

CT-94/02

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. 1985, c.C-34;

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

RCT / GTC
FAXLINE # 0502

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 Limited (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.1985, c.C-34, as amended, to vary the Consent Order granted by the Competition Tribunal dated November 18, 1994.

COMPETITION TRIBUNAL
FEDERAL INDUSTRIAL CONCURRENCE
PRODUCT
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REGISTRAR REGISTRAIRE
OTTAWA, ONT. #26

BETWEEN:

**AGT DIRECTORY LTD. and
EDMONTON TELEPHONES CORPORATION**

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.**

Respondents

RESPONSE OF THE DIRECTOR OF INVESTIGATION AND RESEARCH

1. This response is filed on behalf of the Director of Investigation and Research (the "Director").

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2. The Director denies the allegations contained in the Notice of Application (the "Application") except as specifically admitted herein.
3. The Director admits the allegations contained in paragraphs 4(a), (c) and (d) of the Application.
4. The Director pleads that because of the lack of particularity of the said Application he is unable to plead thereto in other than a summary way to the issues raised therein until after discovery or further particulars are provided.
5. The Director admits the allegations contained in paragraph 4(b) of the Application but states that at the time of the Consent Order referred to, the acquisition of Edmonton Telephones Corporation and /or its reorganized affiliates by TELUS, the parent of AGT, was contemplated, anticipated and in the process of being realized by TELUS. The Director further states that paragraph 2 of the said Consent Order anticipated and provided for such an eventuality.
6. The Director pleads that there has not been a change in circumstances as alleged by the Applicants and that consequently, the conditions precedent to the exercise of the Tribunal's power to vary the said Consent Order under subsection 106(a) of the *Competition Act* (the "Act") have not been met.
7. If there has been a change in circumstances, which is denied, the amendment sought in paragraph 2 (b) of the Application, based upon the suggested language in proposed paragraph "9" should be limited to dealings between the applicants in order to insure that the sought removal of the subject prohibitions is not effective as between joint relationships of the applicants and the other respondents.
8. The Director denies the allegations contained in paragraphs 4(e) and (f) of the

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Application. The original Consent Order was made as a result of an application brought under section 79 of the Act against, amongst others, the Edmonton Telephones Corporations (the ED TEL group of companies, including ED TEL Directory Inc. now the Applicant TELUS Advertising Services (Edmonton) Inc.) and AGT Directory Limited (now the Applicant TELUS Advertising Services Inc.). The Director submits that the Tribunal's power to vary is circumscribed by the considerations relevant to the provisions of section 79 of the Act as implemented by the Consent Order of November 18, 1994.

9. The Director further pleads that the matters referred to in paragraphs 4(e) and (f) of the Application are irrelevant to the application of s. 106 (a) of the Act to this proceeding. There is no general "efficiency" defence to conduct under section 79 of the Act. Subsection 79 (4) requires that the Impugned "practice" be justified by superior competitive performance. The suggestion that there is an evolving better way to carry on business subsequent to a Consent Order, which is not a *causae causans* of the practice, but allegedly renders the prohibition of the practices redundant, in order to enjoy the private benefits of the post order conduct is not within s. 79 (4). Such conduct is a factor to be taken into account in assessing the substantial lessening of competition, and all consideration of "efficiencies" has been subsumed in that original process.

10. The Director pleads that the Applicants have failed to demonstrate how or why the removal of the prohibitions set out in the Consent Order or the modifications thereto as sought in the Application would no longer be required to prevent the continuation or reinstatement of the substantial lessening of competition ("SLC") by reason of which the said Consent Order was made.

11. The Director pleads that the Consent Order was entered into by the parties thereto because the respondents to that Order were members of a horizontal anti-

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competitive arrangement of national scope regarding the telephone directory business in Canada. The Director pleads that if, which is denied, there has been a change of circumstances as set out in the Application within the meaning of s.106(a) of the Act regarding the Applicants, the said Order would still have been made, and is still effective for its purpose to restrain anti-competitive activity as aforesaid amongst business undertakings acting jointly, in that the said prohibitions continue to be effective against the constituent behaviour underlying the SLC.

12. The Director pleads that the Application does not suggest why the said modifications are in, or are sufficiently in, the public interest such that the Director could consent thereto or that this Tribunal could exercise its discretion to amend the Consent Order in that:

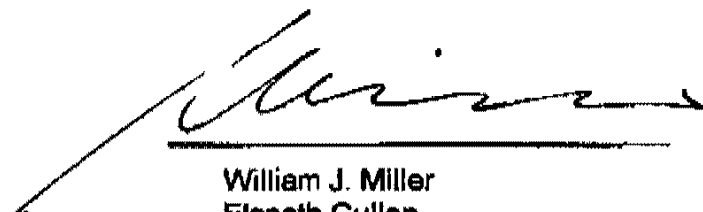
- a) it does not plead any or any sufficient basis why the removal of the prohibitions will open or insure that the relevant markets will or will remain open to competition;
- b) it does not plead any or any sufficient basis why the removal of the prohibitions will not serve to promote the recurrence of the anti-competitive activity upon which the Consent Order was made; and
- c) it does not plead any or any sufficient basis why the removal of the prohibitions will not impose undue and necessary burdens upon any other aspect of the public interest in competition.

13. The Director therefore, under the circumstances, pleads that the Application should be dismissed.

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14. The Director asks that the hearing of this matter be held in the National Capital Region in the English language.

DATED at Hull, Quebec this 14 day of February, 1997.



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Tele-Direct (Publications) Inc., and
Tele-Direct (Services) Inc.**