

Competition Tribunal



Tribunal de la Concurrence

CT - 1994 / 001 – Doc # 143b

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

AND IN THE MATTER OF certain practices by
The D & B Companies of Canada Ltd.

B E T W E E N:

The Director of Investigation and Research

Applicant

- and -

The D & B Companies of Canada Ltd.

Respondent

- and -

Information Resources, Inc.
Canadian Council of Grocery Distributors
Intervenors



ORDER AMENDING ORDER DATED AUGUST 30, 1995

Dates of Hearing:

October 17-21, 24-28, 31, 1994;
November 1, 2, 4, 1994;
April 3, 10-13, 18-21, 25-28, 1995

Presiding Member:

The Honourable Mr. Justice William P. McKeown

Lay Members:

Dr. Frank Roseman
Mr. Victor L. Clarke

Counsel for the Applicant:

Director of Investigation and Research

Donald B. Houston
Bruce C. Caughill

Counsel for the Respondent:

The D & B Companies of Canada Ltd.

John F. Rook, Q.C.
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Information Resources, Inc.

Calvin S. Goldman, Q.C.
Gavin MacKenzie
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Canadian Council of Grocery Distributors

Paul Martin

COMPETITION TRIBUNAL

ORDER AMENDING ORDER DATED AUGUST 30, 1995

The Director of Investigation and Research

v.

The D & B Companies of Canada Ltd.

FURTHER TO the Reasons for Order dated August 30, 1995 and the proposed provision regarding historical scanner data set out in those reasons;

AND FURTHER TO paragraph 5 of the Order dated August 30, 1995;

AND ON READING the submissions of the parties and the intervenors and noting their request that the matter be disposed of without further appearance before the Tribunal;

THE TRIBUNAL ORDERS THAT:

Paragraph 5 of the Order dated August 30, 1995 shall be replaced by the following, which shall be incorporated into that order and shall be effective as of August 30, 1995:

"5. (1) This paragraph shall have effect for nine months from the date of this order.

(2) Subject to subparagraph (3), upon the request of a supplier or potential supplier of a scanner-based market tracking service, including IRI, and if directed to do so by a supplier of retailer scanner data which has not retained its own historical scanner data for the relevant period, the respondent shall provide to the supplier or potential supplier of a scanner-based market tracking service the historical scanner data which it has for that supplier of retailer scanner data for the fifteen months prior to the request by the supplier or potential supplier of the service, whether the data are in the form originally received from the retailer or otherwise. The respondent shall be entitled to take reasonable steps to clean up its historical data in order to protect its sample design and related proprietary data.

(3) The respondent need not comply with the request by a supplier or potential supplier of a scanner-based market tracking service if the supplier or potential supplier of the service does not agree:

(a) to pay 50 percent, if only one request is received for the data, or a proportional share, if more than one request is received for the data, of any reasonable, documented costs already incurred by the respondent in cleaning up the historical scanner data where the data are no longer in their original form;

(b) to pay 100 percent of the respondent's reasonable expenses of providing the data to the supplier or potential supplier of the service; and

(c) to pay 100 percent, if only one request is received for the data, or a proportional share, if more than one request is received for the data, of any reasonable, documented costs incurred by the respondent in manipulating or reformatting the historical scanner data in order to mask its sample design prior to providing the data to the supplier or potential supplier of the service.

(4) In the event of a disagreement regarding the terms of this paragraph, the Director or the respondent may apply to the Tribunal for further directions."

DATED at Ottawa, this 26th day of September, 1995.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) W.P. McKeown
W.P. McKeown