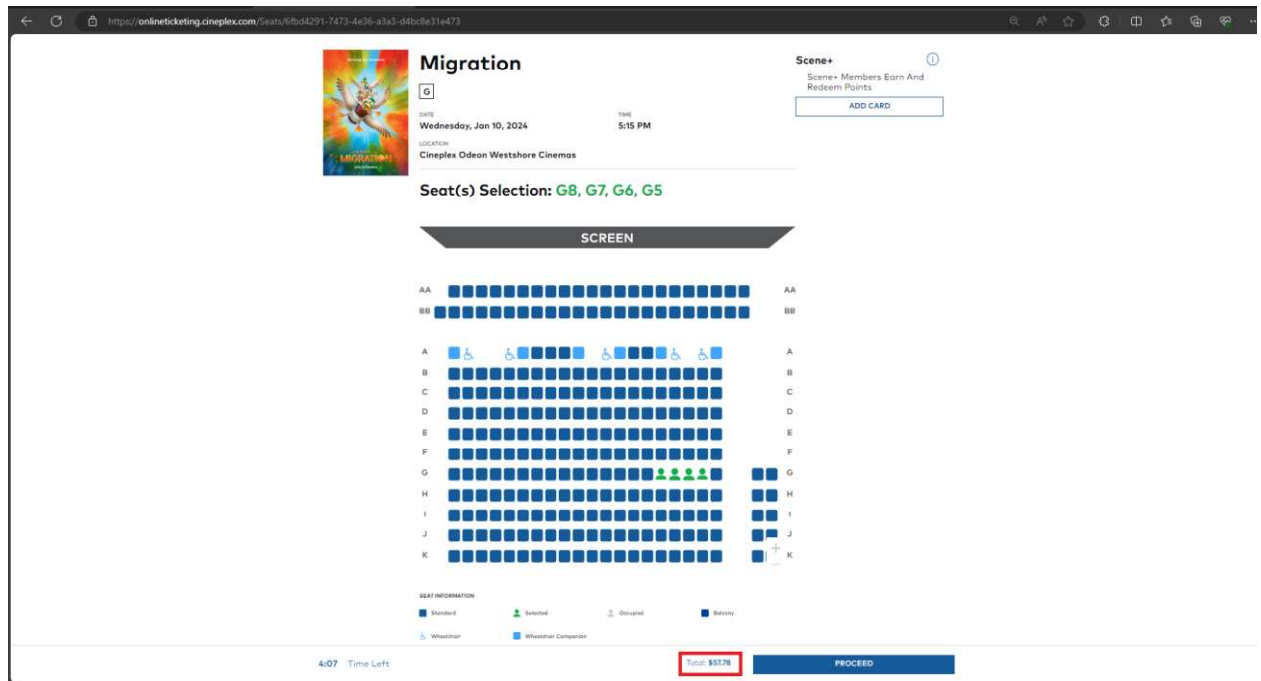


19. To the right of the displayed subtotal, consumers can elect to “Proceed,” which directs them to a seat selection page as shown in **Figure 6: Seat Selection**, which is referred to as the “Seats” page. Consumers can then immediately reserve their seats from those still available for that showtime. On this Seats page, the total price for all tickets is displayed. This total price now includes taxes. The price presented does not meet any definition of partitioned prices, and instead reflects the full price including all fees and taxes, such that the consumer’s decision to proceed only considers the total price. I also note that the countdown timer resets after a consumer elects to proceed.

¹⁸ In marketing and user design, a CTA is “typically a region of the screen that drives the reader to click through to engage further” such as “an image, a button, or a reserved section of the digital asset.” See, e.g., Chen, Tser-Yieth, et al. “How Different Advertising Formats and Calls to Action on Videos Affect Advertising Recognition and Consequent Behaviors.” *The Service Industries Journal* (2018): 1-22 at 3.

¹⁹ “Tickets.” *Cineplex*. <<https://onlineticketing.cineplex.com/TicketCart/6fbd4291-7473-4e36-a3a3-d4bc8e31e473?platform=&platformversion=&appversion=>> (accessed Jan. 3, 2024).

Figure 6: Seat Selection²⁰



20. To the right of the total cost, consumers can again click the CTA button to “Proceed” to the payment page, where an order summary is shown that itemizes the price of the movie tickets, Online Booking Fee, and taxes. See **Figure 7: Order Summary**. The countdown timer also resets again at this point.

²⁰ “Seats.” *Cineplex*. <<https://onlineticketing.cineplex.com/Seats/6fbd4291-7473-4e36-a3a3-d4bc8e31e473>> (accessed Jan. 3, 2024).

Figure 7: Order Summary²¹

The screenshot displays the Cineplex online ticketing interface. At the top, there are navigation tabs for 'TICKETS', 'SEATS', and 'PAYMENT'. The main content area features a movie poster for 'Migration' with the following details:

- Movie:** Migration
- Date:** Wednesday, Jan 10, 2024
- Time:** 5:15 PM
- Location:** Cineplex Odeon Westshore Cinemas

Below the movie details, there are sections for 'Payment Methods' and 'Scene+'. The 'Payment Methods' section includes options for 'Gift Card' (ADD A GIFT CARD) and 'Credit Card' (ADD OTHER PAYMENT METHOD). The 'Scene+' section includes a link to 'ADD CARD' and a note: 'Scene+ Members Earn And Redeem Points'.

The 'Order Summary' section is highlighted with a red border and contains the following breakdown:

Item	Amount
Movie Tickets (4)	\$49.00
Online Booking Fee	\$6.00
Taxes	\$2.78
Total	\$57.78

At the bottom of the page, there is a countdown timer showing '4:47 Time Left', the total amount 'Total: \$57.78', and a blue 'PROCEED' button. A small 'VISA ECONOMICS' logo is visible in the top right corner.

21. Consumers can then proceed to the final page that allows them to enter their credit card or other payment information and check out. See **Figure 8: Payment**. The countdown timer again resets at this point to a longer, 15-minute timer. At this stage the price displayed is the total price, including taxes, preceded by a breakdown of its components.

²¹ "Payment." Cineplex. <<https://onlineticketing.cineplex.com/PaymentOptions/6fbd4291-7473-4e36-a3a3-d4bc8e31e473>> (accessed Jan. 3, 2024).

Figure 8: Payment²²

The screenshot shows the payment page for a Cineplex movie ticket. The page is titled "Migration" and displays the movie poster, date (Wednesday, Jan 10, 2024), and time (5:15 PM). The location is Cineplex Odeon Westshore Cinemas. The total amount is CAD 57.78. The page is divided into sections for "Review Your Order", "Pay With Your Credit Card", and "Pay with PayPal". The credit card section includes fields for Cardholder Name, Credit Card Number, Expiry Date (MM/YY), and Security Code. There is a "PAY WITH YOUR CREDIT CARD" button and a "Pay with PayPal" button. A "14:39 Time Left" indicator is visible at the bottom.

22. These steps, in order, comprise the Consumer Flow for information and purchase of a Cineplex movie ticket on the Cineplex Website. The Cineplex Mobile App offers a substantively similar Consumer Flow but displays the options in a mobile-friendly layout that is as a general rule more vertical and compressed. See **Appendix C: Cineplex Mobile App Consumer Flow**.

V. THE DESIGN OF CINEPLEX'S ONLINE TICKET SALE PROCESS IS CONSISTENT WITH OPTIMIZING FOR CONSUMER SATISFACTION.

A. Firms Are Incentivized to Design Seamless and Transparent User Experiences.

23. There is a well-known business principle of doing well by doing good, which encapsulates the idea that it is often in business's own interest to treat their customers well, respect their time and efforts, and provide a seamless user experience.²³ In other words, it is to Cineplex's advantage to keep their customers happy and minimize their frustration.²⁴ By ensuring consumers are happy, a business like

²² "Payment." *Cineplex*. <<https://onlineticketing.cineplex.com/Payment/a9f1a2f8-4a05-42cd-a9f7-5edaf01404f2>> (accessed Jan. 3, 2024).

²³ See, e.g., Kotler, Philip and Kevin Lane Keller. *Marketing Management*, 14th ed. New Jersey: Prentice Hall (2012) at 629 ("[S]atisfying customers, employees, and other stakeholders and achieving business success are closely tied to the adoption and implementation of high standards of business and marketing conduct.").

²⁴ See, e.g., Lee, Dong-Jin and M. Joseph Sirgy. "Quality-of-Life (QOL) Marketing: Proposed Antecedents and Consequences." *Journal of Macromarketing* 24.1 (2004): 44-58 at 52 ("Enhancing satisfaction with all aspects of

Cineplex builds a positive reputation with its customers, encourages long-term loyalty, and positive word of mouth. In turn, these raise the long-term profitability of a business. User interface design is often key in this pursuit, especially for goods sold online.²⁵ The end result of this is a purchasing flow that is streamlined and intuitive while providing consumers with all the relevant information they need to make informed purchase decisions. This approach is generally thought to be a best practice in designing websites for consumers to navigate.²⁶

24. On the contrary, frustrating or angering consumers by hiding fees is unlikely to be a sensible approach for companies. While a hidden or deceptive presentation of a fee might increase profits in the short term, it will also cause longer term harm as consumers become aware of the deception, leading to reputational harm and damaging consumer relations.²⁷ As brand reputation and loyalty are

the consumer cycle should lead to increased customers' trust in the firm and its products, which in turn should lead to repeat purchasing and commitment to the firm"); Shankar, Venkatesh, Amy K. Smith, and Arvind Rangaswamy. "Customer Satisfaction and Loyalty in Online and Offline Environments." *International Journal of Research in Marketing* 20 (2003): 153-175 at 174 ("The finding that ease of obtaining information has a stronger effect on both overall satisfaction and loyalty online than offline has important implications."); Srivastava, Medha and Alok Kr. Rai. "Mechanics of Engendering Customer Loyalty: A Conceptual Framework." *IIMB Management Review* 30 (2018): 207-218 at 209 ("Researchers established positive links between customer satisfaction and various aspects of customer loyalty such as relative attitude... reduced intensity of blame and anger in impaired relationships... repurchase intentions ... repeat usage intentions ... willingness to recommend ... and customers' future intentions.").

²⁵ See, e.g., Shi, Min and Hong Yuan. "Impact of E-Commerce Website Usability on User Satisfaction." *Journal of Advanced Computational Intelligence and Intelligent Informatics* 23.1 (2019): 91-96 at 92 ("High usability is the key to the success of an E-commerce website and a determinant factor for users to continue using the website."); "49 Cart Abandonment Rate Statistics 2024." *Baymard Institute* (July 11, 2023). <<https://baymard.com/lists/cart-abandonment-rate>> (accessed Jan 5, 2024) (An analysis of collected research by the web UX research company the Baymard Institute finding that "the average large-sized e-commerce site can gain a 35.26% increase in conversion rate though better checkout design.").

²⁶ See, e.g., Shi, Min and Hong Yuan. "Impact of E-Commerce Website Usability on User Satisfaction." *Journal of Advanced Computational Intelligence and Intelligent Informatics* 23.1 (2019): 91-96 at 92 ("High usability is the key to the success of an E-commerce website and a determinant factor for users to continue using the website."); Shankar, Venkatesh, Amy K. Smith, and Arvind Rangaswamy. "Customer Satisfaction and Loyalty in Online and Offline Environments." *International Journal of Research in Marketing* 20 (2003): 153-175 at 174 ("The finding that ease of obtaining information has a stronger effect on both overall satisfaction and loyalty online than offline has important implications. First, a service provider should determine the appropriate information needs of its customers. Second, it should design a website so that the customer can access not only all the relevant information but also access them only when he/she needs it. Third, the company should invest in technologies that search for the right information and retrieve the information as quickly as possible. Fourth, the company may want to focus on creating the right user-interfaces that allow customers to access information in the way that is most convenient for them[.]").

²⁷ See, e.g., Lee, Jung-Yong and Chang-Hyun Jin. "The Role of Ethical Marketing Issues in Consumer-Brand Relationship." *Sustainability* 11 (2019): 1-21 at 13 ("An unethical pricing strategy has a negative effect on consumer attitude formation, which includes relationship building with a brand."); Kotler, Philip and Kevin Lane Keller. *Marketing Management, 14th ed.* New Jersey: Prentice Hall (2012) at 203 ("A firm is more likely to be seen as trustworthy when it ... [p]rovides full, honest information ... [and] [p]artners with customers to help them learn and help themselves[.]"); Srivastava, Medha and Alok Kr. Rai. "Mechanics of Engendering Customer Loyalty: A Conceptual Framework." *IIMB Management Review* 30 (2018): 207-218 at 211 ("Formation of customer loyalty calls for an empathetic environment in which both the customer and the company co-exist with mutual trust.").

important to most companies, acquiring a perception of being deceptive and misleading can hurt a firm's long-term profitability.²⁸ This is particularly true for businesses that live or die by consumer repeat purchasing, such as movie theaters.

25. In this way, firms selling products online are heavily incentivized to design an intuitive, transparent, and non-frustrating process for buying their goods or services.

B. The Cineplex User Experience Reflects User Design Best Practices.

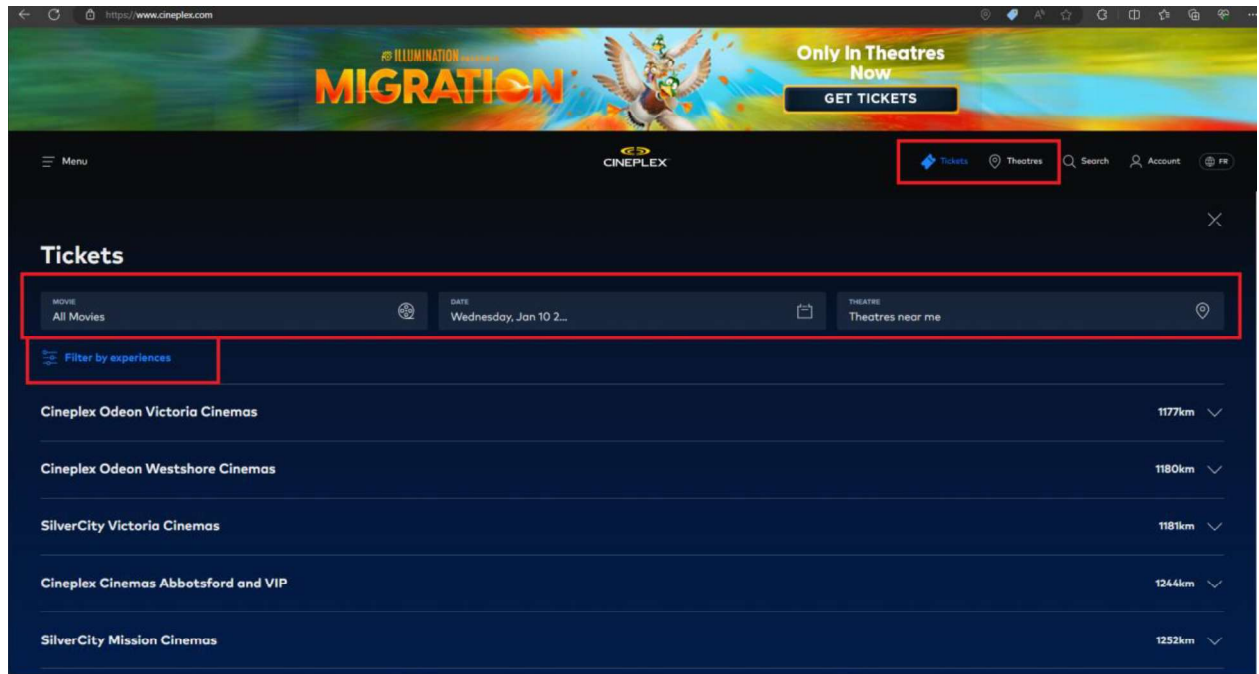
26. The Cineplex Consumer Flow as I have described it in Section IV is well-engineered and exhibits user design best practices. Cineplex's website design shows it following the aforementioned incentives to maintain brand relationships by crafting transparent and intuitive user experiences.
27. In accordance with this, the Consumer Flow for movie tickets is streamlined and intuitive. Consumers are given access to a broad array of helpful information, which assists them to choose between options and make their final purchasing decision.
28. The consumer decision making process is comprised of several well-known stages. As summarized in Philip Kotler and Kevin Lane Keller's leading text on Marketing Management, these consist of (i) problem or need recognition, (ii) information search, (iii) consideration set, (iv) evaluation of alternatives, and (v) decision.²⁹ A properly structured consumer interface facilitates and helps the consumer in every step of this process (the "Five-Step Model"), as the consumer can elect to exit from the interface and not purchase at any one of the stages.
29. The Cineplex Website Consumer Flow described above is an example of an interface that follows this principle, offering consumers exactly the type of information they require at every step. The first step, need recognition, occurs prior to consumers visiting the Cineplex Website or Mobile App. Once on the Cineplex landing page, the Website actively assists consumers in their information search step by providing—free of charge—information, searching, and filtering tools. This information includes

²⁸ See, e.g., Hallowell, Roger. "The Relationships of Customer Satisfaction, Customer Loyalty, and Profitability: An Empirical Study." *International Journal of Service Industry Management* 7.4 (1996): 27-42 at 27, 31-36 (finding a statistical relationship between customer satisfaction and customer loyalty, and between customer loyalty and profitability); Lee, Dong-Jin and M. Joseph Sirgy. "Quality-of-Life (QOL) Marketing: Proposed Antecedents and Consequences." *Journal of Macromarketing* 24.1 (2004): 44-58 at 50 ("We will argue that the consequences of [quality of life] marketing may lead to outcomes affecting the survival and growth of the firm."), 52 ("Negative consumption experiences and perceptions of socially irresponsible marketing practices of a firm, in contrast, are likely to result in negative word of mouth and a negative corporate image[.]").

²⁹ Kotler, Philip and Kevin Lane Keller. *Marketing Management, 14th ed.* New Jersey: Prentice Hall (2012) at 166-172.

movie description pages, which can help consumers decide if a movie interests them or is appropriate for their family to see, as well as the numerous types of search options available. The fact that consumers can filter by movie, by location, by theater, by date, and by experience type allows consumers to personalize the information search step to their own preferences. *See Figure 9: Search and Filtering Options.* The information offered by Cineplex also assists consumers in creating a narrow consideration set of specific tickets to buy and in evaluating the alternatives between movie tickets (i.e., comparing based on theater location and experience type).

Figure 9: Search and Filtering Options³⁰



30. Even with all this information available, some consumers may not have found a specific ticket that meets their needs. For instance, some consumers may have been browsing for interesting films (and thus, never proceeded past the consideration set step of the decision process), and others may have been gathering information for a later purchase made in person at the movie theater. For consumers that do identify a desired ticket based on movie, theater, showtime, and experience type, the Cineplex Website and Mobile App further allow consumer choice within their consideration set once such consumers proceed to the online ticketing page.

³⁰ "Tickets." *Cineplex*. <<https://www.cineplex.com>> (accessed Jan. 3, 2024).

31. Once on the ticketing page, consumers are invited to select the ticketing option that best suits them, or they may elect to use a promotional coupon at that time. Consumers can elect to either reserve their seats online and pay the Online Booking Fee, purchase tickets at the theater to save on the Online Booking Fee, or join CineClub to forgo the Online Booking Fee but still reserve advance seats online.³¹ Cineplex helps consumers make this choice by presenting them, on the same page where prices are first shown (as shown above in **Figure 5: Updated Ticketing Page**), with clearly displayed key relevant information, including, specifically, the amount of the itemized Online Booking Fee and its incorporation into the subtotal immediately besides the “Proceed” button. There is also a clearly displayed notice concerning details of the CineClub membership program and the fact that it waives booking fees. From this consideration set, consumers will weigh prices against their relative preferences and select the option that best suits their situation (i.e., evaluation of alternatives and decision). Consumers can do this because of the information provided on the different options and because the Online Booking Fee is clearly shown but is separate from the ticket prices. This process, and how such self-sorting increases overall consumer surplus, is discussed further in Section VI.B.
32. The structure and design of the current Cineplex Website and Mobile App thus fit the Five-Step Model of the consumer decision process. Prices displayed currently are intuitive and clear. To alter the interface to display prices that incorporate the Online Booking Fee and then add exceptions to its application would result in a less transparent and intuitive display. Any additional explanation clutters the interface and would force consumers to conduct subtractions. Clutter leads to confusion and confusion reduces welfare.³² First, as discussed below in Section VI.B, seeing only a bundled price may lead to overall welfare reduction as well because consumers may very well end up with inefficient unwanted outcomes. Second, the Online Booking Fee is capped and does not apply to more than four tickets purchased at the same time,³³ which would lead to inaccurate representations for those purchasing more than four tickets (for those to whom the Online Booking Fee applies). Currently, the subtotal price shown immediately to the left of the CTA button is the true subtotal price. This is an accurate price that is all inclusive of the Online Booking Fee, if the Online Booking Fee applies. This presentation is logical, intuitive, and consistent with prevailing marketing and online norms.

³¹ As previously mentioned, consumers may also connect their Scene+ account to receive a discount on the Online Booking Fee.

³² Shugan, Steven M. “The Cost of Thinking.” *Journal of Consumer Research* 7.2 (1980): 99-111.

³³ “Family.” *Cineplex*. <<https://www.cineplex.com/events/family>> (accessed Jan. 11, 2024).

C. A *De Minimis* Number of Consumers Registered Formal Complaints Regarding the Online Booking Fee.

33. I have reviewed the complaints said to be about the Online Booking Fee, as produced by the Competition Bureau in this Matter.³⁴ There were 97 million consumer visits to the Cineplex Website in the last year. Only seven complaints were produced by the Commissioner in this Matter. This represents 0.0000072 percent of visits to the Cineplex Consumer Flow. All of those seven complaints are dated after the Application was filed in this Matter, over one year after the Online Booking Fee was introduced. This suggests to me, from a scientific perspective, that consumers of the Cineplex Website did not find the Online Booking Fee misleading.
34. A low percentage of complaints, in particular complaints received over a year following the launch of the Online Booking Fee, is unsurprising given the analysis discussed throughout this report that Cineplex’s website design, the Consumer Flow of a ticket, and presentation of the Online Booking Fee are consistent with marketing and user design best practices as well as industry standards and norms. If the Website adheres to industry norms, then consumers have learned to expect this structure. Picking various price options and components is summarized in real-time at the bottom of the screen. I note that there were zero complaints prior to the Application being filed against Cineplex.

VI. PRINCIPLES OF MARKETING SUPPORT THAT THE CINEPLEX TICKET CONSUMER FLOW IS TRANSPARENT AND EFFICIENT.

A. The Online Booking Fee Is Presented Openly and Simultaneously with Ticket Price Information.

35. As I discussed above, the Consumer Flow for Cineplex ticket buyers is well-engineered and consistent with best practices.³⁵ In this section I analyze the presentation of a specific step of the Consumer Flow, which is the presentation of the pricing information.
36. As described above in Section IV, the first time a consumer encounters pricing information is on the ticketing page, where the line items for ticket pricing and the Online Booking Fee are shown

³⁴ “REGF00036_000000001_native.pdf.” (June 18, 2023) (REGF00036_000000001); “REGF00043_000000001 (Confidential Level B).pdf.” (Aug. 7, 2023) (REGF00043_000000001); “REGF00043_000000002 (Confidential Level B).pdf.” (July 20, 2023) (REGF00043_000000002); “REGF00043_000000003 (Confidential Level B).pdf.” (Aug. 2, 2023) (REGF00043_000000003); “REGF00043_000000004 (Confidential Level B).pdf.” (July 19, 2023) (REGF00043_000000004); “REGF00043_000000005 (Confidential Level B).pdf.” (June 15, 2023) (REGF00043_000000005); “REGF00043_000000006 (Confidential Level B).pdf.” (July 1, 2023) (REGF00043_000000006).

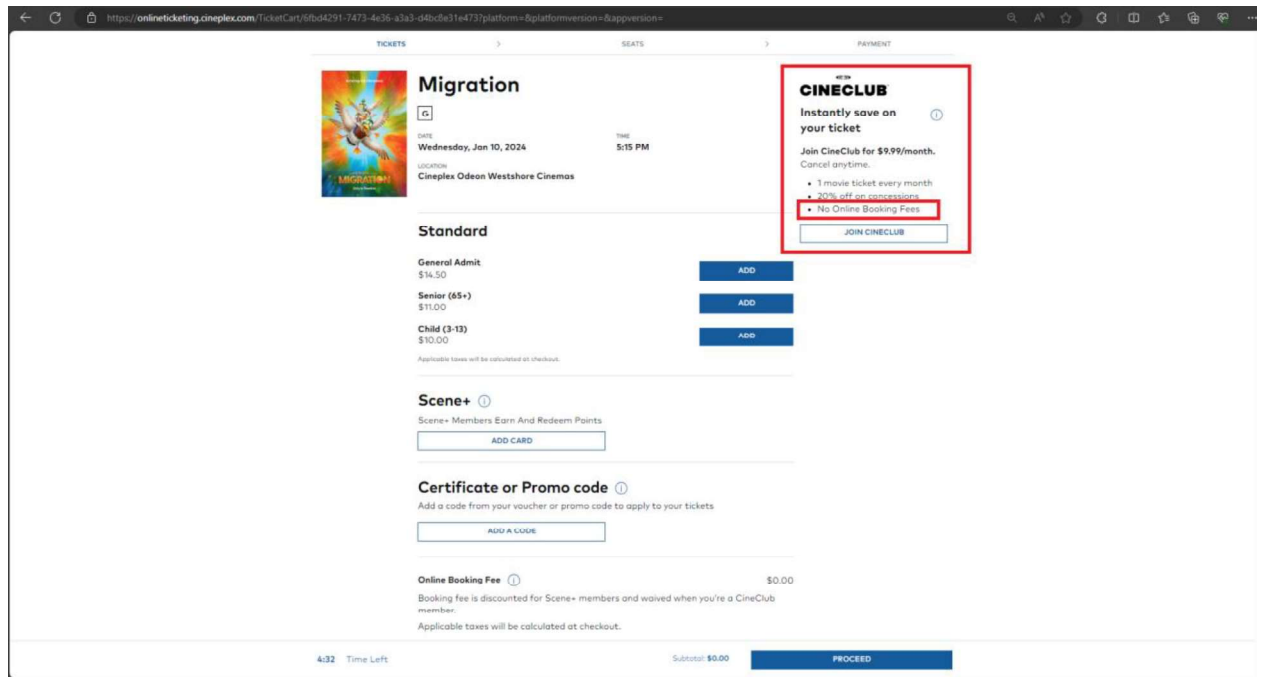
³⁵ See *supra* Section V.B.

simultaneously. In addition to the clearly distinguished Online Booking Fee item, the Online Booking Fee is added into the subtotal that is prominently shown at the bottom of the page.

37. As a result of Cineplex’s design, the Online Booking Fee is clearly shown to consumers at the same time they are first presented the ticket price. Moreover, the presentation of the subtotal immediately next to the CTA button that gives the option to proceed allows consumers to make their final purchasing decision based on what is likely to be the most relevant information—their total anticipated expenditure—which includes the Online Booking Fee. A fundamental tenet of consumer choice dictates that consumers that are extremely price sensitive would be able to stop the transaction process if the addition of the Online Booking Fee into the subtotal brings the total cost to a level beyond their willingness to pay.³⁶
38. As the Consumer Flow progresses, there is never a page where the base ticket price is shown without mention of the Online Booking Fee, and the subtotal always includes the Online Booking Fee from the first moment it is applied.³⁷
39. Moreover, the initial ticketing page design makes it clear that the Online Booking Fee is not a mandatory or fixed charge. Consumers that are not existing CineClub members are invited via the floating window in the top right of the Website display to join the CineClub program and are advised that doing so will result in “[n]o [o]nline [b]ooking [f]ees” being charged for the transaction. Such information is displayed prominently and before the CTA button in the top-to-bottom layout. *See Figure 10: CineClub Advertisement.*

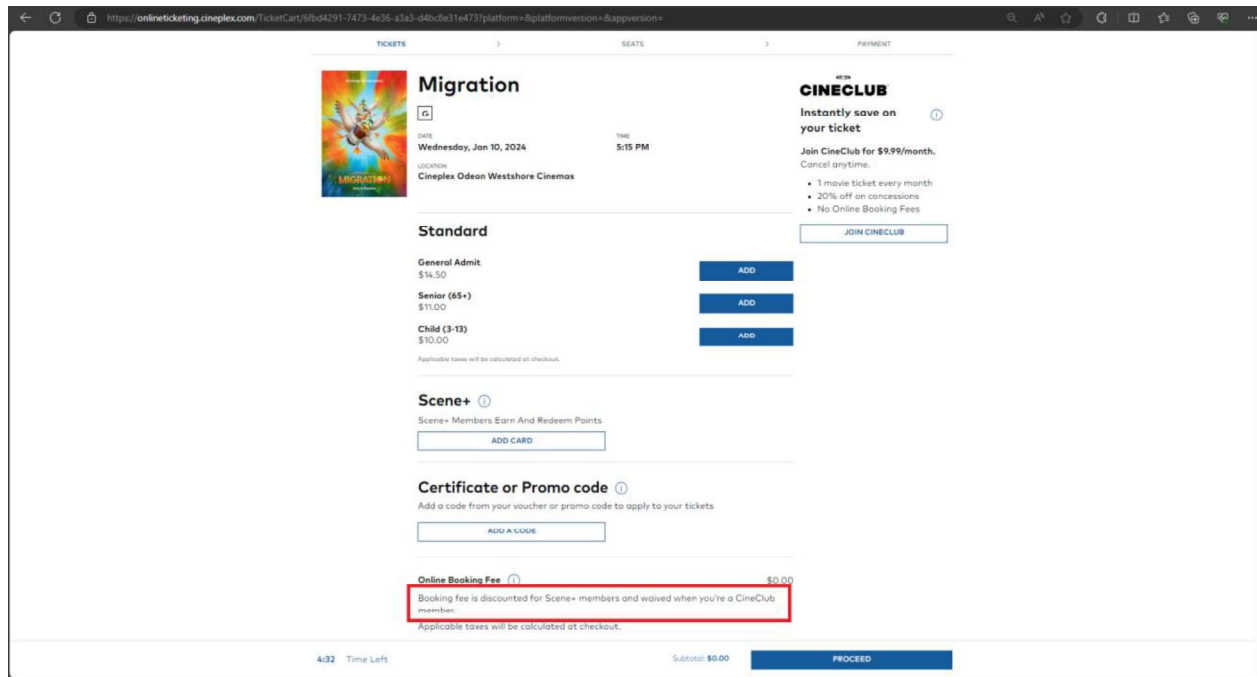
³⁶ Varian, Hal R. *Intermediate Microeconomics: A Modern Approach*, 8th ed. New York: W. W. Norton & Company (2010) at 4 (“Economists call a person’s maximum willingness to pay for something that person’s reservation price. The reservation price is the highest price that a given person will accept and still purchase the good. In other words, a person’s reservation price is the price at which he or she is just indifferent between purchasing or not purchasing the good.”) (emphasis omitted).

³⁷ *See supra* Figures 1-8.

Figure 10: CineClub Advertisement³⁸

40. Consumers are also informed in the line item for the Online Booking Fee itself that such booking fee is “discounted for Scene+ members and waived when you’re a CineClub member” in text no smaller than the standard font size present on the rest of the page. Consumers can thus be aware that the Online Booking Fee is non-mandatory and subject to discount. See **Figure 11: Online Booking Fee Information**.

³⁸ “Tickets.” Cineplex. <<https://onlineticketing.cineplex.com/TicketCart/6fbd4291-7473-4e36-a3a3-d4bc8e31e473?platform=&platformversion=&appversion=>> (accessed Jan. 3, 2024).

Figure 11: Online Booking Fee Information³⁹

41. As a final check before the consumer completes an online ticket purchase, the order summary again presents the components of the transaction, itemizing the tickets and the amount of the Online Booking Fee, if applicable.⁴⁰ By again presenting the itemized cost of a ticket, the Consumer Flow double-checks with consumers that they are sure about proceeding with the online transaction (including the Online Booking Fee), that is, that they are okay with paying the fee for the value of convenience and certainty of prebooking their particular choice of seats. This final check occurs before paying. At any time, consumers have the choice of purchasing tickets in person at the movie theater (as many consumers have done for years and still nearly half do),⁴¹ thus waiving the Online Booking Fee entirely because the purchase is no longer made online, while still benefiting from their online information search and consideration set stages in their decision-making process.

³⁹ "Tickets." *Cineplex*. <<https://onlineticketing.cineplex.com/TicketCart/6fbd4291-7473-4e36-a3a3-d4bc8e31e473?platform=&platformversion=&appversion=>> (accessed Jan. 3, 2024).

⁴⁰ See *supra* Figure 7: Order Summary.

⁴¹ Cineplex's analysis of digital tickets as a percent of total tickets from June 1, 2022 through Dec. 31, 2022 showed that 48 percent of tickets were sold physically. "OBF700 – Online Booking Fees." *Cineplex* (June 1, 2022 – Dec. 31, 2022) (CNPLX_01077684_native).

B. Cineplex’s Consumer Flow Provides Searching Consumers with Valuable Information and Its Numerous Options Allow Consumers to Self-Select into Various Prices, which Increases Consumer Welfare.

42. As I detailed above in Section IV, the Consumer Flow for a movie ticket involves several distinct steps, almost all of which provide searching consumers valuable information to aid their search process. Specifically, the Consumer Flow presents consumers information on: (i) what movies are showing; (ii) at what theaters they are showing; (iii) at what times they are showing; (iv) information related to the movie including plot, genre, and ratings; (v) availability of different movie-viewing experiences, such as regular vs. Imax; (vi) the structure and availability of seats; (vii) accessibility for persons with disabilities; (viii) the price of a ticket (incorporating all the options above, and including age differences); (ix) the fee for online booking; (x) the existence of the CineClub subscription service; and (xi) the benefits of that subscription service, including that the Online Booking Fee is waived for subscribers.
43. The literature on consumer search has long understood the value of such information to consumers who are deciding what, if any, movie to see. For instance, research has found that online consumer search predicts movie box office success.⁴² In the e-commerce space generally, researchers have found that offering relevant information to consumers as an additional benefit enhances consumer satisfaction and customer loyalty.⁴³
44. Moreover, the information given to consumers during the Consumer Flow is primarily presented *before* the pricing information (which includes the Online Booking Fee). In other words, information on what movies, theaters, experiences, seats, accessibility, and times are offered as a pure benefit to the consumer. Providing consumers with valuable information with ease, and for free, is consistent with my analysis above that firms like Cineplex have every incentive to make their websites easy to use and valuable to consumers.
45. To show the importance of this information to Cineplex consumers, I analyzed data on consumer behavior during their interaction with the Consumer Flow. That data consists of a set of Cineplex dashboards describing the number visits, orders, and conversion rates, among other statistics.⁴⁴

⁴² Goel, Sharad, et al. “Predicting Consumer Behavior with Web Search.” *Proceedings of the National Academy of Sciences of the United States of America* 107.41 (2010): 17486-17490.

⁴³ Shankar, Venkatesh, Amy K. Smith, and Arvind Rangaswamy. “Customer Satisfaction and Loyalty in Online and Offline Environments.” *International Journal of Research in Marketing* 20 (2003): 153-175 at 173 (“Our results show that the depth of information at the website increases service encounter satisfaction, which increases overall satisfaction, which, in turn, has a mutually reinforcing relationship with loyalty.”).

⁴⁴ “Online Booking Fee Dashboard.” *Cineplex* (Sept. 11, 2023) (CPX_0002757_LEVEL B).

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46. I performed the following analysis on this data. First, I calculated the number of visitors to the Cineplex Website between January 1, 2022 and December 31, 2022. I found that there were 97,108,167 visits to the Website during that timeframe.
47. Second, I calculated the number of consumers who started the Consumer Flow but left the Website prior to reaching the Tickets page, i.e., the first page on which prices are shown. In other words, these consumers interacted with the Website, received information about movies, times, theaters, and experience, and used that information to cease their search, either because they knew that a movie/time/theater/experience that they wanted was available and left the page to purchase a ticket in-person or because they did not see a choice fitting their desires. I found that there were 85,667,333 visitors that visited the Cineplex Website but left before reaching the ticket page.
48. Taken together, my analysis therefore indicates that over 88.2 percent of Cineplex Website visitors used the information Cineplex provided at no cost to inform their purchasing decision, without even having seen any prices.
49. For those consumers that continue to the Tickets page and are presented with pricing information, presenting the Online Booking Fee alongside the base ticket price still provides a benefit. As it currently exists, the Online Booking Fee is assessed to offer consumers the additional benefit of reserving seats ahead of time for a movie showing from the comfort of their existing location. This might be particularly helpful for new or popular movies that may sell out of the best seats quickly or for consumers with particular needs or preferences. Underscoring this value is the certainty guaranteed by prebooking an experience. The Online Booking Fee thus compensates Cineplex for offering a real service that adds concrete value for consumers.
50. To demonstrate the value of having the ability to both observe seat availability and reserve seats ahead of time without having to go to the theater, I collected and analyzed data on consumer seat reservation behavior. Specifically, I collected data on the seating preview pages by randomly selecting 150 upcoming theater-experience type-showtime combinations (each of which I will refer to as a “showing”) for the film “Wonka,” for January 9, 2024, which spanned 92 different theater locations. I found that 66.7 percent of showings had same-day reserved seats.

51. I also analyzed the relative likelihood that center seats are reserved. Center seats are generally acknowledged as the most desirable seats in the movie theater.⁴⁵ I found that consumers prefer those middle seats, with over 65 percent of reserved seats falling the middle third of the theater. Cineplex's Consumer Flow is therefore providing consumers with two additional values. First, it allows consumers to reserve the most desirable seats. Second, it informs searching consumers whether the most desirable seats to a particular movie showing experience have already been taken or not.
52. Moreover, from an economic theory perspective, the existence of vertically differentiated ticketing options with different price points reflecting different value-adds increases overall consumer welfare. As described above, consumers are not required to pay the Online Booking Fee if they join the CineClub membership program, elect to purchase their tickets in person at the theater, or if they hold certain promotional coupons. The existence of a ticketing option incorporating the separate Online Booking Fee merely creates a visible option for those prioritizing convenience.
53. The Cineplex ticketing process sorts people based on their preferences and willingness to pay. Consumers with extra time to spend in order to avoid the Online Booking Fee, extremely price sensitive consumers, or those who place a low value on selecting their specific seating placement can choose to purchase tickets in person at the theater, either ahead of time or right before the show. Consumers who wish to see movies frequently will save money by joining the CineClub program, which awards them one ticket per month and waives the Online Booking Fee. Consumers wishing to see movies less frequently and who value the convenience of reserving their chosen seat online and ahead of time will choose to pay the extra Online Booking Fee for this service.
54. This process in action is what economists refer to as third degree price discrimination, which is a well-studied, common form of pricing behavior in which firms charge different prices for different levels of service, often for a "premium" version of a service versus a regular or pared-down version, when consumers self-select their preferred alternative.⁴⁶ Third-degree price discrimination often involves consumers self-sorting based on some characteristic, for example age (e.g., for senior or child discounts) or preferences (e.g., when marketing the same product that under a name brand versus the store brand).⁴⁷ In this instance, consumers' anticipated appetite for movies, preference for

⁴⁵ See, e.g., McDonald, Juli. "AMC Will Start Charging More for Better Movie Theater Seats." *CBS News Boston* (Feb. 6, 2023). <<https://www.cbsnews.com/boston/news/amc-movie-theater-seats-charge>> (accessed Jan. 10, 2024) (describing a proposed plan by American cinema chain AMC to charge extra for "'preferred' center seats in the middle of the theater" as opposed to "'standard' seats, on the side or in the back" and "discounted value tickets in the front row.").

⁴⁶ Pindyck, Robert S. and Daniel L. Rubinfeld. *Microeconomics*, 8th ed. New Jersey: Pearson (2013) at 404-410.

⁴⁷ *Id.* at 404-405.

seating arrangement, price sensitivity, and available time act as the sorting characteristics, along with age-based pricing. Consumers are then charged different prices based on these preferences.^{48, 49}

55. Allowing consumers of Cineplex movie tickets to self-sort in this manner based on preferences and willingness to pay can increase overall welfare. This increase in welfare arises because consumers who are the most responsive to price (i.e., have the most elastic demand) are afforded the opportunity to purchase a movie ticket at a lower price (by choosing one of the ways that eliminates the Online Booking Fee) instead of foregoing seeing the movie entirely at a higher price (that would have been charged if only one price level was available). That is, at the extreme, consumers might miss the opportunity to have seen a movie that they wanted to see and that they would have enjoyed. The user design of Cineplex's ticket flow at present makes it clear that these options exist, thus allowing consumers to self-sort and capture this consumer surplus.

56. Moreover, had the Cineplex Website displayed ticket prices in aggregate on the Tickets page and on subsequent pages on which prices are shown—that is, with the Online Booking Fee not disclosed explicitly as a subcomponent of the subtotal—consumer confusion would be greater for a number of reasons. For one, additional clutter and caveats would be required at the final purchase page to indicate the possibility of waiving the Online Booking Fee for Scene+ or CineClub members. This would lead to consumer confusion as to whether the Online Booking Fee applied to their own transaction during the purchasing process. In turn, this would leave them less able to accurately evaluate the costs and benefits of saving on the Online Booking Fee by joining CineClub or purchasing tickets in person. Additionally, the true base price of a ticket would become unclear, meaning that consumers wanting to purchase tickets later at the theater would not know how much they could expect to pay or might not be aware at all that they could save money by purchasing at the theater. Thus, presenting the true base price is important, as presenting only a bundled price may lead to overall welfare reduction because consumers may very well end up with inefficient unwanted outcomes. The current design of the Cineplex Website and Mobile App is a transparent and intuitive option that better enables consumers to evaluate alternatives and self-sort into consumer groups via welfare-enhancing third-degree price discrimination.

⁴⁸ *Id.* at 406-407.

⁴⁹ The third option of joining CineClub, while it does result in no Online Booking Fee being charged, is not necessarily the lower-priced option in this model as it does commit the consumer to spending money each month to receive a movie ticket. Instead, it represents an option for those with a greater overall demand for movies to receive a surplus, similar to a bulk discount on physical goods.

VII. RESPONSE TO THE MORWITZ REPORT

57. In the Morwitz Report, Dr. Vicki Morwitz presents her opinions to the following questions:

- “How does the manner of presenting pricing information by merchants impact consumers? In particular, how does “drip pricing” (or similar pricing practices) affect consumers in terms of 1) their perception of the price to be paid for a given product, and 2) their behaviour?”⁵⁰
- “What impacts could Cineplex’s representations with respect to the sale of movie tickets on its Website and in the App be expected to have on consumers’: a) perception on the price to be paid for movie tickets; and b) behaviour, including purchasing decisions?”⁵¹

58. Dr. Morwitz opines that Cineplex “uses partitioned and drip pricing when it charges customers an additional online booking fee” and that the Online Booking Fee is a “shrouded attribute,” which she contends is when “firms make it difficult to find or process, or obfuscate product-related information from its customers.”⁵² Dr. Morwitz additionally opines that the Online Booking Fee “likely lowered consumers’ perceptions of the total cost of purchasing tickets from Cineplex[.]”⁵³

59. In support of these conclusions, Dr. Morwitz references and summarizes literatures on behavioral economics, behavioral pricing, and information processing (including information salience, change blindness, and time pressure, among other things).⁵⁴ She opines that the findings from her selected studies show that Cineplex’s presentation of the Online Booking Fee is misleading in that it would have caused consumers to underestimate the price they actually paid for movie tickets.⁵⁵

60. However, Dr. Morwitz’s analysis of consumer behavior in general, and drip pricing, shrouded attributes, and partitioned pricing specifically are misapplied to Cineplex and its Consumer Flow. Among other flaws, Dr. Morwitz ignores the simple fact that Cineplex’s presentation of pricing is *not* drip pricing as is defined within the academic literature (including Dr. Morwitz’s own definition as used in her policy work),⁵⁶ as both the base ticket price and the Online Booking Fee are presented simultaneously to consumers. Critically, while much of Dr. Morwitz’s report consists of summarizing insights from behavioral economics literatures that are far removed from the context of

⁵⁰ Morwitz Report Appendix B.

⁵¹ *Id.*

⁵² *Id.* ¶ 14.

⁵³ *Id.* ¶ 15.

⁵⁴ *Id.* Section 4.1.

⁵⁵ *Id.*

⁵⁶ Morwitz, Vicki G. “Vicki Morowitz Remarks for the White House Convening on the Economic Case for Junk Fee Policies.” *Whitehouse.gov* (Mar. 21, 2023). <<https://www.whitehouse.gov/wp-content/uploads/2023/03/Vicki-Morwitz-remarks.pdf>> (accessed Jan. 11, 2024).

the matter at hand and how they *might* apply to the Cineplex Website and Mobile App, she fails to conduct or report any empirical analysis to support or validate those hypotheses.

A. Dr. Morwitz Fails to Show that the Cineplex Consumer Flow Involves Drip Pricing, Obscured Pricing, or Shrouded Attributes.

61. Throughout her report, Dr. Morwitz presents a summary of several strands of literature in behavioral economics, including discussing multiple articles and studies relating to the effects of drip pricing and obscured pricing on consumer behavior.⁵⁷ She also discusses the concept of shrouded attributes.⁵⁸ While I take no issue with her survey of that literature, I note that Dr. Morwitz is incorrect that any of that literature's notions of drip pricing, obscured pricing, or shrouded attributes applies to the matter at hand. As I discussed above,⁵⁹ the base ticket price and Online Booking Fee are presented to consumers *simultaneously* in the Cineplex Consumer Flow. This simple fact renders all of Dr. Morwitz's discussion of these topics irrelevant.

62. To the contrary, Dr. Morwitz states:

Cineplex's pricing practice on the Tickets page of its website and app are examples of partitioned pricing and drip pricing as the terms are understood in the academic literature. ... It is a form of drip pricing because the amount to be charged for the online booking fee is not presented when the ticket price is first presented, but is only revealed after consumers select a type of ticket. The online booking fee meets the definition of a shrouded attribute because information about it is not made salient on the Cineplex website or in the app.⁶⁰

63. Dr. Morwitz does not support or elaborate upon these assertions, and she does not point to any literature or data analysis that might justify this conclusion.⁶¹ Dr. Morwitz has not performed any analysis showing the definitions of drip pricing or shrouded attributes in her cited academic literature (rather than her own interpretation) and comparing these to the Cineplex Consumer Flow.⁶²

⁵⁷ Morwitz Report Section 4.1.2.

⁵⁸ *Id.* ¶ 67.

⁵⁹ *See supra* Section VI.A.

⁶⁰ Morwitz Report ¶ 146.

⁶¹ In fact, Dr. Morwitz includes no citations whatsoever throughout her entire analysis section on the "[i]mpact of Cineplex's representations." *See* Morwitz Report Section 4.2.2.

⁶² In fact, Dr. Morwitz only cites one study related to "shrouded attributes," and this study deals solely with a theoretical model in which a shrouded attribute is one defined as "a product attribute that is hidden by a firm, even though the attribute could be nearly costlessly revealed." Gabaix, Xavier and David Laibson. "Shrouded Attributes, Consumer Myopia, and Information Suppression in Competitive Markets." *The Quarterly Journal of Economics* 121.2 (2006): 505-540 at 512. As I discussed in Section VI.A, the Online Booking Fee is not hidden or omitted by Cineplex; it is in fact published on the ticketing page.

64. The only attempted support of this claim is Dr. Morwitz’s own personal review of the experience of buying a Cineplex movie ticket, conducted over “two different movie searches on the Cineplex Website and in the Cineplex app[.]”⁶³ As part of this review, Dr. Morwitz claims that, after selecting four tickets to purchase, the Online Booking Fee increased from \$0.00 to \$6.00 (four times the Online Booking Fee) despite there being “no indication whether this represents a per order online booking fee or a per ticket online booking fee[.]”⁶⁴ To the contrary, and as I described above,⁶⁵ tickets are added one by one in the Cineplex Consumer Flow, and the associated Online Booking Fee (and subtotal) increases at every step. This makes it clear to consumers that the Online Booking Fee is being included at a per-ticket level.
65. As I discussed in Sections V.B and VI.A, my analysis of the Cineplex Consumer Flow found that information about the Online Booking Fee was presented in a transparent manner that is consistent with user design best practices and that would make it easy for consumers to digest and proceed with information. Further, the incentives to create a transparent and intuitive checkout design discussed in Section V.A offer more reason to believe that Cineplex would not seek to obfuscate its prices. Dr. Morwitz’s failure to address the simple fact that the Consumer Flow and Online Booking Fee does not meet the academic literature’s definition of drip pricing (even according to Dr. Morwitz’s own definition) and, accordingly, renders much of her conclusions irrelevant.
66. Dr. Morwitz’s publicly stated position is consistent with the fact that Cineplex is not engaged in drip pricing, as this term is understood in the academic literature, with respect to the Online Booking Fee and the base ticket price. As a member of the White House Panel on the Economic Case for the President’s Initiative on Junk Fees, Dr. Morwitz cites the FTC definition of drip pricing as a “pricing technique in which firms advertise only **part of** a product’s price up front and reveal other charges **later** as shoppers go through the buying process.”⁶⁶ The sequential nature of pricing information is thus definitional for drip pricing. Indeed, Dr. Morwitz summarizes the drip pricing literature as “mak[ing] clear that consumers benefit when all-inclusive upfront pricing is used, and when fees for optional add-ons are disclosed **up front** and not dripped later in the shopping process.”⁶⁷ As I described above, the Cineplex Consumer Flow presents the base ticket price and Online Booking Fee

⁶³ Morwitz Report ¶ 104.

⁶⁴ *Id.* ¶ 136.

⁶⁵ *See supra* ¶ 18.

⁶⁶ Morwitz, Vicki G. “Vicki Morowitz Remarks for the White House Convening on the Economic Case for Junk Fee Policies.” *Whitehouse.gov* (Mar. 21, 2023). <<https://www.whitehouse.gov/wp-content/uploads/2023/03/Vicki-Morowitz-remarks.pdf>> (accessed Jan. 11, 2024) (emphasis added).

⁶⁷ *Id.* (emphasis added).

simultaneously up front, and in the same stage (even on the same page where prices are first displayed). The Cineplex Consumer Flow therefore falls outside the generally accepted academic literature's definition of drip pricing, including, most notably, Dr. Morwitz's own definition of drip pricing.

B. Dr. Morwitz Fails to Empirically Test or Otherwise Support Her Various Theoretical Hypotheses.

67. Throughout her report, Dr. Morwitz discusses economic literature and theories that constitute hypotheses about how the world *might* work, yet she fails to provide any empirical support or otherwise validate the applicability of these hypotheses to the Cineplex Consumer Flow. Instead, Dr. Morwitz simply applies the conclusions from her cited studies to this Matter without analyzing whether it is appropriate to apply such conclusions and without performing her own analysis of Cineplex consumers specifically.

68. As an example of this approach, Dr. Morwitz states:

In my opinion, Cineplex's representations of ticket prices including its decision to separate the online booking fee from those ticket prices lowers consumers' perceptions of the total ticket costs, ultimately influencing their choice to purchase tickets from Cineplex online over alternative options.⁶⁸

69. Similarly, she opines:

In addition, my opinion is that Cineplex's pricing representations, combined with vague representations about the online booking fee and the presence of countdown clocks, leads consumers to underestimate the total cost of purchasing tickets. Consumers tend to focus primarily on the initially advertised price, neglecting additional fees or the disclosure of total online booking fees and the order's subtotal. This phenomenon is further exacerbated by the time pressure associated with countdown clocks, which enhances anchoring and primacy effects.⁶⁹

70. These statements are not supported by any empirical analysis of Cineplex pricing or consumer behavior. Simply put, these assertions have not been tested. Instead, Dr. Morwitz merely assumes that she can apply to the Cineplex Consumer Flow findings made across a wide array of different laboratory and theoretical studies addressing contexts far removed from the matter at hand.

⁶⁸ Morwitz Report ¶ 145.

⁶⁹ *Id.* ¶ 149.

71. Moreover, the very literature Dr. Morwitz cites can be used to draw exactly the opposite hypotheses. For example, the academic literature on time pressure points to a potential decrease in purchase likelihood under time pressure conditions,⁷⁰ and Dr. Morwitz’s own work reviewing the effects of partitioned prices yields mixed predictions about their overall impact.⁷¹ Other studies cited by Dr. Morwitz also state that partitioned prices have ambiguous impacts on consumers. For instance, one study that presented a meta-analysis of the partitioned price literature concluded that “[e]vidence of the impact of partitioned pricing is contradictory[.]” and that it might have “divergent effects” on consumers.⁷² Further, that same study found that including the total price—just like the Cineplex Consumer Flow does—lowered the impact of partitioned pricing.⁷³ I additionally note, contrary to these studies of partitioned prices, the Cineplex Consumer Flow includes both a partitioned price and a non-partitioned, all-inclusive price to its consumers.
72. A critical flaw in Dr. Morwitz’s analysis is the lack of any direct empirical support for her conclusions. The Morwitz Report attempts to make up for the lack of any direct empirical support by borrowing from other published studies. There are numerous reasons to predict that these studies would not apply universally, let alone to the matter at hand. For one, Dr. Morwitz has not discussed or tested the external validity of her cited studies, where external validity refers to whether the results from a given research study can be applied to a given situation or population other than that originally studied. The external validity of a study is crucial in evaluating the applicability of those results to real world contexts. Dr. Morwitz has not analyzed the similarities between her studies’ conditions and the purchasing of Cineplex movie tickets to determine whether it is appropriate to apply conclusions from those studies to Cineplex.
73. There are common-sense reasons to expect that many of her cited papers either do not apply or would not generalize to the matter at hand. Her discussion of behavioral economic concepts such as framing effects, reference points, loss aversion, the endowment effect, status quo bias, and anchoring

⁷⁰ Dhar, Ravi and Stephen M. Nowlis. “The Effect of Time Pressure on Consumer Choice Deferral.” *Journal of Consumer Research* 25.4 (1999): 369-384.

⁷¹ See Greenleaf, Eric A., et al. “The Price Does Not Include Additional Taxes, Fees, and Surcharges: A Review of Research on Partitioned Pricing.” *Journal of Consumer Psychology* 26.1 (2016): 105-124 at 111 (“The impact of [partitioned pricing] depends on several moderators. Two key moderators are the surcharge magnitude and ease of processing.”), 112 (“Characteristics of consumers can also moderate the impact of [partitioned pricing]. ... participants with moderately favorable attitudes towards brands process surcharges more accurately than those with relatively low, or high, brand attitudes. More general consumer characteristics such as need for cognition and regulatory focus also moderate reactions to [partitioned pricing.]”).

⁷² Abraham, Ajay T. and Rebecca W. Hamilton. “When Does Partitioned Pricing Lead to More Favorable Consumer Preferences?: Meta-Analytic Evidence.” *Journal of Marketing Research* 55.5 (2018): 686-703 at 686.

⁷³ *Id.*

deals with pricing situations that generally bear little to no resemblance to Cineplex's Consumer Flow. Of her cited research, only one study is related to online ticket purchasing behavior and found that consumers respond to observing the full purchase price, inclusive of fees, for online sports and concert ticket purchasing if it is presented at the same time as the initial ticket selection.⁷⁴ As I described above, this is exactly what Cineplex does in its Consumer Flow. None of Dr Morwitz's cited research is related to movie ticket purchasing. It is well understood that ignoring the appropriate consumer universe is considered a fatal flaw. As noted by Shari Seidman in her treatise Reference Guide on Survey Research, "[a] survey that provides information about a wholly irrelevant population is itself irrelevant."⁷⁵

74. Moreover, most of the work Dr. Morwitz cites dates from years or decades ago,⁷⁶ from a time before current norms and consumer expectations around online purchasing flows and pricing structures were formed. Norms and consumer experience shape consumer expectations and change over time and determine what information and purchase flows consumers expect. Indeed, Dr. Morwitz herself has acknowledged this change in norms, stating that "it can be argued that for most online shopping, as well as many important purchases such as cellular phone services, cable television, and travel, [partitioned pricing] is now the norm[.]"⁷⁷ These changing norms likely explain why Cineplex consumers do not seem to have issues with the structure of the Cineplex Consumer Flow and Online Booking Fee as evidenced by the lack of complaints.⁷⁸
75. Specifically, many of the studies Dr. Morwitz cites were published more than a decade ago and are unlikely to reflect current consumer norms and expectations for, or behavior in, online purchases. For instance, current consumers are well versed in online purchasing, app navigation, and scrolling

⁷⁴ Blake, Tom, et al. "Price Salience and Product Choice." *Marketing Science* 40.4 (2021): 619-636. As I described above, this is exactly what Cineplex does in its Consumer Flow.

⁷⁵ Diamond, Shari Seidman. "Reference Guide on Survey Research." *Reference Manual on Scientific Evidence*, 3rd ed. Washington, DC: The National Academies Press (2011): 359-424 at 377. Dr. Diamond also states that: "The definition of the relevant population is crucial because there may be systematic differences in the responses of members of the population and nonmembers."; and "If the relevant subset cannot be identified, however, an overbroad sampling frame will reduce the value of the survey." *Id.* at 377, 379.

⁷⁶ See, e.g., Morwitz Report n. 2, 4, 6, 12, 13, 17, 19, 21, 23, 27, 35, 46, 47, 49, 61, 62, 64 (referencing studies or books from 1990 or before).

⁷⁷ Greenleaf, Eric A., et al. "The Price Does Not Include Additional Taxes, Fees, and Surcharges: A Review of Research on Partitioned Pricing." *Journal of Consumer Psychology* 26.1 (2016): 105-124 at 107.

⁷⁸ See *supra* Section V.C.

in ways that would be totally foreign to online purchasers in, say, 2004. Some of the studies Dr. Morwitz cites even predate the world-wide web.⁷⁹

76. As Dr. Morwitz has found in her own academic research, marketing strategies and incentives for drip pricing or partitioned pricing vary based on industry context and norms that consumers are accustomed to.⁸⁰ Consider the study cited by Dr. Morwitz on drip pricing and partitioned pricing in hotel and resort fees.⁸¹ Dr. Morwitz ignores all the many ways in which the hotel industry and the movie theater industry are different, and how those differences might result in different incentives for marketing. As I described previously, deceptive and hidden fees can have negative impact on firms' long-run profitability.⁸² This is particularly true when repeat customers are a significant portion of a firm's customers, as is the case for movie theaters constantly attracting local consumers to see the latest movies. In contrast, resort hotels are marketing towards infrequent hotel resort consumers, making drip pricing more attractive in that context. Dr. Morwitz does not analyze how such fundamental differences across industries impact her hypotheses, let alone her findings and conclusions. As such, they are misleading when applied to Cineplex.
77. Finally, some of the studies Dr. Morwitz cites, such as those on change blindness, or those involving risk and uncertainty, are entirely removed from the matter at hand. For instance, many of the studies on change blindness do not deal with consumer purchasing or choice behavior at all, but rather study entirely unrelated concepts such as the attention paid to visual objects when presented with moving distractions in the real world. Dr. Morwitz does not credibly tie such studies to the Cineplex consumer decision-making process.
78. Dr. Morwitz could have empirically tested her hypotheses with data from actual Cineplex consumers. She does not. Dr. Morwitz could also have tested the question of whether Cineplex's presentation of pricing information "lowers consumers' perceptions of the total ticket costs" and whether consumers were ultimately "influenc[ed] [in] their choice to purchase tickets from Cineplex

⁷⁹ The world-wide web was invented in 1989 and multiple of Dr. Morwitz's cited studies predate this benchmark. "The Birth of the Web." *CERN*. <<https://home.cern/science/computing/birth-web>> (accessed Jan. 11, 2024); Morwitz Report Appendix D.

⁸⁰ See Greenleaf, Eric A., et al. "The Price Does Not Include Additional Taxes, Fees, and Surcharges: A Review of Research on Partitioned Pricing." *Journal of Consumer Psychology* 26.1 (2016): 105-124 at 119 ("Relative preferences for [partitioned pricing] versus [all-inclusive pricing] may also be affected by whether a change departs from existing practices that consumers are accustomed to. For example, surcharges are more prevalent in online purchases and catalogs (e.g., shipping and handling) and services (tips, buyer's premium), but are less prevalent in bricks and mortar settings.").

⁸¹ Sullivan, Mary W. "Economic Analysis of Hotel Resort Fees." *Bureau of Economics, Federal Trade Commission, Economic Issues* (2017); Morwitz Report ¶¶ 68, 72.

⁸² See *supra* ¶ 24.

online over alternative options.”⁸³ Again, she does not. Likewise, Dr. Morwitz could have tested or somehow supported the hypothesis that “Cineplex’s pricing representations, combined with vague representations about the online booking fee and the presence of countdown clocks, leads consumers to underestimate the total cost of purchasing tickets.”⁸⁴ She does not. Dr. Morwitz’s analysis is not helpful in determining the effect of Cineplex’s pricing or countdown clock presentation because it is purely suppositive and theoretical.

79. In contrast, I found that, empirically, consumers behaved in a fashion consistent with information-gathering and that they were unimpacted by the Online Booking Fee. As I described above in Section VI.B over 88 percent of Cineplex Website visitors use the Cineplex Website as an information-gathering tool at no cost, where these consumers do not ever see the price or Online Booking Fee charged by Cineplex. My opinion that the Online Booking fee provides value to consumers is supported by both broadly applicable economic tenets as well as an empirical analysis of seat reservation behavior. Similarly, I found that, empirically, there were no complaints produced by the Commissioner regarding the Online Booking Fee prior to the Application in this Matter, which supports the conclusion that consumers did not view the Online Booking Fee as deceptive or misleading. As noted before, there are seven complaints produced by the Commissioner in this Matter, all dated after the issuance of the Notice of Application, representing 0.0000072 percent of visits to the Cineplex Consumer Flow.
80. Finally, I note that Dr. Morwitz ignores the importance and value of non-price information to consumers. Throughout her report, Dr. Morwitz highlights, almost exclusively, information on prices and fees, and indeed seems to believe that the sole goal of consumers visiting Cineplex’s Website or Mobile App is their “initial intent to purchase tickets.”⁸⁵ This is a false premise, as there are numerous reasons why consumers would visit Cineplex’s Website, the most important being: seeing what movies are currently showing, at what theaters they are showing, available viewing experiences, and seat availability, in addition to the desire to actively purchase a ticket with a guaranteed seat reservation attached to it.

⁸³ Morwitz Report ¶ 145.

⁸⁴ *Id.* ¶ 149.

⁸⁵ *Id.* ¶ 150.

VIII. RESPONSE TO THE ECKERT REPORT

81. In the Eckert Report, Jay Eckert presents his answers to questions regarding the design of the Cineplex Website and Mobile App, including with regard to consumers' screen size, the Website layout, presentation of information "above and below the fold," alternative options for presenting or highlighting the Online Booking Fee, and the presence of the countdown timer.⁸⁶
82. In his report, Mr. Eckert opines that the presentation of the Online Booking Fee line item "below the fold," or past the point on the screen that is visible without scrolling (under his analysis), acts to ensure that this information will not be seen.⁸⁷ He argues that the design of the Cineplex Website discourages consumers from scrolling down to view information regarding the online booking fee.⁸⁸ He also opines that it is "technically possible to initially display the price of a movie ticket with the price of the [Online Booking Fee] included" or that other "design approaches" could "be considered to enhance the awareness" of the Online Booking Fee.⁸⁹ Finally, Mr. Eckert opines that the ticketing page "does not require a countdown timer for the purpose of temporarily holding seat inventory for the user."⁹⁰
83. Mr. Eckert's analysis is fundamentally flawed. For one, much like Dr. Morwitz, Mr. Eckert makes several claims about the behavior of consumers in the Cineplex Consumer Flow that are not supported by data or analysis of actual Cineplex consumers. As I discussed above, ignoring the appropriate consumer universe is considered a fatal flaw.⁹¹ Further, much of Mr. Eckert's assertions ignore relevant factors that would affect consumers' experience in the Cineplex Consumer Flow (e.g., browser zoom level). Most notably, Mr. Eckert's own framework for analyzing webpage information design leads to the conclusion that consumers' attention would be guided precisely to the Online Booking Fee on the ticketing page, even if consumers do not immediately scroll to the bottom of the page. Further, Mr. Eckert's vague assertions about alternative designs for the ticketing page are unsupported and ignore the best practices for user design discussed earlier in this report.

⁸⁶ Eckert Report Appendix A.

⁸⁷ *Id.* ¶¶ 26-31.

⁸⁸ *Id.* ¶¶ 37-38, 47-48.

⁸⁹ *Id.* ¶¶ 49-52.

⁹⁰ *Id.* ¶ 57.

⁹¹ *See supra* ¶ 73.

A. Mr. Eckert Fails to Adapt His Analysis To the Cineplex Consumer Flow and Fails to Consider Numerous Factors that Influence the Consumer Experience.

84. At multiple points in his report, Mr. Eckert provides reference to different website analytics, such as statistics on desktop and mobile screen resolutions and page fold,⁹² and studies on user attention and the page fold.⁹³ However, Mr. Eckert fails to apply his descriptions of such analytics to actual Cineplex consumers.
85. As one example of this deficiency, Mr. Eckert asserts in his report that 69.33 percent of all users on the web use a “maximum screen resolution with a fixed height of up to 1,080 pixels or smaller[.]”⁹⁴ Citing the fact that the Online Booking Fee appears on the ticketing page 1,330 pixels below the top of the browser,⁹⁵ he concludes that the Online Booking Fee line item “would only be visible to the user if they chose to ignore the timer and floating call to action button and scroll down to the very bottom of the page.”⁹⁶ Mr. Eckert preaches the use of analytics, but then uses none, as no claim made in these assertions is supported with data or empirical analysis. Moreover, Mr. Eckert fails a basic premise of demonstrating that his figures describe the appropriate consumer universe of Cineplex customers.
86. Mr. Eckert’s approach does not consider the actual website using experience of Cineplex consumers, instead he merely cites general statistics about web users, regardless of whether they are actual Cineplex consumers or whether those same Cineplex consumers could or could not view the Online Booking Fee line item above the page fold. Mr. Eckert’s approach also ignores several relevant considerations of consumers and their customized browsing experience, such as the zoom level, the font size, and browser and device selection. All of these directly impact the amount of text visible while browsing and thus impact whether the Online Booking Fee is visible above or below the fold. Moreover, these factors impact whether consumers are in the habit of scrolling down every page (such as in the case of high zoom levels, enlarged fonts, or tablet devices). Aggregate statistics on default screen resolution are thus not descriptive of the experience of actual Cineplex consumers. Mr. Eckert’s conclusions based on such statistics are therefore unsupported and misleading.
87. Overall, Mr. Eckert’s analyses are not validated, tested, or applied to actual Cineplex consumers. Further, Mr. Eckert offers several conclusions that are not supported by any analysis or supporting

⁹² Eckert Report ¶¶ 42-46.

⁹³ *Id.* ¶¶ 30-31, 47.

⁹⁴ *Id.* ¶ 42.

⁹⁵ *Id.* Figure 3.

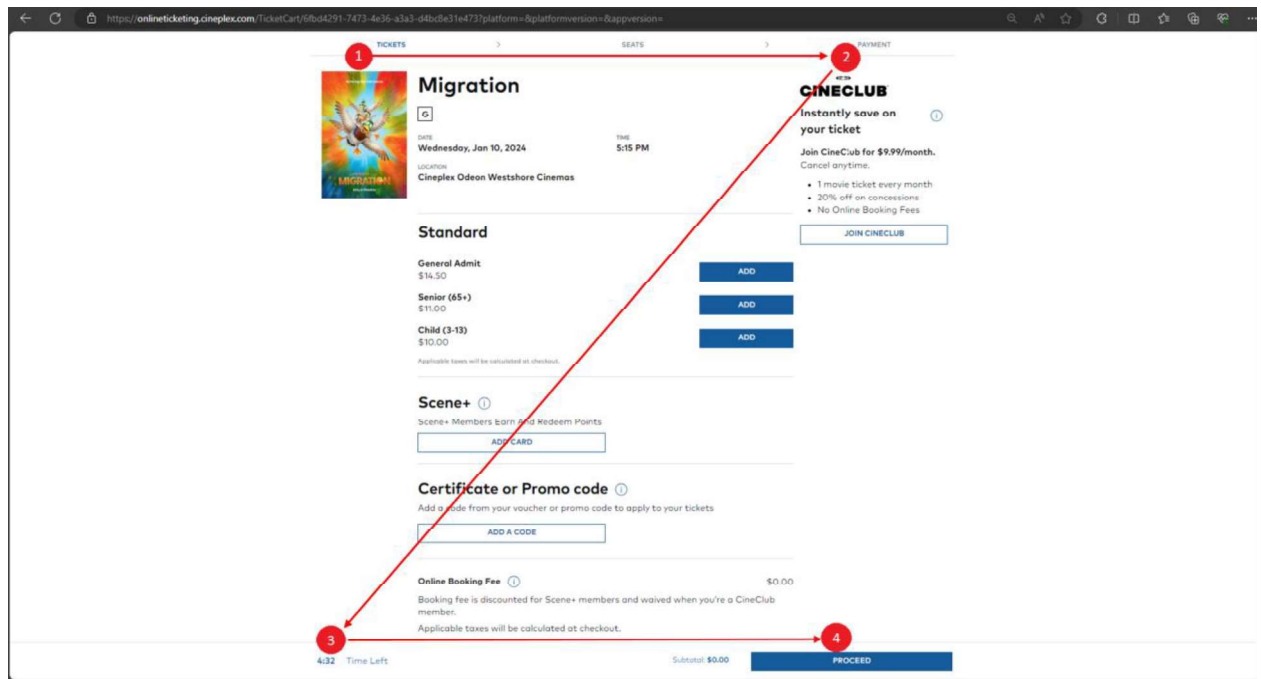
⁹⁶ *Id.* ¶ 44.

metrics. For instance, Mr. Eckert claims that the layout of the Cineplex ticketing page is in a “Z Pattern” which discourages consumers from scrolling down the page.⁹⁷ While this is an interesting empirical hypothesis, Mr. Eckert does not test it at all, let alone test it on Cineplex consumers. His conclusion that consumers using the Cineplex Website were discouraged from scrolling downwards remains entirely hypothetical and thus misleading.

B. Mr. Eckert’s Own Analysis of the Cineplex Ticketing Page Shows that Consumer Attention Would Be Guided Towards Indications of the Online Booking Fee.

88. Mr. Eckert presents information design about configuration patterns for web pages and opines that the Cineplex ticketing page follows a “Z Pattern” in which consumers’ attention generally follows a Z shape starting in the top left of the display.⁹⁸ See **Figure 12: Mr. Eckert’s Z Pattern Framework for the Cineplex Ticketing Page** for a replication of Mr. Eckert’s Figure 1.

Figure 12: Mr. Eckert’s Z Pattern Framework for the Cineplex Ticketing Page⁹⁹



89. As is clear from **Figure 12**, Mr. Eckert’s “Z-Pattern” actually supports the conclusion that consumers’ attention is guided to the Online Booking Fee, as both the second and third element of the Z-Pattern are centered around items discussing the Online Booking Fee. I also note that, even if

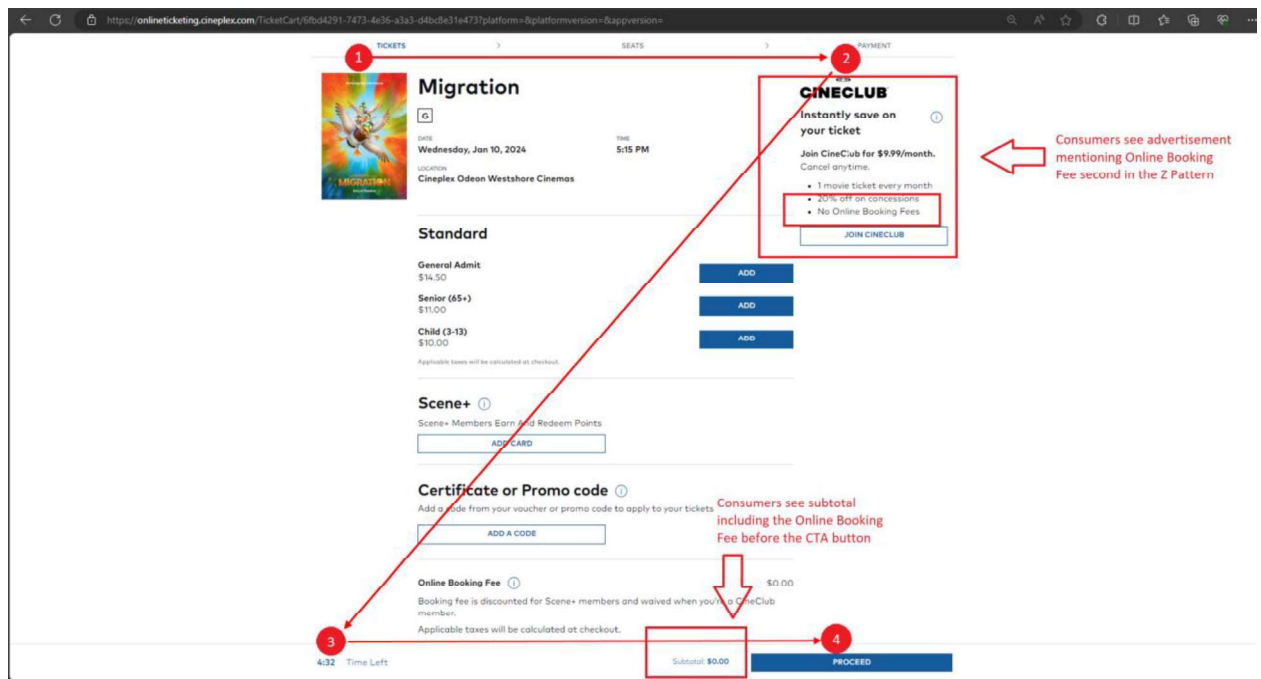
⁹⁷ *Id.* ¶¶ 34, 37.

⁹⁸ *Id.* ¶¶ 33-35.

⁹⁹ “Tickets.” *Cineplex*. <<https://onlineticketing.cineplex.com/TicketCart/6fbd4291-7473-4e36-a3a3-d4bc8e31e473?platform=&platformversion=&appversion=>> (accessed Jan. 3, 2024); Eckert Report Figure 1.

the Online Booking Fee were presented below the page fold, this conclusion would still hold. That is because, according to Mr. Eckert’s Z-Pattern framework, the second item consumers pay attention to is a CineClub advertisement stating that CineClub members pay “[n]o [o]nline [b]ooking [f]ees.” Additionally, directly before the CTA button in the Z-Pattern, consumers would see the subtotal which includes the Online Booking Fee (and is the true total before taxes that consumers are expected to pay and upon which they can base their final expenditure decisions). See **Figure 13: Indications of the Online Booking Fee in Mr. Eckert’s Z Pattern.**

Figure 13: Indications of the Online Booking Fee in Mr. Eckert’s Z Pattern



C. Mr. Eckert Ignores Best Practices for Designing to Accommodate the Consumer Choice Process.

90. Mr. Eckert also ignores relevant principles of best practices of marketing and user design that the academic literature has established have a positive impact on consumer experience, firm profitability, and consumer welfare.¹⁰⁰

¹⁰⁰ See *supra* Sections V.A-B; Elliott, Greg, et. al. *Marketing, 4th ed.* Wiley (2017) at 29 (“Research shows that companies who have a well-defined marketing strategy perform better than companies that do not have a well-defined marketing strategy. A range of marketing [best] practices have been linked to company performance. Specifically, research shows that companies using certain marketing practices have better profits, sales volumes,

91. Mr. Eckert's unsupported opinions regarding potential alternative options to display the Online Booking Fee are vague and unspecified, as Mr. Eckert does not present any specific alternative design methodologies for the ticketing page.¹⁰¹ This makes an empirical validation of his opinions close to impossible. However, to the extent that Mr. Eckert has opined that Cineplex could display ticket prices already including the Online Booking Fee,¹⁰² he ignores several of the user design best practices that I have discussed in this report. For instance, as I discussed above, Cineplex's current Consumer Flow fits the Five-Step Model of consumer decision making and the prices displayed are intuitive and clear.¹⁰³ Adding the necessary exceptions, caveats, subtractions, and clutter in order to attempt to pre-include the Online Booking Fee in the base ticket price would result in a degraded experience that increases confusion, makes valuable consumer self-sorting more difficult, and reduces consumer welfare.¹⁰⁴

market share and return on investment[.]”), 31 (“Marketing can play a role in improving people’s quality of life through providing better or safer products and the promotion of consumer and social welfare.”).

¹⁰¹ Eckert Report ¶¶ 49-52.

¹⁰² *Id.* ¶ 51.

¹⁰³ *See supra* ¶ 32.

¹⁰⁴ *See supra* ¶¶ 32, 56.

Appendix A

Curriculum Vitae

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Academic Employment

2020 – present	Wolfe Family Presidential Endowed Chair in Life Sciences, Innovation, and Entrepreneurship, Professor of Marketing Rady School of Management, University of California, San Diego,
2018 - 2021	Associate Dean of Programs Rady School of Management, University of California, San Diego
2018 – 2020	Professor of Marketing Rady School of Management, University of California, San Diego
2010 – 2017	Associate Professor of Marketing Rady School of Management, University of California, San Diego
2012 – 2013	Visiting Associate Professor of Marketing Kellogg School of Management, Northwestern University
2011 – 2012	Visiting Professor of Marketing Arison School of Management, IDC
2005 – 2010	Assistant Professor of Marketing Rady School of Management, University of California, San Diego
2003 – 2005	Assistant Professor of Marketing School of Management, Yale University

Other Employment

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2018 - present Chief Behavioral Science Officer, Fiverr, Inc.
1991 – 1999 Israeli Air Force

Publications

Alicea Lieberman, On Amir, & Ziv Carmon (forthcoming). Stuck In a Rut: The Behavioral Entrenchment Effect, *Organization Behavior and Human Decision Processes*.

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On Amir and Orly Lobel (2014). How Non-Competes Stifle Performance, *Harvard Business Review*, 92 (1/2), p.26.

On Amir and Orly Lobel (2013). Driving Performance: A Growth Theory of Non-Compete Law, *Stanford Technology Law Review*, 16 (3), spring.

On Amir and Orly Lobel (2012). Liberalism and Lifestyle: Informing Regulatory Governance with Behavioral Research, *European Journal of Risk Regulation*, 1, 17-25.

Kelly Goldsmith and On Amir (2010). Can Uncertainty Improve Promotions, *Journal of Marketing Research*, December, 1070-1077.

Leonard Lee, On Amir, and Dan Ariely (2009). In Search of Homo Economicus: Cognitive Noise and the Role of Emotion in Preference Consistency, *Journal of Consumer Research*, 36, 173-187.

Anastasiya Pocheptsova, On Amir, Ravi Dhar, and Roy Baumeister (2009). Deciding without Resources: Psychological Depletion and Choice in Context, *Journal of Marketing Research*, June, 46 (3), 344-355.

On Amir and Dan Ariely (2008). Resting on Laurels: The Effects of Discrete Progress Markers as SubGoals on Task Performance and Preferences, *Journal of Experimental Psychology: Learning, Memory, & Cognition*, 34 (5), 1158-1171.

On Amir and Orly Lobel (2008). Stumble, Predict, Nudge: How Behavioral Economics Informs Law and Policy, *Columbia Law Review*, December, 2098-2138.

Nina Mazar, On Amir, and Dan Ariely (2008). The Dishonesty of Honest People: A Theory of Self-Concept Maintenance, *Journal of Marketing Research*, November, 45 (6), 633-644, (lead article).

*Media coverage: NY Times Science section (Nov. 20th, 2007)

*HBR Breakthrough Ideas for 2008.

*Winner of the 2012 William F. O'Dell award.

Nina Mazar, On Amir, and Dan Ariely (2008). More Ways to Cheat – Expanding the Scope of Dishonesty, *Journal of Marketing Research*, November, 45 (6), 651-653.

On Amir and Jonathan Levav (2008). Preference construction versus choice construction: The instability of preferences learned in context. *Journal of Marketing Research*, April, 145-158.

On Amir, Ziv Carmon, and Dan Ariely (2008). The Dissociation between Monetary Assessments and Predicted Utility, *Marketing Science*, 27 (6), 1055-1064.

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Alicia Lieberman, Andrea C. Morales, and On Amir (2019). Beyond the Lab: Using Data from the Field to Increase Research Validity, in Handbook of Research Methods in Consumer Psychology, Frank R. Kardes, Paul M. Herr, and Nobert Schwarz, Editors, Routledge.
“Psychology of Pricing: How to Price Your Products Effectively,” The To Do List, May 23rd, 2019.

“Is the Mind like a Muscle?” Scientific American, Mind, online edition.

“Making Consumption Decisions by Following Personal Rules” (2005), In Inside Consumption: Frontiers of Research on Consumer Motives, Goals, and Desires. Ratti Ratneshwar & David Mick (eds.), Routledge Press. (with Dan Ariely & Orly Lobel)

On Amir & Ariely Dan (2001) e-Rationality: Rationality in Electronic Environments. In S.M. Broniarczyk, & K. Nakamoto, Advances in Consumer Research, 24. Provo, UT.

On Amir (2004) Alternative Decision Processes in Consumption: Personal Rules, Rationales, and Identity Maintenance, Advances in Consumer Research, XXXI, 26.

Selected Research in Progress

The Impact of Linguistic Structure on Judgment Confidence and Source Attitude (with Giulia Maimone and Uma Karmarkar) – Under review at Journal of Marketing

How Product Unavailability Leads to Choice of Lesser Alternatives—The Role of Hedonic Aggregation (With Jean Zhang and Gal Smitizsky) – Under review

The most Influential Age Hypothesis: Does the Self Cause Predictable Preferences (with Nina Mazar) – revision invited Management Science.

Reference Escalation in Sequential Choice (with Coby Morvinski and Evan Weingarten) – Under review

My Experience or My Expectations: The Effect of Expectations as Reference Points on Evaluations of Experiential Purchases (with Amar Cheema, Davide Proserpio, and Stephanie Tully) – under review.

Risk Aversion as Self Control (with Orly Lobel and Kelly Goldsmith)

Driving Pro-Environmental Choice (with Elizabeth A. Keenan and Ayelet Gneezy)

Risk Management for the Future: Age, Risk, and Choice Architecture (with Orly Lobel)

Honors and Awards

MSI Research Award: “Do Experts Outperform Artificial Intelligence? The Case of Logo Design,” # 4000657, 2019

MSI Research Award: “Quantity Integration,” #4000477, 2018

MSI Research Award: “New Product Adoption,” #4-1842, 2014

Robert Wood Johnson Foundation research grant for Healthy Choices.

MSI Junior Scholars 2009

“Most Valuable Professor Award,” voted by the Flex MBA class of 2007

“Most Valuable Professor Award,” voted by the Fulltime MBA class of 2007

MSI Research Award: “Motivating Discounts: Price Motivated Consumer Reasoning”, #4-1273, 2004

AMA - Sheth Doctoral Consortium Fellow, 2002

MSI Research Award: “Information Aversion: Indecision, Procrastination, and Consumer Choice Online”, #4-1141, 2001

CS Holding Fellowship, 2001

Walter A Rosenblith Fellowship, 2000

Conference presentations and Invited Talks

University of California, Berkeley, Haas (2015, 2023)

University of Toronto, Rotman (2015)

University of Southern California, Marshal (2014, 2022)

University of Southern California, Psychology (2013)

University of Pennsylvania, Wharton (2007, 2013)

University of Chicago, Booth (2013)

Northwestern University, Kellogg (2012)

Interdisciplinary Center, Arison (2011)

Stanford University, GSB (2009, 2023)

Columbia University, GSB (2009)

University of California, San Diego, Psychology (2005, 2006, 2007, 2008)

University of California, San Diego, Economics (2008)

Erasmus University (2008)

University of Melbourne (2007)

Hebrew University (2007)

Washington University, St. Louis (2007)

University of San Diego, School of Law (2006)

University of California, Los Angeles, Anderson (2004)

University of California, Riverside, Anderson (2015, 2023)

Yale University, Psychology (2004)

INSEAD (2004, 2015)

Johns Hopkins University (2017)

NUS (2018)
Ben Gurion University (2018)
HKU (2019)
CUHK (2019)
MIT (2019)
NYU (2009, 2023)
Monash University (2023)

Association for Consumer Research, 2001, 2003, 2004, 2006, 2007, 2013, 2015, 2016, 2022, 2023
Society of Consumer Psychology, 2004, 2005, 2008, 2012, 2014, 2015, 2016, 2017, 2020
Society for Judgement and Decision Making, 2003, 2005, 2006, 2011, 2015, 2016, 2019, 2023
Behavioral Decision Making Research in Management, 2002, 2006, 2008, 2014, 2016, 2018
FUR, IESE, 2008
Marketing in Israel, 2002, 2003, 2005
Northeastern Marketing Consortium 2003
Coller Conference of Behavioral Economics 2008, 2009, 2017, 2018, 2019, 2021
DMEP 2019
Winter SJDM 2022, 2023
Colorado Winter Conference on Marketing and Cognition 2023

In the Media

2023 iPhone Survey: More than 1 in 5 Americans think that the new iPhone is worth going into debt, WalletHub, September 13, 2023.
San Diego is Climbing the Ranks of Most Expensive Cities in the World. Here's Why, NBC 7, December 8, 2022.
Research Reveals How To Persuade Consumers To Use And Buy More, Forbes, November 22, 2022.
Capital One Savor Review: Tasty Rewards for Dining & Entertainment, WalletHub, July 1, 2022
Decision Making Traps and Tips for Negotiators, CIIAN, December, 2021
2021's Best Things to Buy on Black Friday, WalletHub, November 19, 2021
'That's not true.' San Diego doctors tackle COVID misinformation sown during county meeting. San Diego Union Tribune, October 6, 2021
You could be one of three San Diegans who just won \$50,000 in the state's vaccine lottery. San Diego Union Tribune, June 4, 2021.
California's vaccine incentives program – KPBS, May 2021.
San Diego health systems ask for fewer vaccine doses, turn down extra amid supply glut. San Diego Union Tribune, May 10, 2021.
2021's Best Places for Valentine's Day. WalletHub, February 2, 2021.
We're getting closer to having a Covid-19 vaccine. Hold onto that mask, though. San Diego Union Tribune, October 25, 2020
Psychology of Pricing: How to Price your Products Effectively, The Do List, May 23, 2019
The Celebrity of Legalized Cannabis, Pacific San Diego, May 20, 2019
Marines may ditch 'The Few, the Proud' slogan, San Diego Union Tribune, October 11, 2016
The free-shipping wars have begun, San Diego Union Tribune, October 2013

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The Young and The Promising, TheMarker magazine, 2011
Consumer Emotional Reactions to Changing Gas Prices, Ch. 10 News, August 2008
Jogging Down the Comeback Trail, San Diego Union Tribune, August 2007
Big Business and the Consumer, Jeremy Seville Comedy Hour, WealthTV 2007
Social Marketing, San Diego Union Tribune, May 2007
Trends in E-commerce, San Diego Business Journal, July 2006
Dating websites, San Diego Union Tribune, April 2006
Database marketing, Campus Technology, November 2005
Christmas shopping, Hartford Courant, December 2004

Service

PhD Committee Uzma Khan, Yale SOM, 2005 Michael Liersch, UCSD
Psychology, 2007
Elizabeth Keenan, UCSD, 2015
Coby Morvinski, UCSD, 2015 (Chair)
Charles Lin, UCSD Economics, 2015
Kristen Duke, UCSD (Chair)
Alicea Lieberman, UCSD (Chair)

Conferences Program committee for: SCP, ACR, BDRM, SJDM
Conference Chair: SCP 2017

Reviewer

Journal of Marketing Research
Marketing Science
Journal of Experimental Psychology: General
Journal of Economic Psychology
Journal of Consumer Research
American Economic Review
Journal of Consumer Psychology
Memory and Cognition
Psychology and Marketing
Cognition
Journal of Behavioral Decision Making
Organizational Behavior and Human Decision Processes
Psychological Science
Journal of Personality and Social Psychology
Management Science
Journal of Economic Behavior and Organizations
Science

Member

Association for Consumer Research

Association for Consumer Psychology
Society for Judgment and Decision Making
American Psychological Society
American Marketing Association

Teaching Experience

Marketing Management (MBA, Executive)
Analytics in the wild (MBA, Executive)
Consumer Behavior (MBA, Executive)
Market Research (MBA, Executive)
Social Psychology (teaching fellow, Harvard)
E-Commerce Strategy (Executive)
Data Driven Decision Making (Executive)
Customized Executive Programs
Pricing (Executive)
Lab to Market (MBA, Executive)
Intro to Business (Graduate)
Branding (Executive)

Consulting and Executive Teaching Experience

Electronic Arts, HP Inc., Fiverr, Illumina, AAA, USAI, Cubic Corporation, Zimmer Dental, Life Technologies / Thermo Fisher, Intuit, WellBeat, Kaiser Permanente, HP Software, Sony Entertainment, Applied Biosystems, Kumbaya App, Joyned, Marble, Themis-Tech, Flare, Arborknot.

Litigation Cases

Town of Apple Valley v. Apple Valley Ranchos Water Company, CIV-DS-1600180, California Superior Court, San Bernardino. Retained by defendant. Deposed.

Arechiga v. Kellwood Company/Vince LLC, Case No. BC500988, Superior Court of California, County of Los Angeles. Retained by defendant. Deposed.

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Yamagata v. Reckitt Benckiser LLC. Case No. 3:17-cv-03529-VC, United States District Court for the Northern District of California. Retained by defendant. Deposed.

Warner Records, Inc., et al. v. Charter Communications, Inc., Case No.: 1:19-cv-00874, United States District Court for the District of Colorado. Retained by plaintiffs. Report submitted. Deposed.

BK Tobacco & Foods, LLP, an Arizona, limited liability partnership, d/b/a HBI International, v. Central Coast Agriculture, Inc., a Delaware corporation. Case No. CV-19-05216-PHX-MTL,

PUBLIC

United States District Court, District of Arizona, Retained by plaintiff. Report submitted. Deposited.

CLEEN ENTWICKLUNGS-UND VERTRIEBSANSTALT FÜR UMWELTPRODUKTE, a Liechtenstein corporation; and IQAIR NORTH AMERICA, INC., a California corporation, v. BLUEAIR AB, a Sweden corporation; and BLUEAIR, INC. a Delaware corporation. Case No. 2:21-cv-02236-DSF-ADSx, United States District Court for the Central District of California. Retained by plaintiffs. Report submitted.

UMG Recordings, Inc., et al. v. Bright House Networks, LLC, Case No.: 8:19-cv-00710, United States district court for the middle district of Florida, Tampa Division. Retained by plaintiffs. Report submitted.

Chasom Brown, et al. v. GOOGLE LLC, Case No. 4:20-cv-03664-YGR-SVK, United States district court for the northern district of California. Report submitted & deposited.

Max Story and Nancy Murrey-Settle v. Heartland Payment Systems, LLC., Case No. 3:19-cv-00724, United States District Court, Middle District of Florida, Jacksonville Division. Retained by plaintiff. Report submitted. Deposited.

ANDREA CAMPBELL, in her official capacity as ATTORNEY GENERAL v. UBER TECHNOLOGIES, INC. and LYFT, INC., C.A. No. 2084CV01519-BLS1, Superior Court of the Commonwealth of Massachusetts for the County of Suffolk. Retained by defendant. Report submitted. Deposited.

Appendix B

Materials Reviewed

Materials Reviewed¹

Documents Filed in the Proceeding

Affidavit of Dr. Vicki Morwitz (Affirmed January 5, 2024). *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 an order pursuant to section 74.1 of the Competition Act regarding conduct reviewable pursuant to paragraph 74.01(1)(a) and as clarified for greater certainty by subsection 74.01(1.1) of the Competition Act* (Competition Tribunal No. CT-2023-003) (Jan. 5, 2024) and Exhibits.

Affidavit of Jay Eckert (Affirmed January 5, 2024). *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 an order pursuant to section 74.1 of the Competition Act regarding conduct reviewable pursuant to paragraph 74.01(1)(a) and as clarified for greater certainty by subsection 74.01(1.1) of the Competition Act* (Competition Tribunal No. CT-2023-003) (Jan. 5, 2024) and Exhibits.

Notice of Application and Application. *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 an order pursuant to section 74.1 of the Competition Act regarding conduct reviewable pursuant to paragraph 74.01(1)(a) and as clarified for greater certainty by subsection 74.01(1.1) of the Competition Act* (Competition Tribunal No. CT-2023-003) (May 18, 2023).

Reply of the Commissioner of Competition. *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 an order pursuant to section 74.1 of the Competition Act regarding conduct reviewable pursuant to paragraph 74.01(1)(a) and as clarified for greater certainty by subsection 74.01(1.1) of the Competition Act* (Competition Tribunal No. CT-2023-003) (July 14, 2023).

Response. *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 an order pursuant to section 74.1 of the Competition Act regarding conduct reviewable pursuant to paragraph 74.01(1)(a) and as clarified for greater certainty by subsection 74.01(1.1) of the Competition Act* (Competition Tribunal No. CT-2023-003) (June 30, 2023).

Documents Exchanged at Discovery

¹ In preparing my report, I reviewed the documents listed here along with any items cited or referenced in the body and footnotes of my report.

- “OBF700 – Online Booking Fees.” *Cineplex* (June 1, 2022 – Dec. 31, 2022) (CNPLX_01077684_native).
- “Online Booking Fee Dashboard.” *Cineplex* (Sept. 11, 2023) (CPX_0002757_LEVEL B).
- “REGF00036_000000001_native.pdf.” (June 18, 2023) (REGF00036_000000001).
- “REGF00043_000000001 (Confidential Level B).pdf.” (Aug. 7, 2023) (REGF00043_000000001).
- “REGF00043_000000002 (Confidential Level B).pdf.” (July 20, 2023) (REGF00043_000000002).
- “REGF00043_000000003 (Confidential Level B).pdf.” (Aug. 2, 2023) (REGF00043_000000003).
- “REGF00043_000000004 (Confidential Level B).pdf.” (July 19, 2023) (REGF00043_000000004).
- “REGF00043_000000005 (Confidential Level B).pdf.” (June 15, 2023) (REGF00043_000000005).
- “REGF00043_000000006 (Confidential Level B).pdf.” (July 1, 2023) (REGF00043_000000006).
- “Time on page within COT (Copy - 2023 YTD Jan 1, 2023 - Oct 30, 2023).” *Cineplex* (Oct. 31, 2023) (CPX_0002880).
- “Time on page within COT (Copy – FULL YEAR 2022).” *Cineplex* (Sept. 11, 2023) (CPX_0002761).
- “Time on page within COT (Copy - July 15, 2022 to Dec 31, 2022).” *Cineplex* (Oct. 31, 2023) (CPX_0002890).

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- “Home.” *Cineplex*. <<https://www.cineplex.com>> (accessed Jan. 3, 2024).
- “Migration.” *Cineplex*. <https://www.cineplex.com/movie/migration?ic=cpx_hp-moviegrid-en> (accessed Jan. 3, 2024).
- “Payment.” *Cineplex*. <<https://onlineticketing.cineplex.com/Payment/a9f1a2f8-4a05-42cd-a9f7-5edaf01404f2>> (accessed Jan. 3, 2024).
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“Seats.” *Cineplex*. <<https://onlineticketing.cineplex.com/Seats/6fbd4291-7473-4e36-a3a3-d4bc8e31e473>> (accessed Jan. 3, 2024).

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Other

“49 Cart Abandonment Rate Statistics 2024.” *Baymard Institute* (July 11, 2023). <<https://baymard.com/lists/cart-abandonment-rate>> (accessed Jan 5, 2024).

Abraham, Ajay T. and Rebecca W. Hamilton. “When Does Partitioned Pricing Lead to More Favorable Consumer Preferences?: Meta-Analytic Evidence.” *Journal of Marketing Research* 55.5 (2018): 686-703.

Blake, Tom, et al. “Price Salience and Product Choice.” *Marketing Science* 40.4 (2021): 619-636.

Chen, Tser-Yieth, et al. “How Different Advertising Formats and Calls to Action on Videos Affect Advertising Recognition and Consequent Behaviors.” *The Service Industries Journal* (2018): 1-22.

“CineClub.” *Cineplex*. <https://www.cineplex.com/cineclub?ic=cpx_globalnav-en_cineclub> (accessed Jan. 3, 2024).

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Dhar, Ravi and Stephen M. Nowlis. “The Effect of Time Pressure on Consumer Choice Deferral.” *Journal of Consumer Research* 25.4 (1999): 369-384.

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Elliott, Greg, et. al. *Marketing, 4th ed.* Wiley (2017).

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Gabaix, Xavier and David Laibson. “Shrouded Attributes, Consumer Myopia, and Information Suppression in Competitive Markets.” *The Quarterly Journal of Economics* 121.2 (2006): 505-540.

- Goel, Sharad, et al. "Predicting Consumer Behavior with Web Search." *Proceedings of the National Academy of Sciences of the United States of America* 107.41 (2010): 17486-17490.
- Greenleaf, Eric A., et al. "The Price Does Not Include Additional Taxes, Fees, and Surcharges: A Review of Research on Partitioned Pricing." *Journal of Consumer Psychology* 26.1 (2016): 105-124.
- Hallowell, Roger. "The Relationships of Customer Satisfaction, Customer Loyalty, and Profitability: An Empirical Study." *International Journal of Service Industry Management* 7.4 (1996): 27-42.
- "How It Works." *Scene+*. <<https://www.sceneplus.ca/how-it-works>> (accessed Jan. 3, 2024).
- Kotler, Philip and Kevin Lane Keller. *Marketing Management, 14th ed.* New Jersey: Prentice Hall (2012).
- Lee, Dong-Jin and M. Joseph Sirgy. "Quality-of-Life (QOL) Marketing: Proposed Antecedents and Consequences." *Journal of Macromarketing* 24.1 (2004): 44-58.
- Lee, Jung-Yong and Chang-Hyun Jin. "The Role of Ethical Marketing Issues in Consumer-Brand Relationship." *Sustainability* 11 (2019): 1-21.
- McDonald, Juli. "AMC Will Start Charging More for Better Movie Theater Seats." *CBS News Boston* (Feb. 6, 2023). <<https://www.cbsnews.com/boston/news/amc-movie-theater-seats-charge>> (accessed Jan. 10, 2024).
- Morwitz, Vicki G. "Vicki Morowitz Remarks for the White House Convening on the Economic Case for Junk Fee Policies." *Whitehouse.gov* (Mar. 21, 2023). <<https://www.whitehouse.gov/wp-content/uploads/2023/03/Vicki-Morowitz-remarks.pdf>> (accessed Jan. 11, 2024).
- Pindyck, Robert S. and Daniel L. Rubinfeld. *Microeconomics, 8th ed.* New Jersey: Pearson (2013).
- Shankar, Venkatesh, Amy K. Smith, and Arvind Rangaswamy. "Customer Satisfaction and Loyalty in Online and Offline Environments." *International Journal of Research in Marketing* 20 (2003): 153-175.
- Shi, Min and Hong Yuan. "Impact of E-Commerce Website Usability on User Satisfaction." *Journal of Advanced Computational Intelligence and Intelligent Informatics* 23.1 (2019): 91-96.
- Shugan, Steven M. "The Cost of Thinking." *Journal of Consumer Research* 7.2 (1980): 99-111.
- Srivastava, Medha and Alok Kr. Rai. "Mechanics of Engendering Customer Loyalty: A Conceptual Framework." *IIMB Management Review* 30 (2018): 207-218.

Sullivan, Mary W. “Economic Analysis of Hotel Resort Fees.” *Bureau of Economics, Federal Trade Commission, Economic Issues* (2017).

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“The Birth of the Web.” *CERN*. <<https://home.cern/science/computing/birth-web>> (accessed Jan. 11, 2024).

Varian, Hal R. *Intermediate Microeconomics: A Modern Approach, 8th ed.* New York: W. W. Norton & Company (2010).

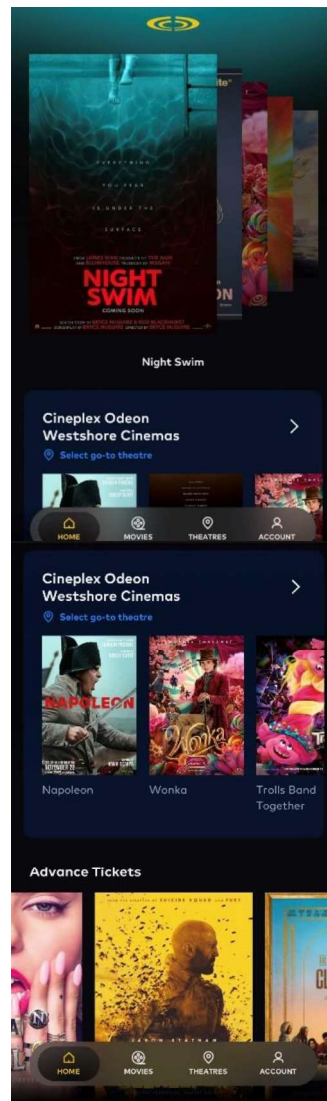
Appendix C

Cineplex Mobile App Consumer Flow

Cineplex Mobile App Consumer Flow¹

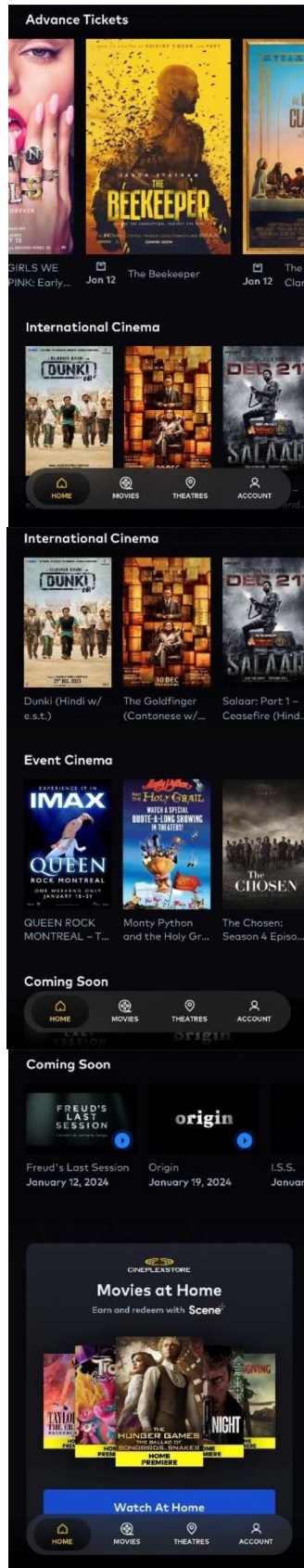
1. In this appendix I describe the sequence of steps, or Consumer Flow, that would be followed consumers who wish to gather information and purchase a ticket for a movie showing at a Cineplex theater via the Mobile App. I note that for certain figures I have included illustrative annotations marked in a red overlay.
2. A consumer who is interested in finding information or viewing a movie at a Cineplex theater can go to the Mobile App. A view of the Mobile App landing page is shown in **Figure C-1: Cineplex Mobile App Landing Page**.

Figure C-1: Cineplex Mobile App Landing Page



¹ In this Appendix, each Mobile App page is depicted through vertically stacked, contiguous screenshots.

PUBLIC

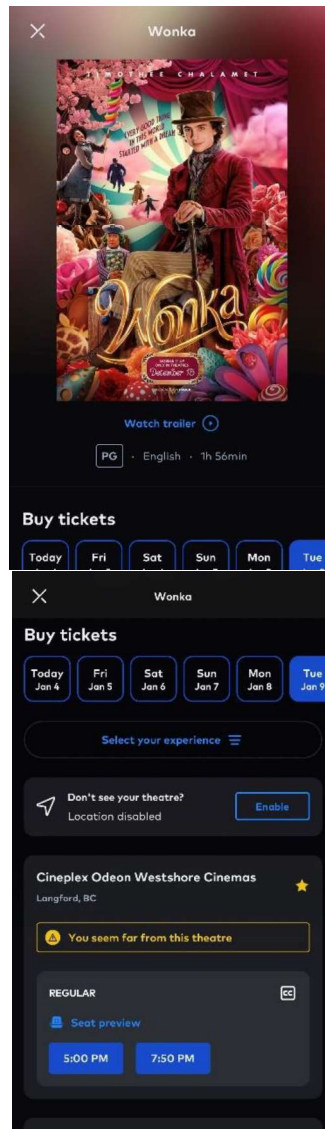


3. The Cineplex Mobile App landing page lists movies showing at Cineplex theaters. From this page,

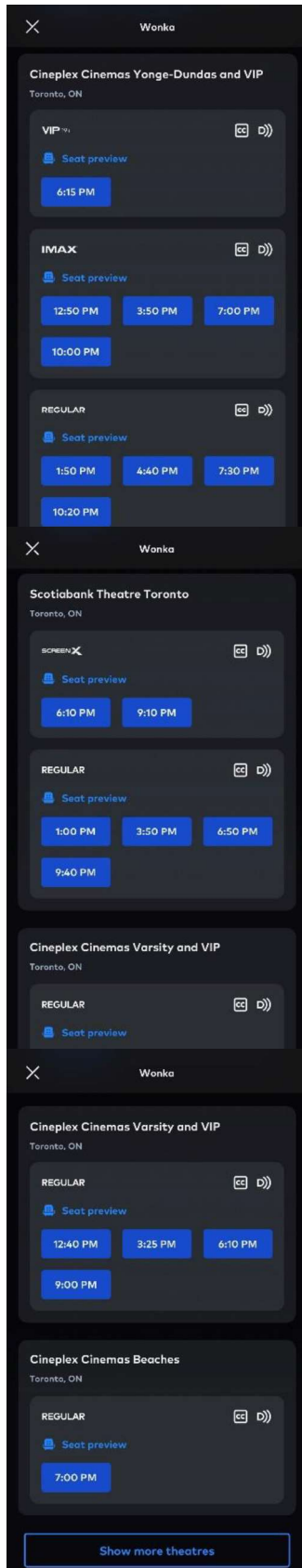
PUBLIC

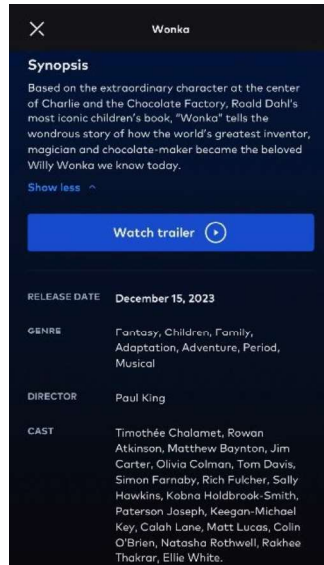
consumers may select a movie that they are interested in seeing. This leads to pages displaying more detailed information about that movie, including the length, genre, ratings, theater locations, dates and showtimes, viewing experiences, seating structure and availability at a selected theater, and a brief summary and trailer. See **Figure C-2: Movie Detail and Theater Showing**.

Figure C-2: Movie Detail and Theater Showing



PUBLIC





4. If consumers are interested in this movie, they can choose their desired date, theater location, viewing experience and showtime as shown above in **Figure C-2: Movie Detail and Theater Showing**.
5. Additionally, consumers can elect to “Preview Seats” and see a map of the seat structure and availability for a particular showtime they are interested in. That is, consumers can see the demand for a particular movie, screening time, and viewing experience.
6. Through this point in the Consumer Flow on the Mobile App, the consumer has not been presented with any information regarding *any* pricing information. At this point, a consumer can progress to learning pricing information by clicking movie showing time for the theater and experience they desire, which brings them to a page on which they can select the number and type of ticket they would like to purchase.
7. Notably, this page displays the prices for tickets for the selections made on the preceding pages, the Online Booking Fee, a five-minute countdown timer, and also the availability of the Scene+ membership program. Scene+ is a loyalty program that offers consumers perks and points when they spend with those businesses.² There is no cost to join Scene+.³ The Online Booking Fee is discounted for Scene+ members.⁴ For consumers that are not already part of the CineClub program, the ticketing page clearly advertises that the Online Booking Fee is waived for members of the

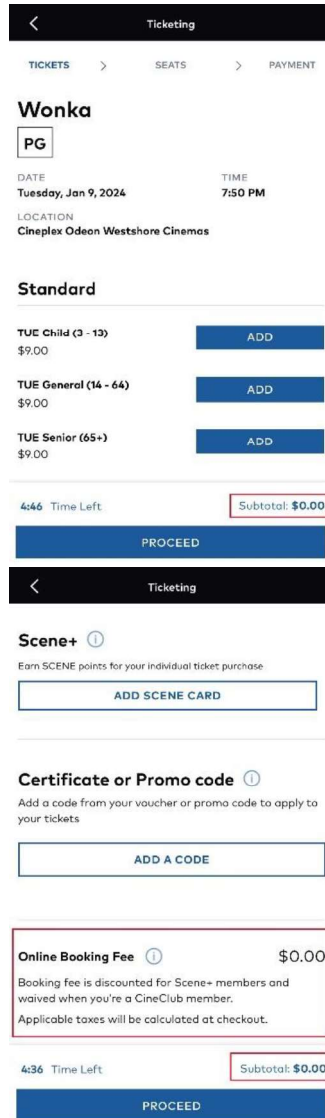
² “How It Works.” *Scene+*. <<https://www.sceneplus.ca/how-it-works>> (accessed Jan. 3, 2024).

³ “Terms & Conditions.” *Scene+*. <<https://www.sceneplus.ca/terms-and-conditions>> (accessed Jan. 10, 2024) (“Membership is free and no purchase is required to become a Member and maintain your Membership.”).

⁴ **Figure C-3: Ticketing Page** (“Booking fee is discounted for Scene+ members”).

CineClub subscription service.⁵ For an example of the ticketing page before tickets are added, see **Figure C-3: Ticketing Page**, below.

Figure C-3: Ticketing Page



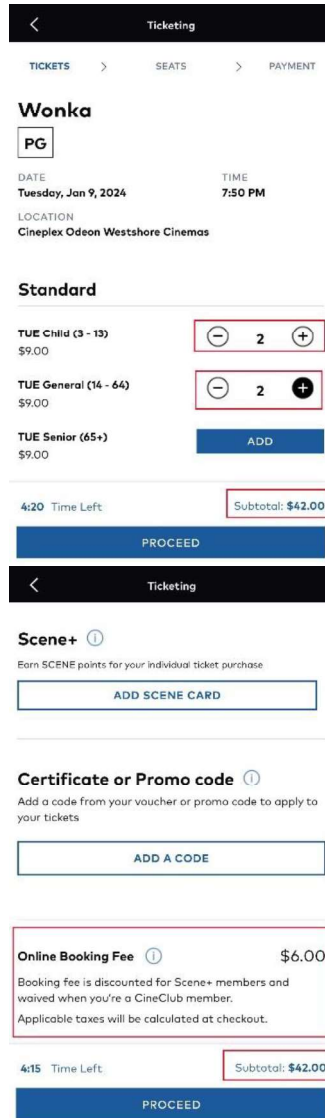
8. Once tickets are added to the consumer’s cart, the page updates to show the Online Booking Fee applied and the subtotal, including both the ticket price and the Online Booking Fee before taxes. This display at the bottom of the screen is a “floating display” such that no matter where the consumer is on the page or wherever the consumer scrolls, the subtotal is always available to see at

⁵ See **Figure C-3: Ticketing Page** (“Booking fee is ... waived when you’re a CineClub member”).

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the bottom of the screen just above the major CTA button to make a purchase. See **Figure C-4: Updated Ticketing Page**. Consumers can also add multiple tickets to their purchase, and, as they do so, both the amount of the Online Booking Fee and the subtotal update to reflect the increased amount. This update is displayed for each ticket added (e.g., if a consumer adds three tickets, the displayed Online Booking Fee increases from \$1.50 to \$3.00 to \$4.50) in independent increments.

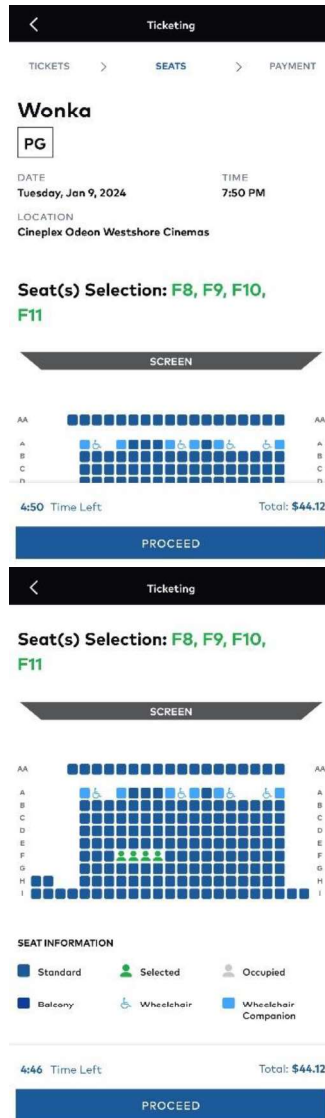
Figure C-4: Updated Ticketing Page



9. Below the displayed subtotal, consumers can elect to “Proceed,” which directs them to a seat selection page as shown in **Figure C-5: Seat Selection**. Consumers can then immediately reserve their seats from those still available for that showtime. On this page, the total price for all tickets is

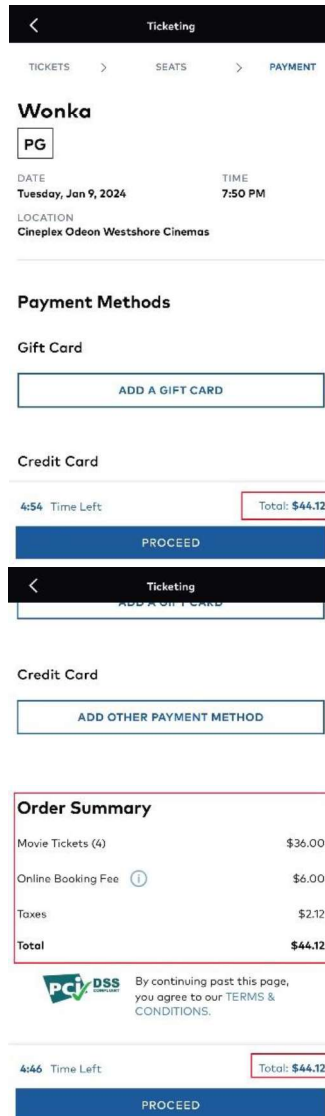
displayed. This total price now includes taxes. I also note that the countdown timer resets after a consumer elects to proceed. At this stage, the price presented is no longer partitioned, and instead reflects the full price including all fees and taxes.

Figure C-5: Seat Selection



10. Below the total cost, consumers can again click the CTA button to “Proceed” to the payment page, where an order summary is shown that itemizes the cost of the movie tickets, Online Booking Fee, and taxes. See **Figure C-6: Order Summary**. The countdown timer also resets again at this point.

Figure C-6: Order Summary



11. Consumers can then proceed to the final page that allows them to enter their credit card or other payment information and check out. See **Figure C-7: Payment**. The countdown timer again resets at this point to a longer, 15-minute timer. At this stage the price displayed is the total price, including taxes, preceded by a breakdown of its components.

Figure C-7: Payment

 Ticketing

Total Amount: CAD 44.12

Pay with Apple Pay



Pay With Your Credit Card

Cardholder Name

Credit Card Number




Expiry Date (MMYY)

Security Code


Most cards: the 3-digits on the back of the card. Amex: the 4-digits on the front of the card.

ZIP/Postal Code

PAY WITH YOUR CREDIT CARD

 Ticketing

Credit Card Number



Expiry Date (MMYY)


Security Code

Most cards: the 3-digits on the back of the card. Amex: the 4-digits on the front of the card.

ZIP/Postal Code

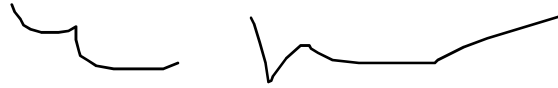
PAY WITH YOUR CREDIT CARD

Pay with PayPal


the same, easier way to pay

Your private information is secured using TLS 1.2 (Transport Layer Security). All information is encrypted between your web browser and Exact Transactions (Canada) Ltd.

12. These steps, in order, comprise the Consumer Flow for a Cineplex movie ticket on the Cineplex Mobile App.

A handwritten signature in black ink, consisting of a series of connected loops and lines, positioned above a horizontal line.

This is Exhibit “B” to the affidavit of On Amir,
affirmed remotely as being located
in the city of La Jolla in the State of California,
before me in the city of Toronto in province of Ontario,
on January 12, 2024, in accordance with
O. Reg 431/20, Administering Oath or Declaration Remotely.

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 an order pursuant to section 74.1 of the *Competition Act* and subsection 74.01(1.1) of the *Competition Act*;

BETWEEN:

COMMISSIONER OF COMPETITION

Applicant

– and –

CINEPLEX INC.

Respondent

ACKNOWLEDGMENT OF EXPERT WITNESS

I, On Amir, acknowledge that I will comply with the Competition Tribunal’s code of conduct for expert witnesses which is described below:

1. An expert witness who provides a report for use as evidence has duty to assist the Tribunal impartially on matters relevant to his or her area of expertise.
2. This duty overrides any duty to a party to the proceeding, including to person retaining the expert witness. An expert is to be independent and objective. An expert is not an advocate for a party.

January 12, 2024

Date



On Amir

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 an order pursuant to section 74.1 of the *Competition Act* and subsection 74.01(1.1) of the *Competition Act*;

BETWEEN:

COMMISSIONER OF COMPETITION

Applicant

– and –

CINEPLEX INC.

Respondent

AFFIDAVIT OF ON AMIR

(AFFIRMED JANUARY 12, 2024)
