

ORIGINAL

No. CT-94

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

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE		P R O D U I T
AUG 29 1995 12B		
REGISTRAR - REGISTRAIRE		
OTTAWA, ONT.		#150

BETWEEN:

THE DIRECTOR OF INVESTIGATION AND RESEARCH

COMPETITION TRIBUNAL  
TRIBUNAL DE LA CONCURRENCE

- and -

File No. CT-94/3  
 No. du dossier  
Her v Tele-Direct  
 et [redacted]  
 Exhibit No. [redacted]  
 No. de la pièce  
 Filed on Jan 22/96; 10h01  
 Déposée le  
 Registrar Shogacei  
 Greffier

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

- and -

ANGLO-CANADIAN TELEPHONE COMPANY,  
NORAM-TELE WORLDWIDE LTD.,  
DIRECTORY ADVERTISING CONSULTANTS LIMITED  
AND THUNDER BAY TELEPHONE

AFFIDAVIT OF ROBERT WILLIG

I, Robert Willig, of the Township of Princeton,  
State of New Jersey, MAKE OATH AND SAY AS FOLLOWS:

1. I am a Professor of Economics and Public Affairs at Princeton University, Princeton, New Jersey. I have been retained by the Respondents to provide an expert

opinion and expert evidence with respect to certain allegations made by the Director in these proceedings.

2. Attached as Exhibit "A" is a copy of my opinion with respect to these matters.

SWORN BEFORE ME in the  
Township of Princeton  
in the State of New York  
this 17<sup>th</sup> day of August, 1995

Mary K. Fish

Robert Willig  
Robert Willig

MARY K. FISH  
Notary Public, State of New York  
Qualified in Warren County  
Commission Expires February 28, 19 96

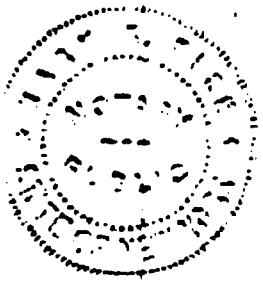


EXHIBIT "A"

**REPORT OF ROBERT D. WILLIG**  
**Filed On Behalf of Tele-Direct Publications and Tele-Direct Services**  
**In Re: The Director of Investigation and Research v.**  
**Tele-Direct (Publications) Inc. and Tele-Direct (Services) Inc.**  
**Proceedings Before the Competition Tribunal**  
**August 18, 1995**

1. My name is Robert D. Willig. My business address is Woodrow Wilson School, Robertson Hall, Princeton University, Princeton, New Jersey, 08544. I received a Ph.D. in Economics from Stanford University in 1973, an M.S. in Operations Research from Stanford in 1968, and an A.B. from Harvard College in 1967. I worked in the Economics Research Department of Bell Laboratories, first as a member of the technical staff and later as a supervisor, from 1973 to 1978. Since 1978, I have held the position of Professor of Economics and Public Affairs at Princeton University. There, I lead the economics program at the Woodrow Wilson School of Public and International Affairs, and also teach in the Economics Department.

I took academic leave to serve as Deputy Assistant Attorney General in the Antitrust Division of the U.S. Department of Justice from 1989 to 1991. During my tenure there, I drafted what became the 1992 Horizontal Merger Guidelines. In addition, I supervised a staff of approximately fifty Ph.D. economists who evaluated potential merger and monopolization cases as major components of their work. In part as a result, I have broad experience assessing and delineating relevant markets and analyzing the impacts on competition of business practices in many different contexts.

I have authored Welfare Analysis of Policies Affecting Prices and Products, Contestable Markets and the Theory of Industry Structure, and some seventy articles in the economics literature. I have served as co-editor of the Handbook of Industrial Organization, and as a member of the editorial boards of the American Economic Review, the Journal of Industrial Economics, Utilities Policy, and the MIT Press Series on Government Regulation of Economic Activity.

I have served as an expert witness in the United States before Congress, Federal administrative agencies, and state Public Utility Commissions on subjects involving regulation and deregulation of transportation, communications, energy and other industries. I have also provided expert testimony before U.S. state and Federal Courts and agencies on matters of antitrust and competition. I have served as a consultant for the Federal Trade Commission on antitrust policy, for OECD ("Organization of Economic Cooperation and Development") on global trade and competition policy, and for several nations' governments on microeconomic reforms. I have also consulted in the private sector on pricing, costing and business

organization. In the field of telecommunications, I have conducted research studies, written, consulted, and testified on long distance markets, network access, service and access pricing, yellow page directory services, competition and regulation, and market boundaries. I was an organizer of the annual Telecommunications Policy Research Conferences.

I have been an elected Fellow of the Econometric Society, a member of the Research Advisory Council of the American Enterprise Institute, an Associate of the Center for International Studies, a Member of the New Jersey Governor's Task Force on the Market Pricing of Electricity, a Member of the Defense Science Board Task Force on the Consolidation of the Defense Industry, and a partner in Consultants in Industry Economics, L.L.C. A complete copy of my Curriculum Vitae is attached as Appendix 1.

2. I have been retained by Tele-Direct to provide an expert opinion and expert evidence on:
  - (1) the definitions of the relevant markets in this case;
  - (2) the rationales for certain of the business practices of Tele-Direct impugned by the Director;
  - (3) the validity of the Director's theory of tied selling in this case; and
  - (4) the likely impact on competition of the impugned practices.

3. My central conclusions are as follows:

- (i) The relevant product market in which to determine the competitive position of Tele-Direct directory advertising comprises all forms of advertising that serve the same function as advertising in Tele-Direct's directories from the perspective of the firms that purchase this advertising. The relevant market includes most local advertising (i.e. advertising which promotes the business of local establishments), irrespective of whether it appears in newspapers, flyers, other directories, or any other advertising medium. The relevant geographic markets include any other local advertising to which some consumers in the area of directory circulation are exposed. Of course, in order to compete with each other, it is not necessary for two different local advertising media to have the exact same groups of consumers exposed to them -- but it is necessary for them both to be capable of promoting the business of the same establishment. These conclusions are derived from evidence pertaining to advertiser behavior, to the actions and reactions of the firms supplying various kinds of local advertising, and to the behavior and uses of advertising of final consumers.

- (ii) The high level of competition facing Tele-Direct directory advertising in its relevant markets rules out the exercise of significant market power. This conclusion follows from several lines of analysis. First, Tele-Direct directory advertising accounts for sufficiently modest shares of the relevant markets to indicate that Tele-Direct is not a dominant firm in its markets. Second, there is considerable evidence of rivalrous behavior among participants in the relevant markets. Third, existing competitors have the capacity to expand their output significantly and rapidly in response to shifts in demand. Fourth, no substantial barriers to entry exist.

- (iii) As a matter of economic logic, the Director's allegations of anticompetitive activity

by Tele-Direct make little or no sense in view of the high level and robust nature of competition facing Tele-Direct's directory advertising in its relevant markets. When facing such competition, firms are impelled by market forces to fashion their sales efforts and other business practices efficiently, and in line with customers' demands, because if they do not succeed in these endeavors, they cannot succeed in their business. Consequently, it is my considered view, as well as that of many others, that those charged with protecting competition for the public interest should, before turning to a detailed assessment of the complained-of practices, assess the robustness and strength of competition in the appropriate relevant markets because if significant market power is found to be unlikely, then there is no need to waste judicial resources on a scrutiny of the practices.

(iv) Nevertheless, for the sake of completeness, I proceed to consider some of Tele-Direct's challenged business practices towards "consultants". These practices appear, through the lens of economic analysis, as well as the common sense of business, to be efficient adaptations to the nature of the enterprise and its marketplace environment. Putting aside the proven conclusion that Tele-Direct faces effective competition for its directory advertising, a reliable test for the efficiency of business practices is whether they are consistent with competition. There can be no doubt that Tele-Direct's policies towards "consultants" have efficient pro-competitive rationales.

4. This report is organized as follows:

Section I considers the definitions of the relevant markets for assessing the degree of competition facing Tele-Direct directory advertising. Section II evaluates the strength of this competition in the relevant markets, and discusses the implications of this evaluation for the overall case. Section III considers the rationales for certain of the business practices of Tele-Direct with respect to consultants impugned by the Director and considers whether there likely could be an impact on competition in a relevant market as a result of the impugned practices.

#### **I. DEFINITION OF THE RELEVANT MARKET FOR TELE-DIRECT DIRECTORY ADVERTISING**

5. The analysis and evidence detailed in this section reach the conclusion that the relevant product market in which to determine the competitive position of Tele-Direct directory advertising comprises all forms of advertising that serve the same function as Tele-Direct directory advertising from the perspective of the firms who purchase the advertising. This would include the bulk of local advertising through other media such as other directories, newspapers, magazines, radio, television, direct mail and flyers, outdoor advertising, and so forth. The geographic boundary of the market in which advertising in a given Tele-Direct directory competes is defined in terms of, but not necessarily equal to, the area that the directory serves. Any other local advertising to which consumers in the directory area are exposed also competes in this geographic market. The location of the consumers who are exposed to it is the key factor in the determination of whether a particular advertising medium is in the geographic

market. Of course, in order to compete with each other, it is not necessary for two different local advertising media to have the exact same groups of consumers exposed to them -- but it is necessary for them both to be capable of promoting the business of the same establishment. The location of the plant or station at which the medium is produced or transmitted is relevant only to the extent that it affects the area of coverage. Thus, for example, a radio station in one area may be an important medium in the advertising market for an adjoining area.

6. Economic reasoning and common sense mandate that the market be defined to include the bulk of local advertising through media other than directories. Tele-Direct directory advertising is one of many ways in which an establishment may promote its product or service, and attract customers. Advertising plays many roles, and not all forms of advertising have identical characteristics and marketing capabilities.

The same economic logic shows that taking the relevant market in which Tele-Direct directory advertising competes as comprising all forms of advertising, both local and national, is too broad a definition. It is clear, for example, that network television advertisements and Tele-Direct directory advertisements are not good substitutes. At the other end of the spectrum, it should be equally clear that a market definition that included solely directory advertisements would be far too narrow. A variety of media serve similar roles.

7. To understand which forms of advertising are substitutes for, and competitors of, Tele-Direct directory advertisements, it is important to understand the role of telephone directory advertising from the point of view of those who purchase advertising. The purchasers' perceptions of substitutability are the crucial ones since they control the allocation of their advertising budgets; it is the threat that customers (Tele-Direct directory advertisers) will switch to alternative forms of advertising that prevents the existence of market power.

A business purchases an advertisement in a Tele-Direct directory for one fundamental reason: to increase profits by attracting more customers and raising sales volume. It is certainly true that advertisements in different media differ along a variety of dimensions. For example, some are print, while others are broadcast. Some are creative, while others are not. Shoppers may also use advertisements in different media differently. However, when choosing among alternative forms of advertising, a vendor does not care about the characteristics of the media for their own sake. Ultimately, the value of advertising in each medium is judged by its effect on sales. When a consumer makes a purchase, the seller does not care whether that consumer was influenced by directory advertising, rather than advertising in any other medium (unless of course this information helps him to plan a more effective advertising campaign -- again judged by sales -- in the future).

8. By purchasing a Tele-Direct directory advertisement, a company may reach two types of potential customers: (1) those buyers who are looking for that particular company's establishment; and (2) those buyers who are using directory listings and advertisements as a source of information on which to base their choice of an establishment to patronize. Both types of customers can be reached through other media.

9. The first type of customer uses the firm's directory advertisement as a source of the address and telephone number of the particular establishment being sought. Clearly, the firm can convey that same information to these customers through a lightface white page listing, or a lightface yellow page listing, or by being listed with directory assistance. Given that these alternatives to directory advertising are provided to firms free or at a very low price, it is extremely unlikely that Tele-Direct directory advertising could derive any significant market power from its role as a means of reaching consumers who are seeking preselected firms.

10. Tele-Direct directory advertisements are used by firms to reach the second type of consumer. A business purchases an advertisement in a directory in order to attract those consumers who have not yet definitely chosen an establishment to patronize. There is a tremendous variety of marketing techniques and advertising media through which a business can encourage consumers to patronize it. Directory advertising competes against any of these advertising vehicles that influence the choices that consumers make in terms of the store or provider of a service from whom they make purchases. This is the standard definition of "local advertising", in contrast to national advertising that is defined as promoting products or services, rather than particular establishments.

11. My conclusions concerning the appropriate definition of the market are derived from a number of lines of evidence that all point to the same answer. The framework is set by the fundamental concept that the relevant product market includes the products and services that provide the competitive constraints on the firm's product at issue, because they are the products and services that the firm's customers do and would further substitute for the firm's offering. In general, for the analysis of competition, one can responsibly use three different types of evidence to shed light on the degree of substitutability among 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 their products to be substitutes; and one can examine the characteristics and uses of the products to assess the degree of functional similarity. These categories of evidence, presented below in order, are what underlie much of both traditional and methodologically rigorous consideration of market definition issues. This is so because the three types of evidence cover the domain from the applicable perspectives, giving considerable weight to the views of market participants -- not as they would necessarily articulate them in the context of a legal dispute, but as their views shape their observable behavior as businesses and consumers.

#### **IA. FROM THE PERSPECTIVE OF ADVERTISERS, LOCAL ADVERTISING IS THE RELEVANT MARKET FOR TELE-DIRECT DIRECTORY ADVERTISING**

12. The purchaser of advertising is interested in the effectiveness of his or her advertising dollar in generating increased retail sales. An advertising purchaser judges whether media are substitutes by looking at their effectiveness, and by spending on those media that are viewed to perform well, relative to their cost. 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.

13. One particularly clear source of information on this subject is the Customer Satisfaction Management Report prepared for Tele-Direct by Elliott: Customer Satisfaction Measurements, dated January 1993. The report documents a study based on 1575 telephone interviews of a sample of current and former customers of Tele-Direct, for the purpose of providing Tele-Direct with information about how to improve customer satisfaction by means of changes in its business management. For my present purpose of delineating the relevant market in which directory advertising competes, it is fortunate and informative that the Elliott study included specific questions about the media in which the business advertises.

14. Among the interviewed current Tele-Direct customers, for every 100 mentions of Yellow Pages as a medium where the business advertises, there were 110 mentions of other media -- 17 of daily newspapers, 31 of community newspapers, 13 of trade publications, 7 of magazines, 19 of direct mail and flyers, 2 of free-standing inserts, 11 of radio, 4 of TV, and 6 of billboard. Twenty-six percent of the interviewed Tele-Direct customers answered that no other media provide better advertising value than Tele-Direct Yellow Pages, while the rest mentioned a wide variety of media as providing better value, including 31% for community newspapers, 22% for direct mail and flyers, and 11% for word-of-mouth.

15. Fifty-nine percent of the interviewed Tele-Direct customers rated the quality of Yellow Pages as about the same as that of other companies that provide advertising, 18% and 3% as somewhat or much higher quality, respectively, and 12% and 8% as somewhat or much lower quality, respectively. Among the interviewed former customers of TD, who recently cancelled their Yellow Pages advertising, 44% rated the quality of Yellow Pages as about the same as that of other companies that provide advertising, while 49% answered somewhat or much lower quality. Thus, not only do the customers of Tele-Direct Yellow Pages already advertise to a very significant extent in a wide variety of other media, but many of these customers compare against available alternatives the quality of Yellow Pages as an advertising medium for their business in much the same unenthusiastic way that do the former Tele-Direct customers who have since cancelled their Yellow Pages advertising. This indicates 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.

16. A smaller scale, but more searching, Yellow Pages Satisfaction Study was prepared for Tele-Direct by Omnifacts Research Limited, in April 1994, with a focus on the Newfoundland market. Though the economy of the province was reported to be a factor in shrinking advertising budgets and a decrease in Yellow Pages advertising revenues, competitive factors were reported to be important as well. Newer, and smaller-firm, advertisers were making much greater use of local trade magazines, direct mail, flyers and brochures, and making decisions in reaction to deals offered by sales representatives from the various media. Established customers are not deserting the Yellow Pages, but are using all of the print media available, including brochures and newsletters. Advertisers who had reduced Yellow Pages expenditures



mentioned reliance on newspaper and radio advertising and added monitoring of customer awareness of radio and print advertising.

17. Another small-scale study, of advertisers in Montreal and Toronto, was prepared for Tele-Direct in May 1990 by IMPACT Research, "The businesspeople's perception of the Yellow Pages as an advertising medium." Among the 36 interviewed respondents, for their advertising media, 25 used mailings, 22 used local weekly newspapers, 19 used Yellow Pages, 18 used daily newspapers, 9 used radio, 5 used magazines, 4 used business cards, 4 used television, 4 used out-of-home, 3 used trade shows, and 3 used catalogues.

18. Survey findings of these kinds are completely consistent with the experiences of the members of the Tele-Direct sales force, who are aware that their customers generally advertise in many other local media and generally substitute spending in various forms of advertising for spending in others, including Yellow Pages, within the control of an overall advertising budget. Tele-Direct salespeople regularly encounter customers who intend to move funds out of Yellow Pages advertising for the purpose of freeing up a portion of their advertising budget to be committed to a different medium, and regularly work to stop or reverse any such movement of advertising expenditures.

19. It is important to recognize that the advertiser penetration experienced by Tele-Direct for its overall Yellow Pages directory advertising is approximately 50%. That is, about one-half of all establishments (with business telephone service) in the areas covered by the Tele-Direct directories do not purchase any Yellow Pages advertising in those Tele-Direct books. These establishments are listed with their phone numbers and addresses (in light face) in their chosen classified heading, as part of their business telephone service, but they do not elect to purchase any advertising (or even a bold listing) in their local Tele-Direct directory. I understand that it is Tele-Direct's practice to have a salesperson contact each non-advertiser every year in an attempt to sell them advertising, and I understand that Tele-Direct's success rate in this endeavor is roughly 5%. Thus, plainly, establishments can and do choose to forego Tele-Direct Yellow Pages advertising, and to do so (in 95% of the cases) repeatedly.

20. While some such establishments may forego all advertising, and others may elect to advertise solely in other directories, many choose an advertising strategy that includes other media. Appendix 2a is an advertisement from the London Free Press for an auto dealer, Grand Touring Cars, who has no display advertisement and nothing but a lightface listing in its local Tele-Direct Yellow Pages directory. The Appendix contains as another example a Niagara newspaper ad for an Arby's restaurant which also has nothing in its local Tele-Direct Yellow Pages directory but a lightfaced listing. As a related example, the Appendix also includes an Ottawa newspaper graphic ad for a cafe-restaurant called Le Twist, which has no display ad but which does have a bold listing in its local Tele-Direct Yellow Pages directory.

21. These examples emerged from a search through a number of regional newspapers from Toronto, Thornhill, London, Ottawa, Niagara, Sault Ste Marie, St-Catharines, and Montreal. Newspaper ads were identified for establishments in the businesses represented by the top five

Yellow Pages headings in the region's Tele-Direct directories. Then, those establishments with newspaper ads were sought in their local Tele-Direct Yellow Pages directories. Overall, the search found 542 newspaper advertisers in these categories. Of this group, 39% had display ads in both the searched newspaper and in the local Tele-Direct Yellow Pages directory, while 61% of the newspaper advertisers had no display ad in their local Tele-Direct Yellow Pages directory. (The 61% is comprised of 42% who had no Yellow Pages business phone number, and hence no listing in the Tele-Direct Yellow Pages of any kind. Another 12% did have lightfaced classified listings in the local Tele-Direct Yellow Pages directory, but no ad in that directory of any kind. Yet another 6% had a boldfaced listing in their local Tele-Direct Yellow Pages directory, but no display ad in that directory.)

22. The same search also uncovered further examples that are of interest to this inquiry. A limited number of the advertisers employed much the same ads in both the newspaper and the Tele-Direct Yellow Pages directory. As an example, Appendix 2b holds the very similar newspaper and directory ads of Sweeney Todd's, a micro brewery pub in St-Catharines. The Appendix also holds the Ottawa newspaper and directory ads of the law office Legault, Roy, Mantha -- both ads have essentially the same copy with a different layout. Also in the Appendix are examples (Pensa & Associates, lawyers in London; and Elm Street Computer Terminal, a computer dealer in Toronto) where the newspaper ad includes some of the same information presented in the directory display ad, but where the newspaper ad also includes some timely information of the kind that a directory ad could not contain, due to its permanence.

23. Thus, it is plain from even this limited survey that establishments, including those in the most popular directory categories, have diverse portfolios of advertisements that may or may not include display and boldface listing ads in Tele-Direct Yellow Pages directories. Evidently, for some who choose not to advertise in these directories, or not to invest in display ads, newspaper advertising is among the alternatives of which they avail themselves. This is not surprising in general, but especially in light of the examples that show that the content of an establishment's ad in the Yellow Pages directory and in a newspaper may be much the same, and, the differences that arise often stem from the greater timeliness of newspapers.

These observations of advertiser marketplace behavior reinforce the more scientific and the more inclusive results of the surveys that were described above. In total, the presented evidence from the perspective of advertisers, in my view, strongly supports the proposition that all forms of local advertising are substitutes for Tele-Direct directory advertising.

#### **IB. FROM THE PERSPECTIVE OF THE SUPPLIERS OF ADVERTISING, ALL LOCAL ADVERTISING COMPETES WITH DIRECTORY ADVERTISING**

24. The perspective of suppliers can be extremely helpful in determining the relevant market for the assessment of competition because it is the suppliers who experience extant marketplace competition in the course of their businesses, and who must react to it in order to survive. Hence, indications that suppliers do act consistently with competition against a given product or

service in the ordinary courses of their businesses can provide reliable evidence for market definition.

25. Many of the aspects of the way that Tele-Direct runs its business provide clear evidence that from its perspective, its directory advertising competes against all other local advertising. To start at the beginning, Tele-Direct salespeople undergo a rigorous training program that includes education about other local advertising media and how to sell directory advertising in the face of competition from them. The Tele-Direct salesforce must participate in the company's four-day Media Workshop, which includes among its stated objectives:

- (1) To increase our understanding of advertising media and the role of yellow pages in the media mix;
- (2) To assist you in serving as media consultants in the field, and overcoming objections [to buying more directory advertising] related to other media;
- (3) To learn specific sales strategies to increase the "Yellow Pages portion" of advertisers' media budget;
- (4) To enhance your awareness of the tactics other media sales reps may use to sell against Yellow Pages and to learn skills to overcome these tactics.

It seems clear that Tele-Direct would not mount such a workshop, and commit resources to it, unless in the company's perspective its customers do find advertising in other media attractively substitutable for directory advertising, and its advertising rivals do try to sell their ads in other media as substitutes for those of Tele-Direct.

26. Tele-Direct arms its sales force with information and sales aids that show that the company regards itself as needing to react to other advertising media in the marketplace it faces. For example, as sales people move into a new area for a canvas, local newspapers are provided to inform them about the kinds of advertising their customers are inclined to buy. Informational packages like the examples in Appendix 3 are often provided that list data on local newspapers and radio stations, and include approximations of their prices for advertising. Some prepared material shows direct comparisons between prices of Tele-Direct ads in the local directories and ads in the local media. Other aids that are intended to be shown to the customer compare ad sizes as well as prices between specific newspapers and Tele-Direct directories. Letters are sometimes prepared for sales reps to send to customers at the start of a canvas and which include lines such as: "... Yellow Pages ads are less expensive than other comparable media."

27. A family of sales aids for specific headings favorably compare the effectiveness of directory ads against newspapers, radio, TV, and sometimes magazines, direct mail and suppliers' catalogues with respect to influencing consumer behavior. (Examples are provided in Appendix 4.) Another sales aid compares the roles and strengths of television, magazine, newspaper, direct mail, outdoor, radio, and Yellow Pages advertising. Another family of sales aids (see Appendix 5) displays copies of testimonial letters from advertisers who explain that such other media as radio and newspapers are not as effective in building their business as directory ads. Sales people can leave with the customer pads of sheets entitled "Advertising

Survey" (Appendix 6). These encourage personnel at the customer's office to ask callers where they found the address or phone number, and include check boxes for Yellow Pages Directory, white pages directory, newspapers, direct mail, radio, television, trade shows, business cards, and other.

28. Tele-Direct sales aids also are designed to counter the cutting activities of consultants who approach directory advertisers as self-proclaimed experts, and give advice on how to buy less directory advertising in exchange for a percentage of the "cost saving." (See Appendix 7) Other Tele-Direct sales aids are directed at persuading advertisers that they will do better by staying with Tele-Direct ads rather than moving into an advertising program in specific independent directories.

29. Internally, Tele-Direct attempts to understand the reason for advertising cancellations, and makes use of the Potential Advertiser Retrieval (P.A.R.) Form for this purpose. Among the boxes on the form for the reason for the cancellation is "Trying Other Media". Tele-Direct keeps abreast of developments affecting other media, and systematically takes into account in its own pricing decision-process anticipated movements in prices for advertising space in other local media. Tele-Direct actively supports marketing research that has as one of its focuses the competitive interaction between directory and other local advertising. In general, Tele-Direct attempts to react effectively and competitively to changes in its business environment, and I understand that these reactions include 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.

30. While I have not had access to internal information about the operations of other suppliers of advertising, there are many clear indications that such suppliers regard Tele-Direct directory advertising among their close competitors. First, Tele-Direct personnel are well-aware of wide-spread aggressive efforts by advertising sales people from newspapers to divert advertisers' spending from Yellow Pages ads to their own. Second, information on the competitive activities of other local advertising suppliers has appeared from time-to-time in public.

A) The Oshawa Times, a local Canadian newspaper from Oshawa, Ontario, ran a full page insert in their July 17th, 1990 edition stating that advertising in directories is "risky." They claim that the amount of money spent for one advertisement in the Yellow Pages could be spent on a series of advertisements in the Oshawa Times, and with the money left over one could still place a smaller advertisement in the Yellow Pages that would be large enough to capture the attention of potential customers.

The newspaper sponsors seminars targeting advertisers who are unsure of where they should spend their advertising budgets. The speakers at these seminars are well known for their anti-Yellow Page advice. They recommend decreasing spending on Yellow Page advertisements, and transferring the money saved to advertising in other forms of media. (Appendix 8 has

examples of these materials, and Appendix 9 contains the materials alluded to below in B through G.)

B) An advertisement placed in The Daily News on August 5, 1991 proclaims that advertisers need to divert their yellow page spending to newspapers. The ad states "When people start reading the Yellow Pages every morning for breakfast, we'll start placing big ads in it. Until then the Yellow Pages is nothing more than a directory of names, phone numbers and addresses that the average person uses infrequently at best." The ad plays on the disadvantages of Yellow Page advertising and turns them into the advantages of advertising in newspapers: flexibility, creativity, ability to promote sales, and coverage.

C) An article in The Financial Post dated November 11, 1991 states that numerous Canadian newspapers have been sponsoring anti-Yellow Page attacks similar to the one The Oshawa Times sponsored. The article continues by reporting that newspapers, television and radio stations are all fighting back to reclaim their share of the advertising dollar.

D) An advertisement in the Cape Breton Post compares newspaper ads with billboards, direct mail, radio, television and Yellow Pages. It claims the other forms of advertising media "just don't carry the weight that newspaper advertising does." The ad builds on the weaknesses of the other forms of advertising and tells its customers that newspapers are the best value for the money. Specifically the advertisement claims that the Yellow Page advertisements are "sandwiched" in among numerous other competitors and that it is unlikely that anyone will see the ads.

E) An article from the Truro area suggests that Yellow Page advertisements should be limited to 5% of the entire advertising budget. The article reads "Simply putting an advertisement in the Yellow Pages doesn't get the merchant's message across and can even be a trap."

F) The StarWeek Magazine ran an advertisement in one of their editions stating there were many reasons advertisers should choose their magazine over Yellow Pages as a form of advertising. It went on to compare the effectiveness of StarWeek due to its coverage, creativity, special editorial features which attract readership, and exposure.

G) In another article entitled "Let Your Fingers Do the Walking," there is a discussion of different sales seminars on ways to divert Yellow Page advertising dollars to advertising on local radio stations. These seminars teach sales representatives different techniques that have been effective in diverting money spent on Yellow Page advertisements. "Build a case that radio is the place to put yellow page 'savings' ... Convince them that Yellow Page ads are filled with clutter they can cut back on ... Use a scissors and a copying machine to show how the same message can be said in far less space ... Show how multiple advertisements in one directory are probably misdirected ... Target Yellow Page advertisers who buy only the phone book." The article states that many of these advertisers are unaware of the advantages of radio advertisements. It is up to the sales reps to "sell the advertisers on radio."

H) Tele-Direct sales personnel have described an aggressive advertising sales campaign by the London Free Press that targets shifts in advertisers' budgets from directory ads to newspaper ads. Appendix 10 shows as an example a "PROPOSED YELLOW PAGES SAVINGS PLAN" that was presented to Nash Jewellers on May 29, 1995 by a representative of the London Free Press. It details a substantial cut back in directory advertising for the jeweller, coupled with a plan for Nash to spend the resulting "savings" on new advertising in the newspaper. The proposal also emphasizes some claimed shortcomings of Yellow Pages advertising for jewellers, boasts of the effectiveness of the newspaper advertising, and terms the proposed shift a "passive to active advertising plan."

31. The above indications of the perspectives of suppliers of other local advertising serve, in my view, to confirm and reinforce the direct evidence from Tele-Direct that all different forms of local advertising compete with directory advertising.

**IC. FROM THE PERSPECTIVE OF FUNCTIONAL SIMILARITY,  
LOCAL ADVERTISING IS THE RELEVANT MARKET  
FOR TELE-DIRECT DIRECTORY ADVERTISING**

32. As I have already discussed above, it is clear that Tele-Direct directory advertising and other forms of local advertising have the same basic function for those who purchase them -- namely to promote the patronage of the advertised establishment. However, evidence is available to go more deeply into this matter by shedding light on how, and to what extent, local advertising in different media succeed in building patronage by reaching and influencing consumers.

33. In 1988, the marketing department of Tele-Direct conducted a survey titled Yellow Pages Usage by Product/Service. For each of the 25 categories of product/service, some 250 interviews were conducted with actual or intended purchasers sampled randomly with the aim of statistically representing the over-18 year old population of the Tele-Direct territories. Of the questions asked in the interviews, of special interest for present purposes were two types. First, respondents were asked whether they saw or heard any advertising that influenced them in any way to select the particular item in the category, and if necessary they were prompted by questioning mentions of newspaper, radio, television, and Yellow Pages ads. Second, those respondents who did not affirm being influenced by Yellow Pages Ads in the prior question sequence were asked as a follow up whether they referred to their Yellow Pages for any reason such as for a name, address or telephone number concerning the item in the category. These latter reference-oriented uses of Yellow Pages reportedly outnumbered the affirmative influence responses for Yellow Pages ads by some 150% on average across the categories.

34. Nevertheless, focusing only on respondents' affirmative mentions of influence by ads, Yellow Pages ads were mentioned by some 10.3% of the respondents, averaged across categories. Newspaper ads were mentioned by some 8.3% of the respondents, Other ads by some 5%, TV ads by 2.6% and radio by 1.6%. Thus, of the mentions of ad influence, Yellow Pages accounted for some 37%, with newspapers close behind, and with all the non-Yellow Pages ads together accounting for 63%.

35. More recently, more narrowly, and also on the subject of ad influence, a survey of 184 respondents in malls in Hamilton, in 1993, by McMaster Marketing Research for TD, asked, among other things, for a ranking of 6 types of media based on how much they influence purchasing decisions. Newspapers were ranked as the most influential source of advertising information by 45% of the respondents, TV by 27%, magazines by 10%, Yellow Pages by 9%, radio by 9%, and billboards by 1%. TV was the standout in influence for the 18-24 year old age group, while newspapers were the most frequently cited as most influential by all other age groups.

36. IMPACT Research conducted an "Advertising Impact Study -- 1991 Tele-Direct Campaign," for TD, in which a sample of 800 respondents in Toronto and Montreal answered questionnaires. While 86.5% agreed the Yellow Pages is a reliable source of information, 53% did not agree that it is the most-often-used shopping guide, and 63% did not agree that it is the only shopping guide I really need.

37. Data are reported in "Summary of the '92 Goldfarb Report Data on the Yellow Pages" concerning the "incidence and frequency of purchase from various shopping sources." Mail order catalogue ranks highest, with "after looking at Yellow Pages" and Mail order clubs coming in next. After these are In-home party/group demonstrations, and mail merchandise offerings. It is important to note that the "after looking at Yellow Pages" category does not distinguish between use of the Yellow Pages as a source of information about a known establishment's phone number or address, or a more open-ended use without a particular establishment in mind.

38. These sets of data all basically paint the same picture that Yellow Pages are a significant source of information and ads that are influential to consumers, but they are by no means unique or dominant in these roles. Taken together, other media are generally rated as far more influential than Yellow Pages, and for various groups, newspapers, TV, and direct mail catalogues were ranked as more influential. Thus the evidence shows that from the perspective of functionality, directory advertising and other forms of local advertising work in their own ways to achieve the same goals -- namely influencing consumers so as to build the patronage of the advertised establishment. For each group studied, directory advertising did not appear to be dominant, and did appear to face effective alternatives for the function of influencing patronage.

39. One last question that has only been addressed indirectly thus far is the extent to which the same individual consumers are susceptible to influence by both directory and other forms of

local advertising. Fortunately, there are comprehensive 1995 data from the large survey taken by the Print Measurement Bureau that go directly to this question. Among Canadian Yellow Pages users who are over 18, about 80% are more than light viewers of TV. The analogous figures for Ontario and Quebec are 81% and 78%, respectively. Among Canadian Yellow Pages users who are over 18, about 81% are more than light listeners to radio, and likewise 81% for Ontario and for Quebec. 67% of the above-18 Canadian Yellow Pages users read a daily newspaper at least twice a week, and for Ontario and Quebec the figures are 72% and 59% respectively. 62% of the 18+ Canadian Yellow Pages users read a community newspaper in the past week, while that figure was 84% and 67% in Ontario and Quebec respectively. 83% of the 18+ Canadian Yellow Pages users are more than light readers of magazines, and that number is 82% and 85% for Ontario and Quebec respectively. Among over-18 Canadian Yellow Pages users, 96% travelled and 74% visited a mall within the last week. These figures were 96% and 75% for Ontario, and 95% and 71% for Quebec.

40. The conclusion from these data is inescapable -- Yellow Pages users are exposed to advertisements that run in a wide variety of other media, including TV, radio, daily newspapers, community newspapers, and outdoor and mall displays. It is not the case that Yellow Pages users are a different and isolated group. Rather, they are exposed to and likely influenced by other local advertising, as are others who are exposed but are not Yellow Pages users. Advertisers can seek to reach and influence the group of Yellow Pages users by means of directory advertising, or by means of any of a wide array of the other local media because the Yellow Pages users are largely exposed to these media as well. Thus, all the local advertising, regardless of the medium, share the same functionality with directory advertising, and belong in the same relevant market for the purpose of assessing the strength of competition.

## **II. THE STRENGTH OF COMPETITION FACING TELE-DIRECT DIRECTORY ADVERTISING IN ITS RELEVANT MARKETS**

41. I shall analyze the strength of competition facing Tele-Direct directory advertising in its relevant markets along three conventional tracks. After characterizing the principal participants in the relevant markets, I proceed to assess the level of Tele-Direct's market share, to consider the nature of rivalry among the market participants, and to assess the conditions of expansion and entry in the relevant markets.

### **IIA. SUBSTITUTES FOR TELE-DIRECT DIRECTORY ADVERTISING**

42. The substitutes for Tele-Direct directory advertising surely include free lightface listings in Tele-Direct directories, and advertisements in competing directories, daily and weekly newspapers, magazines, and local radio and television, as well as direct mail, flyers, outdoor advertising, signs and displays in storefronts, telemarketing, free gifts with company logos, public relations campaigns, and coupons. It is notable that these substitutes are so various in



their forms and technologies, and have contrasting strengths and weaknesses, while still overlapping strongly in their functions to the advertiser who may purchase them.

43. Due to its important position in the relevant market, it is worthwhile to consider how newspaper advertising differs from directory advertising. Newspapers allow greater flexibility than directories in terms of both the graphic design and content of the advertisements. Newspaper advertisements can be larger than those in directories. Complex designs and photographs may more readily be included in newspaper advertisements than in directory advertisements. Newspapers also have greater flexibility over time. Unlike directory advertisements which are generally set for a year at a time, newspaper advertisements can be changed daily. Thus, a newspaper advertisement may contain information about current prices. In markets where consumers do comparison shopping, the ability to convey price information is an important advantage. Because newspapers are published more frequently than directories, newspapers are better suited to the needs of newly-opened businesses. A business relies on advertising most heavily when it is just beginning and is not yet known to consumers. Such a business might have to wait as long as 14 months for its directory advertisements to reach potential customers.

44. Directory advertisements have advantages as well. Directory advertising appears in the same book as the basic lightface listing. Thus, a consumer can turn to a directory knowing that all business phone service subscribers within the telephone exchanges served by that book are included. In addition, Tele-Direct directories are distributed at no charge to telephone subscribers, and are available at many public telephones.

45. Do these differences between newspapers and Tele-Direct directories significantly affect the way in which advertisers use the two media? All of the lines of evidence presented earlier strongly agree on the conclusion that local advertisers generally use the two media for similar functions, so that they are close substitutes. Of course, advertisements in newspapers can bear a particularly strong resemblance to directory advertising. However, even those newspaper advertisements that are not identical in appearance and form to Tele-Direct advertisements serve the same role; local distributors, retailers, and outlets can choose between purchasing both types of advertising in order to increase their sales. Indeed, the evidence discussed in section IB demonstrates a continuing pattern of vigorously rivalrous conduct between TD and its newspaper competitors for local advertising.

46. There are some 53 daily newspapers in Ontario, 11 in Quebec, 4 in New Brunswick, and 2 in Newfoundland, according to the *Canadian Advertising Rates and Data (CARD) Catalogue* (unless otherwise noted, I have drawn all counting statistics with respect to media in Canada from this source). In addition, there are some 410 community newspapers in Ontario, 264 in Quebec, 21 in New Brunswick, and 18 in Newfoundland. Canadian aggregate advertising revenue for 1993 was \$1,863 million for dailies, \$16.4 million for weekend supplements, and \$552 million for weeklies and others, according to *1994: a Report on Advertising Revenues in Canada*, prepared by G. Mitchell and published by CARD (unless otherwise noted, I have drawn all financial statistics respecting Canadian media from this source). This report categorizes

\$398.6 million of the dailies advertising revenues as national and \$39.4 million of the weeklies and others' advertising revenues as national, and therefore out of the relevant market in which Tele-Direct directory advertising competes. However, \$943.2 million and \$512.6 million of the advertising revenues of the dailies and weeklies, respectively, are explicitly categorized as local advertising revenues. An additional \$520.8 million is categorized as revenues from classified advertising in the dailies.

47. As an advertising medium, magazines are in many ways comparable to newspapers, albeit with comparative strengths and weaknesses. Magazines can have a tight focus on a particular community of interest, or a narrow regional appeal, or be published with local editions that can carry localized ads. In these and other instances, magazine advertisements can often effectively serve the function of promoting specific stores and outlets. In some cases, magazine advertisements can resemble directory advertising in both form and content. There are approximately 557 consumer magazines across Canada, along with 127 ethnic publications, 29 university and school publications, 98 farm publications, and 820 business publications. Total 1993 advertising revenues for this group is reported to be \$1417 million.

48. Advertisements on local radio and television stations are also good substitutes for directory advertisements. Consumers may not utilize broadcast advertisements in the same way that they use directory advertisements, but from the advertisers' perspective the two types of advertising have the same function -- to generate increased revenues by attracting new sales. While a consumer may not consciously "consult" his or her radio when choosing a particular firm to patronize, the fact that he or she has been exposed to an advertisement for a particular firm repeatedly in the past will affect his or her decision. I have already mentioned several perspectives on the impacts of radio and television advertising. It is worth emphasizing that radio and television do influence some of the very same purchasing decisions that are affected by directory ads, and they have the potential to influence many more. The ability of radio and television advertisements to influence consumers' choices of which firms to patronize is, of course, what motivates firms to spend dollars on these advertisements. These dollars come from the same advertising budget which may be otherwise used to purchase Tele-Direct directory advertisements.

49. There are approximately 92 radio stations in Ontario, 96 in Quebec, 8 in New Brunswick, and 7 in Newfoundland. There are approximately 21 TV stations in Ontario, 25 in Quebec, 3 in New Brunswick, and 2 in Newfoundland. Canadian spending on local radio ads in 1993 was \$554.9 million. Canadian spending on local TV ads in 1993 was \$377 million. Most TV ads are national, while most radio ads are local.

50. As a leading form of local advertising and source of consumer information, direct mail competes head-to-head with directory advertising. Direct mail advertisements can be very similar in form and content to directory advertisements. In addition, they may contain recent information on prices, and frequently offer promotional discounts; in general, direct mail tends to be a more flexible medium than directories. It is not at all uncommon to find firms that advertise both through direct mail and in directories. On the other hand, some firms in the same

line of business may advertise through direct mail and choose to forego a directory advertisement, in part because of its superior targeting. The evidence strongly suggests that advertisers perceive direct mail and directory advertisements to be close substitutes.

51. Handbills and flyers are similar in form and content to direct mail. These advertisements are inexpensive to produce, and can also be targeted to consumers located near the store being advertised. Canadian spending in 1993 for admail, catalogues, advertising flyers, and trade advertising material came to a total of \$1,968 million.

52. Outdoor advertisements, such as billboards and other publicly displayed signs, often are used to promote the patronage of a particular firm. These signs may be used to provide all of the information contained in a directory advertisement. Signs and displays in storefronts are sometimes an effective means of attracting new customers. Canadian spending in 1993 for outdoor advertising was \$771 million.

53. Advertising in independent directories is another source of competition for Tele-Direct directory advertising, if the scoping of the directories makes them both capable of promoting the businesses of some of the same establishments. Of course, two directories need not have identical scopes in order to compete with each other. An establishment might decide to ignore one of the books in favor of the other, or cut back a bit on one to free up some advertising budget to cover the other, or act on the view that the quality and coverages of the directories are likely to downgrade. According to Tele-Direct, there were 117 market publishers producing a total of 252 directories in early 1995. Canadian spending on "Yellow pages" advertising in 1993 was \$855.5 million, according to the Mitchell Report.

54. In addition to the above categories of local patronage-building advertising, many local vendors solicit business by contacting potential customers via the telephone. This permits the vendor to respond to a customer's specific questions and concerns. Some local establishments also stimulate business through public relations, for example by supporting schools, charities, and community events. Yet another technique for promoting local establishments is to print logos and advertisements on free gifts, such as pens, pencils, and calendars.

55. The preceding list of substitute media and advertising is by no means exhaustive. Many other activities can effectively promote particular stores and vendors. For example, it is often said that the most effective form of advertising is word-of-mouth recommendations from satisfied customers. If the cost of formal advertising became too high, many firms might well consider reallocating portions of their advertising budgets to activities like customer service, in the expectation that word-of-mouth would be more cost-effective in terms of generating new business. Such activities could well function as substitutes for directory advertising.

56. Marketing research may also function as a substitute for formal media advertising. Through research and analysis, a firm can develop a better sense for the productivity of different sales promotion techniques, and reduce expenditures on those techniques that are found to be less productive. With respect to purchasing decisions that are more characteristic of businesses,

there exist other media that are specifically designed for businesses and industrial buyers. These media include industrial purchasing directories, trade and business magazines, and suppliers' catalogues. Businesses engage in a number of other activities that are designed to promote their products and services to other businesses. Two common techniques of promotion are direct sales calls and participation in trade shows. Each of these activities competes with directory advertising (as well as other promotional strategies) for its portion of the firm's overall marketing budget. Indeed, I understand from salespeople and marketing personnel at Tele-Direct that trade shows are a growing phenomenon for consumers' goods in Canada, with a sometimes noticeable impact on spending on Tele-Direct directory advertising.

## **IIB. THE MARKET SHARE OF TELE-DIRECT DIRECTORY ADVERTISING**

57. For purposes of making a market share calculation, I favor defining the relevant product market conservatively as the market for local advertising, rather than as local sales promotion. This definition focuses attention on conventional forms of advertising, and excludes numerous promotional activities that are probably good substitutes for Tele-Direct directory advertisements. I prefer this definition for three reasons. First, the boundary between conventional advertising and other forms of promotion is reasonably well-defined. Once one begins to add in other promotional activities, the appropriate market boundary becomes much more controversial. Second, data on conventional forms of advertising are readily available, whereas data on many other forms of promotion are not. Third, because I define the market this way, my calculations will almost certainly overstate Tele-Direct's true market share. My analysis will therefore tend to convey a very conservative impression about the competitiveness of the market, and about the role of Tele-Direct within it.

58. Estimates of market share should be based on advertising revenues. Revenues are the most appropriate measure of the relative importance and competitive significance of competing media. When deciding where to spend an additional dollar on advertising, vendors will put their money into the form of advertising that they think will have the greatest impact and effect on profit -- on sales less the costs, including the cost of advertising. Therefore, the revenues generated by a given medium provide a measure of the value of that form of advertising as viewed by the businesses purchasing it. It is the switching between media by these purchasers that limits market power. Hence, revenues are the best measure of market share.

59. Alternative measures such as the number of exposures or the total physical volume of advertisements are less appropriate. These alternatives fail to take differences in media effectiveness into account. For example, medium A may be seen by twice as many consumers as is medium B, but advertisements in medium A may be only one half as effective in promoting sales. Hence, these media may be equally valuable to purchasers of advertising, despite the difference in total exposures. By using revenues as our measure this type of problem is avoided, because expenditures by advertisers on different media reflect the value that the advertisers receive from these media.

60. The geographic market for which to calculate market share also must be chosen carefully. As I discussed earlier, the relevant geographic market is defined by the location of the audience exposed to a given medium. Ideally, one would calculate the market share of each Tele-Direct directory separately, taking the area served by the particular directory as the starting point for the relevant geographic market for the calculation of its share. Unfortunately, advertising revenue data are not available at this level of geographic detail. Thus, it is necessary to examine the market share of Tele-Direct directory advertising at a more aggregate level. If Tele-Direct directories' advertising market shares are similar across the areas they serve, then a conservative aggregate figure will provide an accurate conservative estimate of a single directory's market share.

61. Even at the aggregate level, it is impossible to calculate a single, perfect estimate of Tele-Direct directory advertising's share of the relevant market. While some highly informative data are available, they do not make it possible to match up geographic coverages with real precision, nor do they provide fully precise separations of the revenues from advertising in different media into categories that clearly do and do not compete with directory advertising.

62. Consider newspapers for example. I have already explained that much of local newspaper advertising is closely substitutable for directory advertising. However, newspapers also contain advertisements for grocery stores, which do not generally advertise heavily in directories. Hence, grocery store advertising revenues should not be fully included into the calculation of total revenues in the relevant market. Unfortunately, available advertising data are not broken down for local advertisers by the product advertised. Similar complications may arise with other media. In computing market share, one can make only approximate adjustments for these kinds of factors.

63. Geographic factors also raise complications that necessitate reasonable approximations. The advertising revenue data with the needed breakdowns into local and national categories are available only on a national Canada-wide basis, and thus far, only for as recently as 1993. These are the data already mentioned above from the Mitchell Report published by CARD. Nielsen Media Services collects advertising revenue figures on a far less inclusive basis, focusing on just the larger advertising vehicles, but does offer a disaggregation by the set of regions: Maritimes, Quebec, Ontario, Manitoba/Saskatchewan, Alberta, and British Columbia. The Tele-Direct data on its directory advertising revenues are available separately for Tele-Direct (Publications) Inc. and for Tele-Direct (Services) Inc. This disaggregation does not exactly coincide with the regional disaggregation offered by the Nielsen data. In 1993, Tele-Direct (Services) Inc. published 3 directories in Ontario, 3 in Quebec, 9 in New Brunswick, 4 in Newfoundland and Labrador, 1 in Northwest Territories, and 1 in Yukon Territories. Tele-Direct (Publications) Inc. published 45 directories in Ontario and 37 in Quebec. Yet, in complication of the matching process, Dominion Directory published 11 directories in Quebec, and MT&T published 11 directories in Nova Scotia and Prince Edward Island.

64. At the national level, the Mitchell/CARD Report asserts that the 1993 percentage share of advertising revenues attributed to "Yellow pages (Directories)" is 9.5%. As a first attempt

to adjust the data for the nature of the relevant product market that my analysis has identified, I recalculated the 1993 percentage share of advertising revenues attributed to "Yellow pages Directories" on a base that excludes all revenues explicitly identified as national advertising. The resulting Yellow Pages directory share of explicitly non-national advertising revenues is 12.6%. Since this calculation does still include some national advertising revenues in such categories as direct mail where no explicit breakdown into local and national categories is provided, some further adjustment is warranted. For one adjusted estimate, I included only 50 percent of the advertising revenues for all media (other than directories which I included in toto), after first excluding all explicitly identifiable national advertising. By this conservative approach, the share of directory advertising in the national relevant market is estimated to be approximately 24%.

65. The corresponding estimate for the share of Tele-Direct in its relevant product and geographic markets is between 23 and 24 %. To obtain this estimate, I applied the Nielsen data on the percentages of Canadian advertising revenues attributed to Ontario and Quebec to the adjusted Canada-wide (non-national) revenue data from the Mitchell/CARD Report for all media but directories. For the directory category, I employed the sum of the 1993 directory revenues of Tele-Direct (Publications) Inc. and Tele-Direct (Services) Inc.

66. In making this calculation, in order to be conservative, I have erred on the side of overestimating Tele-Direct's market share in several ways. First, as mentioned earlier, I have excluded all promotional activities that fall outside the rubric of conventional advertising, despite the fact that many of these activities are close substitutes for directory advertising. Second, I have omitted revenues earned by independent directories. Third, I have classified all the advertising revenues from Tele-Direct directories as local. Fourth, I have further sliced all figures on non-national and local advertising in media other than directories in order to compensate for possible misclassification and mismatch of advertising expenditures. The calculation includes the revenues from all of Tele-Direct's directories, it does not include any advertising revenues from other media in New Brunswick, Newfoundland and Labrador, and the Yukon and Northwest Territories, but it also omits revenues earned by Dominion Directory in Quebec.

67. My estimate of Tele-Direct's market share is substantially and robustly lower than the 35 percent market share threshold for unilateral market power and market dominance that is widely referred to by competition analysts. Its share is far lower than the 50% and higher figures employed by many courts as the threshold market share for findings of monopolization pursuant to intervention in business practices. The market share of Tele-Direct directory advertising is low enough to make it very unlikely that Tele-Direct possesses significant market power with its directories.

### **IIC. RIVALROUS BEHAVIOR, COMPETITORS' POTENTIAL FOR EXPANSION, AND LOW BARRIERS TO ENTRY**

68. Competition in the market for local advertising is intense. Abundant evidence of inter-

media rivalry was presented in Section I above. The behavior of newspaper and broadcast media advertising salespeople and allied consultants is certainly characteristic of competitive rivalry, and inconsistent with any conceivable concerns about collusion. Tele-Direct's own patterns of conduct vis a vis other media and with regard to attempts to sell more advertising to existing customers, avoid cancellations from existing customers, and convert non-advertisers to customers, are all consistent with a highly competitive and rivalrous marketplace, and thoroughly inconsistent with any possible concerns about non-competitive conduct.

69. There is also abundant evidence of intense competition between Tele-Direct and publishers of independent directories. Tele-Direct has competitively and vigorously responded to the entry and selling efforts of independent directories at the level of corporate decisions about pricing and product design, at the level of arming the sales force with pointed selling aids to compete, and at the level of the sales force itself struggling to hold and increase revenues in the face of intense rivalry for the advertiser's business.

70. It is also clear that the suppliers of most substitute advertising services could expand significantly and rapidly in response to profit opportunities. This point is best illustrated with reference to competing directories. The expansion of a directory requires little more than the addition of sales personnel and an increase in the number of published pages. Experience demonstrates that competing directories stand ready to divert market share from incumbent publishers, throughout North America, with no geographic or demographic prerequisites for competition to be aggressive and dynamic in directory advertising.

71. Similarly, expansion of advertising by existing newspapers, magazines, local radio stations, and local television stations appears to be relatively easy. If market conditions warranted, newspapers and magazines could readily increase the number of pages dedicated to advertising, as well as place more emphasis on their classified sections. If the demand for or price of their local advertising rose significantly, stations would find it profitable to increase the number of minutes of air time devoted to these advertisements.

72. Likewise, there appear to be no barriers to expansion of capacity by existing direct mailers, or to the expansion of any (with the possible exception of out-of-house advertising subject to limitations on available sites) of other promotional activities and the companies that support them.

73. In summary, the evidence indicates that markets for local advertising are characterized by intense intra-media and inter-media rivalry. Numerous competitors, representing a variety of media, have both the inclination and capacity to expand rapidly if Tele-Direct were to make an ill-conceived attempt to exercise market power that would, as a result, fail.

74. The evidence is plainly inconsistent with the conclusion that substantial barriers to entry into the directory publishing business exist. Most notably, the persistent entry of independent publishers into Tele-Direct's territory and the expansion of incumbents within that territory strongly attests to the absence of such entry barriers.

75. The historical record demonstrates that there has been significant entry and exit by directory publishers, of a wide variety of sizes, throughout North America, and specifically in Canada.

76. In the U.S., newspapers have spearheaded a recent wave of entry into the directory publishing business. Communications Trends, Inc. (CTI) warns directory publishers that newspaper publishers pose an important threat to established directories because they have deep pockets, instant credibility (particularly when they are associated with local newspapers), a proven track record with local advertisers, knowledge of the local market, publishing skills and resources, and an ability to promote the directory with in-house ads. In Tele-Direct's territory, there has been significant entry by a group of local newspaper publishers with a current total of 13 *Easy to Read* directories. According to Tele-Direct personnel, these publishers employ the same sales people to handle both newspaper and directory advertising.

77. The evidence is that new directory entrants can have substantial market impact, and real business success very quickly. CTI reports that the recent entries (as opposed to acquisitions) of Gannett Company into the yellow page directory business in the U.S. came close to break even after one year. According to Tele-Direct personnel, the new independent directory in Sault St. Marie has reached a size and level of success where its revenues are some 60% of those earned by the incumbent Tele-Direct directory, after only a few years of operation. The Easy to Read directory in Stratford increased its published advertising by some 59% between its first and second year of publication (1993-94).

78. The current reality is that Tele-Direct faces a strong competitive threat from potential entrants into the directory publishing business. Tele-Direct seems to take the threat of potential competition seriously, and factors it into its business planning with decisions that beneficially affect its customers.

79. Entry barriers are quite low for most competing media, including (but not limited to) community newspapers and direct mail. The proliferation of local papers testifies to the relative ease of entering the newspaper industry on a relatively small scale, with few sunk costs. A newly established community newspaper must undertake a large number of distinct activities. However, each of these activities entails the use of widely available information, technology, skills, and other resources. Likewise, there are certainly no barriers to the establishment of new direct mail services or in-house capabilities. Entry into emerging electronic media is a particularly likely trend that has already begun in Canada.



80. Overall, there appear to be neither structural nor behavioral barriers to entry into the market served by Tele-Direct directory advertising. If Tele-Direct were to raise its prices significantly for directory advertisements, or to degrade the quality of its services, it can be expected that potential competitors would respond aggressively. The threat of entry by new firms therefore provides a powerful check on the existence of market power, and assures a competitive outcome.

81. The evidence establishes that there are many viable competitors in this market, representing a variety of media, that these competitors have the ability to expand output quickly and significantly in response to shifts in demand, that rivalry between these firms and Tele-Direct is intense, and that Tele-Direct's market share is too small to support the exercise of significant unilateral market power. The evidence also establishes that entry barriers are low, and that active and potential competition rule out the exercise of significant market power by Tele-Direct.

### IID. CONCLUSION

82. In view of the conclusions reached thus far about the high level and robust nature of competition facing Tele-Direct's directory advertising in its relevant markets, allegations of anticompetitive activity by Tele-Direct make little or no sense. Looking forward, there is no reason to believe that there is any threat to the continuation of the competition that currently pervades the markets in which Tele-Direct participates. Looking back, it is difficult to reconcile the allegations of anticompetitive activity by Tele-Direct with the persuasive evidence on the extent of competition that was and still is characteristic of the markets involved.

83. For purposes of public policy, it is my view, as well as that of many others, that those charged with protecting competition for the public interest should, before turning to a detailed assessment of complained-of business practices, assess the robustness and strength of competition in the appropriate relevant markets. This is so because if significant market power is found to be implausible, then there is no need to waste judicial resources on a scrutiny of the practices. A powerful presumption is warranted that business practices are not anticompetitive, and indeed are economically efficient if they take place in robustly competitive markets. When facing such competition, firms are impelled by market forces to fashion their sales efforts and other business practices efficiently, and in line with customers' demands, because if they do not succeed in these endeavors, they cannot succeed in their business.

84. In my view, the findings here of robust competition in the relevant markets, and the absence of market power in the hands of Tele-Direct, should make any further analytic or fact-finding steps unnecessary, and unwarranted. Nevertheless, for the sake of completeness, I proceed to consider some of Tele-Direct's challenged business practices towards "consultants," and independent agents.

### **III. TELE-DIRECT'S POLICIES TOWARDS CONSULTANTS**

85. It is my intention here to focus on economic analysis of TD's principal policies towards consultants, largely as articulated in its "Consultant Guidelines" of February 25, 1992. This document sets out the policy that the Director impugns as a kind of refusal to deal. In essence, the policy is that TD will not accept contracts and advertising instructions from consultants directly, instead of from the customer.

86. A policy of this kind would be difficult to understand, and to explain, in a simple business that sold goods on a one-time basis for immediate cash payments. It should be irrelevant to such a business whether it were an end-user of the goods or an agent of an end-user who paid the cash and took away the goods. Hence, suspicions of some anticompetitive effects or discrimination might be aroused if such a business were to refuse to deal with any but end-users.

87. However, TD's policy is straightforward to understand as efficient and reasonable in the setting of the character of its business, and the nature of the consultants' business. First, I set down in summary form some of the basic features of the directory advertising business that bear on the issue.

88. One key element of the appeal to advertisers of TD's directories as advertising media is that they are useful reference books for consumers. The directories are more useful to consumers as references the more businesses do advertise in them, the more information businesses' ads contain, and the more attractive are the ads.

89. Because advertisers must make their decisions in advance of publication of the directory, and because consumers must make their decisions whether to use the directory before they can ascertain what information it offers on the subject of immediate interest, it is expectations about the qualities of the directory and its reputation that drive its uses and whether or not it is successful.

90. Consequently, the long term relationships between TD and its directory advertisers are vital to the usefulness of the directory to other advertisers and to consumers, and vital as well to TD's success.

91. It is difficult for a typical advertiser, quickly or reliably, to ascertain the impacts of changes in its directory advertising program on its flow of business.

92. Most directory advertisers pay for their ads on a monthly basis, after the directory has been published.

93. The basic nature of the consultants' business is that they offer advice to advertisers on how to cut back on their directory advertising programs, in exchange for payment by the advertiser of a significant percentage (often 50%) of the money thereby "saved." This

saving of money by the advertiser that is shared with the consultant is generally defined to be a one time trigger -- if the reduction in advertising continues over a second year, the consultant is not paid again for the second year of saving. The consultant is only paid again if another new "saving" is recommended and implemented.

94. It is clear from both common sense and economic analysis that such a consultant has a strong financial incentive to persuade an advertiser to cut back on directory ads as much as possible, whether or not the advertiser has been advertising too much for his or her own prosperity. No long-term relationship or much repeated business is at stake between a consultant and an advertiser, in essence because to the extent that the consultant succeeds one year there is no directory advertising to cut back the next year. Thus, the factor that usually is the best motivator for quality performance of services -- namely repeat business -- is intrinsically absent in the consultant's business.

95. It is plain that the business interests of TD and consultants are in direct opposition in all the usual ways that apply when two parties are fighting over the same dollar. Here, superficially, the more the consultant succeeds in inducing a directory advertiser to cut back, the more the consultant is paid, and correspondingly, the less is TD paid as the publisher of the directory. Even though TD and consultants are not in the same business -- consultants do not publish directories nor create other advertising media -- nevertheless this simple opposition of business interests is analogous to that experienced by direct competitors. Consequently, as a matter of public policy, they should not be expected to cooperate with each other, nor forced to, anymore than true horizontal competitors are.

96. However, it is critical to recognize that the conflict of interest between TD and consultants runs deeper than that between ordinary competitors, and here the public interest is specially at stake as well. The short term incentives of consultants to persuade advertisers to cut beyond their own interests have effects beyond the short term finances of the advertiser and TD. Excessive cutting tends to undermine the value of the directory to consumers and to other advertisers. Excessive cutting tends to undermine the reputation of the directory and the expectations of consumers and other advertisers about the value to themselves of utilizing the directory. Consequently, excessive cutting tends to have a long-lasting negative, and possibly downward spiralling impact on the value of the directory to consumers, to all advertisers, and to TD.

97. Should the advertiser be persuaded to cut excessively, it is likely that his or her business will suffer, but not at all clear that the advertiser will be able accurately to ascertain the causal link. It is certainly plausible that some advertisers in this spot will incorrectly infer that the remaining or restructured ads in the directory are not worth their price. One reaction may be to cease paying the monthly bills for the advertising that remains, especially if the relationship between the advertiser and TD has been replaced with a short-term transaction between the advertiser and the consultant. Another reaction may be to become entirely disenchanted with directory advertising, to the disadvantage of the advertiser, the quality of the directory to its users, and TD.

98. In these ways, the conflict of interest between consultants and TD is more afflicted with the public interest than an ordinary competitive relationship. Some of the harms experienced by TD and the advertiser from the misincentives endemic to the consultants' business correspond to externalities experienced inadvertently by other advertisers and consumers with a stake in the quality of the directory.

99. The policy conclusion to be derived from this analysis is surely not to prohibit the activities of consultants -- there may be some value to advertisers from the advice that may be preferred, and countervailing market forces can be counted on to protect the public interest if they are allowed to operate. What should be derived from this analysis however is the conclusion that TD should not be coerced into assisting the consultants, so that the countervailing market forces can operate. TD should be permitted to try and maintain its relationships with its advertising customers, and to insist on receiving instructions and signing contracts only with them directly. In this way, TD is assured the opportunity to provide information on the implications to the advertiser of any proposed changes or cuts in the advertising program, and is assured the opportunity to make sure that the advertiser understands what is being ordered, to maximize the prospects that TD will be paid, as promised.

100. These business practices appear, through the lens of economic analysis, as well as the common sense of business, to be efficient adaptations to the nature of the directory enterprise and the challenge of the misincentives endemic to the consultants' business. Putting aside the proven conclusion that Tele-Direct faces effective competition for its directory advertising, a reliable test for the efficiency of business practices is whether they are consistent with competition. There can be no doubt that Tele-Direct's policies towards consultants have efficient pro-competitive rationales.

101. I have read the report of Professor Michael Trebilcock filed in connection with this case. I agree with the substance of Professor Trebilcock's report and agree with his conclusions that no tied sale exists in the circumstances of this case and that, even if a tied sale could be found, it could not have any anti-competitive effects in the "markets" identified by the Director.

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## APPENDICES

<u>Appendices</u>	<u>Description</u>
1.	Curriculum Vitae of Robert D. Willig
2(a).	Exemplary Advertisements <ul style="list-style-type: none"><li>- Grand Touring Cars (London Free Press)</li><li>- Arby's Restaurant (Niagara Falls Review)</li><li>- Le Twist (Ottawa Citizen)</li></ul>
2(b).	Exemplary Advertisements <ul style="list-style-type: none"><li>- Sweeney Todds (St. Catharines Standard)</li><li>- Legault, Roy, Mantha (Ottawa Citizen)</li><li>- Pensa and Associates (London Free Press)</li><li>- Elm Street Computer Terminal (Toronto Star)</li></ul>
3.	Tele-Direct Sales Aids <ul style="list-style-type: none"><li>- Comparison of Media Rates</li><li>- "Lets Look at Your Advertising Budget Wisely"</li><li>- Form letter from sales representative to advertiser (Tony Rondinelli)</li></ul>
4.	Tele-Direct Sales Aids <ul style="list-style-type: none"><li>- Y.P.R.O.I sales aid for Computer and Equipment Service</li><li>- Y.P.P.A. sales aid "Attorney Advertising in the Yellow Pages"</li><li>- Tele-Direct sales aid "What Do You Want Your Advertising To Do You?"</li></ul>
5.	Testimonial Letters <ul style="list-style-type: none"><li>- Letter from Gilles Savard</li><li>- Letter from Suzanne Paul</li><li>- Letter from Kim Underwood</li><li>- Letter from Gail Nadeau</li></ul>
6.	Tele-Direct Advertising Survey
7.	<ul style="list-style-type: none"><li>- Form letter from Brian Metzger, Document #111109-10</li><li>- Tele-Direct Advertisement "Whatever You Do Don't Take The Bait" , Document #111112</li><li>- NB Tel Yellow Pages Advertisement, Document #104794-95</li><li>- NB Tel Yellow Pages Advertisement, Document #104797</li></ul>

- NB Tel Yellow Pages Advertisement, Document #104801
  - NB Tel Yellow Pages Advertisement, Document #104802
- 8.
- Oshawa Times Advertisement, Document #108109
  - Oshawa Times Advertisement, Document #108121
  - "How much is Too Much" Document #108106
  - American Consulting Services Advertisement, Document #108122
  - Consultant Quiz, Document #108123
  - Oshawa Times Advertisement, Document #108124
- 9.
- Daily News Advertisement, Document #103050
  - Financial Post Article "Media Go Up Against Yellow Pages", Document #103189
  - Cape Breton Post Advertisement, Document #104889
  - Consultant Mary Mackillop Advertisement, Document #104888
  - Article "Alternative to MT&T Yellow Pages theme of Truro Advertising Session", Document #104886
  - Starweek Magazine Advertisement, Document #104723
  - Article "Let Your Fingers Do The Walking", Document #102199
- 10.
- Proposed Yellow Pages Savings Plan