

[REDACTED]

Public

**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.

<b>COMPETITION TRIBUNAL</b> <b>TRIBUNAL DE LA CONCURRENCE</b>		<b>PRODUIT</b>
<b>AUG 31 1995</b>	<i>128</i>	
REGISTRAR - REGISTRAIRE		
<b>OTTAWA, ONT.</b>	<i>#163</i>	

Between:

THE DIRECTOR OF INVESTIGATION AND RESEARCH

Applicant

- and -

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

Respondents

**AFFIDAVIT OF RICHARD SCHWINDT**

I, Richard Schwindt of the Municipality of Abbotsford, in the Province of British Columbia, MAKE OATH AND SAY:

1. On August 14, 1995, I swore an affidavit attaching a report prepared for the Director of Investigation and Research dealing with market definition in respect to telephone directory advertising.
2. Attached hereto and marked as Exhibit "A" is a true copy of my evidence in rebuttal to the report prepared by Robert D. Willig on behalf of the Respondents. The contents of Exhibit "A" and the findings and opinions expressed therein are true to the best of my knowledge, information and belief.
3. I make this affidavit pursuant to Rule 47(2) of the Competition Tribunal Rules.

SWORN before me, at the Municipality of *Abbotsford* in the Province of British Columbia this *28* day of *AUGUST*, 1995.

*[Signature]*

A Commissioner, etc.

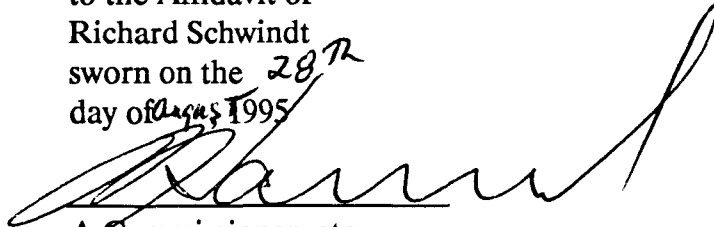
**PETER W. HAMMOND**  
BARRISTER AND SOLICITOR  
2459 Pauline Street  
Abbotsford, B.C. V2S 3S1

*[Signature]*

Richard Schwindt

File No. CT-94/3  
 No. du dossier DIR v Tele-Direct  
 et A-114  
 Exhibit No. A-114  
 No. de la pièce Oct 26/95; 10h21  
 Filed on Shagari  
 Déposée le Shagari  
 Registrar Shagari  
 Greffier

This is Exhibit "A"  
to the Affidavit of  
Richard Schwindt  
sworn on the 28<sup>th</sup>  
day of August 1995



A Commissioner, etc.  
**PETER W. HARNICK**  
BARRISTER AND SOLICITOR  
2459 Pauline Street  
Abbotsford, B.C. V2S 3G1

This report constitutes a rebuttal of the economic opinion submitted by Professor Robert Willig on behalf of the Respondents in this matter.

Prof. Willig was retained to provide an opinion on several matters including the definition of the relevant market, the rationale for certain of Tele-Direct's business practices, the validity of the Director's theory of tied selling in this matter, and the likely effects on competition of certain of Tele-Direct's business practices. I was asked by counsel for the Director to prepare a report in rebuttal to the discussion of the definition of the relevant market which is the main focus of Prof. Willig's report.

Prof. Willig states that the relevant product market must include those products and services that are substitutes for the product under review -- in this case, Tele-Direct's directory advertising. The products and services to be included must be good enough substitutes to competitively constrain Tele-Direct. He draws upon three types of evidence to establish the degree of substitutability among potentially competitive products.

one can attempt to determine whether purchasers (in this case, the advertisers) view the products as substitutable;

one can investigate the extent to which the producers (in this case, the publishers and the media) themselves perceive the products to be substitutes;

and one can examine the characteristics and uses of the products to assess the degree of functional similarity.<sup>1</sup>

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1 Robert Willig, "Affidavit of Robert Willig," August 17, 1995, p. 5.

These evaluative criteria, amongst others, are well accepted by the economics profession as means to bound the relevant market. Indeed, I have applied these very same criteria as well as others in my report of August 14, 1995.

#### A. The Perspective of Advertisers

The views of customers as to the substitutability of products are obviously material to the definition of the relevant market. If users believe two products to be substitutes and if they act upon that belief (e.g., if when the price of one good increases they switch to an alleged substitute) this is evidence that the two products belong in the same market.<sup>2</sup>

While this evaluative criterion is correct, Prof. Willig simply does not apply it. He does not document the views of advertisers. He does not document the response of advertisers to changes in the product bundle offered by any particular medium. More specifically, he provides no evidence that advertisers switch from one medium to another in the face of a price change or other alteration in the product offering. Instead, he makes the following assertion.

Therefore, the best test of whether alternative media meet the needs of local establishments is whether such firms make expenditures for advertising in these media. It is clear from an examination of the available evidence that the businesses that advertise in Tele-Direct directories also advertise in a variety of substitute media.<sup>3</sup>

I know of no body of economic thought which supports the notion that the contemporaneous consumption of two goods is evidence that those two goods are close substitutes and therefore are in the same relevant market. In fact, one would expect that complementary goods, not substitutes, would be purchased in tandem. Indeed, as I noted in my report, Tele-Direct sells its product on the basis that directory advertising is a complement to other media advertising, not a substitute for it.

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2 The sensitivity to price changes is commonly couched in terms of cross-price elasticity of demand. If an increase in the price of "X" of, say, 10%, triggers an increase in demand for "Y" of more than 10%, this is evidence of substitutability. However, some caution should be exercised with the use of elasticities. It is well known (the so-called "Cellophane fallacy") that a monopolist can price its product so high that further increases will result in a loss of customers and revenues.

3 Willig, pp. 5-6.

Prof. Willig relies upon several studies included in the productions to support his finding that some Yellow Pages advertisers do use a media mix. This fact is not disputed. However, his conclusions are not supported by the evidence. For example, he cites the 1993 Elliott study at length wherein, amongst other things, Yellow Pages advertisers were asked to rate the quality of the different media that they used. He concludes from this that "a significant portion of Yellow Pages advertising is vulnerable to cut-back or cancellation in favor of expanded spending on other local advertising media."<sup>4</sup> The authors of that study come to no such conclusion nor is it clear that directory advertisers, other than when prompted by surveyors, compare the effectiveness of the Yellow Pages with other media.

Prof. Willig also cites the 1994 Omnifacts Research Limited report commissioned by Tele-Direct in support of his conclusions. However, a careful reading of that report indicates that directory advertisers do not view other media as substitutes.

Many respondents had difficulty in rating the Yellow Pages in comparison to their preferred print supplier as they perceive the Yellow Pages to be a completely different form of advertising, and others reported not having used any other forms of print media.<sup>5</sup>

There is some confusion evident concerning the respective roles of Newfoundland Telephone and Tele-Direct with regard to their responsibility for the Yellow Pages. This confusion is compounded by the fact that the bill for Yellow Pages advertising is incorporated into the telephone bill. This reinforces, in the mind of some customers, their image of the telephone company and the Yellow Pages as arrogant monopolies, and their feeling that they have little choice but to deal with them. This is not a healthy situation in that it also gives some advertisers the impression that the companies are trying to hide the cost of Yellow pages advertising. It also contributes to a feeling on the part of some that Yellow Pages advertising is not really [emphasis in original] advertising.<sup>6</sup>

At pages 7-8, Prof. Willig reports the results of his own research. Apparently he identified the top five directory headings (presumably in terms of advertising

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4 Willig, p. 6.

5 Omnifacts Research, "Yellow Pages Satisfaction Study," prepared for Tele-Direct (Services) Inc., April, 1994, p. 30, Document 116813.

6 Omnifacts Research, "Yellow Pages Satisfaction Study," prepared for Tele-Direct (Services) Inc., April, 1994, pp. 35-36, Document 116818-116819.

revenue although this is not clear from his report) and then searched regional newspapers in metropolitan areas of Ontario and Quebec for display ads under these headings.<sup>7</sup> He found 542 newspaper advertisers under these headings. Of these, 39% had display ads in the relevant Tele-Direct directory, 42% had no listing at all in the Yellow Pages and 18% had either a lightfaced or boldfaced listing in the directory. These findings do not support the conclusion that a meaningful proportion of Yellow Pages advertisers place similar ads in newspapers.

The 1995 top five headings, in terms of revenues, for Tele-Direct Publications are set out below.<sup>8</sup> Included are the number of business subscribers under each heading.

Heading	# of Firms
Lawyers	7,701
Restaurants	19,874
Moving & Storage	1,031
Automobile Dealers (New)	1,976
Dentists	5,898
Total Top Five	36,480

Even if Prof. Willig's position is that contemporaneous use of directory and newspaper advertising implies that an advertiser views these as substitutes, then one must conclude that a very small portion of advertisers fall into this category. Of the 542 newspaper advertisers, 39% (or 211 firms) also had directory display advertising. The Tele-Direct territories<sup>9</sup> surveyed by Prof. Willig account for about 34% of total T-D (Pubs.) Yellow Pages revenues, so one can estimate that about 12,403 business subscribers in the top 5 headings were in these territories (i.e., 34% of 36,480). This implies that 1.7% (i.e., 211/12,403) of the business subscribers in the relevant territories and headings actually advertised in both newspapers and directories. This is clearly negligible.

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7 The report does not indicate how many, or which newspapers were searched, nor for how many days the search was carried on.

8 Derived from Document 131699, titled "Top 500 Headings, T.D. Pub."

9 The areas are Toronto, Thornhill, London, Ottawa, Niagara, Sault Ste Marie, St-Catharines and Montreal.

More importantly, Prof. Willig's empirical exercise provides no insights as to the identity of firms that advertise heavily in newspapers but eschew directory advertising. As I indicated in my report, grocery stores, movie theatres and department stores advertise heavily in newspapers but purchase little, if any advertising in the Yellow Pages.

In summary, Prof. Willig's evidence with respect to the views and behaviour of advertisers does not support his conclusion that all local media advertising belongs in the same relevant market.

## B. The Perspective of the Suppliers of Advertising

The views and behaviour of suppliers of potential substitutes are also relevant in identifying the product market. Prof. Willig's evidence in this regard focuses on Tele-Direct and several Canadian newspapers.

His evidence of Tele-Direct's views as to who it competes with is drawn largely, and selectively, from training material. His discussion begins with citations from one of Tele-Direct's salesforce training programs, a four day "Media Workshop." A careful reading of that workshop material suggests that Tele-Direct marketed its product as a complement, not a substitute for other media.

As a Yellow Pages Sales Representative it is important for us to understand how to use all [emphasis in original] media to best advantage - television, radio, newspapers, magazines, Yellow Pages, outdoor advertising and direct mail. With this understanding we can educate our clients and assist them in maximizing the results of their advertising budget by demonstrating how Yellow Pages can increase [emphasis in original] the effectiveness of the other media in building business.<sup>10</sup>

In this regard, the Yellow Pages can be seen as a complementary medium -- supporting and extending the reach of your advertising in other creative media.<sup>11</sup>

Before leaving the "Media Workshop" material, it is worth quoting at length one passage not referred to by Prof. Willig.

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10 Tele-Direct "Media Workshop, Trainer's Guide," p. 1.3, Document 118493.

11 Tele-Direct "Media Workshop, Trainer's Guide," p. 1.3, Document 118592.

### GENERIC COMPETITION

Generic Competition occurs between products capable of satisfying the same basic need. The need, rather than the form defines this competition. For example, many different companies producing entirely different products and services compete to satisfy an individual's need to be entertained (i.e., theatres, film, sporting events, plays, outdoor activities, hobbies etc.).

In the advertising industry, generic competition exists between different Media capable of satisfying a company's need to advertise -- the competition is for a share of the advertising dollar. (i.e. newspaper, television, radio, magazines, billboards, Yellow Pages, etc.)

### PRODUCT FORM COMPETITION

Product form competition occurs between products that have similar functions or forms. Examples of this type of competition within the directory industry would be "niche" directories such as ethnic directories, neighbourhood directories and business to business directories. Frasers directory and Electronic Yellow Pages would also be examples of product form competition.

### ENTERPRISE COMPETITION

Enterprise competition sometimes called brand competition occurs between companies supplying similar products. Examples of this form of competition are numerous, from the rival corner florist to the more obvious corporate giants - Coke and Pepsi, GM and Ford, Xerox and Canon.<sup>12</sup>

Generic competition does not put products into the same relevant market. Other media compete with directory advertising in the same sense that hobbies compete with movie theatres.

In concluding the section on Tele-Direct's perceptions of its competitors, Prof. Willig states his understanding that in reaction to "changes in its business environment" (which presumably include alleged competition from other media), Tele-Direct took the following steps.

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12 Tele-Direct "Media Workshop, Trainer's Guide," pp. 4.6-4.7, Documents 118830-118831.

- pricing decisions and promotional programs,
- changes in directory scopes,
- movements in the structure of relative prices, for ads of different sizes and characteristics,
- planning and implementing new graphics options, and
- fine-tuning sales force deployment patterns and attitudes.<sup>13</sup>

While there is evidence that Tele-Direct engaged in these types of practices when confronted with direct competition from other directories, there is scant evidence that such policies were adopted to meet competition from other media. If such evidence exists, Prof. Willig does not provide it.

With respect to the views of other suppliers of advertising, Prof. Willig focuses exclusively on newspapers. He provides no evidence to support the view that other media which he places in the relevant market (such as local television, radio, magazines, business papers, farm directories, religious publications, admail, catalogues, flyers, and outdoor advertising) viewed directory advertising as a competing medium.

There is evidence that during the recession in Central Canada in the early 1980s several newspapers attempted to switch advertisers from directories to newspapers. This is reported at length by Prof. Willig. The core issue is whether they were successful. Put differently, did directory advertisers reduce their Yellow Pages expenditures and replace this with newspaper advertising? The answer is found in one of the articles relied upon by Prof. Willig.

Tele-Direct has begun to feel the pinch this year. But Sweeney [James Sweeney of Tele-Direct] attributes this to recession, not the anti-Yellow Pages campaign.<sup>14</sup>

### C. Functionality or End Use

The degree to which two products serve the same function or end use provides important information about whether they are close substitutes. Prof. Willig asserts that "all the local advertising, regardless of the medium, share the same functionality with directory advertising, and belong in the same relevant

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<sup>13</sup> Willig, p. 10.

<sup>14</sup> Don Hogarth, "Media Go Up Against Yellow Pages," *The Financial Post*, November 11, 1994, p. B2, Document 103189, cited in Willig at Appendix 9.



market for the purpose of assessing the strength of competition."<sup>15</sup> His evidence in this regard draws from studies that show that consumers are "influenced" by directory advertising and advertising in other media. He simply ignores the fundamental differences between directory and other media advertising.

The attributes which set the Yellow Pages apart from other advertising media are conveniently summarized in a document relied upon by Prof. Willig.

Strengths:

- Constant use - available 24 hours a day 365 days a year
- Covers virtually the entire market
- Buyers seeking sellers
- Contains virtually all potential sellers
- Completes the message of other advertising media
- Results can be easily measured
- Easy-to-use directory

Weaknesses:

- Inflexible: Yellow Pages ads are changed or updated only once per year
- Long lead time for production
- Cannot list specific prices or promotions
- All competitors displayed together
- Limited to active shoppers - does not create desire
- Due to the large amount of advertising in some directories, books are often cumbersome<sup>16</sup>

It is my view, as expressed in my report, that these characteristics of directory advertising limit functional interchangeability with other media to such a degree as to set directory advertising in a separate relevant market.

#### D. Conclusion

Because I cannot agree with Prof. Willig's definition of the relevant market, I cannot agree with his calculations of Tele-Direct's market share, nor can I agree with his discussion of barriers to entry to the relevant market.

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<sup>15</sup> Willig, p. 14.

<sup>16</sup> Tele-Direct, "Media Workshop, Trainer's Guide," pp. 4.6-4.7, Document 118638.