

Competition Tribunal



Tribunal de la Concurrence

CT - 1994 / 002 – Doc # 19a

IN THE MATTER OF an application by the Director of Investigation and Research  
under sections 79 and 105 of the *Competition Act*, R.S.C. 1985, c. C-34;

AND IN THE MATTER OF certain practices of the Publishers of  
Yellow Pages Telephone Directories in Canada.

B E T W E E N:

The Director of Investigation and Research

Applicant

- and -

AGT Directory Limited  
Anglo Canadian Telephone Company  
DirectWest Publishers Ltd.  
Edmonton Telephones Corporation  
The Manitoba Telephone System  
MT&T Holdings Incorporated  
Tele-Direct (Publications) Inc.  
Tele-Direct (Services) Inc.

Respondents



**CONSENT ORDER**

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**Date of Hearing:**

November 18, 1994

**Presiding Member:**

The Honourable Mr. Justice Marc Noël

**Lay Members:**

Dr. Frank Roseman  
Mr. Victor L. Clarke

**Counsel for the Applicant:**

**Director of Investigation and Research**

John S. Tyhurst

**Counsel for the Respondents:**

**AGT Directory Limited  
DirectWest Publishers Ltd.  
Edmonton Telephones Corporation  
The Manitoba Telephone System  
MT&T Holdings Incorporated  
Tele-Direct (Publications) Inc.  
Tele-Direct (Services) Inc.**

Warren Grover, Q.C.  
Mark J. Nicholson

**Anglo Canadian Telephone Company**

Warren Grover, Q.C.  
Russell W. Lusk, Q.C.  
Mark J. Nicholson

**COMPETITION TRIBUNAL**

**CONSENT ORDER**

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*The Director of Investigation and Research*

v.

*AGT Directory Limited et al.*

FURTHER TO the application of the Director of Investigation and Research ("Director") pursuant to sections 79 and 105 of the *Competition Act* ("Act") and further to the notice of application dated September 20, 1994 for a consent order directing the respondents to cease engaging in certain alleged anti-competitive acts associated with the sale of national advertising and other remedies specified in the draft consent order;

AND ON READING the notice of application, the statement of grounds and agreed material facts, the consent order impact statement and the consent of the parties filed herein;

AND UPON NOTICE of the application having been given in accordance with section 65 of the *Competition Tribunal Rules*;

AND ON HEARING counsel for the parties in respect of this application;

AND ON CONSIDERING THAT the Director and the respondents have reached a settlement which is reflected in the draft consent order;

AND ON CONSIDERING THAT the Director declares himself satisfied that, on the basis of the considerations outlined in the consent order impact statement and the statement of grounds and agreed material facts, the remedies described herein will be sufficient to remove and prevent the substantial lessening of competition in the selling of national advertising caused by the alleged practice of anti-competitive acts;

AND IT BEING UNDERSTOOD BY THE PARTIES HERETO THAT the respondents and the Director have agreed to the facts set out in paragraphs 7 to 59 of the statement of grounds and agreed material facts for the purposes of this application and any proceeding initiated by the Director relating to this consent order, including an application to vary or rescind under section 106 of the Act, but this shall not be taken as an admission by the respondents or the Director of any such facts for any other purposes;

AND IT BEING FURTHER UNDERSTOOD BY THE PARTIES HERETO THAT nothing in this order shall be taken or construed as barring or preventing the Director from applying any of the provisions of the Act, from seeking a remedy thereunder, including an application to rescind or vary under section 106 of the Act, or from making a further application to the Tribunal at a future date in respect of anti-competitive practices or acts engaged in by the individual respondents in the conduct of their business;

THE TRIBUNAL ORDERS THAT:

**Definitions**

1. For the purposes of this order the following definitions shall apply:

(a) "CANYPS" shall mean the Canadian Yellow Pages Service, an unincorporated association, whose role was defined by the terms of the CANYPS agreement;

(b) "CANYPS agreement" shall mean the agreement dated December 19, 1991 among the respondents, and all documents incorporated by reference therein;

(c) "head office rule" shall mean the requirement that was incorporated by reference into the CANYPS agreement that national advertisers were to be allocated among the respondents on the basis that the respondent in whose territory the head office of a national advertiser was located would function as the selling company for the placement of any advertisements which that national advertiser placed;

(d) "national advertising" shall mean advertising placed in telephone directories of two or more publishers;

(e) "publisher" shall mean a publisher of Yellow Pages telephone directories in Canada, namely, the respondents;

(f) "rates and data book" shall mean a book published by a trade or industry association which contains a list of all telephone directories published by members of the association, together with rates for generally available advertising items, closing dates and other information essential to the sale of advertising in the telephone directories;

(g) "selling", "sell", "sale" and "sold" shall refer to the selling by the selling company or seller of national advertising;

(h) "selling company" or "seller" shall mean any entity, including any of the respondents, which engages in the business of placing national advertising into the Yellow Pages telephone directories of all of the publishers in which an advertiser wishes to advertise by using the VAN system or another equivalent system acceptable to the individual receiving publisher acting reasonably in terms of compatibility of existing systems and costs;

(i) "telephone directories" shall mean telephone directories published by or on behalf of a telephone company or another supplier and includes the alphabetic listing of residential and business numbers often referred to as the "white pages", as well as a classified commercial directory which is often printed on coloured paper;

(j) "VAN system" shall mean Value Added Network, which is the electronic order transmission system established by the YPPA and used to submit orders to YPPA publisher members including the publishers, or its successor;

(k) "Yellow Pages" shall mean the trademark registered and owned in Canada by Tele-Direct (Publications) Inc. and licensed by Tele-Direct to the other publishers;

(l) "Yellow Pages telephone directories" shall mean those telephone directories which are authorized by a telephone company and which display the Yellow Pages trademark under license from Tele-Direct (Publications) Inc.; and

(m) "YPPA" shall mean the Yellow Pages Publishers' Association.

### **Application**

2. The provisions of this order shall apply to each of the respondents and to:

(a) each division, subsidiary, or other person controlled by it, and each officer, director, employee, agent or other person acting for or on behalf of any of them; and

(b) each of their successors and assigns, and all other persons in active concert or participation with any of them who shall have received actual notice of this order.

### **Prohibitions**

3. With regard to the sale of national advertising in Yellow Pages telephone directories, each respondent shall be prohibited from:

(a) maintaining a head office rule for allocating advertisers;

- (b) maintaining exclusive selling arrangements with any other respondent;
- (c) refusing to deal with any selling company, except where the refusal is based upon reasonable and legitimate business concerns of a non-exclusionary nature;
- (d) discriminating between selling companies acting in their capacity as selling companies, except where the discrimination is based upon reasonable and legitimate business concerns of a non-exclusionary nature;
- (e) refusing to license selling companies having an office in and qualified to do business in Canada, for the proper use of Yellow Pages trademarks for the purpose of selling advertising in Yellow Pages telephone directories, provided that these companies enter into and maintain a commercially reasonable standard form of trademark licensing agreement;
- (f) agreeing with any other respondent on the criteria for determining which national advertising accounts are commissionable;
- (g) agreeing with any other respondent on the rate of commission payable, except during a transition period ending June 30, 1995 during which a minimum commission of 25% will be available to selling companies for national advertising which meets the commissionability criteria established by each respondent; and



(h) denying to selling companies access to any rates and data book style of publication that might continue to be, or in the future might be, compiled and distributed by and to the respondents under the auspices of CANYPS or otherwise by the respondents.

### **Monitoring**

4. The respondents shall provide the Director on a timely basis, until July 1, 1998, with the minutes of all meetings of CANYPS or its successors.

5. The respondents shall provide the Director, on a timely basis, until July 1, 1998 with a standard form of trademark licensing agreement referred to in subparagraph 3(e) of this order, and all amendments thereto.

### **Duration**

6. This order shall have force and effect for a period of ten years from the date of its issuance.

### **Notice**

7. When notice is required to be given pursuant to any of the terms of this order, it shall be considered given if dispatched by registered letter to those persons listed in Schedule A appended to this order.

## **Interpretation**

8. In the event of a dispute as to the interpretation of this order, the Director or any respondent shall be at liberty to apply to the Tribunal for a further order interpreting any of the provisions of this order. Nothing in this paragraph is intended to restrict the power of the Tribunal to rescind or vary this order pursuant to section 106 of the Act or take other action authorized by the Act or the *Competition Tribunal Act*.

DATED at Ottawa, this 18th day of November, 1994.

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

(s) Marc Noël  
Marc Noël

## **SCHEDULE A**

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