

THE COMPETITION TRIBUNAL

IN THE MATTER OF an application by the Director of Investigation and Research under sections 79 and 105 of the *Competition Act*, R.S.C. 1985, c. C-34;

AND IN THE MATTER OF certain practices of the Publishers of Yellow Pages Telephone Directories in Canada;

AND IN THE MATTER OF a Consent Order granted by the Competition Tribunal dated November 18, 1994;

AND IN THE MATTER OF an application by TELUS Advertising Services Inc. and TELUS Advertising Services (Edmonton) Inc., under sections 105 and 106(b) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended, to vary the Consent Order granted by the Competition Tribunal dated November 18, 1994.

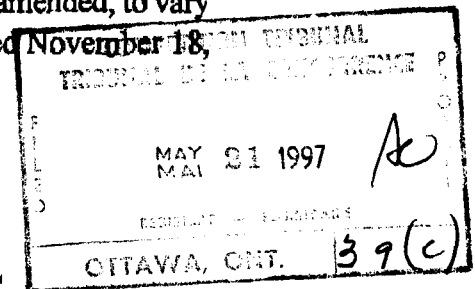
BETWEEN:

**TELUS ADVERTISING SERVICES INC.
TELUS ADVERTISING SERVICES (EDMONTON) INC.**

Applicants

**THE DIRECTOR OF INVESTIGATION AND RESEARCH,
ANGLO CANADIAN TELEPHONE COMPANY,
DIRECTWEST PUBLISHERS LTD.,
THE MANITOBA TELEPHONE SYSTEM
MT&T HOLDINGS INCORPORATED,
TELE-DIRECT (PUBLICATIONS) INC., and
TELE-DIRECT (SERVICES) INC.**

Respondents



CONSENT ORDER IMPACT STATEMENT

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I. INTRODUCTION

1. This Statement is filed by the Applicants TELUS Advertising Services Inc. ("TAS") and TELUS Advertising Services Edmonton Inc. ("TASE") pursuant to section 77 of the *Competition Tribunal Rules*. It provides an explanation of the Draft Consent Order, the circumstances giving rise to the Draft Consent Order, the relief to be obtained if the order is made, and the anticipated effect on competition of the Draft Consent Order. The Draft Consent Order submitted by agreement of the parties to this proceeding is attached as Schedule "A" to the Consent Form executed by the parties filed herewith.

2. The Applicants TAS and TASE are both wholly owned subsidiaries of TELUS Corporation ("TELUS"). TASE carries on the telephone directory publishing business in the City of Edmonton, Alberta. TAS carries on the telephone directory publishing business in the balance of the Province of Alberta.

3. TAS was known as AGT Directory Limited ("AGTD") prior to its name change effective October 21, 1996. Prior to March 10, 1995, the business of TASE was conducted by Edmonton Telephones Corporation ("ETC").

4. AGTD and ETC were amongst the Respondents to the Consent Order granted by the Competition Tribunal on November 18, 1994 ("CANYPs Consent Order"). The CANYPs Consent Order was directed at the market for the sale of national advertising into telephone directories in Canada. It was intended to regulate certain commercial conduct and practices associated with the various Yellow Pages directory publishing companies in Canada and placed certain prohibitions on the Respondent publishers with respect to the selling of national advertising in Yellow Pages directories, and the commission structures and practices associated therewith.

5. The CANYPS Consent Order resulted from several years of consultations and negotiations with the Competition Bureau. Throughout the period of these discussions, and at the time the CANYPS Consent Order was granted, AGTD and ETC were separate, unaffiliated publishers of Yellow Pages directories in the Province of Alberta.

6. On October 28, 1994, Edmonton City Council approved a preliminary prospectus for an initial public offering for the shares of the parent of ETC. On November 18, 1994, Edmonton City Council agreed to accept TELUS' offer to purchase the business of ETC. The Amended Share Purchase Agreement dated November 28, 1994 provided that the transaction was subject to a number of closing conditions, including regulatory approval.

7. On February 28, 1995, the Director of Investigation and Research advised TELUS and ETC that he did not intend to challenge the acquisition.

8. On March 10, 1995 TELUS, the parent company of TAS, acquired the business carried on by ETC, including its Yellow Pages directory publishing business. Following a corporate reorganization and subsequent name change, that business is now carried on by TASE. The result of the TELUS acquisition of ETC and the subsequent reorganization, was that both Yellow Pages directory companies in Alberta came under the common ownership of TELUS.

9. Common ownership of the Yellow Pages businesses provided opportunity for TAS and TASE to engage, as sister companies, in a limited degree of business coordination and the development of associated efficiencies. However, to the extent that both parties remained subject to the terms of the CANYPS Consent Order, they were prohibited from developing common efficiencies and strategies in the area of national advertising. In particular, the CANYPS Consent Order terms prevent the Applicants from coordinating the following activities which are the subject of the Proposed Variation:

3. With regard to the sale of national advertising in Yellow Pages telephone directories, each respondent shall be prohibited from:

...

(b) maintaining exclusive selling arrangements with any other respondent;

...

(d) discriminating between selling companies acting in their capacity as selling companies, except where the discrimination is based upon reasonable and legitimate business concerns of a non-exclusionary nature;

...

(f) agreeing with any other respondent on the criteria for determining which national advertising accounts are commissionable;

(g) agreeing with any other respondent on the rate of commission payable, except during a transition period ending June 30, 1995 during which a minimum commission of 25% will be available to selling companies for national advertising which meets the commissionability criteria established by each respondent;

II. TEST FOR A CONSENT ORDER VARYING A PRIOR ORDER OF THE COMPETITION TRIBUNAL

10. This application is brought pursuant to section 106(b) of the *Competition Act* which states:

106. Where, on application by the Director or a person against whom an order has been made under this Part, the Tribunal finds that

...

(b) the Director and the person against whom an order has been made have consented to an alternative order,

the Tribunal may rescind or vary the order accordingly.

11. Section 105 of the *Competition Act* provides:

105. Where an application is made to the Tribunal under this Part for an order and the Director and the person in respect of whom the order is sought agree on the terms of the order, the Tribunal may make the order on those terms without hearing such evidence as would ordinarily be placed before the Competition Tribunal had the application been contested or further contested. (emphasis added)

Section 105 expressly contemplates that a detailed evidentiary basis is not a prerequisite to the issuance of an order.

12. In *Director of Investigation and Research v. Asea Brown Boveri Inc.* (an unreported decision of the Competition Tribunal delivered on December 18, 1996), the Competition Tribunal stated that it would apply the same test to a variation of a consent order that it applied when considering a draft consent order. In the merger context, this was described by the Competition Tribunal in the following fashion:

The Tribunal adopts the standard of review set out in the memorandum of fact and law of the Director. The Tribunal will therefore apply the same test to a variation of a consent order as it applies when considering a draft consent order:

That test is whether the merger, as conditioned by the terms of the consent order, results in a situation where the substantial lessening of competition, which it is presumed will arise from the merger, has, in all likelihood, been eliminated. [Director of Investigation and Research v. Air Canada (7 July 1989), CT-88/1, Reasons for Consent Order Dated July 7, 1989 at 66 (Competition Tribunal).]

In the case of a proposed variation, it is the consent order as proposed to be varied that the Tribunal will evaluate against this standard.

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13. In *Director of Investigation and Research v. Bank of Montreal et al* (1996), 68 C.P.R. (3d) 527 (Competition Tribunal) at 537, the Competition Tribunal referred to the test to be applied when assessing a draft consent order in a merger case and went on to define the analogous test that would be applied in assessing a consent order in an abuse of dominance case:

The basic test for assessing a draft consent order in a merger case is set out in *Canada (Director of Investigation and Research) v. Air Canada* (1989), 27 C.P.R. (3d) 476 at 513-14, 44 B.L.R. 154, [1989] C.C.T.D. No. 29 (QL) (Comp. Competition Tribunal.). The Tribunal stated:

The tribunal accepts the Director's argument that the role of the tribunal is not to ask whether the consent order is the optimum solution to the anticompetitive effects which it is assumed would arise as a result of the merger. The tribunal agrees that its role is to determine whether the consent order meets a minimum test. The test is whether the merger, as conditioned by the terms of the consent order, results in a situation where the substantial lessening of competition, which it is presumed will arise from the merger, has, in all likelihood, been eliminated.

In an abuse of dominance case, the analogous test for assessing the proposed consent order is whether the consent order will in all likelihood eliminate the substantial lessening of competition which is presumed to result from the practice of anti-competitive acts identified in the application.

14. In the subject application, the appropriate test would be a combination of the two tests outlined above, that is, whether the CANYPS Consent Order granted by the Competition Tribunal on November 18, 1994, as modified by the proposed variation, would in all likelihood continue to eliminate the substantial lessening of competition which is presumed to result from the conduct which was the subject of the original application.

15. For the reasons outlined below, the parties submit that this test would be satisfied as the proposed variation is limited in scope and the public interest served by the CANYPS

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Consent Order with respect to the market for the sale of national advertising into telephone directories in Canada continues to be served by the CANYPS Consent Order as modified by the proposed variation.

III. DESCRIPTION OF PROPOSED VARIATION

16. The proposed variation seeks merely to avoid the application of certain terms of the Consent Order to arrangements and dealings between TAS and TASE only. The terms of the Consent Order in question are sub-paragraphs 3(b), (d), (f) and (g) reproduced above.

17. Removing the application of subparagraphs 3(b) and 3(d) of the CANYPS Consent Order to dealings between TAS and TASE, would permit greater system-to-system access and integration with TAS and TASE, without requiring that similar access be provided to third parties to confidential business information held in those systems. It would enable the Applicants to develop the ability to place advertising directly and efficiently in one another's directories. This will permit more efficient internal systems to be created for the placement of advertisements.

18. Removing the application of sub-paragraphs 3(f) and (g) to dealings between TAS and TASE would enable them to coordinate and integrate their approach to commission criteria and rates for national advertising in their directories. This would permit TAS and TASE to develop a uniform approach to such matters throughout Alberta in their dealings with the CMR community throughout North America. CMRs (Certified Marketing Representatives) are members of YPPA (Yellow Pages Publishers Association) who act as agents and engage in the business of placing national advertising into Yellow Pages directories.

19. The proposed variation is narrow in scope and leaves the essence of the Consent Order intact. The proposed variation would permit TAS and TASE to coordinate the national

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advertising aspect of their businesses, consistent with the other areas of business which are unaffected by the CANYPS Consent Order.

20. The Applicants will, in their dealings with all other persons, continue to be bound by the prohibitions which are waived through the proposed amendments only with dealings *inter se*. The proposed variation will not affect the relationship of the Applicants with any of the other Respondent publishers. The other Respondent publishers will continue to be bound by all aspects of the CANYPS Consent Order.

IV. ANTICIPATED COMPETITIVE IMPACT OF THE PROPOSED VARIATION

21. The proposed variation has been designed to achieve the following objectives:

- (a) maintain the fundamental purposes of the CANYPS Consent Order;
- (b) allow TAS and TASE to establish common commission rates and criteria for national advertising;
- (c) reduce the confusion and dissatisfaction existing in the CMR community in North America in respect to TAS and TASE;
- (d) permit the development of an integrated approach by TAS and TASE in dealing with the CMR community in national advertising to reduce the duplication of costs and effort and improve efficiency; and
- (e) place TAS and TASE, on a combined basis, on a similar footing as the other integrated Canadian directory companies, which are permitted to establish

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common commission rates and criteria throughout their respective operating territories.

(a) Essence of CANYPS Consent Order Unchanged

22. The narrow focus of the proposed variation will maintain the fundamental objective of the CANYPS Consent Order. The proposed variation affects only TAS and TASE which, collectively, represent approximately 10% of the market for national Yellow Pages advertising. (For the purposes of this calculation, transactions between TAS and TASE were not treated as national advertising.) Relations among, and the terms of the Order respecting the other Respondents remain unchanged, as do the terms of the Order as between the Applicants and the other Respondents.

(b) Permission for Common Rates and Criteria

23. The proposed variation would remove the impediments which the CANYPS Consent Order places upon TAS and TASE to coordinate and institute common commission rates and criteria for national advertising in Alberta directories. This variation would enable the companies to operate as affiliated entities and to develop an integrated and consistent approach in these areas, particularly in their relationships with the CMRs.

(c) Reduce Confusion in CMR Community

24. The existing situation creates confusion and dissatisfaction in the CMR Community which places national advertising in the Yellow Pages directories. Of the 178 North American CMRs, there are 25 CMR offices in Canada, the majority of which are located in

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Ontario and Quebec. These CMR representatives often do not disaggregate the Alberta market into its component parts. CMRs have difficulty understanding why two companies under the same ownership, and now bearing a common name, maintain different national account definitions and distinct commission rates.

25. The CMRs placing national advertising with TAS and TASE are further inconvenienced by the need to interact with two points of contact in Alberta, two systems of customer service, business and incentive developments and commission criteria, in order to place advertising in the Alberta market. This duplication results in increased efforts and resources to be devoted by CMRs to the Alberta market, reducing the efficiency of the CMR community and the attraction of the Alberta market for national advertising. Relief under the proposed variation will allow TAS and TASE to cooperate in building productive relationships with the CMR community in a manner which reduces ambiguity and confusion, and which stimulates advertising placement to the benefit of advertisers, the CMRs and TAS and TASE.

(d) Developing Integrated Approach to CMR Community

26. Relief under the proposed variation will allow TAS and TASE to develop an integrated approach to the CMR community which will create efficiencies for all parties, and stimulate advertising. The CMR community, which is located mainly in areas outside Alberta and closer to the major national advertising accounts, is critical to TAS and TASE, which are otherwise unable to effectively tap the concentrated market for national advertising. To generate the business from such accounts, TAS and TASE require an efficient and mutually beneficial relationship with the CMR community.

27. The proposed variation would reduce duplication and increase efficiency in the Yellow Pages business including:

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- i) allowing one uniform system of commission rates and criteria for national advertising;
- ii) enabling TAS and TASE to provide one point of contact for CMRs and national accounts placing advertising in Alberta, thereby reducing their administrative burden and transaction costs;
- iii) permitting development of standardized practices and a uniform approach to incentive plan development, product management and customer service, to enhance the relationship with the CMR community and stimulate national advertising;
- iv) permitting the rational integration within TAS and TASE of national advertising and other advertising (not regulated by the Consent Order) as the various functions involved in providing Yellow Pages advertising do not lend themselves to artificial segmentation on the basis of whether advertising qualifies as national advertising, i.e. these activities are best organized, from a business point of view, across all classes of advertising; and
- v) allowing increased efficiencies and cost savings by achieving economies of scale.

(e) Elimination of a Comparative Disadvantage

28. The proposed variation would place TAS and TASE, on a combined basis, on a similar footing with the other integrated Yellow Pages publishers in Canada. Allowing the integration and coordination of their national advertising business will enable TAS and

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TASE to put a united message forward to the CMR community about the Alberta Yellow Pages market, as the other publishers are able to in their respective territories.

29. The Competition Order Variation Impact Assessment Report prepared by Professor Michael J. Trebilcock (Professor of Law and Director of the Law and Economics Programme at the University of Toronto), filed herewith, concludes that the proposed variation of the CANYPS Consent Order would in all likelihood continue to eliminate the substantial lessening of competition which is presumed to result from the conduct which was the subject of the CANYPS Consent Order Application and would permit the realization of various efficiencies from greater integration of the Yellow Pages publishing activities of TAS and TASE pursuant to the common ownership structure that now exists. He does not identify any anti-competitive effects resulting from the proposed variation.

V. ALTERNATIVES TO CONSENT VARIATION

30. The alternative to the proposed variation would be a contested Application for a variation pursuant to s.106(a) of the *Act*. The parties are satisfied that the CANYPS Consent Order, as modified by the proposed variation, would still address the competitive concerns which were the subject of the Director's original application.

VI. CONCLUSION

31. For the reasons considered above, the Applicants request the Competition Tribunal to grant the proposed variation.

All of which is respectfully submitted this 21st day of May, 1997.

BENNETT JONES VERCHERE

Per: 

Solicitors for the Applicants TELUS Advertising Services Inc. and TELUS Advertising Services (Edmonton) Inc.