

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. 1970, c.C-23, as amended;

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

RCT / GTC

FAXLINE # 0503

AND IN THE MATTER OF an application by TELUS Advertising Services Inc. (formerly AGT Directory Limited) and TELUS Advertising Services (Edmonton) Inc. (formerly ED TEL Directory Inc., successor to Edmonton Telephones Corporation), 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 November 18, 1994.

FILED		DEPOSE	
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B E T W E E N

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.

Respondents

RESPONSE

1. This is a Response by the Respondents other than the Director of Investigation and Research (the "Director") (such parties, collectively, are referred to herein as the "Respondents") to the Application dated January 13, 1997 by Telus Advertising Services Inc. and Telus Advertising Services (Edmonton) Inc. under

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section 106(a) of the *Competition Act* (the "Act") to vary the Consent Order granted by the Competition Tribunal dated November 18, 1994 (the "Order").

2. The Respondents support the Application.
3. The Respondents agree with the material facts set out in paragraph 4 of the Application.
4. The Respondents say that the following facts are also material to the questions of whether:
 - (i) the circumstances that led to the making of the Order have changed; and
 - (ii) under the circumstances that now exist, the Order would not have been made.
5. The Director began to investigate the activities of the CANYPS members some time before 1992. Throughout the years of the Director's investigation, ED TEL and AGT Directory were independent entities and were represented as such.
6. AGT Directory and ED TEL had been independent members of CANYPS from its inception.
7. Representatives of the Director met with representatives of the CANYPS members on a number of occasions to discuss his concerns with the joint activities of the CANYPS members. At each meeting, ED TEL and AGT Directory were separately represented.

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8. **Negotiations between the Director and the CANYPS members progressed until February 16, 1993, when counsel for the Director set out in a letter the basis upon which the Director was prepared to enter into a consent order. The points set out in the letter are substantially identical to the prohibitions contained in the Consent Order. The Respondents, including both ED TEL and AGT Directory, agreed to pursue a consent order that would contain these points.**
9. **The Director, through counsel, prepared a draft of the documents required to file a consent order application. This material was transmitted to the CANYPS members, (through counsel) on May 7, 1993. Again, there is little difference in substance between this draft and the Consent Order.**
10. **By late June of 1993, the documents were presented to the CANYPS members for approval in substance at the 1993 CANYPS Conference in Waskegic, Saskatchewan. Both AGT Directory and ED TEL were separately represented at the conference, and each separately approved the documents.**
11. **On July 1, 1993, the CANYPS members fundamentally changed the operation of the CANYPS Association, as well as their commissionability practices, to comply with important provisions in the soon-to-be finalized draft consent order. AGT Directory and ED TEL adopted different commissionability regimes.**
12. **By July 7, 1993, the Director and the CANYPS members (individually and collectively) agreed to file the Application for a Consent Order on July 15, 1993, with the Consent Order hearing to be held on September 7, 1993.**
13. **On July 9, 1993, a senior officer at the Competition Bureau informed the CANYPS members through their counsel that there would be a slight delay in**

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filing the Application. The new Director had decided to postpone the filing to familiarize himself with the case and to respond to complaints raised.

14. On July 15, 1993, the Director, through counsel, informed the CANYPS members, also through counsel, that he had decided not to pursue the CANYPS consent order at that time.
15. Counsel for the CANYPS members met with the Director on September 14, 1993 to discuss, among other things, the future of the CANYPS consent order. The Director indicated that he would shortly provide the CANYPS members with a timetable as to when he would make a decision on whether to proceed.
16. The Deputy Director (Civil Matters) notified the CANYPS members through counsel that the Director's decision on whether to proceed with the CANYPS consent order would be made by November 15, 1993.
17. Counsel for the CANYPS members met with the Director, Competition Bureau staff, and counsel on December 13, 1993. At that time, the Director had still not come to a decision as to whether to proceed on the CANYPS consent order.
18. On March 31, 1994, counsel for the CANYPS members received a letter from the Director which indicated that, among other things, he was prepared to go forward towards finalizing the documents necessary to file a CANYPS draft
19. The Director, through counsel, sent revised documents to the counsel for the CANYPS members on June 13, 1994. These documents were distributed to the CANYPS members on June 14, 1994. The changes to the previous version of the Draft Consent Order were not major. However, a significant substantive change involved changing the transition period in section 3(g), from a two year period

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beginning at the time that the consent order was granted to a fixed period ending July 1, 1995. A similar change was made to the monitoring provisions in paragraphs 4 and 5. These changes reflected the fact that the principal terms of the Consent Order had been implemented on July 1, 1993.

20. By June 24, 1994, counsel for the CANYPS members had met with commerce officers, prepared a slightly revised version of the documents to be filed with the Competition Tribunal, and presented them to the CANYPS members at the 1994 CANYPS Conference in Prince Edward Island. At the conference, the CANYPS members, including AGT Directory and ED TEL, agreed in principle to the revised documents.
21. Throughout July, 1994, meetings were held between Competition Bureau staff and counsel and counsel for CANYPS, resulting in further minor revisions to the documentation. These revisions were communicated to the CANYPS members on July 27. Again, the revisions did not significantly alter the substance of the Draft Consent Order.
22. On August 26, 1994, the Deputy Director (Civil Matters) wrote counsel to the CANYPS members enclosing a final version of the Draft Consent Order as approved for filing by the Director. Subsequently, this version was slightly altered to ensure that all of the names of the parties were complete and accurate.
23. The Application for a Consent Order was actually filed with the Competition Tribunal on September 20, 1994. All of the CANYPS members, including AGT Directory and ED TEL separately, consented to this filing.
24. On October 28, 1995, Edmonton city council approved a preliminary prospectus for an initial public offering of the shares of the parent company of ED TEL.


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25. On November 18, 1995, the same day that the Consent Order was made by the Tribunal, Edmonton city council accepted the Telus offer to purchase the parent company of ED TEL. This transaction was subject to a number of conditions of closing, including obtaining the necessary regulatory approvals.
26. On February 28, 1995, the Director issued a press release which described the results of his investigation into the competitive effects of the merger between Telus Corporation (the parent company of AGT Directory) and the parent company of ED TEL. According to the press release, the Director concluded that he would not challenge the merger.
27. The transaction described in paragraph 25 closed on March 10, 1995.
28. Mr. Bodan Romanluk is now the president of both Telus Advertising Services Inc and Telus Advertising Services (Edmonton) Inc. and is the CANYPS representative on the CANYPS Executive Committee for both companies.
29. It is the Respondents' position that these facts demonstrate that ED TEL and AGT Directory were separate, independent, active participants in CANYPS throughout the long gestation period of the Consent Order. Each independently changed its business practices on July 1, 1993 to comply with the terms of the then draft consent order. The merger of AGT and ED TEL represented a significant, material change to the circumstances that existed throughout the time that the Draft Consent Order was entered into, as well as to the circumstances that existed when the Consent Order was made.
30. Paragraph 2 of the Consent Order does not apply to a merger of two or more of the parties.

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31. The Consent Order was premised on the joint activities of the members of CANYPS in respect of the sale of National Advertising into Telephone Directories. Joint activity presupposes a group of independent actors. For the same reasons that the competition laws in Canada and the United States do not recognize intra-corporate conspiracies, no terms of a Consent Order founded on joint abuse of dominance should prevent the efficient operation of companies which have the same ownership. This applies with greater force where the common ownership resulted from a merger which was reviewed by the Director and was not challenged.

DATED at Toronto, Ontario this 17th day of February, 1997.


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TO: The Registrar of the Competition Tribunal

**AND TO: Director of Investigation and Research
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