

THE COMPETITION TRIBUNAL

CT - 94/02

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 AGT Directory Ltd. (now TELUS Advertising Services Inc.) and Edmonton Telephones Corporation (predecessor to ED TEL Directory Inc., now TELUS Advertising Services (Edmonton) Inc.), under section 106(a) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended, to vary the Consent Order granted by the Competition Tribunal dated Nov. 18, 1994.

ACT / GTC
FAXLINE # 0506

BETWEEN:

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

Applicants

and

**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.**

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE
MAR 8 1997
REGISTRAR - REGISTRAIRE
OTTAWA, ONT. #30
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Respondents

**REPLY TO THE MEMORANDUM OF THE
DIRECTOR OF INVESTIGATION AND RESEARCH**

- 1. This document is filed in reply to the Response filed on behalf of the Director of Investigation and Research ("Director") on February 14, 1997.

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2. In reply to paragraph 6 of the Director's Response, the Applicants plead that the condition precedent to the exercise of the Tribunal's power to vary the Consent Order under section 106(a) of the *Competition Act* has been met, that is, there has been a change in the circumstances that led to the making of the original order.
3. As stated in the Response filed on behalf of the Respondents other than the Director, which is accepted and adopted by the Applicants, AGT Directory Limited ("AGTD") and Edmonton Telephones Corporation ("ETC") were separate and independent companies throughout the twenty-one month period while the Consent Order was being negotiated and at the time that it was granted on November 18, 1994. That was the same day that the City of Edmonton accepted the offer by TELUS Corporation ("TELUS") to acquire the business of ETC.
4. The transaction was subject to various conditions including receipt of an Advance Ruling Certificate or a letter from the Director indicating that he did not presently have sufficient grounds to challenge the acquisition under section 92 of the *Competition Act*. Following receipt of such a letter from the Director on February 28, 1994, the transaction closed on March 10, 1994.
5. The TELUS acquisition of the business of ETC involved some corporate restructuring:
 - (a) ETC transferred its assets, rights and liabilities to Ed Tel Inc. ("ETI") in exchange for shares of ETI;
 - (b) The various components of ETC's business were divided amongst three wholly owned subsidiaries of ETI and the directory business was transferred to Ed Tel Directory Inc. ("ETDI"); and

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- (c) TELUS then purchased the shares of ETI from ETC.
6. Effective October 21, 1996, TELUS adopted the TELUS Master Brand throughout Alberta and AGTD and ETDI changed their names to TELUS Advertising Services Inc. ("TAS") and TELUS Advertising Services (Edmonton) Inc. ("TASE"), respectively.
 7. The existence of the possibility on November 18, 1994 that the ownership of ETC might change at a future date does not preclude the acquisition of ETC's business by TELUS from constituting a change in "the circumstances that led to the making of the (Consent Order)" within the meaning of section 106(a) of the *Competition Act*. AGTD and ETC were independent unaffiliated entities at the time that the Consent Order was negotiated and granted. The relationship between AGTD and ETC at that time would not have been conducive to negotiating a consent order that contemplated common ownership of both companies. Today, TAS and TASE are sister companies that are both owned and controlled by TELUS, have a common President and together carry on the directory business throughout the Province of Alberta.
 8. The Applicants deny the allegation in paragraph 5 of the Director's Response that paragraph 2 of the Consent Order anticipated and provided for the eventuality of ETC being acquired by TELUS. Paragraph 2 of the Consent Order merely states:
 2. The provisions of this order shall apply to each of the respondents and to:
 - (a) each division, subsidiary, or other person controlled by it, and each officer, director, employee, agent or other person acting for or on behalf of any of them; and

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(b) each of their successors and assigns, and all other persons in active concert or participation with any of them who shall have received actual notice of this order.

This paragraph of the Consent Order does not address the potential consequences of a change in control of any of the Respondents or preclude any of the Respondents from applying to vary the Consent Order pursuant to section 106 of the *Competition Act*.

9. In reply to paragraph 7 of the Director's Response, the variations to the Consent Order proposed by the Applicants do not, and were not intended to, affect relationships between the Applicants and the other Respondents.

10. In reply to paragraph 7 of the Director's Response, the Applicants plead that in the changed circumstances that now exist, the Consent Order as modified by the variations proposed by the Applicants ("Modified Consent Order") would overcome any presumptive substantial lessening of competition arising out of the conduct which was the subject of the original Consent Order application. The variations proposed by the Applicants are very limited in scope and leave the essence of the Consent Order intact as outlined below:
 - (a) The Consent Order was directed at the market for the sale of national advertising into telephone directories in Canada. It is estimated that TAS and TASE collectively represent less than ten per cent of this market and do not possess market power in this market.

 - (b) The proposed variations would permit TAS and TASE to establish common commission rates and commissionability criteria for national advertising throughout Alberta thereby benefitting the CMR community, TAS and TASE.

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It would also enable TAS and TASE to deal with each other more directly than they would with unrelated third parties with respect to national advertising. They would be able to deal with each other internally as sister companies as regards all aspects of national advertising in the same way they are at liberty to deal with each other as sister companies as regards all other aspects of their directory business.

- (c) TAS and TASE would continue to be bound by all other aspects of the Consent Order to the same extent they are today.
- (d) The other Respondents would continue to be bound by all aspects of the Consent Order.

In the present changed circumstances, the public interest served by the Consent Order with respect to the market for the sale of national advertising into telephone directories in Canada would continue to be satisfied by the Modified Consent Order.

11. In reply to paragraph 11 of the Director's Response, in the changed circumstances that now exist, the Consent Order would not have been made. TAS and TASE, as sister companies, would not have consented and would not have been expected to have consented to such an order. Further, the Consent Order would have been ineffective to achieve its intended purpose as it was not intended to frustrate future transactions or prevent Respondents who became sister companies from coordinating aspects of their Yellow Pages directory business in order to operate in the most efficient manner and provide the best service to their customers.

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12. In reply to paragraph 12 of the Director's Response, it is in the public interest for this Tribunal to exercise its discretion to grant the variations to the Consent Order sought by the Applicants for the following reasons:

- (a) It would enable TAS and TASE to respond to the desire expressed by members of the CMR (Certified Marketing Representative) community for common commission rates and commissionability criteria for national advertising throughout Alberta.
- (b) It would permit TAS and TASE to cooperate more effectively in building relationships with the CMR community in a manner that minimizes ambiguity and confusion and stimulates the placement of national advertising in Alberta telephone directories, thereby benefitting TAS, TASE and the CMR community.
- (c) It would enable TAS and TASE to develop an integrated approach in dealing with the CMR community, reducing duplication with respect to matters such as incentive plan development and implementation thereby generating cost savings.
- (d) It would permit internal systems to be developed that would enable TAS and TASE to process orders more efficiently in each other's telephone directories thereby generating cost savings, for example, by entering them directly into each other's systems.
- (e) The ability to develop standardized and uniform practices throughout Alberta as regards national advertising would enable TAS and TASE to better serve the needs of the CMR community and reduce the administrative burden and

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the costs incurred by CMRs in doing business with TAS and TASE, for example, by developing systems that would enable either TAS or TASE to act as a single point of contact and accept orders from external CMRs for publication within each other's directories throughout Alberta.

- (f) The constraints imposed by the Consent Order upon TAS and TASE with respect to national advertising create practical difficulties in optimizing procedures for coordinating the efficient handling of local advertising, which is not subject to the Consent Order.

DATED at the City of Calgary, in the Province of Alberta this 28th day of February, 1997.

BENNETT JONES VERCHERE

Per:



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Counsel to TELUS Advertising
Services Inc. and TELUS
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Inc.

TO: The Registrar of the Competition Tribunal

AND TO: Mr. William Miller
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