

THE COMPETITION TRIBUNAL

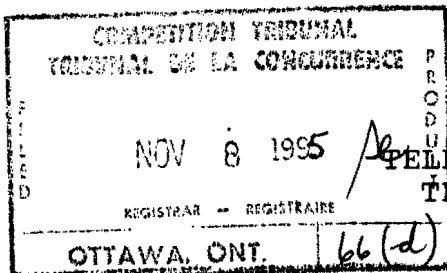
IN THE MATTER OF an Application by the  
Director of Investigation and Research under  
sections 77 and 79 of the Competition Act  
R.S.C. 1985 c. C-34 as amended.

Between:

THE DIRECTOR OF INVESTIGATION AND RESEARCH

Applicant

- and -



TELE-DIRECT (PUBLICATIONS) INC.,  
TELE-DIRECT (SERVICES) INC.

Respondents

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**NOTICE OF APPLICATION**  
**(FURTHER AMENDED October 18, 1995)**

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**TAKE NOTICE THAT:**

1. The Applicant, the Director of Investigation and Research will make an application to the Competition Tribunal pursuant to sections 77 and 79 of the Competition Act R.S.C. 1985, c. C-34 as amended, for:

(a) an order pursuant to s. 77 of the Competition Act prohibiting the Respondents from continuing to engage in the practice of tied selling and to take such further steps as are necessary to restore or stimulate competition in the market, including:

(i) that the Respondents offer and supply advertising services and advertising space at separate prices and in a fashion that the price of advertising services and advertising space when offered together equals the sum of the separately quoted prices for such products and that such separate prices reflect the relative costs of providing each component; or, in the alternative

(ii) that the Respondents expand their commission criteria so that all or further advertisements placed by independent advertising agencies certified by the Respondents qualify for a specified commission, where the aforesaid certification is available on a non-discriminatory basis to all independent advertising agencies who can satisfy reasonable requirements of solvency; or, in the further alternative

(iii) that the Respondents take the action specified in clause (i), after or during a reasonable transition period in which the action specified in clause (ii) is taken.

(b) an order pursuant to s. 79 of the Competition Act prohibiting the Respondents from engaging in the practice of anti-competitive acts specified herein and directing the Respondents to take such actions as are reasonable and necessary to overcome the effects of the said practice, including:

Market for Advertising Services

(i) that the Respondents take the action specified in subparagraph (b) above in respect of tied selling;

(ii) that the Respondents be prohibited from providing advertising space to independent advertising agencies

on less favourable terms and conditions than those available to the Respondents' own sales staff, or otherwise discriminating between independent advertising agencies and the Respondents' own sales staff;

(iii) that the Respondents accept orders for advertising space on behalf of any party that can satisfy the Respondents' reasonable requirements of evidence of authority to act on behalf of an advertiser and capacity to pay for the space requested;

(iv) that the Respondents establish the same or substantially similar deadline for the receipt of orders from advertising agencies as applies to orders received from the Respondents' own sales staff;

(v) that the Respondents make available to advertising agencies or their customers the same payment and credit terms made available to advertisers handled by the Respondents' own sales staff;

(vi) that the Respondents make available to independent advertising agencies, in a timely fashion, through some freely and publicly available vehicle, information regarding any promotional programs (i.e. marketing policies applying to more than one customer) which would affect advertisers' costs or the availability of additional space or colour offered to advertisers;

(vii) that the Respondents make such programs available to advertisers who use the services of an independent advertising agency on the same terms as such programs are made available to advertisers handled by the Respondents' own sales staff;

(viii) that the Respondents provide, to independent agencies, marketing tools and information relating to the sale or supply of advertising space, such as "tear sheets", maps and directories, on the same terms as such tools and information are provided to the Respondents' own sales staff;

(ix) that the Respondents accept and process orders from independent agencies on the same terms and conditions as apply to orders accepted and processed from their own sales staff;

(x) that the Respondents be prohibited from squeezing the return available to independent agencies by acts which include transferring functions, refusing services previously available, or making the terms of supply or commission more onerous or restrictive;

(xi) that the Respondents supply, to any party who requests it, the specifications utilized by them in the reception, placing and publishing of orders for advertising space;

(xii) that the Respondents licence, at the request of independent advertising agencies, including consultants, and on commercially reasonable terms and conditions, the trade marks registered for the Respondents' own use in relation to telephone directories;

Market for Advertising Space

(xiii) that the Respondents be prohibited from targeting price reductions and other discounts for advertising space to those markets in which entry by competing publishers has occurred or is occurring;

(xiv) that the Respondents be prohibited from causing, directly or indirectly, advertising agencies to refuse to place advertising in telephone directories published by competing publishers or otherwise discriminating, or causing advertising agencies to discriminate against competing publishers; and

(c) an order to the effect that, in the event of a dispute, the Director or the Respondents may apply to the Tribunal for a further order interpreting any of the provisions of the order made; and

(d) such further and other order to remedy the anti-competitive effects of the practices engaged in by the Respondents as the evidence may disclose and the Tribunal may deem just and necessary.

**AND TAKE NOTICE THAT:**

2. The Applicant will rely upon the Statement of Grounds and Material Facts which follows and is attached hereto.

3. If you do not file a response with the Registrar of the Tribunal within thirty days of the date upon which this Notice of Application and accompanying Grounds are served upon you, the Tribunal may, upon the ex parte application of the Director, make such order as it considers appropriate.

4. The persons against whom an order is sought are the Respondents. Their address is set out below.

5. The Applicant will seek directions from the Tribunal for the expeditious hearing of this Application in Ottawa.

6. The Applicant requests that this Application be heard in the English language.

DATED at Hull, Quebec, this 22nd day of December, 1994.

(original application signed by)  
George N. Addy

Director of Investigation  
and Research

**ADDRESS FOR SERVICE OF THE APPLICANT:**

Department of Justice  
Competition and Consumer Law Division,  
Legal Services, Industry Canada  
22nd Floor, Place du Portage, Phase I  
50 Victoria Street  
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**TO:** The Registrar of the Competition Tribunal

**AND TO:** Mr. Warren Grover, Q.C.  
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**THE COMPETITION TRIBUNAL**

IN THE MATTER OF an  
Application by the Director of  
Investigation and Research  
under sections 75 and 79 of  
the Competition Act R.S.C.  
1985 c. C-34 as amended.

Between:

THE DIRECTOR OF INVESTIGATION  
AND RESEARCH

Applicant

- and -

TELE-DIRECT (PUBLICATIONS)  
INC.,  
TELE-DIRECT (SERVICES) INC.

Respondents

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**NOTICE OF APPLICATION  
(FURTHER AMENDED)**

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Department of Justice  
Place du Portage, Phase I  
50 Victoria Street  
Hull, Quebec  
K1A 0C9  
Tel. (819) 997-3325  
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**STATEMENT OF GROUNDS AND MATERIAL FACTS**  
**(FURTHER AMENDED October 18. 1995)**

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**A. THE PARTIES**

1. The Applicant the Director of Investigation and Research is appointed under section 7 of the Competition Act, R.S. 1985, c.C-34 (as amended, the "Act") and is charged with the administration and enforcement of the Act.

2. The Respondent Tele-Direct (Publications) Inc. ("T-D Publications") is a company incorporated pursuant to the laws of Canada, and has its head office in the City of Montreal, in the Province of Quebec. T-D Publications is the authorized publisher of telephone directories for most of the provinces of Ontario and Quebec for its affiliate, Bell Canada, the principal telephone

3. The Respondent Tele-Direct (Services) Inc. ("T-D Services") is a company incorporated pursuant to the laws of Canada, and has its head office in the City of Montreal, in the Province of Quebec. T-D Services is the authorized publisher of telephone directories for certain municipal, provincial and territorial telephone companies in Ontario, Quebec, New Brunswick, Newfoundland and Labrador, the Yukon Territory and the Northwest Territories.

4. T-D Services and T-D Publications (collectively "Tele-Direct", the Respondents) are wholly owned by Bell Canada Enterprises Inc. ("BCE"). Tele-Direct forms part of the BCE Directories Group, a division of BCE.

5. The Respondents publish, in the provinces of Ontario, Quebec, New Brunswick, Newfoundland, and the Territories, telephone directories which are distributed to subscribers of telephone companies. The Respondents also provide services related to the placement of advertisements in these directories.

## **B. BASIS AND NATURE OF THE DIRECTORS' APPLICATION**

### **I. Tied Selling**

7. The Applicant says that the Respondents have engaged in a practice whereby, as a condition of supplying advertising space in telephone directories (the "tying product"), they have required or induced customers for the tying product to acquire another product from the Respondents, namely telephone directory advertising services (the "tied product"). The Applicant further says that the practice of tied selling engaged in by the Respondents, as major suppliers of such advertising space, has impeded entry into or expansion of a firm or firms in the market with the result that competition has been, is, or is likely to be lessened substantially.

## **II. Abuse of Dominant Position**

8. The Applicant says that the Respondents substantially or completely control the classes or species of business they engage in, namely the provision of advertising space and the provision of advertising services. The Applicant further says that the Respondents have engaged in or are engaging in a practice of anti-competitive acts, and such practice has had, is having, or is likely to have the effect of preventing or lessening competition substantially in the markets for the provision of advertising space in telephone directories and advertising services.

### **C. MATERIAL FACTS**

#### **I. GENERAL DESCRIPTION OF THE INDUSTRY**

##### **1. The Businesses and the Products**

9. The publication of telephone directories consists of two businesses, which may be engaged in by the same or different firms, namely an "advertising space" or "publishing" business and a "advertising services" or "selling" business:

(i) The "advertising space" or "publishing" business includes all matters relevant to the provision of advertising space in a directory, including access to a subscriber data base (including information relating to new subscribers) upon which the books are based, compilation, physical creation of hard copy, printing, promotion and distribution.

(ii) The "advertising services" or "selling" business refers to the provision of services relating to the sale of advertising space in a telephone directory, including establishing new customers, calling on customers, and providing advice,

information and other services relating to the design, cost, content, location, creation and placing of the advertisements.

10. The purchaser of an advertisement in a telephone directory obtains two products related to these two businesses: advertising space and advertising services.

## **2. The Publishing of Telephone Directories**

11. The structure of the telephone directory publishing industry in Canada evolved from the structure of the telephone industry in Canada and remains closely related to it. The regional telephone monopolies supply subscriber listing information to entities which have gained a dominant position in the provision of telephone directories.

12. For a telephone network to function efficiently, it must provide a convenient means by which subscribers can locate the telephone numbers of others on the system. Traditionally, this has been accomplished through the provision of universally distributed telephone directories. Generally, the company providing the telephone services publishes such a directory, or authorizes another company to publish such a directory, which is then distributed in a certain geographic region. In order to publish such a directory, one must have access on a current basis to the non-confidential names, addresses and assigned telephone numbers of subscribers ("subscriber listing information").

13. "Telephone directories" (as the term is used herein) generally have the following characteristics:

(i) They contain alphabetically arranged subscriber listings, both residential and business, in a white pages section or separate book;

(ii) They also contain business listings in a section arranged, first, by a system of classification by type of business, and, second, alphabetically within each business classification. These classified sections; or separate telephone directories in the case of large metropolitan areas, also carry paid advertising. Because of the colour of the paper they have traditionally been printed on, the telephone directories published by or on behalf of the telephone companies are commonly referred to as "Yellow Pages" telephone directories; and

(iii) The terms "YELLOW PAGES", "PAGES JAUNES", the "walking fingers" logo and certain other associated and similar Canadian Trade Marks are owned by T-D Publications. These Marks are used by T-D Publications itself and licensed to registered users across Canada for use in connection with telephone directories (referred to as "Yellow Pages" telephone directories herein) and related advertising services.

14. Local telephone service in Canada has historically been offered by a number of regional monopolies. The principal telephone companies are as follows:

<u>Province</u>	<u>Principal Local Company</u>
British Columbia	BC Tel
Alberta (ex. Edmonton)	AGT Limited (AGT)
Edmonton	Edmonton Telephones Corporation (ED TEL)
Saskatchewan	Saskatchewan Telecommunications (Sask Tel)
Manitoba	Manitoba Telephone System (MTS)
Ontario	Bell Canada (Bell)
Quebec	Bell Canada (Bell) Quebec Telephone Company (Quebec Tel)
Nova Scotia	Maritime Tel & Tel Limited (MT & T)
New Brunswick	New Brunswick Telephone Company Limited (NB Tel)
Prince Edward Island	Island Telephone Company Limited (Island Tel)
Newfoundland and Labrador	Newfoundland Telephone Company Limited (Newfoundland Tel)
Northwest Territories	Northwest Inc (Northwest Tel)
Yukon Territory	Northwest Inc. (Northwest Tel)

15. There are other small, independent telephone companies located primarily in Ontario, Quebec and British Columbia.

16. Because the publisher of a telephone directory must have current and continuous access to the telephone company's records, such publishers have historically been either a telephone company or a company authorized by the telephone company to publish a directory and supplied with the required subscriber listing information.

17. The principal telephone directory publishers in Canada are as follows:

<u>Province</u>	<u>Local Telephone Co.</u>	<u>Publisher</u>	<u>Relationship between Principal and Company</u>
British Columbia	BC Tel	Dominion Directory operating division of Anglo Canadian Telephone Company (Anglo Canadian)	affiliate
Alberta (except Edmonton)	AGT	AGT Directory Limited (AGT Directory)	affiliate
Edmonton	ED TEL	ED TEL Directory	same entity
Saskatchewan	Sask Tel	DirectWest Publishers Ltd: (DirectWest)	non affiliate
Manitoba	MTS	MTS	same entity
Ontario	Bell	T-D Publications	affiliate
Quebec	Bell Quebec Tel	T-D Publications Dominion Directory	affiliate
Nova Scotia	MT&T	MT&T	same entity
New Brunswick	NB Tel	T-D Services	non affiliate
P.E.I.	Island Tel	MT&T	affiliate
Newfoundland and Labrador	Newfoundland Tel	T-D Services	affiliate
Northwest Territories	Northwest Tel	T-D Services	affiliate
Yukon Territory	Northwest Tel	T-D Services	affiliate

18. All of the publishers, except for ED TEL, publish a variety of Yellow Pages or similar telephone directories within their exclusive territories. The following chart sets out the approximate number of books published by each company as of June, 1993:

<u>Province</u>	<u>Publisher</u>	<u>Directories</u>
British Columbia	Dominion Directory	49
Alberta (except Edmonton)	AGT Directory	22
Edmonton	Ed Tel	1
Saskatchewan	DirectWest	10
Manitoba	MTS	10
Ontario	T-D Publications T-D Services	45 3
Quebec	T-D Publications T-D Services Dominion Directory	37 3 11
New Brunswick	T-D Services	9
Nova Scotia	MT&T	10
Prince Edward Island	MT&T	1
Newfoundland and Labrador	T-D Services	4
Northwest Territories	T-D Services	1
Yukon Territory	T-D Services	1

19. Individual directories are revised, reproduced and distributed annually. The "churn" rate, that is, the number of new connects, disconnects and other changes to the telephone company subscriber listing information data base, is approximately 2.7 percent per month on average.

20. This "churn" rate requires the publisher of a telephone directory to have continuous and current access to the subscriber listing information to compete effectively because:



(a) consumers will generally not accept a directory unless it contains current information;

(b) advertisers will not place advertisements in a directory that consumers do not generally accept; and

(c) the sales force for any directory cannot operate effectively in locating new customers and maintaining contact with established customers without continuous and up-to-date list of subscribers.

21. Telephone directory publishers who publish the telephone companies' directories pay a large part of the revenue generated from directory advertising and related services to the telephone company with which it is associated. The relationship between the telephone company and the publisher (affiliate or arm's length) affects the form that the payments may take (licence and royalty fees, dividends, etc.).

22. Publishing telephone directories is a business that has generated substantial profits for the Respondents.

23. The telephone directory industry in Canada generates revenues of approximately \$1 billion per year. The vast majority of these revenues are accounted for by the telephone directories published by telephone companies or their authorized agents.

24. The Respondents publish Yellow Pages telephone directories in the geographic areas set out above. Within those geographic areas, with few exceptions, the Respondents are the only significant publishers of telephone directories, and thus the only significant source of advertising space in such directories. In those areas that the Respondents do face competition from independent publishers, the market shares of the independents (in terms of the share of paid advertising) is not substantial.

## 2. Telephone Directory Advertising Services

25. The Respondents also provide the vast majority of advertising services. In this regard, the Respondents provide advertising services to customers accounting for more than 90% of the market. Customers accounting for the remaining portion of the market are provided these services by independent agencies.

26. Independent agencies offering or supplying advertising services ("independent advertising agencies", "agencies") are of three general types:

(a) "general" advertising agencies which also provide services to advertising clients in respect of a broad range of media, including newspapers, magazines, television, radio and billboards;

(b) "specialized" agencies, which derive the majority of their revenues from services relating to telephone directories; and

(c) "consultants" whose usual business includes advising persons who purchase advertising space in telephone directories on how to reduce the cost of their advertising and increase its effectiveness. In return for providing those services, the consultants receive a fee. Typically these consultants obtain the cost savings on behalf of their customers by purchasing smaller or less colourful advertisements, making more relevant but more limited geographic placements, or by redesigning the advertisements. In the usual course of their business, the consultants typically assist their customers in dealing with the Respondents in acquiring advertising space.

27. "In-house agencies", consisting of a section or division within an advertiser, also provide advertising services such as order placement and artwork on behalf of that advertiser.

28. General and specialized advertising agencies provide virtually all of their advertising services in this market to clients whose accounts are "commissionable" according to certain arbitrary criteria established by the Respondents.

29. To qualify for commission, agencies must be certified according to requirements established by the Respondents.

### 3. Regulation

30. There are certain aspects of the telephone directory industry in Canada which are currently regulated. The most relevant aspects for the purposes of this application are:

(a) Telephone companies are required to provide copies of the current telephone directories to all subscribers to the telephone system free, or at no charge additional to that of basic telephone service.

(b) The CRTC has jurisdiction to regulate the manner in which the telephone companies under its authority make subscriber listing information, or portions thereof, available pursuant to a tariff. The terms of supply under this tariff have historically proven not to be commercially viable. On January 14, 1994, following a request from White Directory of Canada Inc., the Commission issued Public Notice CRTC 94-3 to initiate a review of the tariff. On March 8, 1995, the CRTC rendered its decision.

(c) In those parts of Canada regulated by the CRTC, the revenues transferred between the telephone company's internal

publishing arm or authorized publisher and the telephone company itself may constitute deemed earnings of the telephone company for the purposes of rate setting.

31. The subject matter of this Application, namely the practices of the Respondents relating to the provision of advertising space and advertising services, is unregulated. Further, the provision of subscriber listing information by the Respondents is not currently restricted by the CRTC.

**4. Consent Order**

32. On November 18, 1994, the Tribunal issued a Consent Order which removed entry barriers in the market for National Advertising, a market in which commission is available for the majority of accounts.

33. The Consent Order did not, however, deal with the advertising services market other than National Advertising services, as defined therein. National Advertising services constitute only a component of the market for the provision of advertising services.

**5. Access to Subscriber Listing Information**

34. The Respondents maintain a relationship with the telephone companies within the geographic areas of Canada wherein they conduct their business. The nature of the relationship is set out above.

35. Independent of the relationship between the Respondents and the specific telephone companies, in each case the telephone companies provide the Respondents with access to subscriber listing information in a commercially useable form.

36. Bell Canada makes certain subscriber listing information available to unaffiliated third parties under a tariff established by the CRTC. However, the terms of supply under this tariff had not, prior to March 8, 1995, permitted access in a commercially usable form. As a result, at the time of filing, no requests had been made for the provision of this information under this tariff. This tariff was revised on March 8, 1995 by the CRTC to provide for greater access to subscriber listing information.

37. The Respondents use this subscriber listing information to publish telephone directories in the geographic area within which they conduct their business.

38. Access to this information is necessary to publish a viable telephone directory. Such lists also provide the advertising space sales force with up-to-date information to permit client contacts.

39. The Respondents market subscriber listing information to certain customers in Canada. These customers include direct mailing firms and advertisers.

40. The Respondents provide this information to such customers in a "commercially useable form", that is to say:

(a) in a machine readable form;

(b) in an unbundled and scoped fashion, based on geography (e.g. municipal area telephone number or neighbourhood) or subject matter (e.g. billings) depending on customers' needs and data availability; and

(c) at a commercially reasonable price.

41. The Respondents, however, have refused to supply subscriber listing information in a commercially useable form, or in any form, to any company which requires it to publish a competing telephone directory.

## II. FACTS MATERIAL TO TIED SELLING

46. The Respondents supply advertising space in the telephone directories that they publish. The Respondents also provide advertising services to customers.

47. The Respondents use an internal sales force to provide these services.

48. The Respondents tie the provision of advertising services to advertising space by:

(a) refusing to sell advertising space and advertising services in an unbundled fashion (that is to say, at separate prices rather than as a package the price of which does not vary with the services taken), and by

(b) refusing to pay commission to any other person who might provide the advertising services to approximately 90% of the market.

49. An advertiser who wishes to obtain advertising services must either obtain those services from the Respondents or from an agency. (A limited number of such customers also have the capacity to provide these services themselves.) An agency that provides such services will seek to be reimbursed by the advertiser if a commission is not available or sufficient.

50. The Respondents will pay commission to an agency only where the agency acts for a customer whose telephone directory advertising space account meets certain commissionability criteria. Approximately 90% of the market does not meet the commissionability criteria set by the Respondents. The determination by the Respondents of which accounts are commissionable and which are not is arbitrary.

51. The Respondents incur substantial costs in the provision of advertising services but do not charge separately or "unbundle" these services, or charge any additional price for them.

52. The refusal by the Respondents to unbundle space and advertising services and the refusal to pay commission on the customer accounts constituting approximately 90% of the market has meant that customers must choose between paying an additional charge to obtain advertising services, or obtain the services from the Respondents as part of the price already paid for advertising space. This requires or induces customers to obtain these services from the Respondents rather than competitors.

53. The Applicant says that these practices of the Respondents constitute tied selling under s.77 of the Competition Act in that:

(a) as a condition of supplying advertising space (the "tying" product) to a customer at a bundled price, the customer is required to acquire the Respondent's advertising services (the "tied" product) as well; and/or

(b) the Respondents induce customers to acquire the tied product by offering to supply the tying product to the customer on more favourable terms or conditions, namely at no additional cost for this additional value, if the customer acquires the tied product as well.

54. The Applicant further says that the Respondents are major suppliers of advertising space in telephone directories in the geographic areas of Canada within which they conduct business.

55. The Applicant further says that this practice has impeded the entry or expansion of advertising agencies or others in the market for the provision of telephone directory advertising services. Advertising agencies or others would provide such services or expand if a reasonable commission were available or if space and service were offered at unbundled prices which reasonably reflected relative costs.

56. The Applicant says that this practice has lessened or is likely to lessen competition substantially in the market for the provision of telephone directory advertising services.

### III. FACTS MATERIAL TO THE ABUSE OF DOMINANT POSITION

#### 1. Substantial or Complete Control of a Class or Species of Business

57. The Respondents produce telephone directories in the geographic areas of Canada that are described in paragraph 17 above. This activity involves two businesses, as described in paragraph 9 above, namely the provision of advertising space and the provision of advertising services.

#### Product Market

##### (i) Advertising Space

58. In regard to the provision of advertising space, the Applicant says that the Respondents control this business in that, with very few exceptions, the Respondents are the sole publishers of telephone directories in those areas of Canada in



which they carry on business and therefore the sole providers of space in telephone directories. While some competing telephone directories do exist, their market share is not substantial.

59. No other advertising medium (including television, radio, magazines, flyers and billboards) provides an effective substitute for telephone directory advertising space.

**(ii) Related Advertising Services**

60. With respect to the provision of advertising services, the Applicant says that the Respondents substantially control this business in that they provide advertising services to more than 90% of the market.

61. Alternative suppliers of related advertising services such as specialist or general advertising agencies cannot compete effectively in this market because of the lack of commission in 90% of the market, and due to the other anti-competitive acts of the Respondents which favour their own internal advertising services suppliers over such competitors.

**Geographic Market**

62. The geographic market for the provision of advertising services is largely regional in nature. Generally, it conforms with the geographic areas of Canada in which the Respondents operate, which are described in paragraph 18 above.

63. The geographic market for the provision of advertising space is local in nature. Generally, it conforms with the areas covered by a single directory (excluding so-called "neighbourhood directories") published by the Respondents.

2. Practice of Anti-Competitive Acts

64. The Applicant says that the Respondents have engaged in a practice of anti-competitive acts within the meaning of that term in sections 78 and 79(1) of the Competition Act.

65. More particularly, the Applicant says that the Respondents have engaged in the following anti-competitive acts:

Practices Affecting the Market for Advertising Services

(a) the tying of the provision of advertising services to advertising space, as detailed in paragraphs 46 to 56 above.

(b) the Respondents' refusal to deal directly with consultants who act as agents for the purchasers of advertising space. The Respondents have issued guidelines to their advertising space sales staff which provide that the customer must deal with the Respondent's salespersons and no consultant can deal with the salespersons as a customer's agent.

(c) providing advertising space to independent advertising agencies on less favourable terms and conditions than to its own sales staff, including:

(i) requiring that orders received from such independent agencies be received several weeks in advance of the date such orders are required to be received from their own sales staff for insertion in the same directory;

(ii) requiring that such independent agencies pay the total amount outstanding for a year's insertion of advertising in a given directory, while customers placing orders through internal sales staff may pay such amount monthly over the course of the year without interest charges;

(iii) making certain promotional programs unavailable when an advertisement is placed through an agency rather than with the Respondents' sales staff;

(iv) refusing to provide "tear sheets" (pages from a directory confirming the placing of an ad) and other information or material to agencies while providing it to customers who have placed ads directly through the Respondents' own sales staff;

(v) rejecting or delaying orders based on alleged errors or other identified problems which would not delay the placing of, or result in the rejection of, the same order if received from the Respondents' own sales staff;

(vi) refusing to provide maps, information on promotional programs, directory changes or other information, documentation and services to agencies, or providing information too late to be made available to agencies' customers, while making such information, documentation and services available to its own internal sales staff and directly-served customers, in a timely fashion; and

(vii) offering free colour and expanded space in advertisements in order to prevent entry and expansion of competitors.

(d) squeezing the return available to independent advertising agencies by acts which include:

(i) transferring functions (such as the verification of the accuracy of bills) to them which were previously carried out by the Respondents' own internal staff;

(ii) refusing to provide services (such as free copies of

maps and directories) to such agencies and to customers which were available from the Respondents previously;

(iii) making the terms of supplying advertising space to the independent agencies (such as payment periods and the procedures for the verification of commissionable accounts) more onerous; and

(iv) further restricting the availability of commission to such agencies over time.

(e) refusing to supply specifications for the placing of ads in Yellow Pages directories to competing suppliers of advertising services;

(f) refusing to licence trade marks, such as the words "YELLOW PAGES" and "PAGES JAUNES" and the walking fingers logo, to competing suppliers of advertising services;

**Practices Affecting the Market for Advertising Space**

(g) targeting price reductions and other discounts to those markets in which entry by competing publishers has occurred or is occurring; and

(h) causing, directly or indirectly, advertising agencies to refuse to place advertising in telephone directories published by competing publishers or otherwise discriminating against or causing independent advertising agencies to discriminate against competing publishers; and

(i) making disparaging statements in regard to new market entrants.

3. Substantial Lessening of Competition

66. The Applicant says that the Respondent's practice of anti-competitive acts described above has had, is having, or is likely to have the effect of preventing or lessening competition substantially:

(a) in the market for advertising space in telephone directories; and

(b) in the market for telephone directory advertising services.

67. The effects on competition in the market for advertising space in telephone directories include:

(a) the targeting of price reduction and other discounts has reduced the ability of competitors to exist and expand and dissuaded further entry; and

(b) the direct or indirect discrimination against competing publishers has harmed the competitive position of same.

68. The effects on competition in the market for telephone directory advertising services include:

(a) by tying the sale of advertising services to the sale of advertising space, the Respondents have foreclosed a significant portion of the advertising services market from competing advertising agencies;

(b) by refusing to deal with consultants acting as agents for the purchasers of advertising space, the Respondents have impeded their entry into and their expansion in the market, precluded them from carrying on business and denied advertisers

the benefits of their competition;

(c) by providing advertising space to the Respondents' own internal sales staff on more favourable terms and conditions than to independent agencies, the Respondents have further limited the ability of such agencies to effectively compete in this market;

(d) by squeezing the return available to independent agencies, the Respondents have reduced the agencies' viability and ability to compete in a substantial segment of the market; and

(e) by refusing to provide specifications for the placing of ads in Yellow Pages directories, the Respondents have hampered the ability of consultants and others who lack access to this information to compete effectively.

#### **D. RELIEF SOUGHT**

69. The Applicant requests that the Tribunal make the following orders:

(a) an order pursuant to s. 77 of the Competition Act prohibiting the Respondents from continuing to engage in the practice of tied selling and to take such further steps as are necessary to restore or stimulate competition in the market, including:

(i) that the Respondents offer and supply advertising services and advertising space at separate prices and in a fashion that the price of advertising services and advertising space when offered together equals the sum of the separately quoted prices for such products and that such separate prices reflect the relative costs of

providing each component; or, in the alternative

(ii) that the Respondents expand their commission criteria so that all or further advertisements placed by independent advertising agencies certified by the Respondents qualify for a specified commission, where the aforesaid certification is available on a non-discriminatory basis to all independent advertising agencies who can satisfy reasonable requirements of solvency; or, in the further alternative

(iii) that the Respondents take the action specified in clause (i), after or during a reasonable transition period in which the action specified in clause (ii) is taken.

(b) an order pursuant to s. 79 of the Competition Act prohibiting the Respondents from engaging in the practice of anti-competitive acts specified herein and directing the Respondents to take such actions as are reasonable and necessary to overcome the effects of the said practice, including:

Market for Advertising Services

(i) that the Respondents take the action specified in subparagraph (b) above in respect of tied selling;

(ii) that the Respondents be prohibited from providing advertising space to independent advertising agencies on less favourable terms and conditions than those available to the Respondents' own sales staff, or otherwise discriminating between independent advertising agencies and the Respondents' own sales staff;

(iii) that the Respondents accept orders for advertising space on behalf of any party that can satisfy the Respondents' reasonable requirements of evidence of authority to act on behalf of an advertiser and capacity to pay for the space requested;

(iv) that the Respondents establish the same or substantially similar deadline for the receipt of orders from advertising agencies as applies to orders received from the Respondents' own sales staff;

(v) that the Respondents make available to advertising agencies or their customers the same payment and credit terms made available to advertisers handled by the Respondents' own sales staff;

(vi) that the Respondents make available to independent advertising agencies, in a timely fashion, through some freely and publicly available vehicle, information regarding any promotional programs (i.e. marketing policies applying to more than one customer) which would affect advertisers' costs or the availability of additional space or colour offered to advertisers;

(vii) that the Respondents make such programs available to advertisers who use the services of an independent advertising agency on the same terms as such programs are made available to advertisers handled by the Respondents' own sales staff;

(viii) that the Respondents provide, to independent agencies, marketing tools and information relating to the sale or supply of advertising space, such as "tear sheets", maps and directories, on the same terms as such tools and information are provided to the



Respondents' own sales staff;

(ix) that the Respondents accept and process orders from independent agencies on the same terms and conditions as apply to orders accepted and processed from their own sales staff;

(x) that the Respondents be prohibited from squeezing the return available to independent agencies by acts which include transferring functions, refusing services previously available, or making the terms of supply or commission more onerous or restrictive;

(xi) that the Respondents supply, to any party who requests it, the specifications utilized by them in the reception, placing and publishing of orders for advertising space;

(xii) that the Respondents licence, at the request of independent advertising agencies, including consultants, and on commercially reasonable terms and conditions, the trade marks registered for the Respondents' own use in relation to telephone directories;

#### Market for Advertising Space

(xiii) that the Respondents be prohibited from targeting price reductions and other discounts for advertising space to those markets in which entry by competing publishers has occurred or is occurring;

(xiv) that the Respondents be prohibited from causing, directly or indirectly, advertising agencies to refuse

to place advertising in telephone directories published by competing publishers or otherwise discriminating, or causing advertising agencies to discriminate against competing publishers; and

(c) an order to the effect that, in the event of a dispute, the Director or the Respondents may apply to the Tribunal for a further order interpreting any of the provisions of the order made; and

(d) such further and other order to remedy the anti-competitive effects of the practices engaged in by the Respondents as the evidence may disclose and the Tribunal may deem just and necessary.