



CT - 1994 / 003 – Doc # 141

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.

B E T W E E N :

The Director of Investigation and Research

Applicant

- and -

Tele-Direct (Publications) Inc.
Tele-Direct (Services) Inc.

Respondents

- and -

Anglo-Canadian Telephone Company
NDAP-TMP Worldwide Ltd. and
Directory Advertising Consultants Limited
Thunder Bay Telephone

Intervenors

- and -

Classified Directory Publishers Inc. and
Tele-Pages Inc.

Applicants for Leave to Intervene



REASONS FOR ORDER DISMISSING REQUEST FOR LEAVE TO INTERVENE

Date of Hearing:

August 2, 1995

Presiding Member:

The Honourable Mr. Justice William P. McKeown

Counsel for the Applicant:

Director of Investigation and Research

John S. Tyhurst

Counsel for the Respondents:

Tele-Direct (Publications) Inc.

Tele-Direct (Services) Inc.

Andrea Redway

Counsel for the Intervenors:

NDAP-TMP Worldwide Ltd. and Directory Advertising Consultants Limited

John M. Hovland

Counsel for the Applicants for Leave to Intervene:

Classified Directory Publishers Inc. and Tele-Pages Inc.

Neil Belmore

Andrew Shaughnessy

COMPETITION TRIBUNAL

REASONS FOR ORDER DISMISSING REQUEST FOR LEAVE TO INTERVENE

The Director of Investigation and Research

v.

Tele-Direct (Publications) Inc. et al.

By judgment from the bench on August 2, 1995, I refused to grant an extension of time to consider the late request for leave to intervene of Classified Directory Publishers Inc. and Tele-Pages Inc. (together referred to as "Classified Directory") and, accordingly, dismissed the request. At the time, I indicated that brief reasons would issue shortly. The following are those reasons.

The Director of Investigation and Research ("Director") filed his application against Tele-Direct (Publications) Inc. and Tele-Direct (Services) Inc. on December 22, 1994. In accordance with the *Competition Tribunal Rules*,¹ the Registrar published a notice of the application in the *Canada Gazette* on January 7, 1995 and in two issues of two newspapers on January 11 and January 18, 1995. In addition to setting out the particulars of the order sought by the Director, the notice indicated that the deadline for filing requests for leave to intervene was February 6, 1995, that is, 30 days after the publication of the notice in the *Gazette*. The 30-day deadline is pursuant to subsection 27(4) of the Rules. On March 20, 1995, the Director filed an amended notice of application reflecting the withdrawal of certain portions of the original application.

¹ SOR/94-290.

Five requests for leave to intervene in this matter were filed before the February 6, 1995 deadline and were granted on March 1, 1995. Included among the intervenors was White Directory of Canada, Inc. ("White"), a directory publisher, which discontinued its intervention by notice filed on June 23, 1995.

Classified Directory filed its request for leave to intervene in this proceeding on June 16, 1995. According to the request for leave to intervene, Classified Directory publishes a directory of Canadian businesses, both in print and electronic form, which is distributed nationally.

Classified Directory filed its request for leave to intervene in this application some four months after the expiry of the deadline for filing requests for leave to intervene established by the Rules. While section 68 of the Rules provides that a judicial member of the Tribunal may extend or shorten a time limit in the Rules by order,² the power to do so is discretionary and, in my view, exceptional. Deadlines are set out in the Rules in order to provide a degree of certainty for the parties and intervenors as to the timing and conduct of an application before the Tribunal in usual circumstances. Section 68 gives the Tribunal the power to alter those deadlines where warranted because of unusual circumstances. It is up to the person who comes to the Tribunal to request an extension of time to provide some explanation of why that extension is justified.

In the case before me, Classified Directory provided no satisfactory explanation for not filing within the 30-day deadline. Reference was made to the fact that, since White has now discontinued its intervention, there are no directory publishers other than the respondents before

² There is one exception in subsection 68(2). The deadline set out in subsection 24(1) of the Rules may not be shortened even by order of a judicial member as this delay is prescribed in section 100 of the *Competition Act*, R.S.C. 1985, c. C-34.

the Tribunal. I regard the presence or absence of White as irrelevant to the question of why Classified Directory did not file its request for leave to intervene within the deadline. There was no evidence before me that White had undertaken to attempt to represent the interests of Classified Directory. Under different circumstances, for example, if a trade association intervened and then withdrew and an individual member wanted to request leave after the deadline to represent itself, the actions of another intervenor might be relevant. In any event, the reference to White is clearly an "after the fact" justification since White actually withdrew *after* the request for leave to intervene of Classified Directory was filed.

It was also argued that allowing Classified Directory to intervene would cause little prejudice to the parties. In my opinion, prejudice to the parties would only become relevant if a valid reason for missing the deadline had been given. On these facts, I do not even arrive at a point where I need to balance any alleged unfairness to the would-be intervenor if the deadline is not extended against possible prejudice to the parties if it is extended. Classified Directory has not provided any reason why it missed the original deadline. Without finding that any of these factors would have been determinative, I note that it did not submit that the time provided to file a request for leave to intervene was too short or that the notice of the application was not adequately publicized. Classified Directory made no submission that might provide a basis for a conclusion that some unfairness to it had occurred.

Classified Directory based its intervention request in part on the decision of the Director to delete two of his proposed remedies. Classified Directory cannot seek any remedies deleted by the Director since the law is well established that intervenors cannot seek any additional relief

beyond that sought by the Director. Counsel for Classified Directory did not pursue this ground in argument.

For these reasons, I declined to grant an extension of time to Classified Directory and thus dismissed the request for leave to intervene on August 2, 1995.

DATED at Ottawa, this 9th day of August, 1995.

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

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