



Ottawa, July 24, 2024 – The Federal Court rejects an application in file T-1357-24:

IN THE MATTER OF COMMISSIONER OF COMPETITION

v.

AMAZON.COM.CA, ULC and AMZN MOBILE LLC

Summary: On July 22, 2024, Chief Justice Paul Crampton rejected an *ex parte* application by the Commissioner of Competition (the “Commissioner”) for an order requiring Amazon.com.ca, ULC and AMZN Mobile LLC (collectively, “Amazon”) to provide 36 data fields in respect of potentially hundreds of millions of products, or more. The draft order would have required Amazon to provide weekly transaction data for each of those products, dating back to January 1, 2023.

Background: On June 7, 2024, the Court heard an initial *ex parte* application by the Commissioner for an order under section 11 of the *Competition Act*, RSC 1985, c C-34 (the “Act”). At the end of the hearing, the Court partially granted the requested order and adjourned the application as it related to the same data requirement described above. The Commissioner requested the adjournment after Chief Justice Crampton expressed concerns about the reasonableness of the scope of the data requirement.

Those concerns were based on a letter from Amazon’s counsel, included in the Commissioner’s application record, which stated that the data requirement would capture “billions of products,” and was therefore “exceedingly broad, excessive and unnecessarily burdensome.”

The Chief Justice suggested that the Commissioner go back to Amazon to obtain additional information regarding the number of products that would be captured by the data request. The Chief Justice also pressed the Commissioner’s counsel regarding why the Commissioner needed extensive information on such a large number of products to assess “whether Amazon has a business interest in turning a blind eye to Fake Reviews” on its website, as described in the Commissioner’s written submissions. Pending clarification of these matters, the Chief Justice declined to grant the Commissioner’s request and left the door open for him to return at a later date.

On July 15, 2024, the Commissioner filed a Supplementary Application Record in relation to the data request in question. The hearing of that supplementary application took place on July 22, 2024.

In the meantime, the Commissioner filed a further letter from Amazon’s counsel, clarifying that the disputed data request would capture “a significant subset of” the estimated 4,150,000 billion products available in the Amazon.ca store. That letter also noted that the Commissioner had not gone back to Amazon to seek additional information, as described above.

In written and oral submissions, the Commissioner’s counsel asserted that the Court’s discretion to dismiss an application under section 11 of the Act is limited to “truly exceptional circumstances, such as an abuse of process.” He added: “[t]he proportionality principle does not apply in the context of” such applications.

Federal Court



Cour fédérale

The Commissioner’s counsel also maintained that, in determining whether to grant the supplementary application, the Court should not give any consideration to the information from Amazon that was included in either the initial Application Record or in the Supplementary Application Record.

Chief Justice Crampton rejected the Commissioner’s narrow interpretation of the Court’s oversight role, after expressing concerns that it would reduce the Court’s role to “rubber stamping” the Commissioner’s applications, unless there is evidence of an abuse of process on the part of the Commissioner. Chief Justice Crampton also rejected the Commissioner’s positions regarding the proportionality principle and the relevance of the information provided by Amazon.

After noting that it remained unclear whether the data request would capture in excess of a billion products, or even hundreds of millions or tens of millions of products, Chief Justice Crampton dismissed the Commissioner’s supplementary application.

A transcript of the Court’s hearing is available on the [News Bulletins](#) page of the Federal Court website.