

Competition Tribunal



Tribunal de la Concurrence

CT - 99 / 2

IN THE MATTER of the *Competition Act*, R.S.C. 1985, c. C-34;

AND IN THE MATTER of an inquiry pursuant to subsection 10(1)(b)(ii) of the *Competition Act* relating to the marketing practices of Universal Payphone Systems Inc.;

AND IN THE MATTER of an application by the Commissioner of Competition for a temporary order pursuant to section 74.11 of the *Competition Act*.

B E T W E E N:

The Commissioner of Competition

Applicant

- and -

Universal Payphone Systems Inc.

Respondent



**ORDER REGARDING FILING OF THE SUPPLEMENTARY AFFIDAVIT
ON BEHALF OF THE APPLICANT**

Date of Hearing:

September 22, 1999

Presiding Member:

The Honourable Mr. Justice Allan Lutfy

Counsel for the Applicant:

The Commissioner of Competition

John L. Syme
Manon Lapointe

Counsel for the Respondent:

Universal Payphone Systems Inc.

Richard P. Bowles

COMPETITION TRIBUNAL

**ORDER REGARDING FILING OF THE SUPPLEMENTARY AFFIDAVIT
ON BEHALF OF THE APPLICANT**

The Commissioner of Competition

v.

Universal Payphone Systems Inc.

UPON the applicant's oral motion for leave to file a supplementary affidavit;

UPON the applicant's acknowledgment that he was aware no later than Monday, September 20, 1999 that the respondent would be filing materials later that day in accordance with the Notice of Hearing issued by the Acting Chairman on September 16, 1999;

UPON the applicant's acknowledgment that the preparation of the supplementary affidavit was underway prior to the commencement of the cross-examination of the respondent's deponent at 3:30 p.m. on Tuesday, September 21, 1999, in Toronto, Ontario, and that this information was not disclosed to the respondent;

UPON the applicant's failure to seek relief from this Tribunal with respect to the filing of the supplementary affidavit prior to the commencement of the cross-examination of the respondent's affidavit;

UPON Rule 72 of the *Competition Tribunal Rules* and Rule 84(2) of the *Federal Court Rules, 1998*;

UPON the representation of applicant's counsel that only one of the nine substantive paragraphs of the supplementary affidavit contains new information which could not have been obtained prior to the filing of the application for the temporary order;

UPON the urgent nature of the remedy sought by the applicant and the public interest and the parties' interest in having the matter dealt with expeditiously;

UPON the Tribunal's satisfaction, in the exercise of its discretion, that the introduction of the supplementary affidavit, subsequent to yesterday's cross-examination of the respondent's deponent and at the outset of the hearing of the application for a temporary order scheduled for today, is not in the interests of justice and may cause prejudice to the respondent;

THE TRIBUNAL ORDERS THAT:

Leave to file the supplementary affidavit on behalf of the applicant is denied.

DATED at Ottawa, this 22nd day of September, 1999.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) Allan Lutfy

Allan Lutfy