

Competition Tribunal



Tribunal de la Concurrence

CT-1994 / 003 – Doc # 82

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.

B E T W E E N:

The Director of Investigation and Research

Applicant

- and -

Tele-Direct (Publications) Inc.

Tele-Direct (Services) Inc.

Respondents

- and -

White Directory of Canada, Inc.

Anglo-Canadian Telephone Company

NDAP-TMP Worldwide Ltd.

Directory Advertising Consultants Limited

InfoText Limited

Thunder Bay Telephone

Intervenors



CONFIDENTIALITY (PROTECTIVE) ORDER

Date of Pre-hearing Conference:

March 29, 1995

Presiding Member:

The Honourable Mr. Justice William P. McKeown

Lay Member:

Dr. Frank Roseman

Counsel for the Applicant:

Director of Investigation and Research

James W. Leising
John S. Tyhurst

Counsel for the Respondents:

**Tele-Direct (Publications) Inc.
Tele-Direct (Services) Inc.**

Warren Grover, Q.C.
Mark J. Nicholson
Emily Jelich

Counsel for Intervenors:

**Counsel for NDAP-TMP Worldwide Ltd. and Directory Advertising Consultants
Limited**

Martha A. Healey

COMPETITION TRIBUNAL

CONFIDENTIALITY (PROTECTIVE) ORDER

The Director of Investigation and Research

v.

Tele-Direct (Publications) Inc. et al.

FURTHER TO the motions brought by the respondents and by the Director of Investigation and Research ("Director") to restrict disclosure of certain documents listed in their respective affidavits of documents;

AND WHEREAS the parties have agreed that there should be an order restricting disclosure of documents over which confidentiality has been claimed but cannot agree on all the terms of such order:

AND WHEREAS there are valid reasons for restricting the disclosure of the documents by issuance of a protective order and such a protective order will expedite the discovery process and preparation for the hearing of this application;

UPON HEARING the submissions of counsel for the parties;

THE TRIBUNAL ORDERS THAT:

1. No document over which confidentiality has been claimed (hereinafter "protected documents") shall be disclosed except in accordance with the terms of this order or with the prior written consent of the person that claimed confidentiality over the document. Protected documents are further described in Appendix "A" to this order, which may be modified by consent of the parties without application to or approval by the Tribunal.
2. Protected documents which the Director has identified as "Level A" documents may, on request of the respondents, be disclosed to counsel for the respondents and independent experts retained by the respondents.
3. All other protected documents identified by the Director may, on request of the respondents or an intervenor, be disclosed to counsel for the respondents or the intervenor, independent experts retained by the respondents or the intervenor and three designated representatives of the respondents.
4. Protected documents identified by the respondents may, on request of the Director or an intervenor, be disclosed to counsel for the Director or the intervenor, those members of the Director's staff involved in this application and independent experts retained by the Director or the intervenor.
5. Except as permitted by this order, counsel for the respondents and counsel for an intervenor who receive protected documents shall not disclose such documents to their respective clients.

6. Persons in receipt of protected documents as permitted by this order may discuss such documents with and may disclose such documents to:

(a) persons identified by the document as having sent or received any such document,
and

(b) representatives of parties to contracts with prior knowledge of the contracts.

7. Where the respondents are required to designate representatives who are permitted by the terms of this order to receive protected documents, such designation shall take place by written notice filed with the Registrar of the Tribunal, with copies sent to all parties and intervenors.

8. Independent experts shall not include current employees of the respondents or an intervenor or any of their respective affiliates.

9. Prior to gaining access to protected documents, any independent expert and designated representative permitted by this order to have access to such documents shall first execute a confidentiality agreement in the form attached hereto as Appendix "B". Each such confidentiality agreement shall be filed promptly with the Registrar of the Tribunal who shall retain all such agreements in confidence until completion or final disposition of this proceeding and any appeals relating thereto, at which time such agreements may be disclosed to the parties or the intervenor, upon request.

10. If any one of the Director, the respondents or an intervenor receives written notice from a person who has signed a confidentiality agreement pursuant to this order that such person is required by law to disclose any protected document, the Director, the respondents or the intervenor, as the case may be, shall give prompt written notice to the person that claimed confidentiality over the document so that such person may seek a protective order or other appropriate remedy.

11.(1) Upon completion or final disposition of this proceeding and any appeals relating thereto, all protected documents and all copies thereof shall be returned to the person that claimed confidentiality over the documents, unless such person states in writing that the claim for confidentiality has been withdrawn or that the documents may be disposed of in some other manner. The respondents shall retain those protected documents returned to them by the Director in a secure and organized manner for a reasonable period of time, such reasonable period to be determined by the Tribunal panel hearing the application at the same time as its decision on the merits.

(2) Notwithstanding subparagraph (1), where the respondents have obtained protected documents from the Director which were seized by the Director from the respondents' premises or which were generated or prepared by the respondents, the respondents shall not be required to return such documents to the Director.

12. This order shall be subject to further direction of the Tribunal.

DATED at Ottawa, this 30th day of March, 1995.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) W.P. McKeown

W.P. McKeown

APPENDIX "A"

1. Documents for which confidentiality is claimed by the respondents in their affidavit of documents and their motion dated February 21, 1995.
2. Documents for which confidentiality is claimed by the Director in the supplementary affidavit of documents sworn by Murray Hamley.
3. Documents identified in Schedule I, Part A (a) of the Director's affidavit of documents and further listed in Attachment 1(b) of the supplementary affidavit of documents sworn by Murray Hamley.
4. Summaries of privileged documents provided by the Director to the respondents.

APPENDIX "B"

COMPETITION TRIBUNAL

CONFIDENTIALITY AGREEMENT

IN CONSIDERATION of being provided with information or documentation in connection with this proceeding over which claims for confidentiality have been advanced, I, _____, of the City of _____, in the _____ of _____, hereby agree to maintain the confidentiality of such information or documentation. It shall not be copied or disclosed to any other person nor shall the information or documentation so obtained be used by me for any purposes other than in connection with this proceeding.

Upon completion of this proceeding, I agree that such information or documentation, and any copies of same, shall be dealt with in accordance with instructions from my counsel or as prescribed by order of the Competition Tribunal.

I acknowledge that I am aware of the order granted by the Competition Tribunal on March 30, 1995 in this regard, a copy of which is attached as Schedule "A" to this Agreement, and agree to be bound by same.

In the event that I am required by law to disclose any of the information or documentation, I will provide [*insert name of retaining or employing party*] with prompt written notice so that the person that claimed confidentiality over such information or documentation may seek a protective order or other appropriate remedy. In any event, I will furnish only that portion of the information or documentation which is legally required and I will exercise my best efforts to obtain reliable assurance that confidential treatment will be accorded to the information or documentation.

[*insert for experts*] I will promptly, upon the request of the person providing the information or documentation, advise where such material is kept by me and at the conclusion of my involvement in the proceedings deliver to the said person the material without retaining any copies thereof. All documents relating to the material will be destroyed, except that I may retain in my confidential files, subject to the requirements of confidentiality imposed by this agreement, materials prepared by me, such as study results and materials of a general nature which do not replicate the information contained in the confidential document.

I hereby attorn to the jurisdiction of the courts of any province in Canada to resolve any disputes arising under this Agreement. I further confirm that I am not a current or former employee of the respondents or an intervenor or any of their respective affiliates.

SIGNED, SEALED AND DELIVERED before a witness this _____ day of _____, 1995.

(Print name)

(Witness)

(Signature)