

Notice of acceptance of undertakings

**MARKET INVESTIGATION INTO
CLASSIFIED DIRECTORY ADVERTISING SERVICES**

**Competition Commission acceptance of final undertakings
pursuant to section 159 of the Enterprise Act 2002**

1. On 5 April 2005 the Office of Fair Trading made a reference to the Competition Commission (CC), under section 131 of the Enterprise Act 2002 (the Act), for an investigation and report into the supply of classified directory advertising services (CDAS) in the UK.
2. In its report, *Classified Directory Advertising Services: Market Investigation*, published on 21 December 2006, the CC found that there are features of the relevant market that prevent, restrict or distort competition in connection with the supply of CDAS and hence that there is an adverse effect on competition.
3. In accordance with section 165 and Schedule 10 of the Act, the CC published on 5 March 2007 its Notice of proposal to accept final undertakings from Yell Group plc together with the draft final undertakings for the purpose of remedying, mitigating or preventing the adverse effects on competition identified in its report. The CC invited comments from interested persons on the draft final undertakings by 5 pm on Tuesday 20 March.
4. The CC has considered all the representations it has received. In the light of these representations the CC has required some modifications to the draft final undertakings. The CC does not consider that the modifications are material in any respect and has decided in accordance with paragraph 5 of Schedule 10 of the Act, that the undertakings, as modified, do not require any further consultation.
5. The CC, pursuant to section 159 of the Act, now accepts the final undertakings, a copy of which is set out in the attached Annex, and accordingly the reference has been finally determined and the undertakings come into force in accordance with section 159 of the Act.



DIANA GUY
Group Chairman
3 April 2007

MARKET INVESTIGATION INTO THE SUPPLY OF CLASSIFIED DIRECTORY ADVERTISING SERVICES

Final Undertakings given by Yell Group plc (Yell) to the Competition Commission (CC), under sections 138 and 159 of the Enterprise Act 2002, to take action requisite for the purpose of remedying, mitigating or preventing the adverse effects on competition identified in the report of the CC on Classified Directory Advertising Services published on 21 December 2006 (the Report).

Yell gives the following undertakings to the CC:

Interpretation

1. In these undertakings:

'the Act' means the Enterprise Act 2002;

'Advertorial' means an advertisement which promotes the interests or opinions of its sponsor and which is designed to simulate editorial content;

'Yell Group' means a group of Interconnected Bodies Corporate which includes Yell;

'Bundling' means charging a rate for the purchase of more than one advertisement bought together which is lower than the rate which would apply if the advertisements were bought individually;

'Business Directory' means a printed directory which would qualify as a Classified Directory save that it is not distributed wholly or mainly to consumers within the meaning of section 183(1) of the Act;

'Category of Directory' means a Classified Directory, a Second Tier Directory or a Themed Guide as the case may be;

'Ceiling Rates' means the maximum rates that Yell may charge for classified advertisements under the terms of these undertakings in specific Editions;

'Classified Directory' means a printed directory which:

- (a) contains advertisements published pursuant to engagements to that effect; and
- (b) shows suppliers of goods and services, classified by reference to the goods or services supplied;
- (c) is distributed wholly or mainly direct to consumers (within the meaning of section 183(1) of the Act);
- (d) is not a Second Tier Directory; and
- (e) is not a Themed Guide;

'Content' means items published within a directory including editorial material, mapping, Advertorials, third-party endorsements, non-classified advertising and classified advertising;

'Distribution Area' means the area within which a directory is distributed;

‘Edition’ means any edition of a Classified Directory published or to be published by Yell;

‘Interconnected Bodies Corporate’ has the meaning given by section 129(2) of the Act;

‘GMC’ means the minimum number of copies of an Edition of a Classified Directory Yell guarantees to deliver to addresses within the Edition’s Distribution Area;

‘Master Rate Card’ means the rate card from time to time published by Yell under paragraph 2(1);

‘New type of advertisement’ means an advertisement which differs from those previously offered to advertisers by virtue of its positioning in the directory or by its size, shape or use of colour or other graphic device;

‘OFT’ means the Office of Fair Trading;

‘Operational Rates’ means the actual rates that Yell will charge for classified advertisements in any Edition exclusive of any discounts;

‘Parent Directory’ means the Classified Directory whose distribution area encompasses the Distribution Area of a Second Tier Directory;

‘Re-scoping’ means the process of altering the Distribution Area of a directory by subdividing directories;

‘RPI’ means the general index of retail prices published from time to time by the Office for National Statistics;

‘Second Tier Directory’ means a printed directory which:

- (a) contains advertisements published pursuant to engagements to that effect; and
- (b) shows suppliers of goods and services, classified by reference to the goods or services supplied;
- (c) is distributed wholly or mainly direct to consumers (within the meaning of section 183(1) of the Act);
- (d) is distributed within a limited part of the Distribution Area of a Parent Directory or Directories;

‘Themed Guide’ means a printed periodic guide whose Content relates wholly to a specific coherent topic and which is distributed either directly or indirectly wholly or mainly to consumers within the meaning of section 183(1) of the Act. For this purpose, ‘specific coherent topic’ means a topic which links one or more goods or services other than a topic which links goods or services on the basis of geography alone;

‘Tying’ means making the purchase of one type of advertisement conditional on the purchase of another type of advertisement or the same type of advertisement in another Category of Directory;

‘Volume discount’ means a discount against the Operational Rate for individual advertisements in consideration of the total amount of money spent by the advertiser which is available to all advertisers across all classifications;

'Yell Limited' means Yell Limited, a company registered in England and Wales under company number 4205228.

Comprehensive rate card

2.
 - (1) Yell shall publish a Master Rate Card for all Editions that it intends to publish between the dates set out in that rate card: in it there shall be set out all the Ceiling Rates for which Yell is prepared to display advertisements in such Editions.
 - (2) Yell shall publish Operational Rates in the Master Rate Card where these differ from the Ceiling Rates and full details of all available discounts and offers.
 - (3) Yell shall make no charge for the inclusion of an advertisement in any Edition other than the charge specified in respect of that type of advertisement and that Edition in the Master Rate Card.
 - (4) Yell shall only offer an advertiser a Volume Discount calculated on the basis of the advertiser's spend in one Category of Directory at any given time, and for these purposes, advertising spend in one Category of Directory shall not count towards a volume discount in another Category of Directory.
 - (5) The Master Rate Card shall be made available, free of charge, by Yell to anyone who requests it, within five working days of receipt of the request provided that Yell shall not be obliged to make more than one copy of any edition of the Master Rate Card available to any applicant.
3. Yell shall be entitled to publish and distribute extracts from the Master Rate Card provided that:
 - (1) the rates set forth in such extracts conform with the corresponding rates set forth in the Master Rate Card published under paragraph 2.1 and 2.2; and
 - (2) each such extract contains a clear reference to the fact that any person is entitled to obtain a copy of the Master Rate Card on the terms set forth in paragraph 2(5).

Rates

4.
 - (1) No Operational Rate shall exceed the corresponding Ceiling Rate.
 - (2) The Ceiling Rates in the Master Rate Card shall meet the requirements set out in sub-paragraphs (3) and (4) below.
 - (3) No Ceiling Rate relating to any Edition that is included in Yell's current Master Rate Card shall be higher than the price arrived at by making the adjustment set out in sub-paragraph (5) below.
 - (4) No Ceiling Rate relating to any future Edition that is not included in the current Master Rate Card shall be higher than the price arrived at by making the adjustment set out in sub-paragraph (5) or (7) below.
 - (5) The adjustment referred to in sub-paragraphs (3) and (4) above is to be made by multiplying the maximum rate that could have been charged for the immediately preceding Edition of that Classified Directory (for the category of advertisement in question) by the fraction:

$$\frac{RPI - 6}{100}$$

where RPI is the RPI number for the latest month for which statistics were available before the publication of that Master Rate Card, expressed as a percentage of the RPI number for the same month in the preceding year.

- (6) The adjustment in sub-paragraph (5) shall apply to Classified Directories scheduled, as at 21 December 2006, for publication prior to 31 March 2008.
- (7) For Editions scheduled, as at 21 December 2006, for publication after 31 March 2008 the adjustment in sub-paragraph (5) shall apply, except that in the fraction referred to in that sub-paragraph, the figure '-6' shall be deleted.
- (8) Yell shall be entitled to round any price calculated pursuant to this paragraph to the nearest whole pound.

Re-scoping

- 5. (1) If Yell alters the Distribution Area (within the meaning of paragraph 6) of a Classified Directory, no Ceiling Rate for any advertisement in the first Edition of any of the Classified Directories affected by the change shall exceed the average (subject to the rules in sub-paragraph (2) below) of the Ceiling Rates for the five Editions with immediately larger GMC and five Editions with immediately smaller GMC than the re-scoped Directory.
- (2) In calculating the average under sub-paragraph (1) above, there shall be disregarded (unless the OFT consents):
 - (a) the rate for the Central London directory; and
 - (b) any rate greater than:
 - (i) £2.75 per 1000 GMC for a quarter column; or
 - (ii) the equivalent, pro rata, rate for a page, or other sub-division of a page,

the limit, in either case, being adjusted by reference to the formula set out in paragraphs 4(4) and 4(6) above.
- (3) Where Yell extends the Distribution Area of a Classified Directory in circumstances falling within paragraph 6(2) below, Yell shall not increase the Ceiling Rates for advertisements in the Classified Directory as a result of such extension.
- (4) Where Yell re-scopes a Classified Directory the combined Ceiling Rate for placing an advertisement in the successor directories shall not be higher than the Ceiling Rate for the same type of advertisement in the Classified Directory before it was re-scoped.

Directory areas

- 6. (1) Yell shall ensure that a map showing the Distribution Area of each Classified Directory is printed in each Edition.

- (2) Yell shall not distribute or arrange for the distribution of a Classified Directory without charge outside its Distribution Area, except:
- (a) in response to a specific request from a consumer; or
 - (b) to consumers resident within a part of a neighbouring Distribution Area which represents less than 5 per cent. of the circulation by number of households of the Classified Directory for that neighbouring Distribution Area.
- (3) Yell may only distribute a Classified Directory in a neighbouring Distribution Area pursuant to paragraph 6(2)(b) if it is able to demonstrate, based on the findings of independent market research conducted amongst a representative sample, that such distribution is sought by at least 55 per cent of households in the part of the neighbouring Distribution Area to which the distribution is to be made.
- (4) Yell shall ensure that Distribution Areas do not overlap except:
- (a) to the extent shown on page 44 of the Report CM 3171 (a copy of which page is annexed);
 - (b) if the overlap arises as a result of an extended distribution made in accordance with paragraph 6(2); or
 - (c) as permitted by paragraphs 7 and 8.

Second Tier Directories

7. Yell may distribute a Second Tier Directory (or Directories) within the Distribution Area of a Parent Directory or Directories provided that:
- (a) the GMC of any individual Second Tier Directory does not exceed 25,000; and
 - (b) the circulation of Second Tier Directories taken together does not exceed 15 per cent of the GMC of the Parent Directory or directories; and
 - (c) no free line entries of businesses are included for businesses located outside the Distribution Area of the Second Tier Directory; and
 - (d) it has published a rate card for its Second Tier Directories.

Themed Guides

8. (1) Yell may distribute a Themed Guide provided that:
- (a) the Themed Guide satisfies the definition in these undertakings;
 - (b) the classifications encompassed by the Themed Guide do not in aggregate comprise more than 10 per cent of the total annual advertising revenue in Yell's Classified Directories on a national basis; and
 - (c) it has published a rate card for its Themed Guides.
- (2) If a Themed Guide does not comply with the requirements of sub-paragraph (1) it shall be treated for the purposes of these undertakings as if it were a Second Tier Directory.

- (3) Yell shall notify the OFT of its intention of producing a Themed Guide at least 2 calendar months before distributing it.
- (4) The notice required by sub-paragraph (3) shall contain full details of the proposed Themed Guide including a description and definition of the theme, the GMC, the Distribution Area, the list of classifications covered by the Themed Guide and the total value of advertising revenue in those same classifications contained in Yell's Classified Directories on a national basis.

Tying and bundling

9. (1) Yell shall not tie sales of advertisements between directories.
- (2) Yell shall not bundle sales of advertisements in;
 - (a) any Classified Directory and Second Tier Directory or Themed Guide; or
 - (b) any Second Tier Directory and Themed Guide.

New types of advertisement

10. The provisions of paragraphs 2, 3, 4, 5 and 9 shall apply to any new type of advertisement 12 months after the date of its introduction in any particular Edition.

Good faith

11. (1) Yell shall have regard, in securing compliance with paragraphs 1 to 10 above, to the objective of these paragraphs, which is to ensure that, on the basis of a like-for-like comparison, the Ceiling Rates for advertisements in Classified Directories published by Yell decline, relative to the RPI, by at least 6 per cent each year until 31 March 2008 and by RPI thereafter and that circulation of any Second Tier Directories and Themed Guides by Yell remains within the restrictions envisaged in these undertakings.
- (2) Actual circulation of Second Tier Directories in excess of the normal margin of less than 10 per cent above GMC will be considered contrary to this Good Faith provision.
- (3) Nothing in these undertakings shall require Yell to do anything that would contravene the provisions of the Unsolicited Goods and Services Act 1971 as amended from time to time.

Preparation of accounts for Classified Directory business

12. (1) Yell shall prepare for its UK Classified Directory business, accounts in respect of each financial year ending 31 March, which shall:
 - (a) meet, so far as is practicable in the opinion of the Directors of Yell, the requirements of Chapter 4 of Part 15 of the Companies Act 2006; and
 - (b) include proper charges or allocations in respect of transactions between the UK Classified Directory business and other activities of Yell or Interconnected Bodies Corporate within the Yell Group.

- (2) References in these undertakings to any provision of the Companies Act 2006 which is not in force when these undertakings take effect shall be treated until such time as such provision comes into force as references to those provisions of the Companies Act 1985 from which they originated and applicable accounting standards.

Availability of accounts

13. Yell shall ensure that a copy of the accounts prepared in compliance with paragraph 12 is:
- (a) sent each year to the OFT at the same time as Yell Limited's annual accounts are delivered to the registrar, together with a report from Yell's auditors as to whether the accounts show a true and fair view of Yell's UK Classified Directory business;
 - (b) made available, free of charge, to anyone who requests a copy, within five working days of receipt of the request, provided that the request is made after the OFT's copy of the accounts has been sent to them.

OFT's consent

14. Where Yell seeks the OFT's consent under paragraph 5 of these undertakings, such consent shall not be unreasonably withheld or delayed and it shall be presumed that the OFT has granted its unconditional consent to the application unless the OFT notifies Yell within 20 working days after receipt of the application that it has serious doubts about whether such consent can be granted.

Information

15. Yell shall provide to the OFT:
- (1) a copy of the Master Rate Card when it is published in electronic form suitable for loading onto a computer;
 - (2) on completion of each distribution of an Edition of a Classified Directory;
 - (a) information on the number of households that have received that Classified Directory in response to a consumer request instigated by a card inviting consumers to request the Classified Directory of a neighbouring Distribution Area; and
 - (b) an estimate of the percentage which those households represent of the circulation of the Classified Directory for the Distribution Area in which those households are located;
 - (3) a list of Editions scheduled, as at 21 December 2006, for publication prior to 31 March 2008;
 - (4) such other information as the OFT may reasonably require for the purpose of ascertaining that these undertakings are being or have been carried out, including in particular extracts from the Master Rate Card and information about the profitability of particular Editions.

Subsidiaries

16. Yell shall procure that any Interconnected Body Corporate within the Yell Group other than Yell which controls all or part of the Classified Directory business, shall comply with the undertakings set out in paragraphs 1 to 13 and 15 as if it had given them.

Transfer of Classified Directory business

17. In the event that Yell intends to transfer its Classified Directory business or any significant part thereof to a business which is not an Interconnected Body Corporate within the Yell Group, Yell shall procure that such business gives to the CC undertakings acceptable to the CC in the same terms, so far as they are relevant, and to the same effect as those set out in paragraphs 1 to 16 before such transfer takes effect.

Duration of Undertakings

18. These undertakings shall remain in force until released by the CC after considering the advice of the OFT. The CC has recommended in its final report that the remedies package constituted by these undertakings is reviewed by the OFT after a period of three years from the date of acceptance of these undertakings.

John Condon

Director

3rd April 2007

Date

Howard Rubenstein

~~Director~~ Company Secretary

For and on behalf of Yell Group plc

FIGURE 3.1

Yellow Pages directory areas

Source: BTYP.