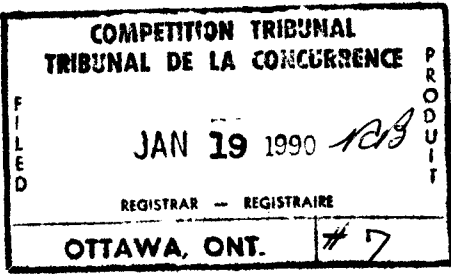


**THE COMPETITION TRIBUNAL**

**IN THE MATTER OF an Application by the Director of Investigation and Research for an order pursuant to section 75 of the Competition Act, R.S. 1985, c. C-34, as amended, requiring that the Respondent accept the Exdos Corporation as a customer for the supply of a product.**



**BETWEEN:**

**THE DIRECTOR OF INVESTIGATION AND RESEARCH**

**Applicant**

**- and -**

**XEROX CANADA INC.**

**Respondent**

**REPLY OF THE APPLICANT**

1. The Respondent Xerox Canada Inc. has only replied to or commented on the statements in paragraphs 1, 3, 4, 5, 6, 7, 8, 24 and 25 of the Director's Application. Insofar as the Respondent has denied or disagreed with any statement in those paragraphs, the Applicant repeats the statements of fact in those paragraphs and joins issue with the Respondent over any denial or disagreement.

2. By way of reply to the entire Response, the Applicant pleads that notwithstanding the nature of the contractual relationship between the Exdos Corporation ("Exdos") and Xerox Canada Inc. ("Xerox") as alleged in paragraphs 10 to 22 of the Response, following Xerox's refusal to supply post-1983 copier parts to Exdos effective October 26, 1988 the elements of section 75 of the Competition Act have been met in that:

a) Exdos has been unable to obtain adequate supplies of that product;

b) Exdos' inability to obtain adequate supplies of the product is because of insufficient competition among suppliers of the product in the market;

c) The business of Exdos, namely, the refurbishing, marketing and servicing of Xerox copiers is substantially affected by its inability to obtain an adequate supply of the product;

d) Exdos is willing and able to meet the usual trade terms of the supplier Xerox;

e) Xerox copier parts are in ample supply.

3. The Applicant has no knowledge of any breach of any contractual agreement between Xerox and Exdos as alleged in paragraph 1(c) of the Response on behalf of Xerox and denies that any breach, if such existed, has any relevance in regard to losses suffered by Exdos.

4. With respect to paragraph 2 of the Response, the Applicant does not dispute that in the copier industry products are identified by model number rather than by year of introduction. However, Xerox products other than the "10 series" referred to in the Response were introduced in the period after 1983. The Applicant therefore states that the term "post-83 copiers" most accurately reflects the subject matter of the Application.

5. The Applicant accepts as substantially correct the statements in paragraphs 1(b), 3, 8, 10, 11, and 21 of the Response on behalf of Xerox.

6. The Applicant has no knowledge of the facts stated in paragraphs 6, 7, 9 and 24 of the Response or behalf of Xerox.

7. In regard to the statements in paragraphs 12, 13, 14, 15, 16, 17, 22 and 23 all to the effect that Xerox did not at any time agree to, permit, or knowingly sell post 1983 copier parts to Exdos other than for Exdos' own end use, the Applicant specifically denies such statements and repeats the statements in the Application that Xerox knowingly did agree to sell such parts, and did sell such parts to Exdos far in excess of Exdos' own end use requirements. Such sales were specifically referred to in oral and written agreements between Xerox and Exdos and the subject of open commerce between them. The Applicant specifically denies that prior to the refusal to supply that such post-1983 copier parts were acquired by "subterfuge" as alleged.


8. The Applicant has no knowledge as to whether or not the sale of equipment by Xerox to Exdos was profitable for Xerox as alleged in paragraph 18 of the Response on behalf of Xerox. As well the Applicant has no knowledge of any harassment of Xerox employees as further alleged in the same paragraph 18. The Applicant denies that any lack of profitability or harassment of such employees provided a "context" for the refusal to supply Exdos as alleged in paragraph 19 or that this "context" has any relevance to this Application.

9. The Applicant has no knowledge of what clarification is referred to in paragraph 20 of the Response on behalf of Xerox. The Applicant agrees that Exdos did continue to openly purchase post 1983 copier parts until the refusal to supply was communicated to them by letter dated August 26, 1988. These purchases however were pursuant to an agreement between Xerox and Exdos summarized in correspondence between them dated November 20, 1987.

10. The Applicant has no knowledge of any passing off as referred to in paragraph 25 of the Response on behalf of Xerox and denies that any passing off if such existed has any relevance to this Application.

11. Except as specifically stated above, the Applicant denies the grounds and material facts as stated in the Response and joins issue with the Respondent thereon.

DATED at the City of Hull in the Province of Quebec on this 18<sup>th</sup> day of January, 1990.

  
Howard I. Wetston  
Director of Investigation and  
Research

TO: The Registrar of the  
Competition Tribunal

AND TO: McCarthy & McCarthy,  
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Solicitors for Xerox Canada Inc.