

Executive Summary

This report examines the practice of suppliers of consumer products and services, segregating part of their costs as a separate charge, and adding the same to the final price paid by consumers. These charges include such “system access fees”, prevalent in the wireless telephony market, “fuel surcharges” in airline transportation and “account opening fees” in financial services. The fundamental nature of the charges reviewed in this report is that they are subjective, and not based on cost accounting principles, part of the business expense of the supplier, mandatory, and often have the veneer of a government authorized or directed charge.

The report focuses on three major industries- telecommunications, airlines and financial services-setting out the prevalence and flashpoint of this kind of billing in consumer sales transactions. Where available, the existence and treatment of extra charges in other jurisdictions including the United States, the European Union and the United Kingdom is also reviewed and discussed. The report notes that the practice seems to be continuing and spreading to more industries such as car rentals, because it enables the supplier to attract customers by featuring a lower price that does not include the separate extra charge.

The report concludes that the practice of adding additional charges to a customer bill for items that are intended to defray the supplier’s cost in delivering the product or service to the customer causes distortions in the competitive market that usually work to the detriment of the consumer. While some industry adherents to the practice of using surcharges defend it as it discloses to the consumer what must be expended to produce the product and service, the value of this information

is largely insignificant in comparison to the problems the practice may cause.

These include the following results:

1. It usually means that the overall advertised cost of the product and service is increased by the amount of the surcharge or extra charge. Where that charge is simply a subjective estimate of one aspect of the supplier's cost of doing business, it misrepresents the price of the product or service to the consumer;
2. It prevents meaningful comparison shopping by consumers because the advertised price of a supplier may or may not reflect accurately the price/value equation for the purpose of making a choice;
3. When one supplier in a product or service market engages in the practice, it encourages others to follow to be able to advertise a lower matching price;
4. It discourages comparison shopping by presenting these fees and charges as a pass through leading customers to believe they are unavoidable;
5. It presents the extra fees and charges as though they were mandated by the government;
6. The fees and charges may not be disclosed until immediately before the transaction has been concluded between the consumer and the supplier. It may rely on the "thrill of the deal" and the effort that the consumer has made to that point to secure the transaction to diminish informed consent;
7. It discourages efficiency and productivity by allowing recovery of costs in an uncompetitive fashion.

The report discusses potential remedies that may currently be available under the federal *Competition Act* and the provincial Consumer Protection Acts chiefly associated with the aspects of misrepresentation of the total price and the nature of the extra charge itself. Because the individual context of the sales transactions in

question must be examined as part of any proceeding to rein in the practice under existing legislation, there is some uncertainty of result that likely allowed the practice of extra charges to flourish. The report advises that the preferable solution for consumers would be an outright ban on the practice. Failing the same, the report recommends provisions in the relevant federal and provincial legislation that would mandate the advertising or representing of an all-in price including the extra charge whenever advertising or representation of the product or service is done. As well, using the precedent of legislation adopted or introduced in the U.K. and the United States, the approach of establishing transparency and competition-enhancing objectives governing consumer transactions in legislation, and empowering relevant regulators to disallow sales practices, not in compliance with those objectives should also be considered if an overall ban is not implemented.