

**SCHEDULE "C"**

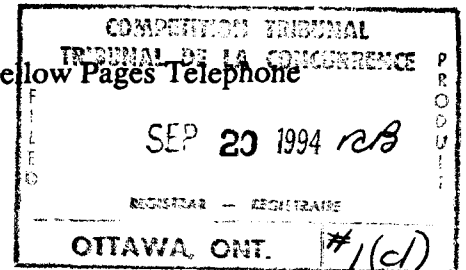
CT - 94/2

**THE COMPETITION TRIBUNAL**

**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 as amended.

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

Between:



**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**

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**CONSENT ORDER IMPACT STATEMENT**

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1. This Statement is filed by the Director of Investigation and Research (the "Director") pursuant to section 34 of the *Competition Tribunal Rules*. It describes the circumstances surrounding, and anticipated effect on competition of the Draft Consent Order attached to the Notice of Application as Schedule "B" and submitted by agreement of the Parties to this proceeding. Unless otherwise expressly defined herein, terms used in this Statement incorporate the meaning ascribed to them in the Draft Consent Order.

I. **NATURE AND PURPOSE OF THE PROCEEDING**

2. The Director files with this Statement a Statement of Grounds and Agreed Material Facts, attached to the Notice of Application as Schedule "A", under sections 79 and 105 of the *Competition Act* (the "Act"). The Statement of Grounds alleges:

(a) That the Respondents substantially or completely control, in each of their respective territories, the business of publishing Telephone Directories;

(b) That the Respondents have jointly engaged in or are engaging in a practice of anti-competitive acts as outlined in paragraphs 72 to 76 of the Statement of Grounds and Agreed Material Facts; and

(c) That in so doing, the Respondents have substantially prevented or lessened competition in the Selling of National Advertising into Telephone Directories in Canada.

3. The Applicant has also filed as the covering document to this Schedule "C", and to accompanying Schedules "A" and "B", a Notice of Application which states that the Director and the Respondents have reached a settlement, which is designed to eliminate the alleged anti-competitive effects of the Respondents' acts. The Director requests the Competition Tribunal's approval of the Draft Consent Order pursuant to section 105 of the Act to effect this settlement.

4. The settlement involves a combination of prohibitions and disclosure obligations by the Respondents. As explained below, these measures are intended to restore any competition which may have been eliminated as a result of the Respondents' acts.

5. The Applicant has undertaken extensive study of this industry and

has consulted widely with industry participants, and experts, both in Canada and in the United States. The Director also participated as an intervener in the CRTC's Directory Data Base Proceeding, discussed in the Statement of Grounds and Agreed Material Facts.

## II. GENERAL DESCRIPTION OF THE PROPOSED SETTLEMENT

6. The proposed settlement, in the form of the Draft Consent Order, contains elements which can be grouped under two categories and which are designed to remedy the effects on competition of the Respondents' acts. These categories are:

(a) Prohibitions which have been designed to prevent the Respondents from engaging in certain acts in the Selling of National Advertising into Yellow Pages Telephone Directories; and

(b) Monitoring provisions enabling the Director to review the Respondents' business practices.

## III. PROPOSED REMEDIES

### (a) Prohibitions

7. The proposed remedies which the Director seeks are that each of the CANYPS members be prohibited, with regard to the Selling of National Advertising in Yellow Pages Telephone Directories, from:

(i) Maintaining a Head Office Rule for allocating advertisers;

(ii) Maintaining exclusive Selling arrangements with any other Respondent;

(iii) Refusing to deal with any Selling Company, except where the refusal is based upon reasonable and legitimate business concerns of a non-exclusionary nature;

(iv) 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;

(v) 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 trademark licensing agreement;

(vi) Agreeing with any other Respondent on criteria for determining which National Advertising accounts are commissionable;

(vii) Agreeing with any other Respondent on a 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 that portion of National Advertising transmitted via the VAN system (or another equivalent system acceptable to the individual receiving Publisher acting reasonably in terms of compatibility of existing systems and costs) which meets the commissionability criteria established by each Respondent; or

(viii) Denying to Selling Companies access to any Rates & 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.

(b) **Monitoring**

8. As well as agreeing to the preceding prohibitions the Respondents have also agreed to an Order directing them to provide the Director on a timely basis, until July 1, 1998: (a) with the minutes of all meetings of CANYPS or its successors, and (b) with the standard trademark licensing agreement referred to in sub-paragraph 7(v) above and all amendments thereto.

IV. **ANTICIPATED IMPACT OF THE PROPOSED REMEDIES**

9. The preceding Prohibitions and Monitoring provisions have been designed to facilitate the entry of independent and non-affiliated Selling Companies. It is expected that competition between and among affiliated and non-affiliated Selling Companies will provide for a richer mix of service options and lower prices for advertisers. As well as this general anticipated impact of the Prohibitions and Monitoring provisions, they have each been specifically included for the following reasons:

(a) **Prohibitions:**

(i) **Prohibition of the Head Office Rule to allocate National Advertisers:**

The Publishers used a Selling system that included the Head Office Rule which allocated advertisers among the Respondents on the basis that the Respondent in whose territory the head office of an advertiser was located would function as the Selling Company for the placement of any advertisements which that advertiser placed. The advertisers thus could not choose among competing Selling Companies. This prohibition will ensure that advertisers can choose among accredited Selling Companies who will have to compete for the business.

(ii) **Elimination of the exclusive Selling arrangements among Respondents:**

The Respondents had agreed to appoint each other as their exclusive agents to perform the Selling Company function on behalf of all other Respondents within their own territories. This provision of the CANYPS Agreement bolstered the Head Office Rule, with the consequence that no third party was allowed to represent any Respondent as Selling Company in any territory other than its own. As a result, the Respondents did not compete in each others territories as Selling Companies. This prohibition ensures that if a Respondent chooses to utilize the services of any Selling Company to represent it in terms of the Selling Company function, it must allow all accredited Selling Companies to do so. As well, the prohibition eliminates the restriction on the Respondents from entering the territory of another Respondent. As with the prohibition concerning the Head Office Rule, this will enable advertisers to choose among competing Selling Companies.

(iii) **Prohibition on refusing to deal with any Selling Companies, except where the refusal is based upon reasonable and legitimate business concerns of a non-exclusionary nature:**

By prohibiting the Respondents from refusing to deal with Selling Companies, this will allow greater access and ease of entry of Selling Companies into the market and allow for greater choice by advertisers of the services provided by Selling Companies. The Respondents may refuse to deal with any Selling Company based on commercially reasonable reasons, such as a chronic failure to pay bills when due.

**(iv) Prohibition on 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:**

This prohibition will prevent Respondents from discriminating between Selling Companies, including the Respondents, to the detriment or advantage of other Selling Companies who compete for the same business. At the same time it ensures that only those activities related to the Selling Company function are subject to the prohibition. Refusing to license a Selling Company for the proper use of trademarks owned and licensed by the Respondents does not constitute discrimination if the Selling Company is not willing to sign and comply with the trademark licence described in sub-paragraph 7(v) hereof.

**(v) 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 trademark licensing agreement:**

This prohibition will permit Selling Companies to hold themselves out as being qualified and duly authorized to sell Yellow Pages advertisements and to service the needs of Yellow Pages advertisers. Previously, only Yellow Pages Publishers in Canada have been able to use these marks, thereby conferring on their sales arms a significant advantage vis-a-vis independents.

**(vi) Prohibition on agreeing with any other Respondent on the criteria for determining which National Advertising accounts are commissionable:**

This prohibition is intended to prevent the joint use of commissionability criteria to forestall the entry and growth of independent Selling Companies.

**(vii) Prohibition on 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 that portion of National Advertising transmitted via the VAN system (or another equivalent system acceptable to the individual receiving Publisher acting reasonably in terms of compatibility of existing systems and costs) which meets the commission criteria established by each Respondent:**

This prohibition will ensure that the Respondents establish rates of commissions independently of one another in response to market forces. The introduction of independent, non-affiliated Selling Companies into a market where none previously existed requires that a transition period of stable and predictable rates of remuneration be provided to encourage new entry. The Director believes that by June 30, 1995 enough entry will have occurred to create a "market" sufficiently robust to allow the removal of any legal obligation arising from this proceeding on the part of the Respondents to pay specific levels of commissions.

**(viii) Prohibition on denying to Selling Companies access to any Rates & Data Book style publication that might continue to be, or in the future might be, compiled and distributed by and to the Respondents under the auspices of the CANYPS Association or otherwise by the Respondents:**

This prohibition is intended to ensure that, should CANYPS or the Respondents, for whatever reason, decide to resume publishing a compendium resembling a Rates & Data Book and distributing it to its members, that publication will be made available to independent Selling Companies which participate in the selling side of the industry.

**(b) Monitoring**

**(i) The Respondents undertake to provide the Director on a timely basis until July 1, 1998 with the minutes of all meetings of CANYPS or its successors:**

To permit the Director to assess if the terms of the Consent Order are being met, the Respondents have agreed to provide him with the minutes of CANYPS meetings for the period specified.

(ii) The Respondents undertake to provide the Director, on a timely basis, with a standard trademark licensing agreement referred to in subparagraph 7(v) above, and all amendments thereto, until July 1, 1998;

To permit the Director to assess if the terms of the trademark licensing agreement are reasonable, the Respondents have agreed to provide him with a copy of the standard agreement and with any amendments that may be made to it in the specified period.

V. ALTERNATIVES TO THE SETTLEMENT:

10. The alternative to the settlement proposed would be to challenge the Respondents' practices. The Director rejected this option because the remedies provided for in the Prohibitions and Monitoring provisions effectively alleviate the substantial lessening of competition raised by the identified joint practices of the Respondents regarding the Selling of National Advertising in Yellow Pages Telephone Directories.

VI. CONCLUSION:

11. For the reasons presented herein, the Director recommends the settlement and asks the Competition Tribunal to approve the Draft Consent Order.