[redacted]

Director

CT-94/03

**THE COMPETITION TRIBUNAL**

IN THE MATTER OF an Application by the Director of Investigation and Research under sections 77 and 79 of the Competition Act R.S.C. 1985 c. C-34 as amended.



Between:



THE DIRECTOR OF INVESTIGATION AND RESEARCH

Applicant

- and -

TELE-DIRECT (PUBLICATIONS) INC.,
TELE-DIRECT (SERVICES) INC.

Respondents

**AFFIDAVIT OF MARGARET E. SLADE**

I, Margaret E. Slade, of the City of Vancouver, in the Province of British Columbia, MAKE OATH AND SAY:

1. I am a Professor of Economics in the Department of Economics at the University of British Columbia and was retained by counsel for the Director of Investigation and Research to provide expert economic evidence in this matter.

2. Attached hereto and marked as Exhibit "A" is a true copy of my evidence. The contents of Exhibit "A" and the findings and opinions expressed therein are true to the best of my knowledge, information and belief.

3. Attached hereto and marked as Exhibit "B" is a true copy of my curriculum vitae.

4. I make this affidavit pursuant to Rule 47(1) of the Competition Tribunal Rules.

SWORN before me, at the
City of Vancouver, in the
Province of British Columbia,
this 15th day of August, 1995.

Margaret Slade
Margaret E. Slade

A Commissioner, etc.

This is Exhibit "A"
to the Affidavit of
Margaret E. Slade
sworn on the 15th
day of August, 1995

A commissioner,
etc.

Margaret E. Slade
Professor of Economics
The University of British Columbia
Vancouver, B.C.

THE DIRECTOR OF INVESTIGATION AND RESEARCH

and

TELE-DIRECT (PUBLICATIONS) INC.
TELE-DIRECT (SERVICES) INC.

I was asked by counsel for the Director to provide an economic opinion dealing with:

(a) the extent to which advertising space and advertising services should be considered to be separate products for the purpose of an analysis of tied selling under sections 77 and 79 of the Competition Act;

(b) the nature and effect on competition of the tied-selling practice alleged in the Statement of Grounds and Material Facts, paragraphs 46 to 56.

As a factual foundation for this opinion, I have relied on the pleadings and documents exchanged by the parties in discovery and the transcripts of the oral discovery. I have also relied on relevant academic and other literature in formulating the method of analysis or approach that I use.

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## 1: Introduction

Tele-Direct (Publications) Inc. and Tele-Direct (Services) Inc. (hereafter Tele-Direct) are publishers of classified-telephone directories in Ontario, Quebec, and parts of New Brunswick, Newfoundland, Labrador, and the Yukon and Northwest Territories. Tele-Direct is controlled by BCE, the parent of Bell Canada, the principal telephone company in the areas where it publishes. Tele-Direct is authorized to publish classified directories by Bell Canada as well as by a number of smaller independent municipal and regional telephone companies.

Tele-Direct supplies directory advertising in the regions in which it operates. There are two separate products or lines of business that go into the production of directory advertising: advertising space and advertising services.

*Advertising space,* which is also described in the Director's Application as the directory-publishing business, refers to all aspects of the directory that relate to physical production and distribution. This includes access to the subscriber-data base, compilation and processing of sales information, verifying layout, typesetting, photo composing, production of hard copy, printing of directories, and distribution of these directories to telephone subscribers.

*Advertising services,* which is also described in the Director's Application as the directory-selling business, refers to all aspects of the directory that relate to sales of advertising space and design of the ads that will appear in that space. This includes establishing new customers, calling on customers and providing them with advice concerning cost, content, design, location, and placement of advertisements. In addition, suppliers of advertising services often bear the cost and responsibility of promoting the medium, delivering the finished product to the publisher, and billing and collecting from the client. Finally, some customers are provided with market research that is tailored to their special needs, and some agencies provide advice on how to integrate Yellow-Pages advertising with other media.

Tele-Direct has engaged in the practice of tied selling. Specifically, most advertisers who purchase space in the directory are required to pay for a bundle that includes both space and service. If advertisers wish to employ an advertising agency, they must therefore pay for service twice: once to Tele-Direct as part of the package and once to the agency for services alone.

Tele-Direct has a virtual monopoly in the provision of advertising space, which is an essential input to telephone-directory advertising. This dominant position is due principally to its relationship with its parent company, Bell Canada, and its historic access to the directory-subscriber listings.

Tele-Direct also controls a substantial portion (in excess of 90 percent) of the directory-advertising-services market. Its dominant position in the service market is an unnatural monopoly. Tele-Direct's practice of tying the two advertising inputs has impeded the entry of advertising agencies and consultants and inhibited the expansion of those that are already in the market. When firms are denied access to 90 percent of a large and lucrative market, it is evident that competition has been lessened substantially.

In what follows, I describe directory advertising, the two products that are used to produce directory advertisements, and Tele-Direct's practice of tied selling. Specifically, section 2 contains general information about the Yellow-Pages-advertising industry. Section 3 describes the two inputs or intermediate products that go into the production of directory advertisements, the viability of separation of the products, and market power in the two lines of business. Section 4 discusses the practice of tied selling in general, the way in which it is applied in the Yellow-Pages-advertising industry, the treatment of tying under the Competition Act, and the application of the Act to directory advertising. Section 5 deals with the remedies, and section 6 concludes.

## 2: The Yellow-Pages-Advertising Industry

<u>2a: The Demanders of Yellow-Pages Advertising</u>

Each year Canadian advertisers spend just under one billion dollars, or approximately 10 percent of their total advertising expenditures, on telephone-directory advertising. Directory advertising is therefore a substantial industry that is important for the economy as a whole. For some individuals, however, directory-advertising is vital.

The demanders of Yellow-Pages advertising are firms and individuals who wish to place ads in a directory. These advertisers want to publicize their names, addresses, telephone numbers and type of business. They do this by purchasing an ad that appears in the directory. The directory is then delivered free of charge to all telephone subscribers in the region.

Many trades people rely on the Yellow Pages as the principal method of publicizing their existence. In addition, shops and restaurants of all sorts want to be listed. The only choice for many businesses is not whether to place an ad but what sort of ad to place. Many others must also decide on how many ads to place.

Some customers must decide on expenditures on each medium, and therefore, in some sense, all media compete for their advertising dollars. Nevertheless, directory advertising has many unique features that distinguish it from other media.

First of all, directory advertising is *informative.* Unlike much advertising on TV or in magazines, it conveys factual information that often includes type of business, geographic location, hours of operation, and advertiser-telephone number.

Second, directory advertising has a relatively *long time frame.* Unlike many flyers and much newspaper advertising, it does not convey information on prices, sales, or special deals that are available for only a limited period of time.

Third, directory advertising is *comprehensive.* Virtually every household and commercial establishment in Canada has a telephone directory, and all businesses that have commercial telephone lines are listed in the Yellow-Pages. This situation can be contrasted with newspaper and magazine advertising, which require that a customer subscribe prior to receiving an ad, with TV and radio advertising, which require that a customer be watching or listening at the time of the ad, and with flyers, which are often distributed selectively.

Finally, Yellow-Pages advertising caters to *random demand*. For example, a telephone subscriber who experiences an emergency such as a plumbing failure can find a complete list of local plumbers in the directory. Moreover, unlike much advertising that seeks to create demand and to alter tastes, directory advertising is designed for customers who occasionally seek a particular sort of service and voluntarily consult their directories.

<u>2b: The Suppliers of Yellow-Pages Advertising</u>

The dominant suppliers of telephone-directory advertising are publishing companies that are affiliated with a regional telephone-operating company. These telephone companies permit their authorized publishing companies to publish and deliver the directories.

A directory contains business listings that are arranged, first, alphabetically by a system of business categories or headings. For example, frequently consulted headings include diverse categories such as "Accountants," "Building Contractors," and "Taxis." Second, directories are arranged alphabetically by establishment within each heading. Individual businesses can request to be listed under what they decide is the most appropriate heading, or they can opt to appear under several related headings.

One can think of the classified-directory industry and its customers in two ways. First, the directory-publishing company produces a directory that includes classified advertisements. The company's customers are households and commercial establishments that subscribe to the telephone; these customers receive the directory, which is distributed free of additional charge, and no money changes hands.

Second, the directory-publishing company sells advertisements to its customers. The customers are not household and commercial subscribers that receive directories; they are advertisers who place ads in the directory. A publisher or an agency, with the help of its customers, combines space and service and produces directory advertisements. Advertisements and listings, which appear in the classified directory, are what both advertisers and readers care about.

The second view is relevant here because the directory publisher receives its revenues from advertising. In other words, the publisher makes a profit from selling advertisements.

Tele-Direct's profits are high -- perhaps in the range of forty percent of total assets. However, Tele-Direct is not regulated directly. Instead, its profit or net revenue is paid to its parent company, Bell Canada. Bell Canada operates under a rate-of-return regulatory constraint, and Tele-Direct is considered an integral part of this regulated firm for the purposes of determining a rate of return.

In addition to Tele-Direct, there are independent-advertising agencies and consultants that supply advertising services to a small fraction of the market. Moreover, competing directories are published and distributed. Nevertheless, Tele-Direct has a dominant position in both markets.

2c: Interaction Between Suppliers and Demanders

Advertising in the Yellow Pages is different from advertising in other media and can be very complex, particularly for clients who place ads in several directories. Although there is some industry standardization, books vary considerably in detail. For example, each directory has its own set of prices or rates for each size and type of ad. It also has its own set of closing dates (i.e., the final date for placing an ad in the directory). In addition, Yellow-Pages headings differ between English and French Canada. A firm that provides service must therefore keep track of this information for its clients.

When deciding on a Yellow-Pages-advertising budget and how it will be spent, a customer faces many choices. These include:

- The allocation of total-advertising expenditures among Yellow Pages and other media.
- The number of directories to enter. For some, this is a simple decision because one or two directories reach all of the advertiser's potential customers. For others, in contrast, some directories are crucial, whereas others are marginal. Deciding where to draw the line can therefore be difficult.
- The number of headings to enter in a given directory. A small contractor, for example, might consider appearing under "Building

Contractors," "Bathroom Remodeling," "Home Improvements," and so forth.

- The size of the ad to place under each heading.
- Whether to choose color, black and yellow, or white knockout, and, if color is chosen, how many colors to use.
- The design of the ad. For example, there exists a trade off between providing a large amount of information, which has value but might cause an ad to appear cluttered, and using a striking graphical design that is less informative but more appealing.

The above decisions are complex, and it is natural for customers to seek advice when faced with complex choices. The vast majority of clients, however, are effectively excluded from using the services of an agency. Indeed, economic considerations associated with the tie dictate that they use a Tele-Direct sales representative.

## 3. Advertising Space and Advertising Services

The supply of directory advertising is to a large extent controlled by directory publishers. In this section, I describe the two separate products that directory publishers combine to produce advertisements for their clients: advertising space and advertising services. I then discuss whether these products can be provided separately or must be furnished as a package. Finally, I assess potential and actual market power in the two lines of business.

### 3a: The Two Products

The telephone-directory industry supplies two inputs or intermediate products that are used in the production of advertisements: advertising space and advertising services.

ADVERTISING SPACE, which is also described in the Director's Application as the directory-publishing business, refers to all aspects of the directory that relate to physical production and distribution. This includes access to the subscriber-data base, compilation and processing of sales information, verifying layout, typesetting, photo composing, production of hard copy, printing of directories, and distribution of these directories to telephone subscribers.

ADVERTISING SERVICES, which is also described in the Director's Application as the directory-selling business, refers to all aspects of the directory that relate to sales of advertising space and design of the ads that will appear in that space. This includes establishing new customers, calling on customers and providing them with advice concerning cost, content, design, location, and placement of advertisements. In addition, suppliers of advertising services often bear the cost and responsibility of promoting the medium, delivering the finished product to the publisher, and billing and collecting from the client. Finally, some customers are provided with market research that is tailored to their special needs and some agencies provide advice on how to integrate Yellow-Pages advertising with other media.

This classification of products is standard in most advertising media. For example, the Institute of Canadian Advertising provides its members with a sample contract in its Advertiser/Agency Agreement Guide and suggests that members include the provisions of the sample in all contracts that they write with their clients. This contract stipulates that:

> Agency will perform *advertising services* including the formation of advertising plans, the creation and production of advertising materials, the *purchase of media time and space,* the placement and checking of the advertising, the payment of media and production suppliers and the submission of monthly (or other) billing to the client. (italics mine)

As this sample demonstrates, the terms space and services are familiar in the advertising industry. Moreover, it is standard for the industry and the media to view the services and space functions as separate. For example, a television station will usually sell time (or pay a commission) to any accredited-advertising agency, where accreditation is granted principally on the basis of credit worthiness.[1]

Tele-Direct, in contrast, dominates the market for advertising services. Nevertheless, it has designated certain accounts as commissionable (less than 10 percent of the market), and will pay a percentage of expenditures to agencies that provide services for these accounts. Four sorts of agencies supply this service: general-purpose-advertising agencies, specialist agencies, Yellow-Pages consultants, and in-house agencies.

*General or multimedia-advertising agencies* are full-service companies that provide advice to clients with respect to a broad range of media, including newspaper, magazines, television, and radio. A few general agencies have divisions that specialize in Yellow-Pages advertising. Most, however, do not.

*Specialist agencies* derive most of their revenues from directory advertising. They provide a full range of services within the Yellow-Pages medium, which includes everything from arranging for space in the directory to providing a client with market research. Specialized agencies, which are the largest of the four types in terms of their Yellow-Pages accounts, supply almost all of the service for commissionable accounts.

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1 Selling space or time and paying a commission to an agency are, for most practical purposes, equivalent. The "price" of space or time is the price of the package minus the commission.

*Consultants* also specialize in Yellow-Pages advertising. However, their principal role is to provide advice on how to reduce the cost of Yellow-Pages advertising. Moreover, their payment can depend either on the size of the cost reduction or on total expenditure.

Finally, *in-house advertising agencies* are divisions within an advertiser's company that provide services for the media that the company uses. These agencies account for only a small fraction of the commissionable accounts.

In what follows, I use the word agency to include all four types of firms.

3b: Separation of Space and Services

Tele-Direct claims that "there is no product known as advertising services independent of a product called advertising space. The sales advice which Tele-Direct's internal sales staff provides forms an inseparable package with the advertising space which it provides in its directories." (Tele-Direct's Response to the Application, ¶ 8).

I believe, however, that space and services are two separate products. First, Tele-Direct pays commissions on some accounts. Moreover, most of the commissionable accounts are handled by outside agencies. It is clear that, for these accounts, the "inseparable package" of space and services has been separated and that space and services are supplied by unrelated firms.

Second, Tele-Direct organizes its company into divisions. Moreover, there are two vice presidents who are in charge of sales and a vice president who is in charge of publishing. Within its own organization, therefore, the two functions are relatively separate.

Third, Tele-Direct has recently created an arm's length subsidiary, Tele-Direct (Media), which is a CMR that specializes in providing advertising services to advertisers with commissionable accounts. One reason for creating this subsidiary was to protect Tele-Direct's national accounts and to recover accounts that had already been lost to agencies.

Fourth, Tele-Direct's subsidiary, NTD, provided advertising services in the US market but did not publish a US directory. Tele-Direct and its subsidiaries, therefore, have offered both space without services and services without space.

Finally, separation of the two functions is common in the advertising industry, and it is standard for other media to pay commissions to accredited agencies. Moreover, with many other media, accredited agencies receive commissions on all of the accounts that they place.

It is possible to claim that two products are really one because the second (e.g., advertising services) would not exist without the first (e.g., advertising space). However, even when one product would not exist without another, it is not the case that the two products must be provided by the same firm. This issue is best handled by analogy. Travel agencies, for example, would not exist if there were no travel. This does not mean, however, that airlines and railroads should control the services that these agencies provide. The decision concerning separateness, therefore must ultimately depend on economic common sense. For example, it would be inefficient to treat left and right shoes as separate products.

## 3c: Market Power in Space and Services

### *i) Market Power in Advertising Space*

The reason why Tele-Direct can make it economically nonviable for most advertisers to use an outside agency is that it possesses market power in the provision of space, which is an essential input into directory advertising. The market power of a directory-publishing company derives principally from its affiliation with its related telephone company. Indeed, each telephone company was initially granted a monopoly position in its respective territory. Moreover, telephone companies permit their authorized-directory-publishing companies to publish and deliver both white and yellow-pages directories and give them access to their subscriber listings. Nevertheless, even when entry is freer, such as in certain US markets, directory publishing tends to be concentrated. A few communities are served by more than one comprehensive classified directory. However, most areas have only one, and few have more than two.

Some evidence of market power comes from an examination of market-share statistics. Although it is difficult to obtain hard numbers on market shares, Tele-Direct is clearly in a dominant position. There have been occasional independent (i.e., not affiliated with a telephone company) entrants that publish a comprehensive product, such as White Directories in Niagara Falls. New entrants, however, have never accounted for a significant share of the market. Tele-Direct is therefore virtually alone in the market.

A dominant-market share by itself, however, is not sufficient to demonstrate market power (i.e., the ability to raise price above marginal cost). In this industry, the most compelling evidence of market power comes from the outcome of the market process itself. Profits are large; estimates put them in the range of 40 percent of total assets.[1] Rates of return of this magnitude are unusual in even the most concentrated industries that have substantial entry barriers.

*ii) Market Power in Advertising Services*

The directory-advertising-services market is an unnatural monopoly. In the absence of artificial restrictions, independent agencies would compete with directory publishers for this role. If the tie between the provision of advertising space and advertising services were broken, many existing agencies would expand. In addition, consultants might upgrade and provide a full range of directory-advertising services. Finally, it is highly probable that new firms would enter this lucrative market. Expansion would occur until the price of advertising services was driven towards the marginal cost of provision and the market became workably competitive.[2]

Expansion has not occurred because Tele-Direct currently ties the provision of services to the purchase of space. Since it has a virtual monopoly on the provision of space, the tie is very effective.

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1 For example, Tele-Direct's Annual Review shows that its net income from Canadian operations was 41 percent of its total Canadian assets in 1991 and 38 percent in 1992.

2 The price of advertising service can either be a commission or it can be a fee for service.

## 4: Tying

Tying is a constraint that can be imposed on a customer that purchases two products, either final or intermediate, as is the case here. In particular, the manufacturer of the first product, the *tying* product, refuses to sell this product to the customer, or makes it economically disadvantageous for the customer to obtain this product, unless the customer agrees to purchase the second product, the *tied* product. Examples of tying and tied products include copying machines and copying paper, new automobiles and their future parts and service, and computers and their peripheral devices. In the Yellow-Pages industry, the tying input is directory-advertising space, whereas the tied input is directory-advertising services.

Tying is often practiced by a firm that has substantial market power in the tying market but less power in the tied market. This description fits the Yellow-Pages industry. Indeed, Tele-Direct has a virtual local monopoly in the provision of advertising space, whereas, absent a tie, many agencies can provide advertising services.

### 4a: Tying of Space and Service by Tele-Direct

In the Yellow-Pages industry, the tying-product is directory-advertising space, and Tele-Direct has a virtual monopoly on the provision of this product in Ontario and Quebec. The tied-product market is directory-advertising services. The advertising-services market could be workably competitive; entry is potentially easy, and economies of scale are relatively unimportant. Tele-Direct, however, has used its monopoly position in the provision of advertising space to capture the advertising-services market. Through tying, it has foreclosed a substantial fraction of the services market and made independent entry difficult if not impossible. In particular, only customers with commissionable accounts can purchase a full range of advertising services from alternative suppliers without incurring an unreasonable cost. This means that approximately 90 percent of the market is effectively foreclosed.

Tele-Direct has decided to perform the publishing and selling functions internally. Moreover, the decision as to whether a space/services package must be purchased from Tele-Direct, or whether services can be provided by an outside agency that is paid a commission, is made by Tele-Direct and is not left up to the client. Indeed, clients that account for approximately 90 percent of revenues in Tele-Direct's territories and a larger fraction of the accounts must pay for a space and services bundle. This means that they are effectively excluded from using an outside agency.

Some customers' accounts have been deemed commissionable by Tele-Direct. When this is the case, Tele-Direct will pay a commission to an outside agency that provides advertising services. This practice can be contrasted with the practice in many other media, where an accredited agency that has a commissionable status normally receives a commission on all of the accounts that it places.

The division between commissionable and noncommissionable accounts, which is entirely up to Tele-Direct, is based more on geographic scope than on the dollar value or on the complexity of an account within a geographic region. In particular, no advertiser that places ads solely in Tele-Direct's territories can obtain commissionability status for an account. This is true in spite of the fact that these territories account for over 60 percent of Canadian Yellow-Pages-advertising expenditures, and that there are over 230 directory sections published in these regions.

The rules that govern commissionability are arbitrary. Indeed, they can be changed at the whim of Tele-Direct. In particular, such a change occurred in 1993, when Tele-Direct abandoned its so-called 'eight-market rule' and put its current rule into place. With the new standard, many accounts that were formerly commissionable no longer are.[1]

Currently, a commissionable account is one that i) is placed in two or more provinces, ii) in 20 directory sections having a minimum value of a "trademark" ad, and iii) has 20 percent of revenue outside of the predominant publisher's territory. Criterion number three is particularly arbitrary, since publishers vary in size from a singe city (Edmonton) to the two largest Canadian provinces (Ontario and Quebec).

An advertiser with an account that does not satisfy these criteria, no matter how large the account, cannot use an agency without paying for services twice. Few customers are willing to incur this double expense.

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1 These accounts, however, have been grandfathered. Nevertheless, if a client with a grandfathered account were to cease using an outside agency, the account could never regain its commissionability status.

Nevertheless, many value the service that is provided by an agency more highly than what they can obtain from Tele-Direct.

Customers with the simplest needs might not choose to use the services of an advertising agency. A large number of customers, however, feel that their needs would be better served by an outside agency but are unwilling to pay twice. Moreover, customers that are unaware of the services that agencies provide might decide to switch if space and services were unbundled. This could be true because they believe that the agency's advice is more impartial, that the agency knows more about the client's industry, or is more flexible in catering to the client's special needs. In addition, advertisers might want to deal with the general-advertising agency that handles their accounts in other media, or they might prefer an agency that will place ads with both Yellow-Pages and other directory publishers. The list of possible reasons is long, and it is clear that no one provider of advertising services can be best for all clients. Nevertheless, most clients have little choice; Tele-Direct has made their use of an advertising agency financially disadvantageous.

Tele-Direct claims that the division between the two classes of accounts is based on "distinct needs which may be more easily addressed by an agent." (Tele-Direct's Response to the Application, ¶ 29). This seems unlikely for several reasons. First, the rules can change when there is no evidence of changes in advertiser needs. Second, many clients do not agree with the way in which the market has been divided. In particular, some clients are unhappy when their accounts are placed in the noncommissionable class. Finally, the fact that some large accounts are allowed to use outside agencies may merely reflect the fact that these clients have superior bargaining power. Indeed, Tele-Direct may find that displeasing powerful buyers is too costly.

An example serves to illustrate the strength of some clients' preferences for outside agencies. Some advertisers with customers that reside only in Ontario and Quebec place unnecessary advertisements in directories that are published in other provinces. In other words, they incur an expense whose only purpose is to increase the geographic scope of their accounts so that they can satisfy the commissionability criteria.

The very fact that the tie exists and is enforced by Tele-Direct is evidence that some customers are unsatisfied with their accounts' noncommissionable status. Indeed, if all local advertisers preferred the service that Tele-Direct provides, a tie would be unnecessary as it would never bind.

4b: Tying Under the Competition Act

Tying, even by a monopoly seller, is not *per se* illegal in Canada. Under the Competition Act, one must demonstrate that i) the firm engaged in the practice is a major supplier in the tying market and ii) tying has an exclusionary effect in the tied market so that competition has been lessened substantially. There is an exception, however, if tied selling is dictated by the technological relationship between the two products (e.g., specialized parts and machinery that depend on being used together for their proper functioning).

I believe that the conditions of the Competition Act are satisfied in the Yellow-Pages advertising industry. It is clear that Tele-Direct is the major, virtually the only, supplier of advertising space in the territories in which it operates. Condition i) is therefore satisfied. Moreover, Tele-Direct's practice of tying impedes the entry of new directory-advertising agencies and inhibits the expansion of existing agencies. Indeed, most clients whose accounts have been deemed commissionable by Tele-Direct use agencies, and many more would like to do so. When firms are denied access to 90 percent of a large and lucrative market, it is evident that competition has been lessened substantially. Condition ii) is therefore also satisfied. Finally, the issue of whether space and service constitute separate products is dealt with in section 3, and it is evident that tying is not dictated by the technological relationship between the two. Moreover, this possibility has not been suggested by Tele-Direct.

To summarize, I believe that the conditions that are set out in the Competition Act are satisfied in this market. As a consequence, Tele-Direct should be prohibited from engaging in tied selling.

## 5: Remedies

With tying, rather than prohibit the sale of the tied product by the supplier of the tying product, it seems preferable to allow the customer a range of choices that include the possibility of purchasing the two inputs separately, either from a single or from two different suppliers, as well as purchasing a tied package. In this way the customer, not the supplier of the tying product, can choose the preferred alternative.

The remedies in the Application stipulate that Tele-Direct be prohibited from engaging in tied selling. In addition, the following steps are specified:

i) Space and services should be offered at separate prices that do not exceed the sum of the price of the bundled package. Moreover, individual prices should reflect the marginal costs of provision.

or

ii) All accounts that are placed with an accredited agency should be commissionable. Accreditation standards should be available on a nondiscriminatory basis to applicants that satisfy reasonable solvency requirements.

or

iii) The prices specified in alternative i) should be offered after or during a transition period in which alternative ii) is implemented.

Two alternatives are therefore stipulated: selling space and services at prices that are based on the relative costs of provision, or expanding commissionability to encompass all accounts that are placed with an accredited agency. In addition, a combination of the two is possible. I discuss the alternatives in sequence.

Offering space and services at separate prices is the most obvious remedy. When agencies can purchase space on behalf of their clients at a reasonable price, advertisers will be free to choose the supplier of services that best meets their needs without incurring prohibitive cost. Moreover, competition in the market for services will drive the price of services towards its marginal cost of provision, and the services market will become workably competitive. There is, however, a drawback associated with separate prices. Indeed, since it is difficult to establish marginal costs, regulatory oversight would probably be required.

Expanding commissionability standards will have the same effect, albeit in a more indirect way. For example, suppose that the commission that is paid by Tele-Direct is 25 percent of the purchase cost of a package of space and service. Moreover, suppose that the marginal cost of provision of service for this account is less than 25 percent. Competition for this account will lead some agency to offer the advertiser a discount, and discounts will occur until the price of service approaches its marginal cost. Indeed, some agencies grant discounts on commissionable accounts at present.

The second alternative is analogous to the current situation in the travel-agency market. If airlines offer travel agencies a flat percent for selling a ticket, and if an agency can provide this service for less, either an agency will offer a traveler a discount, or an agency will purchase a block of tickets at a volume discount and sell those tickets at a reduced price. In either case, free entry into the travel-agency market drives the price of service towards its marginal cost.

Which alternative is preferable? This is a much debated question in the advertising profession. Nevertheless, the trend is away from fixed commissions. For example, only 25 percent of the members of the Association of Canadian Advertisers compensate their agencies in this way.[1] The rest use either a fee-based-compensation scheme or a combination of commissions and fees. Given that the advertising industry has not yet reached a consensus on this subject, it is best that the Tribunal not be more specific. The proposed remedies allow Tele-Direct to make the choice between the two alternatives. Regardless of which is chosen, the problem that the Application addresses should be substantially alleviated and the price of advertising services should fall.

Finally, the Director is not asking the Tribunal to divest Tele-Direct of its advertising-services role, which would be a more drastic remedy. The

1 Agency Compensation Resource Kit, (1994) Institute of Canadian Advertising, Toronto.

remedies simply allow the customer, rather than Tele-Direct, to choose a preferred supplier. If Tele-Direct can compete with the agencies in offering a quality product at a low cost, it will retain many of its customers. If it cannot, however, it will loose them to more efficient suppliers.

## 7: Conclusions

The Competition Act stipulates that the Tribunal should order suppliers to cease engaging in tied sales when it is found that i) the firm engaging in the practice is a major supplier in the tying market and that ii) competition in the tied market is lessened substantially. Moreover, separation of the two products should make economic sense. I have argued that these conditions are met in the directory-advertising market. I therefore believe that Tele-Direct should be prohibited from tying the provision of advertising services to the purchase of advertising space.

With tying, rather than prohibit the sale of the tied product by the supplier of the tying product, it seems preferable to allow the customer a range of choices. I believe that the remedies in the Application meet this criterion. In particular, under the remedies, Tele-Direct can continue to supply advertising services to any customer who prefers to obtain them from the publisher. The remedies are focused on facilitating the expansion of existing firms and the entry of new firms into the advertising-services industry, not on curtailing the activities of those that already exist.

When advertisers are allowed to choose, they will tend to select the supplier that offers the best service at the lowest cost. Moreover, suppliers will tend to compete with each other by offering innovative products to their customers. When the advertising-services market is foreclosed, in contrast, consumer choice is curtailed, and the lone supplier faces little competitive pressure to innovate.

This is Exhibit "B"
to the Affidavit of
Margaret E. Slade
sworn on the 15th day
of August, 1995

A commissioner, etc.

THE UNIVERSITY OF BRITISH COLUMBIA

**CURRICULUM VITAE**

NAME SLADE, Margaret E.

**FACULTY OF** Arts

**DEPARTMENT OR SCHOOL** Economics

## I. DEGREES

| | |
|---|---|
| B.A. In Mathematics, Vassar College, Poughkeepsie, N.Y., | 1961 |
| M.A. in Mathematics, University of California, Berkeley, California | 1963 |
| Ph.D. in Economics, George Washington University, Washington, D.C. | 1979 |

**Academic awards and distinctions (prior to final degree):**

Graduated Phi Beta Kappa and Magna Cum Laude
Summer program in Mathematics Research Department of Bell Laboratories, summers of 1960 and 1961
Eloise Ellery Fellow, Univ. of Calif., 1961-62
Adolph Sutro Fellow, Univ. of Calif., 1962-63
Ph.D. dissertation selected for Garland Publishing series entitled Outstanding Dissertations in Economics.

## II. PROFESSIONAL EMPLOYMENT RECORD

Mathematician, Shell Development Co., Emeryville, CA, 1962-64
Mathematician, Department of Scientific and Industrial Research, Wellington, New Zealand, 1964-66
Mathematician, Office of Earthquake Research, U.S. Geological Survey, Menlo Park, CA, 1968-72
Mathematician, Office of Resource Analysis, U.S. Geological Survey, Reston, VA, 1972-80
Economist, Bureau of Economics, U.S. Federal Trade Commission, 1980-81
Visiting Assistant Professor, University of British Columbia, 1981-82

Assistant Professor, University of British Columbia, 1982-87
Associate Professor, University of British Columbia, 1987-1990
Professor, University of British Columbia, 1990-present.

**Courses taught:**

Industrial Organization, which includes Market Structure, Regulation, and Organization Theory, at the graduate and undergraduate level,
Natural-Resource Economics at the graduate and undergraduate level,
Econometrics at the graduate and undergraduate level.

## IV. PROFESSIONAL ACTIVITIES

Member of the American Economic Association (AEA)
the Association of Environmental and Resource Economists (AERE)
the Canadian Economic Association (CEA)
the Econometric Society (ES)
the European Association for Research in Industrial Economics (EARIE)
Groupement de Recherche en Economie Quantitative Aix Marseille (GREQAM)

Member of the U.S. National Academy of Science Committee on Nonfuel Mineral Demand Relationships, 1981-82
Nominating Committee for AERE, 1987
Canadian Corespondent for AERE, 1990-1991
Executive Committee of EARIE 1990-present
SSHRCC Doctoral and Postdoctoral Fellowship Selection Committee, 1989, 1990, and 1991
SSHRCC Strategic Grants Advisory Committee, 1989
SSHRCC Faculty Grants Committee, 1995, 1996

Associate Editor of Journal of Industrial Economics, 1988-present
Canadian Journal of Economics, 1991-1994
Journal of Environmental Economics and Management, 1988-89
International Journal of Industrial Organization, 1990-present

Editorial Board of Canadian Journal of Economics, 1988-1991
Resources Policy, 1989-present
The Energy Journal, 1991-present
Review of Industrial Organization, 1991-present

Consultant to the U.S. Federal Trade Commission
the U.S. Central Intelligence Agency
the Canadian Restrictive Trade Practices Commission
Bureau of Competition Policy of Canada
the U.S. National Academy of Science Committee on Population
the East-West Center, Honolulu, Hawaii
the World Bank
Shell Oil Company

UBC Killam Faculty Research Fellowship, 1989-90
Invited Professor, Université d'Aix - Marseille II, Marseille, France, 1989-90, 1994-95.
Invited Professor, Université de Paris I, Paris France, Spring 1991 and 1992.
Invited Professor, EHESS, France, Spring 1994
CES Visiting Scholar, University of Munich, Fall 1994
Benjamin Meeker Distinguished Professor, University of Bristol, UK, Spring 1995
Outside examiner on PhD theses: Aix/Marseille II, 1993, University of Toulouse, 1993.
Recipient of Killam Research Prize, 1993, $10,000.

PUBLICATIONS RECORD

NAME: SLADE, Margaret E.

Papers Published in Refereed Journals:

"Retail Contracts: Theory and Practice," (with F. Lafontaine) European Economic Review, forthcoming.

"Mutlitask Agency and Organizational Form: An Empirical Exploration," International Economic Review, May 1996, forthcoming.

"Uniform-Compliance Costs for Mineral Commodities: Who Gains and Who Looses?" Land Economics, Vol. 72, No. 1, February 1986, forthcoming.

"Product Rivalry with Multiple Strategic Weapons: An Empirical Analysis of Price and Advertising Competition," Journal of Economics and Management Strategy, Vol. 4, No. 3, 1995, forthcoming.

"Empirical Games: The Oligopoly Case," Canadian Journal of Economics, Vol. 28, No. 2, May 1995, pp. 368-402.

"What Does An Oligopoly Maximize?" Journal of Industrial Economics, Vol. 57, No. 2, March 1994, pp.45-62.

"Vancouver's Gasoline-Price Wars: An Empirical Exercise in Uncovering Supergame Strategies," Review of Economic Studies, Vol. 59, No. 2, April 1992, pp. 257-276.

"Market Structure, Marketing Method, and Price Instability", Quarterly Journal of Economics, Vol. 106, November 1991, pp. 1309-1340.

"Strategic Pricing with Customer Rationing: The Case of Primary Metals" Canadian Journal of Economics, Vol. 24, No. 1, February 1991, pp. 70-100.

"Cheating on Collusive Agreements," International Journal of Industrial Organization, Vol. 8, No. 4, December 1990, pp. 519-544.

"Strategic-Pricing Models and Interpretation of Price-War Data," European Economic Review, Vol. 34, January 1990, pp. 524-537.

"The Fictitious Payoff Function: Two Applications to Dynamic Games," Annales d'Economie et de Statistique, Vol. 15/16, July/December, 1989, pp. 193-216 .

"The Two Pricing Systems for Nonferrous Metals," Resources Policy, Vol. September 1989, pp. 209-220.

"Price Wars in Price-Setting Supergames," Economica, Vol. 56, No. 223, August 1989, pp. 295-310.

"Modeling Stochastic and Cyclical Components of Technical Change: An Application of the Kalman Filter", Journal of Econometrics, Vol. 41, No. 3, July 1989, pp. 363-383.

"Grade Selection Under Uncertainty: Least-Cost Last and Other Anomalies", Journal of Environmental Economics and Management, Vol. 15, No. 2, June 1988, pp. 189-205.

"Interfirm Rivalry in a Repeated Game: An Empirical Test of Tacit Collusion", Journal of Industrial Economics, Vol. 35, No. 4, June 1987, pp. 499-516. Reprinted in The Empirical Renaissance in Industrial Economics, T. Bresnahan and R. Schmalensee (eds.) Oxford: Basil Blackwell, (1987), pp. 129-146.

"Conjectures, Firm Characteristics, and Market Structure: An Empirical Analysis", International Journal of Industrial Organization, Vol. 4, No. 4, December 1986, pp. 347-370.

"Total-Factor-Productivity Measurement when Equilibrium is Temporary: A Monte-Carlo Assessment", Journal of Econometrics, Vol. 33, No 1/2, October 1986, pp. 75-95.

"Static Profitability as a Measure of Deviations from the Competitive Norm", Managerial and Decision Economics, Vol. 7, No. 2, June 1986, pp. 113-118.

"Taxation of Exhaustible Resources at Various Stages of Production", Canadian Journal of Economics, Vol. 19, No. 2, May 1986, pp. 281-297.

"Exogeneity Tests of Market Boundaries Applied to Petroleum Products", Journal of Industrial Economics, Vol. 34, No. 3, March 1986, pp. 291-303.

"Prices of Metals: A Review Article", Journal of Conservation and Recycling, Vol. 9, No. 2, Spring 1986, pp. 183-188.

"Measures of Market Power in Extractive Industries: The Legacy of U.S. v. General Dynamics", The Antitrust Bulletin, Vol. 31, No. 1, Spring 1986, pp. 91-111.

"Noninformative Trends in Natural-Resource Commodity Prices: U-Shaped Price Paths Exonerated", Journal of Environmental Economics and Management, Vol. 12, No. 2, June 1985, pp. 181-192.

"Tax Policy and the Supply of Exhaustible Resources: Theory and Practice", Land Economics, Vol. 60, No. 2, May 1984, pp. 133-147.

"Mineral Taxation in a Stages-of-Production Framework", Recherches Economiques de Louvain, Vol. 49, No. 4, December 1983, pp. 323-338.

"Cycles in Natural-Resource Commodity Prices: An Analysis of the Frequency Domain", Journal of Environmental Economics and Management, Vol. 9, No. 2, June 1982, pp. 138-148.

"Trends in Natural-Resource Commodity Prices: An Analysis of the Time Domain", Journal of Environmental Economics and Management, Vol 9, No. 2, June 1982, pp. 122-137.

"Recent Advances in Econometric Estimation of Materials Substitution", Resources Policy, Vol. 7, No. 2, June 1981, pp.103-109.

"Price Changes and Metals Markets: Modeling Short and Long-Run Copper-Aluminum Substitution", Materials and Society, Vol. 4, No. 3, November 1980, pp. 397-411.

"The Effects of Higher Energy Prices and Declining Ore Quality: Copper-Aluminum Substitution and Recycling in the U.S.", Resources Policy, Vol. 6, No. 3, September 1980, pp. 223-239.

"An Econometric Model of the U.S. Secondary Copper Industry: Disposal Versus Recycling," Journal of Environmental Economics and Management, Vol. 7, No. 2, June 1980, pp. 123-141.

Papers Published in Books and Conference Volumes:

"Markets and Organizations: Past, Present, and Future," in Economics: The Next Ten Years, L.-A. Gerard-Varet and A. Kirman (eds.) Oxford, Oxford University Press, forthcoming.

"Demand for Energy and Nonfuel Minerals: Final, Derived, and Speculative," (with C. Kolstad and R. Weiner) Chapter 20 in the Handbook of Natural Resource and Energy Economics, Vol. III, J. Sweeney (ed.) Amsterdam, North-Holland, 1993, pp. 935-1009.

"Prices of Metals: History and Current Problems," in The Concise Encyclopedia of Materials Economics, Policy, and Management, M. Bever (ed.) Pergamon Press, 1993, pp. 254-260.

"Strategic Behavior and Collusion," (with A. Jacquemin) Chapter 8 in The New Industrial Economics: Recent Developments in Industrial Organization and Game Theory, M. La Manna and G. Norman (eds.), Edward Elgar, London, 1992, pp. 47-65.

"The Two Pricing Systems for Nonferrous Metals," in Marketing of Nonferrous Metals, M.L. Jackson and P.R. Richardson (eds.) Centre for Resource Studies, Queen's University, 1989, pp. 26-45.

"Cartels, Collusion, and Horizontal Merger", (with A. Jacquemin) Chapter 7 in the Handbook of Industrial Organization, Vol. I, R. Schmalensee and R. Willig (eds.) Amsterdam, North-Holland, 1989, pp. 415-473.

"Value-Added Total-Factor-Productivity Measurement: A Monte-Carlo Assessment", in Measurement in Economics, W. Eichhorn (ed.) Springer-Verlag, 1988, 809-830.

"Natural Resources, Population, and Economic Well Being", in Population Growth and Economic Development, D.J. Johnson and R.D. Lee (eds.) Madison: University of Wisconsin Press, 1987, 331-372.

"Expo 86: An Economic Impact Analysis", (with C. Blackorby and R. Picard) in R. Allen and G. Rosenbluth (eds.) Restraining the Economy, Vancouver: New Star, 1986, pp. 254-278.

"The Macroeconomic Consequences of Expo 86", (with C. Blackorby and R. Picard) in R. Anderson and E. Wachtel (eds.) The Expo Story, Vancouver: Harbour, 1986, pp. 231-254.

"The Effects of Taxes, Subsidies, and Price Controls on Exhaustible-Resource Production", (with T.R. Lewis) in Progress in Natural-Resource Economics, A.D. Scott (ed.) Oxford University Press, Oxford, 1985, 203-227.

"Metal Price History", in Encyclopedia of Materials Science and Engineering, M.B. Bever (ed.) Pergamon Press, 1985, pp. 3943-3948. Reprinted in the Concise Encyclopedia of Mineral Resources, Oxford: Pergamon Press 1986.

"Empirical Tests of Economic Rent in the Copper Industry", in Advances in the Economics of Energy and Resources, Vol. IV, J. Moroney (ed.) J.A.I. Press, Greenwich, Conn. 1982, pp. 223-239.

"An Inter-Country Comparison of Housing-Market Trends in the 70's" (with D.T. Scheffman) in The Determination and Control of House Prices, Papers and Proceedings of a seminar organized by the Building Societies Association, London, January 1981, pp. 64-85.

"Long-Run Price Movements of Mineral Commodities: A Statistical Analysis", in Modeling and Simulation, Vol. 12, Part III, W.G. Vost and M.H. Mickle (eds.) University of Pittsburgh Press, Pittsburgh, Pa. 1981, 89-94.

## Books:

Pricing of Metals, Centre for Resource Studies Monograph, Queens University, 1988, 135 pages. Reprinted in Metal-Market Trading, Economic and Social Commision on Asia and the Pacific.

An Econometric Model of the United States Copper and Aluminum Industries, New York, Garland Publishing, Inc., 1984, 390 pages.

## Papers Published Outside of Economics:

"Estimating Lengths and Orders of Delays in system Dynamics Models", in Elements of the Systems Dynamics Method, J. Randers (ed.) M.I.T. Press, Cambridge, 1979, pp. 162-183.

"A Computer-Assisted Graphical Method for Identification and Correlation of Igneous Rock Chemistries", (with T.L. Wright), Geology, Vol. 6, January 1978, pp. 16-20.

"Numerical Analysis of Lava Lake Cooling Models: Part I, Description of the Method", (with D.L. Peck and H.R. Shaw) American Journal of Science, Vol. 277, April 1977, pp.384-414.

"Numerical Analysis of Lava Lake Cooling Models: Part II, Application to Alea Lave Lake, Hawaii", (with D.L. Peck and H.R. Shaw) American Journal of Science, Vol. 277, April 1977, pp. 415-437.