



CT - 1994 / 003 – Doc # 113

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



**ORDER REGARDING MATTERS CONSIDERED AT THE  
PRE-HEARING CONFERENCE ON JUNE 27, 1995:  
AMENDMENT TO RESPONSE (AMENDED), DISCOVERY ISSUES  
AND JOINT BOOK OF DOCUMENTS**

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**Date of Pre-hearing Conference:**

June 27, 1995

**Presiding Member:**

The Honourable Mr. Justice Marshall E. Rothstein

**Lay Members:**

Dr. Frank Roseman

**Counsel for the Applicant:**

**Director of Investigation and Research**

James W. Leising  
John S. Tyhurst

**Counsel for the Respondents:**

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

Warren Grover, Q.C.  
Mark J. Nicholson

**Counsel for Intervenors:**

**Anglo-Canadian Telephone Company**

Russell W. Lusk, Q.C.

**NDAP-TMP Worldwide Ltd. and Directory Advertising Consultants Limited**

John F. Rook, Q.C.  
John M. Hovland

**Counsel for White Directory of Canada, Inc. (Former Intervenor)**

David K. Wilson

**COMPETITION TRIBUNAL**

**ORDER REGARDING MATTERS CONSIDERED AT THE  
PRE-HEARING CONFERENCE ON JUNE 27, 1995:  
AMENDMENT TO RESPONSE (AMENDED), DISCOVERY ISSUES  
AND JOINT BOOK OF DOCUMENTS**

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*The Director of Investigation and Research*

v.

*Tele-Direct (Publications) Inc. et al.*

FURTHER TO the notice of motion filed by the respondents for leave to amend the Response (Amended);

AND UPON CONSENT by the Director of Investigation and Research (the "Director") to the above motion;

AND FURTHER TO the notice of motion filed by the respondents for an order requiring the intervenors, White Directory of Canada, Inc. ("White Directory"), NDAP-TMP Worldwide Ltd. ("NDAP"), and Directory Advertising Consultants Limited ("DAC"), to provide written answers to the written examination for discovery as set out in the draft order attached hereto as Schedule "A";

AND UPON the discontinuance of White Directory from intervenor status, pursuant to subsection 51(2) of the *Competition Tribunal Rules*;

AND ON CONSIDERING the written submissions made by the parties and intervenors, and on hearing the submissions of counsel for the parties and intervenors;

AND ON HAVING REGARD to the jurisprudence cited, in particular to two decisions of this Tribunal in *Director of Investigation and Research v. A.C. Nielsen Company of Canada Limited*,<sup>1</sup> and the consideration given in these decisions to the issue of ordering discovery and disclosure of information from intervenors;

AND ON HAVING REGARD to the specific circumstances of this case;

AND ON HAVING REGARD to the agreement of counsel for the parties and intervenors to resolve the questions in the draft order (Schedule "A") pertaining to documents;

AND UPON COUNSEL AGREEING that the information produced pursuant to this order shall be disclosed only to counsel for the parties and intervenors;

AND FURTHER TO the notice of motion filed by the Director for orders:

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<sup>1</sup> (22 June 1994), CT9401/28, Reasons and Order Regarding Affidavits of Documents, [1994] C.C.T.D. No. 15 (QL) (Comp. Trib.); (22 September 1994), CT9401/82, Reasons and Order Regarding Matters Considered at Pre-hearing Conference on September 14, 1994: Amendment to Notice of Application, Examination for Discovery, and Production of Documents at 5, [1994] C.C.T.D. No. 15 at 4 (QL) (Comp. Trib.).

(1) compelling the respondents to produce all internal documents or records dealing with their July 1993 commissionability rule changes (with the exception of any such document or record containing or seeking legal advice), and to produce such records to the Director, and to re-attend and answer questions on discovery relating to those documents or records;

(2) compelling the respondents to re-attend and answer questions on discovery relating to the letter of Thomas J. Bourke to Howard Wetston dated July 12, 1991; and

(3) compelling the respondents to produce all pricing studies, memoranda, or other documents or records dealing with the annual rates set by the respondents for directory advertising during the years 1986 to the present and to re-attend and answer questions on discovery relating to those documents or records;

AND UPON HEARING submissions by counsel for the respondents that the above motion, which raises the issue of privilege on the ground of furtherance of settlement, should be deferred so as to avoid the risk of disqualification of the members of the panel in this pre-hearing conference from hearing the application on the merits;

AND UPON agreement by counsel for the parties, prior to the pre-hearing conference, to adjourn the third portion of the Director's motion, dealing with pricing studies, until the August pre-hearing conference;

THE TRIBUNAL ORDERS THAT:

**I. MOTION REGARDING AMENDMENT TO RESPONSE (AMENDED)**

The respondents are granted leave to amend the Response (Amended) by adding after the first sentence in paragraph 62 the following:

It is the Respondents' position that as all issues related to National Advertising were dealt with in the Consent Order, the Applicants are estopped from raising these issues, based on the principle of res judicata and issue estoppel. Furthermore, it is the Respondents' position that if the Applicants wish to vary or rescind the Consent Order they must proceed by way of section 106 of the Competition Act.<sup>2</sup>

**II. MOTION REGARDING WRITTEN DISCOVERY**

The questions set out in Appendix "A" of Schedule "A" shall be dealt with as follows:

**A. Questions to DAC**

- (1) DAC shall answer questions 1, 12, 16 and 20 as set out in Appendix "A";
- (2) DAC shall answer question 2 which shall read as follows: Disclose late payment charges paid over the last three years for accounts paid within 70 days or less of the issue date of the invoice to the CMR;
- (3) DAC shall answer question 9 which shall read as follows: Disclose all references in business or strategic plans to anti-competitive actions of the respondents as alleged by

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<sup>2</sup> Draft Order Regarding the Request for Leave to Amend the Respondents' Amended Response at 2.

the Director since 1990;

(4) DAC shall answer question 14 on the understanding that the answer shall only be at a general level, i.e., not with respect to the services, if any, provided to particular customers;

(5) DAC shall answer questions 15, 17, 18 and 19 if the respondents recast these questions in the form of requests for confirmation of information already possessed by the respondents;

(6) DAC shall not be required to answer questions 10 and 11 since, in the context of the allegations pertaining to DAC, the information in financial statements is at a very aggregated and general level and the Tribunal has not been persuaded that it is relevant or helpful in addressing the issues in this matter; and

(7) DAC shall not be required to answer question 13 since the basis for this question is the Director's allegation in paragraph 65(c)(i) of the notice of application and the Tribunal has not been persuaded that the question relates to that allegation.

**B. Questions to NDAP**

(1) NDAP shall answer questions 5 and 9, and the first question 13; and

(2) All other questions shall be dealt with in accordance with this order with respect to DAC.

**C. Disclosure of Documents by White Directory**

(1) Disclosure of documents by White Directory shall be conditional on the Director calling White Directory to give evidence at the hearing of this matter;

(2) White Directory shall not be required to answer questions pertaining to the income tax treatment of its Canadian operations, i.e., question 2 under "Documents", as this information will not be necessary in light of this order with respect to audited financial statements and consolidated results as set out below;

(3) White Directory shall provide, for its Canadian operations, audited financial statements for the same financial periods for which it has already provided unaudited financial statements since the Tribunal has been persuaded that this financial information may be relevant, and since the Tribunal has not been satisfied that any harm would result to White Directory by such disclosure;

(4) White Directory shall produce consolidated financial statements for the same periods for which it is required to produce audited financial statements for its Canadian operations, since the Tribunal has been satisfied that White Directory is a wholly-owned subsidiary of a United States parent company and there is the potential for allocations of



revenues, expenses, investments and other accounts between the United States and Canadian companies which could affect the Canadian results; and

(5) White Directory shall disclose all references in business or strategic plans that make reference to anti-competitive actions of the respondents as alleged by the Director since 1992.

### **III. MOTION TO COMPEL PRODUCTION OF DOCUMENTS OR RE-ATTENDANCE**

A. The motion is adjourned to a time and place to be fixed by the Chairman of the Tribunal following consultation with counsel for the parties and intervenors;

B. The third portion of the Director's motion concerning pricing studies shall be adjourned to the August pre-hearing conference, or until such time and place as fixed by the Chairman of the Tribunal.

### **IV. JOINT BOOK OF DOCUMENTS**

The parties shall file a joint book of documents by Tuesday, August 29, 1995. The joint book shall contain only documents which are to be adduced in evidence at the hearing of the application and shall be indexed, tabbed and the pages numbered consecutively throughout.

DATED at Ottawa, this 29<sup>th</sup> day of June, 1995.

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

(s) Marshall Rothstein  
Marshall Rothstein