



Ted Rogers School of Management
Toronto Metropolitan University

CORPORATE SOCIAL RESPONSIBILITY, ETHICS AND THE LAW: A LEGAL PRACTITIONER'S PERSPECTIVE

For: “In Conversation” session,
Toronto Metropolitan University
Institute for the Study of
Corporate Social Responsibility

Presented by: Kenneth Jull
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The views are those of the author and are not meant to represent the views of
Gardiner Roberts LLP.



Corporate Social Responsibility

Corporate social responsibility embodies the moral and right thing to do. There is also evidence that corporate social responsibility increases profitability. Despite this, there is behavioral research that shows that some corporations attempt to trick and deceive their customers. A granular example of this is "drip-pricing," a pricing technique in which firms advertise only part of a product's price and reveal other charges later as the customer goes through the buying process.

Drip Pricing

Drip pricing is considered by the Canadian Competition Bureau to be false or misleading, unless the additional fixed charges or fees are imposed by the government, such as sales tax. As a result of amendments to the Competition Act in June 2022, drip pricing is now expressly recognized as a harmful business practice under the law, in both the criminal and civil track streams. This talk will use the example of drip-pricing to explore the interface between corporate social responsibility and regulatory intervention.

Corporate Priorities



- There is hard data that the more financially successful companies value leadership, fairness and the interests of their constituencies more highly than the lower-yielding firms. *In other words, higher risk control leads to higher financial rewards.*¹
- The costs of scandals in any organization go far beyond the obvious legal fees and fines to encompass lost customers, employees and productivity.²

1. L. Sharpe Paine, *Value Shift: Why Companies Must Merge Social and Financial Imperatives to Achieve Superior Performances* (Toronto: McGraw-Hill, 2003), at p. 141.

2. See Arthur Acevedo “Corporate Ethics: Approaches and Implications to Expanding the Corporate Mindset of Profitability” 49 Loy. U. Chi. L.J. 637 (2018)

Profiting from Risk Management and Compliance

- Professor Paine refers to Sealed Air Corporation as a leader in combining high ethical standards and profitability.
- Sealed Air's values are more than just financial tools; they represent a very “human” approach to people both inside and outside the company. They not only contribute to good financial results, but they also make Sealed Air an enjoyable place to work.



Profiting from Risk Management and Compliance

- Hannah Cinel offers a counter perspective to the rosy picture painted of Sealed Air. Cinel's father worked at a Sealed Air division from 1998-2013. Given his wide scope of tenure, one would expect that he experienced at least some tangential benefits of this ethical corporate culture. However, Cinel writes that his experience was exactly the opposite. (Hannah Cinel, "The Pitfall of Hubris in Corporate Culture" Paper submitted for "Financial Crimes and Corporate Compliance" University of Toronto, Faculty of Law, 2020.)



Volkswagen Emissions Scandal

Moral Corporation Model

- In the fall of 2015, the United States' Environmental Protection Agency issued two notices of violation to Volkswagen AG, its American divisions and subsidiary car companies Porsche and Audi, for violations of the Clean Air Act.
- The U.S. government alleged that Volkswagen thwarted this regulatory process by installing software into its diesel vehicles that would detect when a vehicle was undergoing an official test, and activate emissions control only during that short time to ensure conformity with national regulations. In real-world driving conditions, however, Volkswagen cars exceeded the permissible nitrogen oxide emission rate by up to 40 times.



Volkswagen Emissions Scandal

Hard NOx

75m



Volkswagen's "clean diesel" cars seemed like a dream come true for carbon-conscious drivers -- until a fraud of staggering proportions came to light.



Volkswagen Emissions Scandal:



Competition Bureau



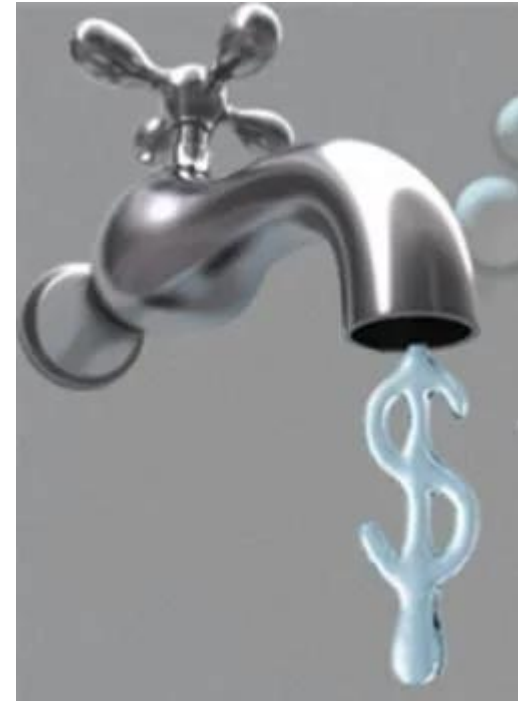
Volkswagen Emissions Scandal:

- In *Commissioner of Competition v. Volkswagen Group Canada Inc. and Audi Canada Inc.* VW and Audi agreed not to create a false or misleading general impression that: (a) their vehicles' emissions are "clean"; (b) their vehicles produce lower emissions than other vehicles; (c) their vehicles are less polluting than other vehicles; (d) their vehicles are "green", or less harmful to the environment than other vehicles; and/or (e) their vehicles are environmentally friendly.
- An administrative monetary penalty for each of VW and Audi of \$7,500,000 was imposed, for a total of \$15 million.

Volkswagen Emissions Scandal:

- The Bureau's investigation found that Volkswagen Canada and Audi Canada misled consumers by promoting vehicles sold or leased in Canada as having clean diesel engines with reduced emissions that were cleaner than an equivalent gasoline engine sold in Canada.
- The Competition Bureau participated in a proposed Canadian class action settlement agreement that Volkswagen reached with consumers of certain 2.0 litre diesel vehicles. This settlement, provides buyback and restitution payments to those consumers totalling up to \$2.1 billion — one of the largest consumer settlements in Canadian history.
- The result of this settlement was a determining factor in the Bureau reaching a consent agreement with the Respondents.

Drip Pricing



“Drip-pricing,” is a pricing technique in which firms advertise only part of a product's price and reveal other charges later as the customer goes through the buying process.

“Digital Advertising and Purchasing: Fun or a New Type of Deception?” (2020), 33 Canadian Competition Law Review 1.



Drip Pricing and the Canadian Legal Regime



- **CRIMINAL**
- **52 (1)** No person shall, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, **knowingly or recklessly** make a representation to the public that is false or misleading in a **material respect**.
- **Drip pricing**
- **(1.3)** For greater certainty, the making of a representation of a price that **is not attainable due to fixed obligatory** charges or fees constitutes a false or misleading representation, unless the obligatory charges or fees represent only an amount imposed by or under an Act of Parliament or the legislature of a province.

- **CRIMINAL**
- **Section 52 (5)** Any person who contravenes subsection (1) is guilty of an offence and liable
- **(a)** on conviction on indictment, to a fine in the discretion of the court **or to imprisonment for a term not exceeding 14 years**, or to both; or
- **(b)** on summary conviction, to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding one year, or to both.

- **ADMINISTRATIVE TRACK**
- **74.01 (1)** A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever,
- **(a)** makes a representation to the public that is false or misleading **in a material respect**;
- **Drip pricing**
- **(1.1)** For greater certainty, the making of a representation of a price that **is not attainable due to fixed obligatory charges** or fees constitutes a false or misleading representation, unless the obligatory charges or fees represent only an amount imposed by or under an Act of Parliament or the legislature of a province.

DO NOT FORGET ABOUT DUE DILIGENCE

- An important aspect of the reviewable matters stream is that, similar to the old regulatory offence, the Act conceives of the defense of due diligence. If a court concludes that the internet process violates the standards set out in the Act, the court must then consider whether the defendant demonstrates that it has exercised due diligence. Under the Act, the due diligence defense means that:
 - **74.1 (3) No order may be made against a person under paragraph (1)(b), (c) or (d) if the person establishes that the person exercised due diligence to prevent the reviewable conduct from occurring.**
- Reference:
- K.R. Webb, “Regulatory Offences, the Mental Element and the Charter: Rough Road Ahead” (1989), 21 Ottawa L. Rev. 419, at p. 469.

NEW SUPER AMPS



AMENDED COMPETITION ACT

- Determination of reviewable conduct and judicial order
- **74.1 (1)** Where, on application by the Commissioner, a court determines that a person is engaging in or has engaged in reviewable conduct under this Part, the court may order the person
- **(a)** not to engage in the conduct or substantially similar reviewable conduct;

AMENDED COMPETITION ACT

- **c)** to pay an administrative monetary penalty, in any manner that the court specifies, in an amount not exceeding
- **(i)** in the case of **an individual**, **the greater of**
 - **(A) \$750,000** and, for each subsequent order, \$1,000,000, and
 - **(B) three times the value of the benefit derived** from the deceptive conduct, if that amount can be reasonably determined, or

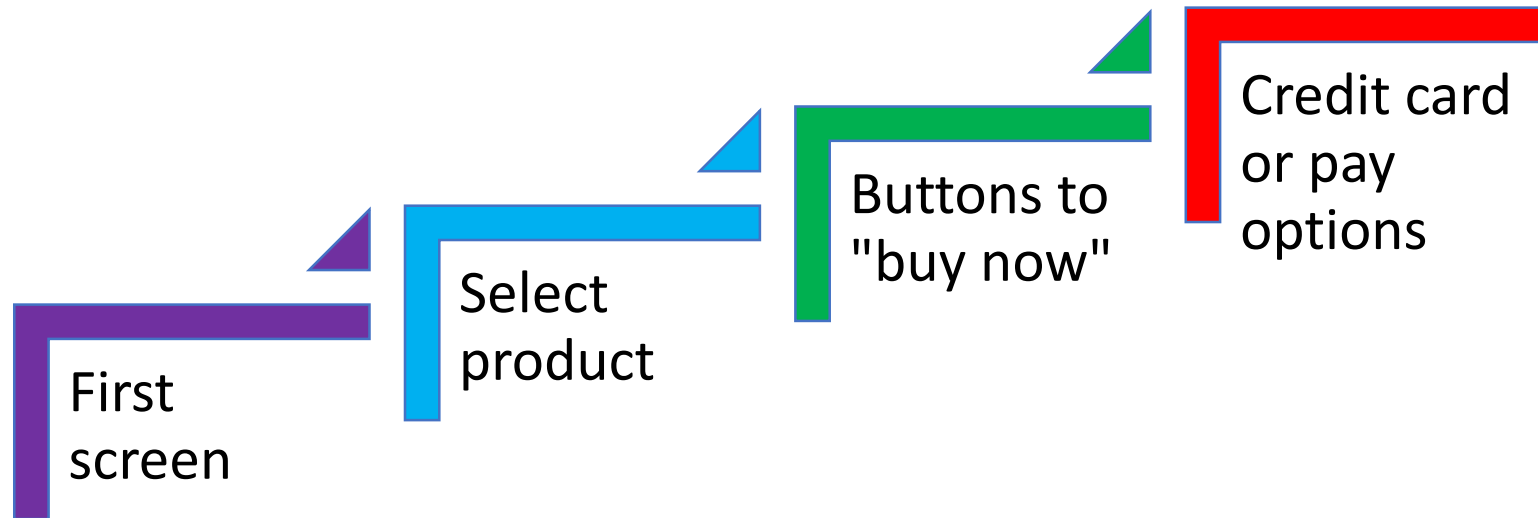
AMENDED COMPETITION ACT

- **(c)** to pay an administrative monetary penalty, in any manner that the court specifies, in an amount not exceeding
- **(ii)** in the case of a **corporation**, **the greater of**
 - **(A) \$10,000,000** and, for each subsequent order, \$15,000,000, and
 - **(B) three times the value of the benefit derived from the deceptive conduct, or, if that amount cannot be reasonably determined, 3% of the corporation's annual worldwide gross revenues; and**

AMENDED COMPETITION ACT

- **(c)** to pay an administrative monetary penalty, in any manner that the court specifies, in an amount not exceeding
- **(d)** in the case of conduct that is reviewable under paragraph 74.01(1)(a),[**makes a representation to the public that is false or misleading in a material respect, which includes drip pricing**] to pay an amount, not exceeding the total of the amounts paid to the person for the products in respect of which the conduct was engaged in, **to be distributed among the persons to whom the products were sold** — except wholesalers, retailers or other distributors, to the extent that they have resold or distributed the products — in any manner that the court considers appropriate

Drip Pricing: A Case Study within the New Digital Framework



FIRST

SCREEN



Issues Specific to the Digital Economy

- In *Bell Canada v Cogeco Cable Canada GP Inc.*, a civil case, Bell challenged Cogeco's use of the phrase “the best Internet experience in your neighbourhood”. Justice Matheson granted an interlocutory injunction with respect to the use of this phrase, and specifically commented on the importance of a first screen of an internet process in the context of the misleading advertising provisions of the Act:
- It is at least arguable that, for the purposes of s. 52, the court should consider what the consumer would **see on a single screen**, including the labels on the hyperlinks on that screen.
- I recognize that the amount of content presented on the screen could depend to some extent on the size of the screen on the device chosen by the consumer. Even taking that into account, much of what Cogeco seeks to rely upon would not appear on that first screen. [emphasis added]


FIRST SCREEN

- *Cogeco* was cited in *Drynan v. Bausch Health Companies Inc.* 2021 ONSC 7423 in relation to the appropriate test;
- When a **consumer arrives at the "landing" (i.e., first) website page, the first statement is that COLD-FX(R) is "A NATURAL HEALTH PRODUCT, PROVEN BY SCIENCE"**.
- The Court certified the action against Bausch Canada and Valeant Canada LP.
- A common issue is: Did the Defendants, or any of them, engage in conduct contrary to section 52 of the Competition Act, RSC 1985, c C-34?


FIRST SCREEN: Ticketmaster case

[Vancouver & Area](#) [Music](#) [Sports](#) [Arts & Theatre](#) [Family](#) [VIP](#) [Deals](#) [verifiedtickets](#)


[All Tickets](#) > [Music Tickets](#) > [Rock & Pop](#) > [OneRepublic](#) > [Aug 21, 2017 07:00 PM](#)







OneRepublic
★★★★☆ (105)
Rogers Arena, Vancouver, BC
Mon, Aug 21, 2017 07:00 PM
Details: OneRepublic, Fitz & the Tantrums
[Event Info](#) | [Onsale Times](#) | [Price Range](#) | [Ticket Limits](#)

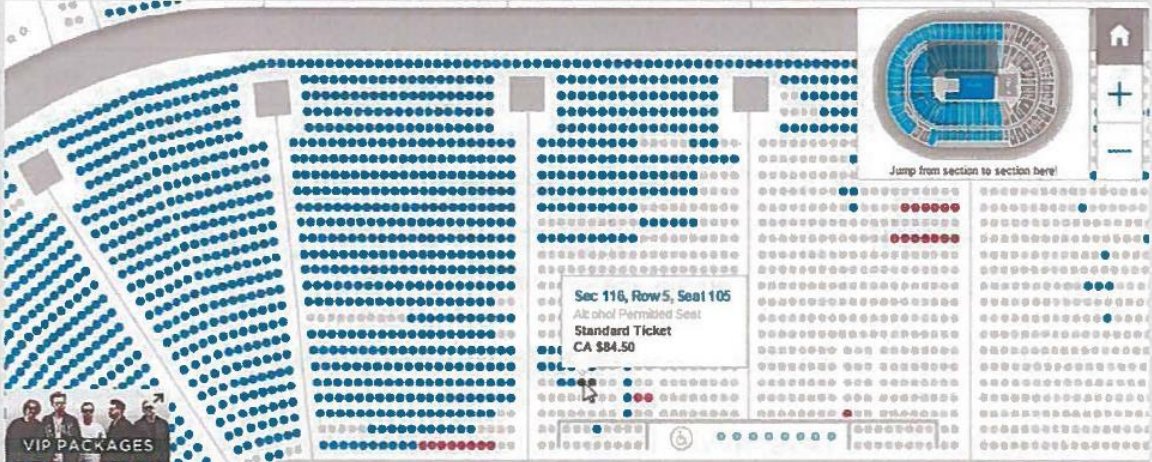
 Look for this symbol for more ways in with Fan-to-Fan Resale.


[BUY ON MAP](#) [SEE RESALE ONLY](#) [FIND SEATS FOR ME](#) [OFFICIAL PLATINUM SEATS](#)

\$20  \$240+


Resale  







★ Special Offers ▾   [Reset](#)






Jump from section to section here!

Sec 116, Row 5, Seat 105
Alcohol Permitted Seat
Standard Ticket
CA \$84.50



VIP PACKAGES

Matches Your Search
 Venue Seat  Accessible  Venue Seat
 Resale Seat  VIP Seat  Resale Seat

Outside Your Search
 Venue Seat  Resale Seat

Selected Seats* (1) | [Show Details](#) ▾

SUBTOTAL: CA \$84.50 [Buy Tickets](#)

**ROGERS ARENA**
800 Griffiths Way, Vancouver, BC V6B 6G1
[Directions](#) | [Parking](#) | [See All Events at this Venue](#)

Additional fees are applied at Checkout.
Per order, delivery and/or processing fees are added when applicable.

By clicking on the "Buy Tickets" button, or otherwise using this website, you agree to the [Terms of Use](#).

*Your seats aren't officially reserved until you click "Buy Tickets" and pass the security check!

FIRST SCREEN: Ticketmaster case: Commissioner's application

36. In fact, the price promoted in the Price Representation is unattainable and the general impression is false or misleading. Consumers who respond to the Price Representations such as those featured in this example are required to pay Non-Optional Fees. While the amount of the Non-Optional Fees and the true cost of the tickets in the example above were known to the Respondents when the above-referenced Price Representations were made, the Respondents only revealed the Non-Optional Fees and the "true" cost of the tickets later in the purchasing process and once consumers had selected their tickets and navigated through certain steps in the purchasing process.


FIRST SCREEN: Ticketmaster case: Commissioner's application

ticketmaster®

OFFICIAL CARD OF **ticketmaster®**

REVIEW DELIVERY SIGN IN PAYMENT

Note: The timer at bottom right shows how long you have to complete this page before we release your tickets for others to buy.



OneRepublic
Details: OneRepublic, Fitz & the Tantrums
Rogers Arena, Vancouver, BC
Mon, Aug 21, 2017 07:00 PM

Section 116
Row 5
Seats 105 - 106
Description NO AISLE BETWEEN
SECTIONS-AISLE SEATS
ARE 1 & 101
Price Level 3
Place Level
LOW
Alcohol Permitted Seat
Seating Chart

Type Standard Ticket
Ticket Price CA \$84.50 x 2
Facility Charge CA \$3.00 x 2
Service Fee CA \$16.90 x 2




SUBTOTAL CA \$208.90

Tickets/Items CA \$208.90
Order Processing Fee CA \$6.00
Delivery via: eTickets Free!

TOTAL CHARGES CA \$214.90

Payment

☒ Credit / Debit Card

* Required Field

Credit / Debit Card

* Visa Debit also accepted

CREDIT / DEBIT CARD TYPE *

Select Card Type

CREDIT / DEBIT CARD NUMBER *

SECURITY CODE *

Expires:

MONTH * YEAR *

Billing Address

FIRST NAME * LAST NAME *

ADDRESS *

UNIT # (OPTIONAL)

ADDRESS LINE 2 (OPTIONAL)

CITY *

Time left to complete page
09:36

FIRST SCREEN: Ticketmaster case: Commissioner's application

Seating Chart	
Type	Standard Ticket
Ticket Price	CA \$84.50 x 2
Facility Charge	CA \$3.00 x 2
Service Fee	CA \$16.90 x 2
SUBTOTAL CA \$208.80	
Tickets/Items	CA \$208.80
Order Processing Fee	CA \$6.00
Delivery via: eTickets	Free!
TOTAL CHARGES CA \$214.80	

FIRST SCREEN: Ticketmaster case: Commissioner's application

37. As identified in the image above, the Non-Optional Fees in this example amount to \$45.80 in fees for the pair of tickets. The Non-Optional Fees therefore increased the original advertised price of the tickets by over 25%, which is significant.
38. The Respondents made similar Price Representations when consumers clicked on any of the other tabs from ticketmaster.ca in order to shop for event tickets.

Ticketmaster response


58. The moment that a consumer clicks on tickets from the list, she is advised that there are fees applicable to the tickets she has selected. The indication of the applicability of fees is stated clearly beside the face value of the ticket through an Obvious Fee Signal. In this example, the text reads: “CA \$9.05 ea + Fees”. This takes place prior to the consumer clicking on “GET TICKETS” or proceeding further in the buy-flow.

Ticketmaster response

Sec 11, Row H

×

You'll get 2 tickets together in this row.



Bowl Ends
Sec 11, Row H

Standard Ticket
CA \$9.05 ea + Fees

−

2

+

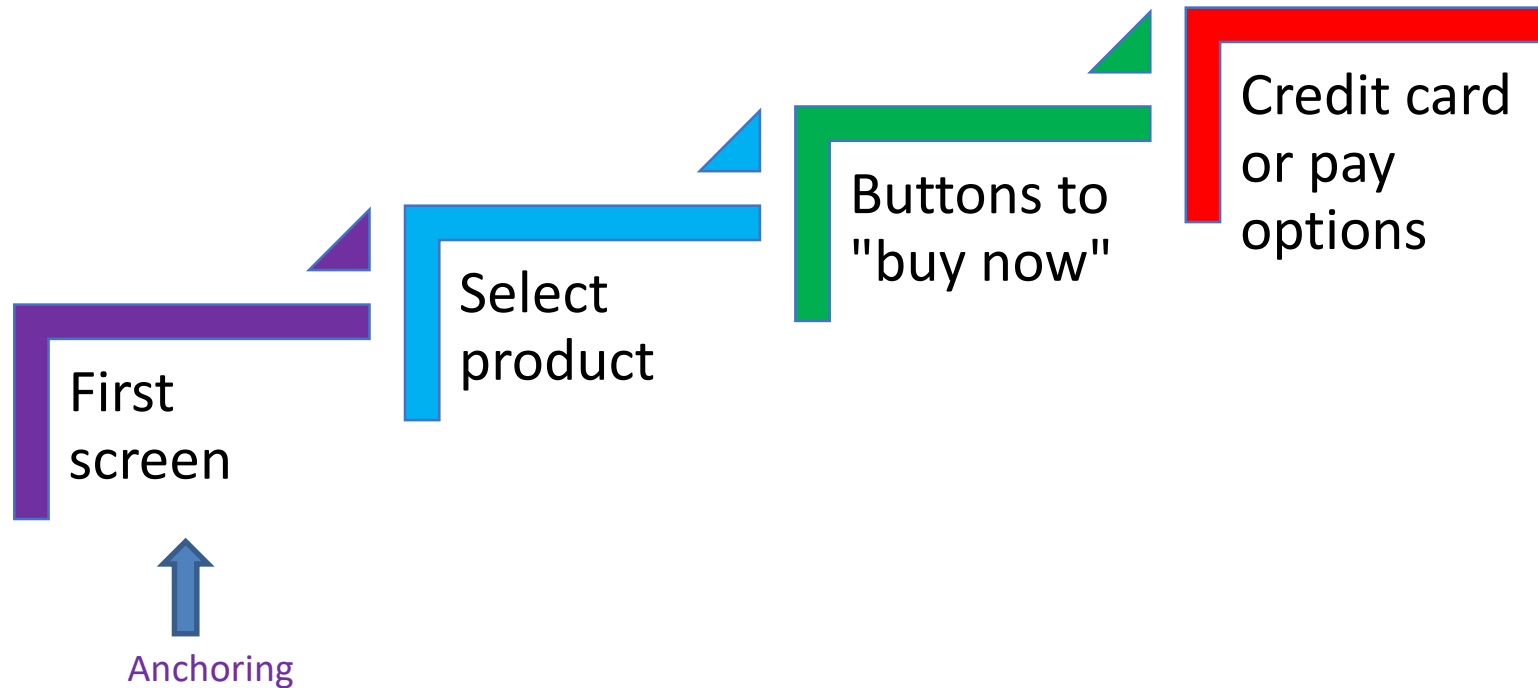
Student and Senior Discount
CA \$9.05 ea + Fees

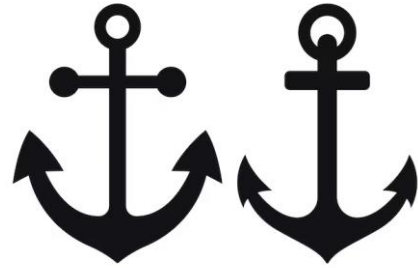
+

2 Tickets

GET TICKETS

Behavioural Psychological Literature

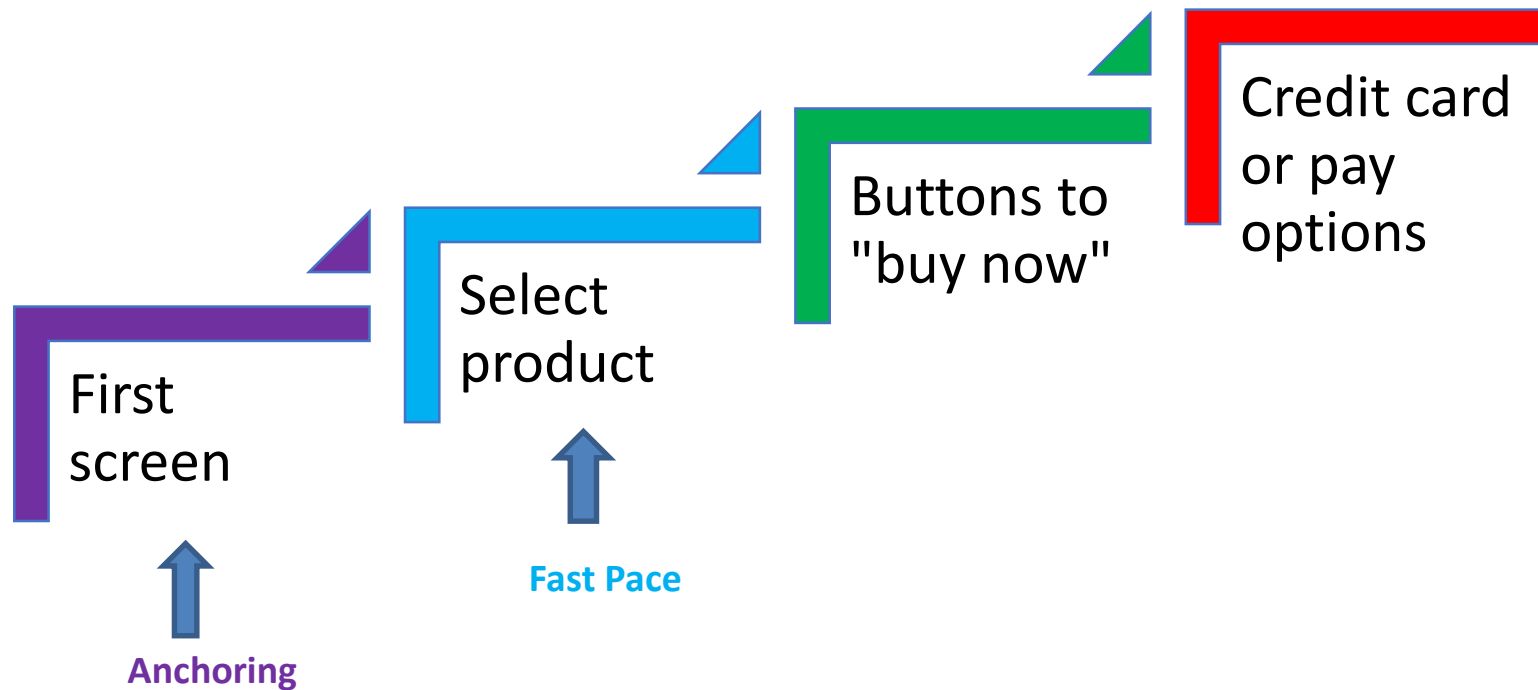




- **(i) Anchoring:** The basic principle of anchoring is the concept that first impressions last.
- Research shows that consumers are likely to anchor on the base price (for example, a ticket face value of \$100) and then tend to adjust insufficiently upward to incorporate the surcharge (for example, an extra \$25).



Fast Pace





- **(ii) Fast Pace:** The digital environment is fast paced, which leaves consumers with an abundance of information in a world where choices must be made quickly. Henry Su explains consumers' need to think fast in the digital sphere where snap judgments based on instinct, bias, and heuristics are encouraged over longer deliberation. Encouraging consumers to make fast decisions in the internet space can impact the legality of drip pricing, as limited time to purchase may intensify the process and make consumers more likely to fall prey to false headline prices—and pay the dripped amount anyway.

Ticketmaster case



Billing Address

FIRST NAME *

LAST NAME *

ADDRESS *

UNIT # (OPTIONAL)

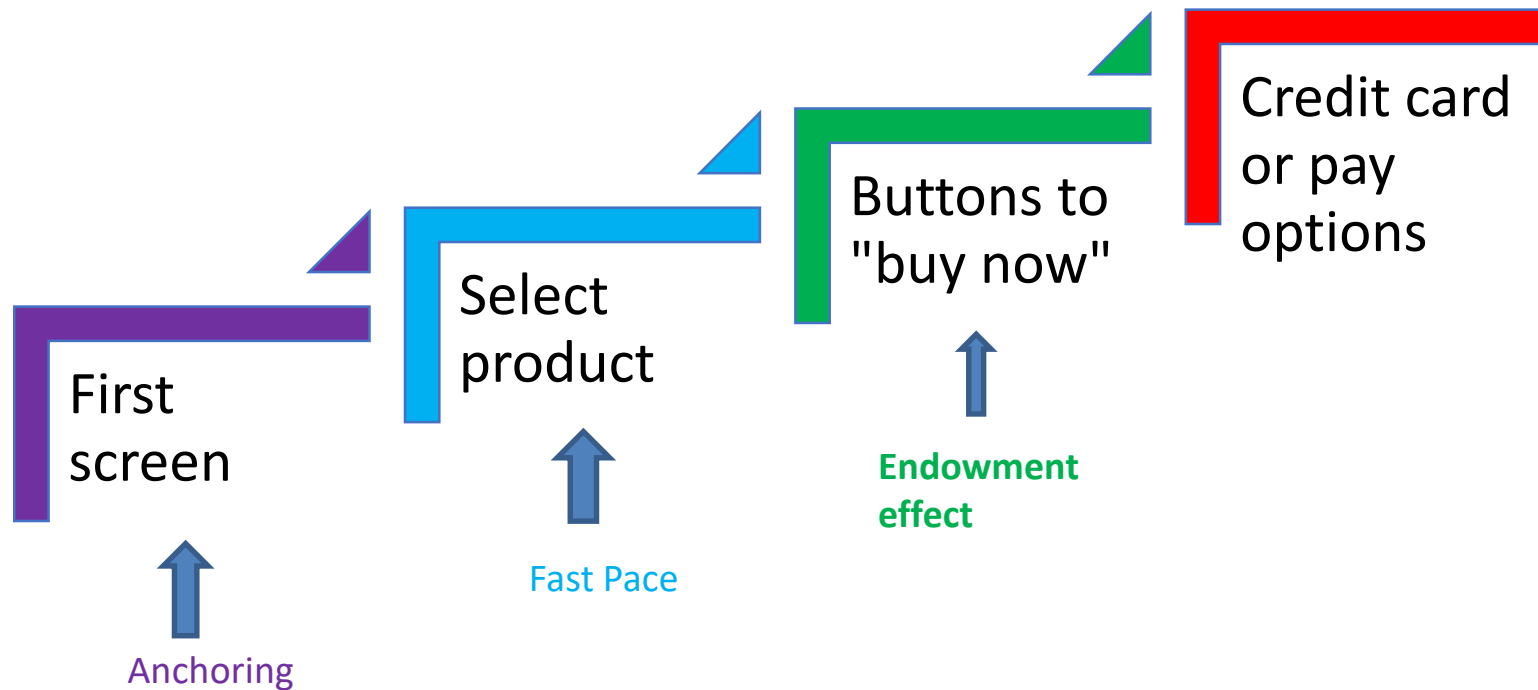
ADDRESS LINE 2 (OPTIONAL)

CITY *

Time left to
complete page

09:36

Behavioural Psychological Literature

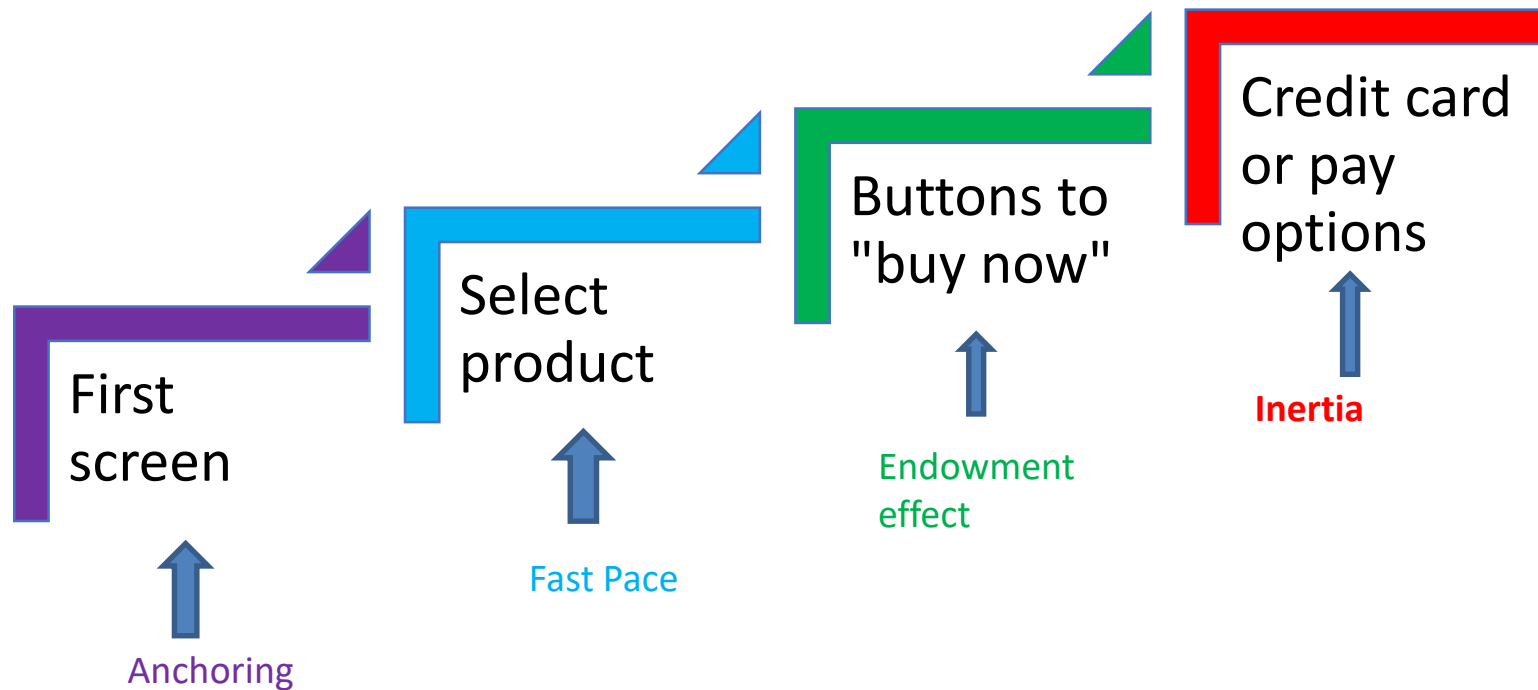


Endowment effect

- **(iii) Endowment effect:** A survey of psychological studies show that background settings that people encounter may impact the decisions they make. Interactive and fast-paced internet processes are often designed to create psychological effects such as an endowment effect which subconsciously impacts consumer choice. The endowment effect is when consumers perceive it to be costly to exit a transaction and search for alternative options.

- **(iii) Endowment effect**: The opening phases of the transaction may have taken up the buyer's limited time and completing the transaction, even on less-desirable dripped terms, may emerge as the consumer's perceived best option in a fast paced digital sphere. Since going back to search for alternatives may be costly, this can lead to a lock-in of consumers. Under drip pricing, consumers may therefore underestimate the total price and spend little time searching for alternative options.

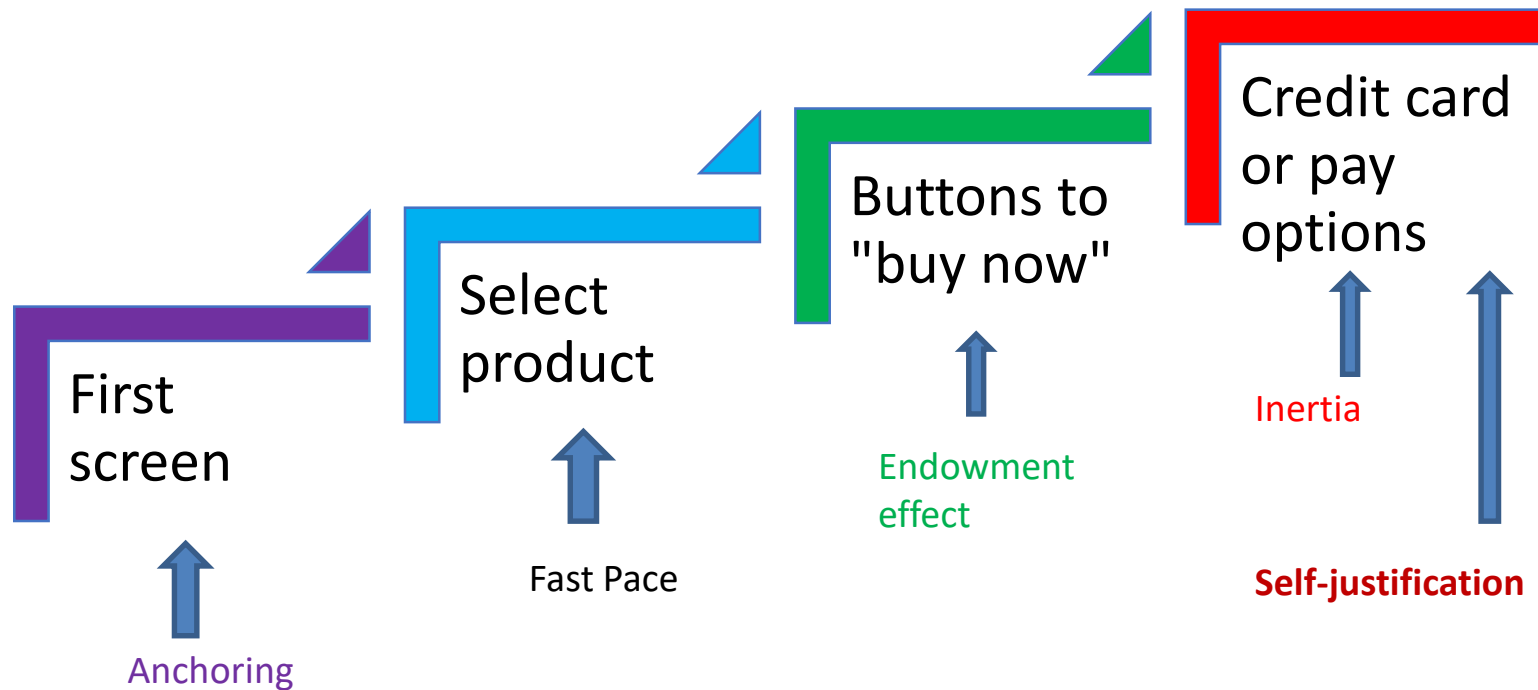
Behavioural Psychological Literature



Inertia:

- **(iv) Inertia:** Inertia (consumers' belief that switching takes too much time) may also help explain the stickiness of consumers' initial selections when exposed to drip pricing. Inertia is an example of a behaviour that is not rational but rather a reflection of the modern and hectic pace of life. Consumers do not feel as if they have the energy or time to spend fixing an issue that leads to them paying more.

Behavioural Psychological Literature

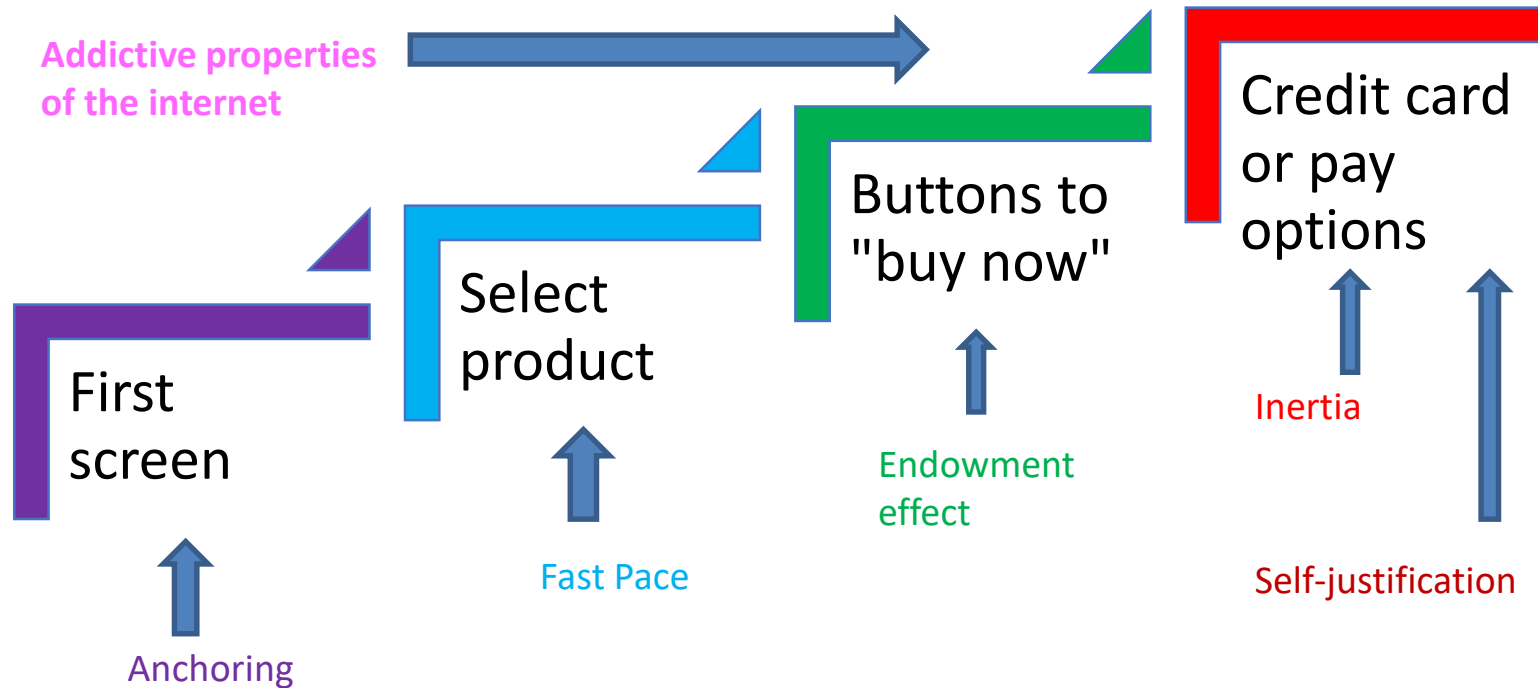


Self-Justification:

- **(v) Self-Justification:** The concept of self-justification requires some elaboration as to why consumers exposed to drip pricing stick with their initial selection, even though it is more expensive and they are relatively dissatisfied with it. Santana et al. found that participants who learned they initially made a mistake by choosing a more expensive option because of drip pricing indicated they were more satisfied with their choice than were those who evaluated the choice from an outsider's perspective. In other words, consumers subjected to drip pricing convince themselves that the final price is satisfactory. In this way, consumers protect their self-image as smart shoppers.

- **(vii) The addictive properties of an internet process that is fun to use:** As set out above, the digital platform takes the consumer through a process starting with the first internet screen and then working through screens which display the range of goods and utilizing interactive buttons that add fun to the process. The fun aspect of the internet should not be underestimated. This entertainment aspect of interactive digital forums is one of the reasons it is such a psychologically addictive process.

Behavioural Psychological Literature



Behavioural Psychological Literature

According to the Variable Ratio Reinforcement Schedule (VRRS) theory, the reason internet activity is potentially addictive is because it provides multiple layers of rewards. Constant surfing of the internet leads to multiple rewards that are unpredictable. Each sign gives a user unpredictable results that keep them entertained and coming back for more. Even simple symbols like a **green checkmark** or a thumbs up can target a consumer's affect heuristic to make them feel good about their purchase.

Behavioural Psychological Literature

- Through symbols and the entertaining interactivity of the transaction, consumers may not even feel “betrayed” after being dripped with additional charges and resulting in spending more money than they would have otherwise spent.
- The “fun” aspect of the internet is largely built upon these multiple layers of rewards and entertainment. These layers should not be eliminated—after all, to do so would be to severely restrict the best parts of the internet. A balance must be struck between maintaining the fun interactive internet experience and protecting consumers depending on the context and industry.

Drip Pricing in the New Digital Economy

The Ticketmaster logo is displayed in white text on a blue rectangular background. The word "ticketmaster" is in a lowercase, sans-serif font, with a registered trademark symbol (®) to its upper right.

ticketmaster®

- In the first Canadian case on digital advertising and pricing, the Competition Bureau has settled with Ticketmaster via a Registered Consent Agreement (RCA) for an administrative monetary penalty of \$4 million and costs of \$500,000.
- As part of the RCA, Ticketmaster has also committed to establishing and adhering to an internal corporate compliance program.
- See: <https://decisions.ct-tc.gc.ca/ct-tc/cdo/en/item/465258/index.do>

Revised platform

Toronto Raptors vs. Orlando Magic Mon • Oct 28 • 7:30 PM



- **Sec 103, Row D** Verified Resale Ticket
 - CA \$220.82 ea
 - (CA \$181.00 + CA \$39.82 fees, including taxes)
- **Sec 309, Row 14** Verified Resale Ticket
 - CA \$220.82 ea
 - (CA \$181.00 + CA \$39.82 fees, including taxes)
- **Sec 121, Row 23** Verified Resale Ticket
 - CA \$223.26 ea
 - (CA \$183.00 + CA \$40.26 fees, including taxes)
- **Sec 113, Row 4** Verified Resale Ticket
 - CA \$223.26 ea
 - (CA \$183.00 + CA \$40.26 fees, including taxes)

ticketmaster®



Cineplex case: Commissioner's argument

1. In June 2022, Cineplex started drip pricing by adding a fixed mandatory Online Booking Fee (the "Fee") to tickets¹ it sold on its Website and or in its App; a deceptive marking practice that has earned it approximately \$40 million in revenue to date. Cineplex began drip pricing the same month the law was changed that deems drip pricing to be false or misleading pursuant to subsection 74.01(1.1) of the *Competition Act*.
2. The evidence heard by the Tribunal demonstrates all of the elements necessary to find that Cineplex has engaged, and continues to engage, in drip pricing contrary to subparagraph 74.01(1)(a) the Act.
3. Cineplex makes representations about the price of tickets that are not attainable online due to the Fee - a fixed obligatory charge. The Act deems Cineplex's conduct to be false or misleading pursuant to subsection 74.01(1.1).

Cineplex case: Cineplex response

18. Instantaneously, upon selecting the tickets that the consumer wishes to purchase online, the price of the ticket, including the online booking fee (if the online booking fee applies), is displayed prominently and immediately to the left of the "Proceed" button. The consumer cannot proceed to the subsequent page without making a ticket selection. Making the ticket selection causes the online price, which includes the price of the online booking fee (if the online booking fee applies), to be displayed immediately to the left of the "Proceed" button and before the "Proceed" button is operative.⁸

FTC Proposes Rule to Ban Junk Fees

Proposed rule would prohibit hidden and falsely advertised fees:

October 11, 2023

- The Federal Trade Commission today announced a new [proposed rule](#) to prohibit junk fees, which are hidden and bogus fees that can harm consumers and undercut honest businesses. The FTC has estimated that these fees can cost consumers tens of billions of dollars per year in unexpected costs.

<https://www.ftc.gov/news-events/news/press-releases/2023/10/ftc-proposes-rule-ban-junk-fees#top>

FTC Proposes Rule to Ban Junk Fees

Proposed rule would prohibit hidden and falsely advertised fees:

October 11, 2023

- “All too often, Americans are plagued with unexpected and unnecessary fees they can’t escape. These junk fees now cost Americans tens of billions of dollars per year—money that corporations are extracting from working families just because they can,” said FTC Chair Lina M. Khan. “By hiding the total price, these junk fees make it harder for consumers to shop for the best product or service and punish businesses who are honest upfront. The FTC’s proposed rule to ban junk fees will save people money and time, and make our markets more fair and competitive.”

<https://www.ftc.gov/news-events/news/press-releases/2023/10/ftc-proposes-rule-ban-junk-fees#top>

FTC Proposes Rule to Ban Junk Fees

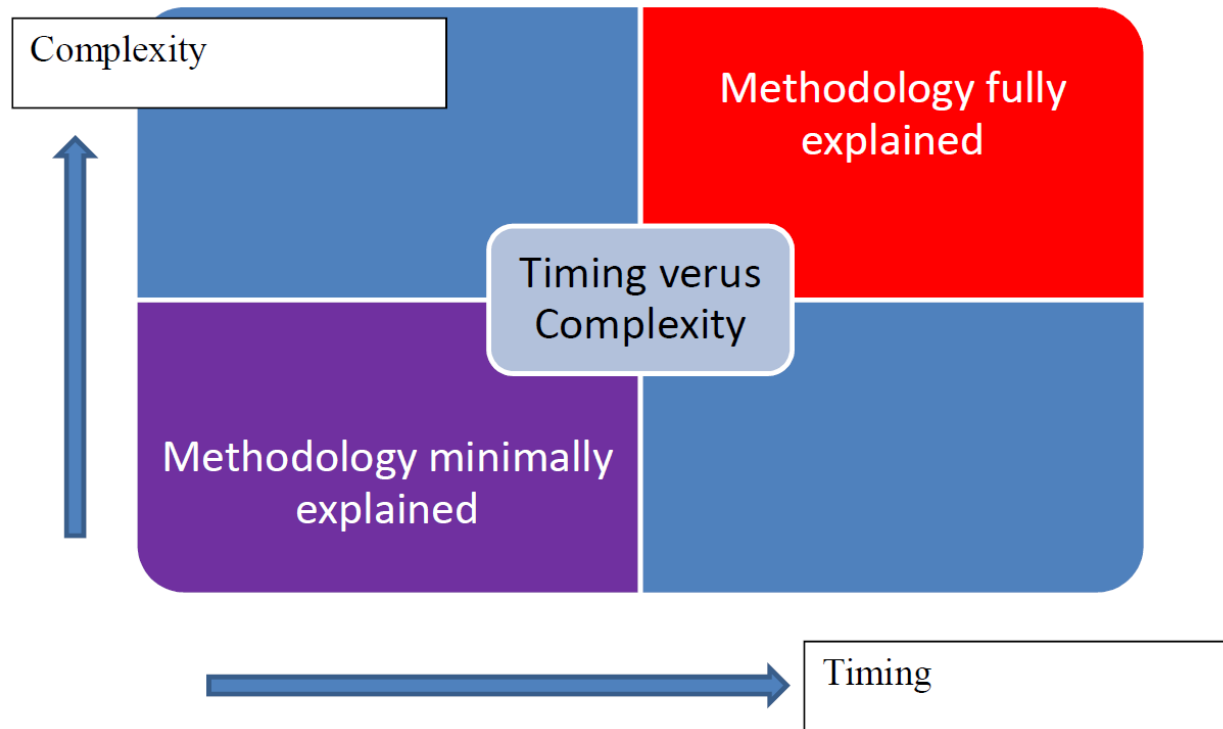
Proposed rule would prohibit hidden and falsely advertised fees:

October 11, 2023

- As the public comments made clear, consumers are fed up with hidden fees for everything from booking hotels and resort fees to buying concert tickets online, renting an apartment, and paying utility bills. Many consumers said that sellers often do not advertise the total amount they will have to pay, and disclose fees only after they are well into completing the transaction. They also said that sellers often misrepresent or do not adequately disclose the nature or purpose of certain fees, leaving consumers wondering what they are paying for or if they are getting anything at all for the fee charged.

<https://www.ftc.gov/news-events/news/press-releases/2023/10/ftc-proposes-rule-ban-junk-fees#top>

MATRIX ANALYSIS OF COMPLEXITY VERSUS TIME



Profiting from Risk Management and Compliance

Todd L. Archibald

Kenneth E. Jull

Chapter 17. Competition Act Offences, Violations and Efficiency

VIII. Suggested Principles for Marketing in the Digital World

- ***Principle one:*** *When a product or service being digitally advertised is transparent, in the sense of being relatively simple to apply, **the first screen that a consumer sees should display all-inclusive information** (such as pricing).*

Suggested Principles for Marketing in the Digital World

- ***Principle Two:*** *Where the product or service being advertised has complex options, the first screen that a consumer sees **should contain a description of the methodology** that will be applied throughout the transaction in accordance with a matrix of timing and complexity.*
- Example of building a car online, the first screen should explain that pricing will vary depending on subsequent choices of engine type and model ranging from sport to luxury.

Suggested Principles for Marketing in the Digital World

- ***Principle Three:*** *The interactive digital process should facilitate **consumer reversal of choices** to the extent that technology will permit*
- A transparent and interactive process should contain accessible “**buttons**” and **instructions that make it easier for the consumer to navigate back** and reverse decisions in a quick fashion, to the extent that technology will permit.

Suggested Principles for Marketing in the Digital World

- ***Principle Four:*** *In the case where there is a finding that a digital process constitutes a violation of competition law, an aggravating factor in the assessment of penalty should be whether disadvantaged consumers are impacted in their ability to satisfy basic needs.*