

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	
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CHATTEL, CAN.	

THE COMPETITION TRIBUNAL

IN THE MATTER OF an Application by the Director of Investigation and Research under section 79 of the *Competition Act*, R.S.C. 1985, c.C-34, as amended;

AND IN THE MATTER OF certain practices by A.C. Nielsen Company of Canada Limited.

BETWEEN:

THE DIRECTOR OF INVESTIGATION AND RESEARCH

Applicant

- and -

A.C. NIELSEN COMPANY OF CANADA LIMITED

Respondent

REPLY

1. The Director admits the following allegations in the Response of A.C. Nielsen Company of Canada Limited ("Nielsen"):

- (a) that Nielsen offers other marketing research products, together with scanner based market tracking, all of which Nielsen describes as "Decision Support Services";
- (b) that there are other marketing research companies offering other marketing research products in Canada, but not that there are any offering scanner based market tracking to the consumer packaged goods industry;
- (c) that in 1986, IRI sought exclusive access to scanner data from grocery retailers in Canada; and

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- (d) that since 1986, Nielsen has contracted with major grocery retail chains in Canada for exclusive access to their scanner data.

Except as is hereinafter expressly admitted, the Director denies each and every other allegation in Nielsen's Response.

Market Definition

2. "Decision Support Services" as described in Nielsen's Response include a number of distinct marketing research products. As acknowledged by Nielsen in paragraphs 6 and 7 of its Response, market tracking is a distinct product which monitors the progress and competitive position of a product in relation to other competing products over time.

3. Other marketing research products, which Nielsen would include as "Decision Support Services" may be complementary to market tracking, but are not effective substitutes for scanner based market tracking. Scanner data is an essential input to the "Decision Support Services" offered by Nielsen.

4. An effective market tracking service requires data on sales of the relevant products. While Nielsen is correct in stating in paragraph 7 of its Response that other data collection methods have been used in Canada, these other methods are inferior for market tracking purposes. Since 1986, Nielsen has been moving to scanner data and away from other data collection methods, and has paid substantial amounts for exclusive access to scanner data.

Nielsen's Control of the Market

5. While there are other companies selling other marketing research products in Canada, Nielsen is the only company in Canada offering scanner based market tracking services

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to consumer packaged goods manufacturers. Its exclusive contracts to acquire scanner data from all major grocery retail chains preclude any new entrant from offering a competing service.

Anti-Competitive Acts

6. Contrary to the allegation in paragraph 21 of the Response, Nielsen has sought and maintained exclusive access to retailers' data, and has paid substantial amounts to retailers in order to secure exclusive access. Nielsen's practice of seeking, maintaining and paying significant financial inducements for exclusive access to retailers' data constitutes a practice of anti-competitive acts.

Competition has been Prevented Substantially

7. In regard to paragraph 19 of Nielsen's Response, the fact that Nielsen's exclusive contracts with retailers will eventually expire does not mean that there is or can be effective competition in the provision of scanner based market tracking services. The Director says,

- (a) that Nielsen is wrong in suggesting, in paragraph 18 of its Response, that effective market tracking services could be provided on a regional or chain-by-chain basis. A competitor cannot provide an acceptable substitute with data from a limited number of retailers. Data is required from all or substantially all retail chains;
- (b) Nielsen's existing exclusive contracts expire at different times. A potential competitor could not provide an effective service until all of Nielsen's contracts had expired and until access had been negotiated with all or substantially all retailers.

8. The Director denies Nielsen's allegation that competition for exclusive access to scanner data could represent or lead to effective competition in the provision of scanner based

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market tracking services. Competition for exclusive access to scanner data, and hence for a monopoly in the provision of scanner based market tracking services, is not effective competition.

Efficiencies

9. Where, as here, a dominant company engages in a practice of anti-competitive acts which has the effect of preventing or lessening competition substantially in a market, it is not a defence to an application under section 79 of the *Competition Act* to allege that there are efficiencies gained through the practice. Assuming that Nielsen has made significant investments in developing its scanner based market tracking services, those investments cannot justify Nielsen's practice of anti-competitive acts.

10. Further, the Director denies the allegation in paragraph 22 of the Response that Nielsen's exclusive contracts are necessary to achieve any benefits or efficiencies to retailers or manufacturers. For manufacturers, the effect of Nielsen's exclusive contracts has been the absence of any choice of competing services. For retailers, the principle benefit has been that they have received significant amounts of money from Nielsen in exchange for exclusive access to their data.

11. The Director denies the allegation in paragraph 28 of the Response that Nielsen's practice of anti-competitive acts has resulted from superior competitive performance.

Miscellaneous

12. In regard to paragraph 8 of Nielsen's Response, Nielsen is correct that only the product identification is contained in the bar coded label affixed by the manufacturer to a

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product. However, other data may be input by the retailer, as stated in paragraph 5(b) of the Application.

DATED at Toronto, Ontario, this 19th day of May, 1994.

STIKEMAN, ELLIOTT
Barristers & Solicitors
Suite 5400, P.O. Box 85
Commerce Court West
Toronto, Ontario
M5L 1B9

Donald B. Houston
(416) 869-5621

Bruce C. Caughill
(416) 869-5673

(416) 947-0866 (Fax)

DEPARTMENT OF JUSTICE
50 Victoria Street
Hull, Quebec
K1A 0C9

David Wolinsky
(819) 997-3325

**Counsel for the Director of Investigation &
Research**

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TO:

FRASER & BEATTY
Barristers & Solicitors
1 First Canadian Place
42nd Floor, P.O. Box 100
Toronto, Ontario
M5X 1B2

Randal T. Hughes
(416) 863-4446

Karen B. Groulx
(416) 863-4618

Fax: (416) 863-4592

Solicitors for the Respondent

THE REGISTRAR
The Competition Tribunal
Suite 600
90 Sparks Street
Ottawa, Ontario
K1P 5B4

(613) 957-7851
(613) 957-3170 (Fax)