

CT-89/4

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.

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE		P R O D U I T
NOV 16 1989 <i>pe</i>		
REGISTRAR - REGISTRAIRE		
OTTAWA, ONT.	# /	

B E T W E E N:

THE DIRECTOR OF INVESTIGATION AND RESEARCH

Applicant

- and -

XEROX CANADA INC.

Respondent

NOTICE OF APPLICATION

TAKE NOTICE THAT the Applicant, the Director of Investigation and Research (the "Director"), will make an application to the Competition Tribunal (the "Tribunal") for:

- 1) An order pursuant to subsection 75(1) of the Competition Act requiring that the Respondent Xerox Canada Inc. ("Xerox") accept the Exdos Corporation as a customer for the supply of a product, namely Xerox copier parts (as hereinafter defined) on the usual trade terms of the supplier and,
- 2) Such further and other order as to this Tribunal may seem just.

**AND TAKE NOTICE THAT if you do not file a response with the Registrar of this Tribunal within thirty days of the date upon which this Notice of Application is served upon you, the Tribunal may, upon the ex parte Application of the Director, make such order as it considers appropriate.**

**AND TAKE NOTICE THAT in support of this Application the Director will rely upon the following Statement of Grounds and Material Facts:**

**STATEMENT OF GROUNDS AND MATERIAL FACTS**

**I. DEFINITIONS**

1. For the purposes of this Application, the word, name or expression:
  - (a) "copier" is a machine which effects the reproduction on paper of a document and includes electrostatic process copiers and accessories physically attached to such copiers; said term does not include either specialized use copiers, such as engineering drawing and microfilm copiers, or offset, mimeograph and spirit duplicator machines;
  - (b) "copier parts" are component parts used to repair, refurbish or maintain copiers;

- (c) "independent service organizations" or "ISO's" are businesses which market and service copiers and are independent from the franchised or authorized network of marketing and service personnel employed by the manufacturer;
- (d) "pre-1983 copiers" are Xerox copiers pre-dating the "Marathon" or "10 Series" models introduced by Xerox in the 1983 model year;
- (e) "post-1983 copiers" are the "Marathon" or "10 Series" copiers and any other copier models introduced by Xerox in the 1983 model year and subsequently;
- (f) "Xerox parts" or "Xerox copier parts" are "Xerox" brand copier parts.

## II. THE PARTIES

2. The Applicant, the Director of Investigation and Research ("the Director"), is the officer appointed under section 7 of the Competition Act and charged with the administration and enforcement of the Act.

3. The Respondent, Xerox Canada Inc. ("Xerox"), is an Ontario corporation with its head office at 5660 Yonge Street, North York, Ontario, M2M 4G7. Xerox is controlled by the Xerox Corporation, which has its head office at Stamford, Connecticut in the United States of America.

4. Xerox is a vertically-integrated supplier of copiers and other office equipment which it distributes and services through sales offices and service branches throughout Canada.

5. Xerox is the largest supplier of copiers in Canada with over half the sales in that market in 1988, in dollar terms. In 1988, Xerox's revenues were approximately \$1.1 billion and its total assets were approximately \$1.9 billion. It is the sole authorized supplier of new Xerox parts in Canada.

6. Exdos Corporation is an Ontario corporation carrying on business from its head office at 147 Norfinch Drive, North York, Ontario. The sole shareholder and Chief Executive Officer is Mr. Terrance Reid.

7. Nezron Office Products ("Nezron") is the operating name of 562412 Ontario Inc., an Ontario corporation with the same principal place of business as Exdos Corporation. Nezron is a wholly owned subsidiary of Exdos Corporation.

8. Exdos Corporation and Nezron (collectively "Exdos") have been operated as one business involving the purchasing, refurbishing, marketing and servicing of used Xerox copiers.

### **III. GROUND FOR THE APPLICATION**

9. The Respondent, Xerox, supplied Xerox parts to Exdos Corporation beginning in May, 1983. In August, 1988 Xerox advised Exdos Corporation that, effective October 26, 1988, Xerox would cease supplying Xerox copier parts for post-1983 copiers. The marketing and service of these post-1983 copiers account for the majority of the revenues of Exdos. Xerox stated that to continue to supply such parts "would conflict with other market initiatives presently underway".

10. Following Xerox's refusal to supply post-1983 copier parts to Exdos, that company has been unable to obtain adequate supplies of that product. Exdos' inability to obtain adequate supplies of the product is because of insufficient competition among suppliers of the product in the market. This inability to obtain an adequate supply of the product has substantially affected Exdos in its business of refurbishing, marketing and servicing Xerox copiers. Exdos is willing and able to meet the usual trade terms of the supplier Xerox. Xerox copier parts are in ample supply.

### **IV. THE REFUSAL TO SUPPLY**

11. In the 1983 model year Xerox introduced the Marathon or "10 Series" copier. Subsequently Xerox encouraged Reid to form an independent company to purchase, sell and service pre-1983 copiers. This was in accordance with a general policy undertaken by Xerox and the Xerox Corporation in the

United States to encourage the establishment of independent companies to take over the sales and servicing of the pre-1983 copiers. Exdos Corporation was established in May, 1983 (under the name "XDS Corporation", which was changed in June, 1983) by Reid, then a Xerox manager, to purchase, refurbish, market and service pre- 1983 copiers.

12. In May, 1983 Xerox contracted with Exdos to sell specified pre-1983 used copiers and new parts at specified prices, including a discount from Xerox retail prices for such new parts (the "1983 Supply Agreement").

13. In May, 1985 this agreement was replaced by a similar agreement (the "1985 Supply Agreement").

14. Since 1985 Xerox also sold post-1983 copier parts to Exdos Corporation at retail prices. Such parts were used by Exdos, with the knowledge of Xerox, to refurbish, market and service post-1983 Xerox copiers obtained from Xerox and other sources.

15. Through the 1983 Supply Agreement, the 1985 Supply Agreement and its subsequent actions, Xerox permitted and encouraged the entry and expansion of Exdos in the purchasing, refurbishing, marketing and servicing of Xerox copiers and provided the equipment, parts and supplies necessary for such activities.

16. By correspondence dated April 29, 1987, Xerox cancelled the 1985 Supply Agreement and terminated all discounts that Exdos Corporation received. However, by correspondence dated November 20, 1987, Xerox advised Exdos

Corporation that "although the formal Business Agreement between Xerox and Exdos has been terminated, it is clear that there will continue to be a business relationship between our respective organizations." This correspondence goes on to indicate that parts for pre-1983 and post-1983 Xerox copiers would continue to be available to Exdos at retail prices.

17. Subsequently Exdos continued to buy pre-1983 copiers and pre-1983 and post-1983 copier parts from Xerox.

18. By correspondence dated August 26, 1988, Reid was advised that Xerox had "determined that continuation of a used equipment sales and support channel would conflict with other market initiatives presently underway" and that Xerox would thereafter cease supplying Exdos Corporation with used Xerox equipment, effective September 26, 1988 and with parts, effective October 26, 1988.

19. By correspondence dated August 29, 1988 Xerox advised all Canadian ISO's that pursuant to a June 1, 1988 policy Xerox would cease supplying them with post-1983 copier parts as of November 1, 1988. This letter acknowledges that such items were supplied in the past as "exceptions". The June 1, 1988 policy permitted end users to order post-1983 repair parts for installation by ISO's and follows a similar ISO policy established in the United States by the Xerox Corporation in January, 1987.

20. By correspondence dated October 5, 1988, Xerox confirmed their refusal to supply Exdos with the qualification that Xerox would supply most pre-1983 copier parts to Exdos in accordance with its general ISO policy dated June 1, 1988. This position remains in effect to the date of this Notice of Application.

21. In the period between its inception and the said refusal to supply, Exdos purchased approximately \$1.5 million in equipment, \$1.5 million in parts and \$1.2 million in supplies from Xerox. Approximately \$1 million of the \$1.5 million spent on parts was for post-1983 copier parts.

22. As a result of Xerox's refusal to supply as described above, Exdos is unable to obtain adequate supplies of the product, namely Xerox copier parts, anywhere in the market on usual trade terms:

(a) the relevant product for the purposes of this application is Xerox copier parts;

(b) the relevant geographic market involves all of Canada.

23. The only source for adequate supplies of Xerox copier parts is Xerox. Other companies' copier parts are with few exceptions not substitutable for use in Xerox copiers.



24. Exdos has been unable to obtain other adequate supply alternatives either within or outside Canada:

- (i) "grey market" (i.e. non-Xerox authorized sources) or other sources in the United States and elsewhere have been tried but proven to be unsatisfactory due to landed cost, limited selection, lack of reliability, and unsuitable delivery time;
- (ii) acquiring and dismantling (or "cannibalizing") used copiers has been tried and proven uneconomical and impractical, particularly for high turnover or "consumable" parts; this practice is very costly and while effective over the short term is not a viable long term source for supply;
- (iii) having end users order copier parts for installation by Exdos (permitted by Xerox's June 1, 1988 policy) is not a commercially feasible supply option due to delay causing machine down time, added costs, the reluctance of customers to order the parts and the effect on the reputation of Exdos of such a practice; and,
- (iv) independent suppliers or reconditioning companies provide only some heat rollers, drums and a few other required items but cannot be relied on to supply the vast majority of copier parts required to adequately service copiers.

25. As a result of Xerox's refusal to supply and Exdos' inability to otherwise obtain adequate supplies of the product, namely Xerox copier parts, Exdos is substantially affected in its business of purchasing, refurbishing, marketing and servicing Xerox copiers;

- (a) post-1983 Xerox copiers constitute the great majority of the repair and maintenance revenues of Exdos. The proportion of pre-1983 copier business revenue has significantly declined as post-1983 copier revenue increases due to the obsolescence and wearing out of the older copiers;
- (b) without an adequate supply of Xerox copier parts, Exdos is unable to continue to service post-1983 copiers, which affects most of its approximately 1350 customers in the Metropolitan Toronto area;
- (c) without an adequate supply of Xerox copier parts Exdos is unable to refurbish post-1983 machines for re-sale, rental and leasing;
- (d) the ability of Exdos to sell, rent or lease Xerox copiers to end users is related to its ability to provide service contracts, which normally accompany sale, rental or lease arrangements. Due to Exdos' inability to obtain adequate supplies Exdos is inhibited from offering service contracts and therefore inhibited from selling, renting or leasing copiers;

- (e) the management and staff of Exdos have been forced to devote a greater part of their time and capital in attempting to secure needed repair parts from "grey market" and other sources and through cannibalizing used equipment. This non-productive time and additional cost has affected the ability of the company to compete in the market;
- (f) the efforts of Exdos to build an established reputation for reliable and economical sales and servicing of Xerox copiers will be injured if it is unable to provide its customers with the level of reliable and timely service ordinarily expected; and,
- (g) the uncertainty surrounding the future of the business and its current inability to experience normal growth has affected employee morale and threatens to jeopardize the ability to retain key employees.

26. Exdos is unable to obtain adequate supplies of Xerox copier parts because of insufficient competition among suppliers of this product in the market:

- (a) Xerox is the only source for adequate supply of Xerox parts;
- (b) copier parts from other copier manufacturers and other sources cannot, with few exceptions, be used as substitutes for Xerox parts.

27. Exdos is willing and able to meet the usual trade terms of Xerox:

(a) Xerox has dealt with Exdos since May 1983 on usual trade terms. Xerox continues to sell some pre- 1983 copier parts to Exdos and Exdos is able to meet usual trade terms;

(b) there are no reasonable technical or servicing requirements which justify a refusal to supply post-1983 copier parts to Exdos.

28. There is ample supply of Xerox parts in Canada.

V. PARTICULARS OF THE ORDER SOUGHT

29. The Applicant therefore applies to the Tribunal for an order under subsection 75(1) of the Competition Act as outlined above in this Notice of Application.

VI. LANGUAGE

30. The Applicant requests that this Application be heard in the English language.

**VII. PROCEDURE**

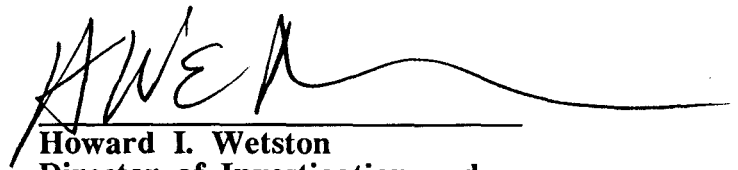
31. The Applicant will seek an order from the Tribunal for directions regarding any interlocutory proceedings herein and for the expeditious hearing of this Application.

**VIII. ADDRESS FOR SERVICE OF THE APPLICANT**

32. The address for service on the Applicant for all pleadings relating to this Application is:

James W. Leising  
Counsel to the Director of  
Investigation and Research  
Department of Justice  
1 Front Street West  
Toronto, Ontario  
M5J 1A5

DATED at the City of Hull  
in the Province of Quebec  
on this ~~16th~~ day of November,  
1989.

  
Howard I. Wetston  
Director of Investigation and  
Research

TO: The Registrar of the  
Competition Tribunal

AND TO: Colin L. Campbell, Q.C.  
Of Counsel to  
Xerox Canada Inc.