

## Undertakings by Castaim Limited

**Undertakings given by Castaim Limited (to be renamed Yell Limited), Company Number 4205228, (“Yell”) to the Secretary of State for Trade and Industry to take action requisite for the purpose of remedying or preventing the adverse effects specified in the report of the Monopolies and Mergers Commission on Classified Directory Advertising Services (Cm 3171, March 1996) (“the Report”).**

Yell hereby gives the following undertakings set out below in paragraphs 1 to 14 relating to the publication and distribution of printed consumer classified advertising directories to the Secretary of State for Trade and Industry.

### Interpretation

1 In these undertakings:

**“the Act”** means the Fair Trading Act 1973;

**“Yell Group”** means a group of Interconnected Bodies Corporate (within the meaning of section 137(5) of the Act), which includes Yell;

**“Business Directory”** means a printed directory that would qualify as a Classified Directory save that it is not distributed wholly or mainly direct to consumers (within the meaning of section 137(2) of the Act);

**“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; and
- (c) is distributed wholly or mainly direct to consumers (within the meaning of section 137(2) of the Act);

**“the Director”** means the Director General of Fair Trading;

**“Edition”** means any edition of a Classified Directory published or to be published by Yell;

**“Interconnected Bodies Corporate”** has the meaning given by section 137(5) of the Act;

**“the Master Rate Card”** means the rate card from time to time published by Yell in accordance with paragraph 2(1) below;

**“Printed Directory Business”** means the business of publishing and distributing Classified Directories and Business Directories;

**“RPI”** means the general index of retail prices published from time to time by the Office for National Statistics; and

**“Significant Number”** means 55 per cent, calculated from the findings of independent market research amongst a representative sample of Relevant Households, as defined in paragraph 7(3) below.

### **Comprehensive rate card**

- 2** (1) Yell shall publish a 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 charges on payment of which Yell is prepared to display advertisements in such Editions, including all discount schemes.
  - (2) Yell shall make no charge for the inclusion of an advertisement in any Edition other than the charge specified in respect of that category of advertisement and that Edition in the Master Rate Card from time to time current.
  - (3) The Master Rate Card shall be made available, free of charge, by Yell to anyone who requests it, within 5 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.
  - (4) Yell shall publish the first Master Rate Card by 1 January 2002.
- 3** Yell shall be entitled to publish and distribute extracts from the Master Rate Card provided that:
- (a) the rates set forth in such extracts conform with the corresponding rates set forth in the Master Rate Card; and
  - (b) 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(3).

### **Rates**

- 4** (1) The rates in any Master Rate Card shall meet the requirements set out in paragraphs (2) and (3) below.
- (2) No price in any Master Rate Card relating to any Edition that is included in Yell’s rate card in effect as at 1 December 2001 (“the December 2001 Rate Card”) shall be higher than the lesser of:
- (a) the price for that Edition and category of advertisement shown in the December 2001 Rate Card, and
  - (b) the price arrived at by making the adjustment set out in paragraph (4) below.
- (3) No price in any Master Rate Card relating to any future Edition that is not included in the December 2001 Rate Card shall be higher than the price arrived at by making the adjustment set out in paragraph (4) below.
- (4) The adjustment referred to in paragraphs (2) and (3) above is to be made by multiplying the price for the immediately preceding Edition of that Classified Directory (for the category of advertisement in question) by the fraction:

$$1 + \left( \frac{RPI - 6}{100} \right)$$

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.

- (5) Yell shall be entitled to round any price calculated pursuant to this paragraph to the nearest whole pound.
- 5** (1) If Yell alters the Distribution Area (within the meaning of paragraph 7) of a Classified Directory, no 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 paragraph (2) below) of the latest published rates for the five Editions with immediately larger Guaranteed Minimum Circulation ("GMC") and five Editions with immediately smaller GMC than the rescoped Directory.
- (2) In calculating the average under paragraph (1) above, there shall be disregarded unless the Director otherwise 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 RPI-6 formula set out in paragraph 4(4) above.
- (3) Where Yell extends the Distribution Area of a Classified Directory in circumstances falling within paragraph 7(2) below, Yell shall not increase the rates for advertisements in the Classified Directory as a result of such extension.

### **Good Faith**

- 6** (1) Yell shall have regard, in securing compliance with paragraphs 1 to 5 above, to the objective of these paragraphs, which is to ensure that, on the basis of a like-for-like comparison, prices paid for advertisements in Classified Directories published by Yell decline, relative to the RPI, by at least 6 per cent each year.
- (2) 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.

### **Directory areas**

- 7** (1) Yell shall ensure that a map showing the area in which each Classified Directory is to be distributed (the directory's "Distribution Area") 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 7(2)(b) above if it is able to demonstrate that such distribution is sought by a Significant Number of households in the part of the neighbouring Distribution Area to which the distribution is to be made ("Relevant Households").
- (4) Yell shall ensure that Distribution Areas do not overlap except:
  - (a) to the extent shown on page 44 of the Report (a copy of which page is annexed);
  - (b) if, two years from the date of these undertakings, there is no supplier of Classified Directories within the overlapping Distribution Areas other than Yell; or
  - (c) if the overlap arises as a result of an extended distribution made in accordance with paragraph 7(2) above.

#### **Preparation of accounts for Classified Directory business**

- 8** Yell shall prepare for its Printed Directory Business accounts in respect of each financial year, ending 31<sup>st</sup> March, which shall:
  - (a) meet the requirements of Schedule 4 to the Companies Act 1985;
  - (b) comply with those UK accounting standards which relate to incorporated entities;
  - (c) include proper charges in respect of transactions between the Printed Directory Business and other divisions of Yell or Interconnected Bodies Corporate within the Yell Group; and
  - (d) be delivered to the registrar (as required by section 242 of the Companies Act 1985) at the same time as Yell delivers its annual accounts to the registrar.

#### **Availability of accounts**

- 9** Yell shall ensure that a copy of the accounts prepared in compliance with paragraph 8 above is:
  - (a) sent each year to the Director at the same time as Yell's annual accounts are delivered to the registrar (in accordance with section 242 of the Companies Act 1985), together with a report from Yell's auditors as to whether the accounts show a true and fair view of Yell's Printed Directory Business;

- (b) made available, free of charge, to anyone who requests a copy, within 5 working days of receipt of the request, if the request is made after the Director's copy of the accounts has been sent to him.

### **Tasktip annual accounts**

**10** Yell shall each publish in its annual accounts:

- 1 the turnover of Yell's Printed Directory Business, segmented between its Classified Directories business and its Business Directories business; and
- 2 segmental information on the operating profit and net assets of Yell's Printed Directory Business,

and shall conspicuously specify in its annual accounts the procedure for obtaining on request and free of charge the accounts specified in paragraph 8 above.

### **Director's consent**

**11** In relation to any matter where Yell seeks the Director's consent pursuant to these Undertakings, such consent shall not be unreasonably withheld or delayed and it shall be presumed that the Director has granted his unconditional consent to the application unless he notifies Yell within 20 working days after receipt of the application that he has serious doubts about whether such consent can be granted.

### **Information**

**12** Yell shall provide to the Director:

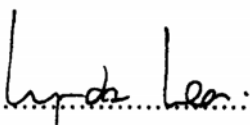
- (a) a copy of the Master Rate Card when it is published together with a version in electronic form suitable for loading onto a computer;
- (b) on completion of each distribution of an Edition of a Classified Directory,
  - i) information on the number of households that have received that Classified Directory in response to a consumer request instigated by a card inviting consumers to request the Classified Directory of a neighbouring Distribution Area; and
  - ii) 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;
- (c) such other information as the Director 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**

**13** 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 12 above as if it had given them.

**Transfer of Classified Directory business**

- 14 In the event that Yell transfers its Classified Directory business or any part thereof to an undertaking which is not an Interconnected Body Corporate within the Yell Group, Yell shall procure that such undertaking gives to the Secretary of State undertakings in the same terms, so far as they are relevant, and to the same effect as those set out in paragraphs 1 to 14 before such transfer takes effect.
- 15 Yell shall be released from the undertakings once it has complied with the obligation imposed by paragraph 14 above provided that Yell has notified the Director of such occurrence within fourteen days of it taking effect.

  
.....  
Director

Date 22nd June 2001.....

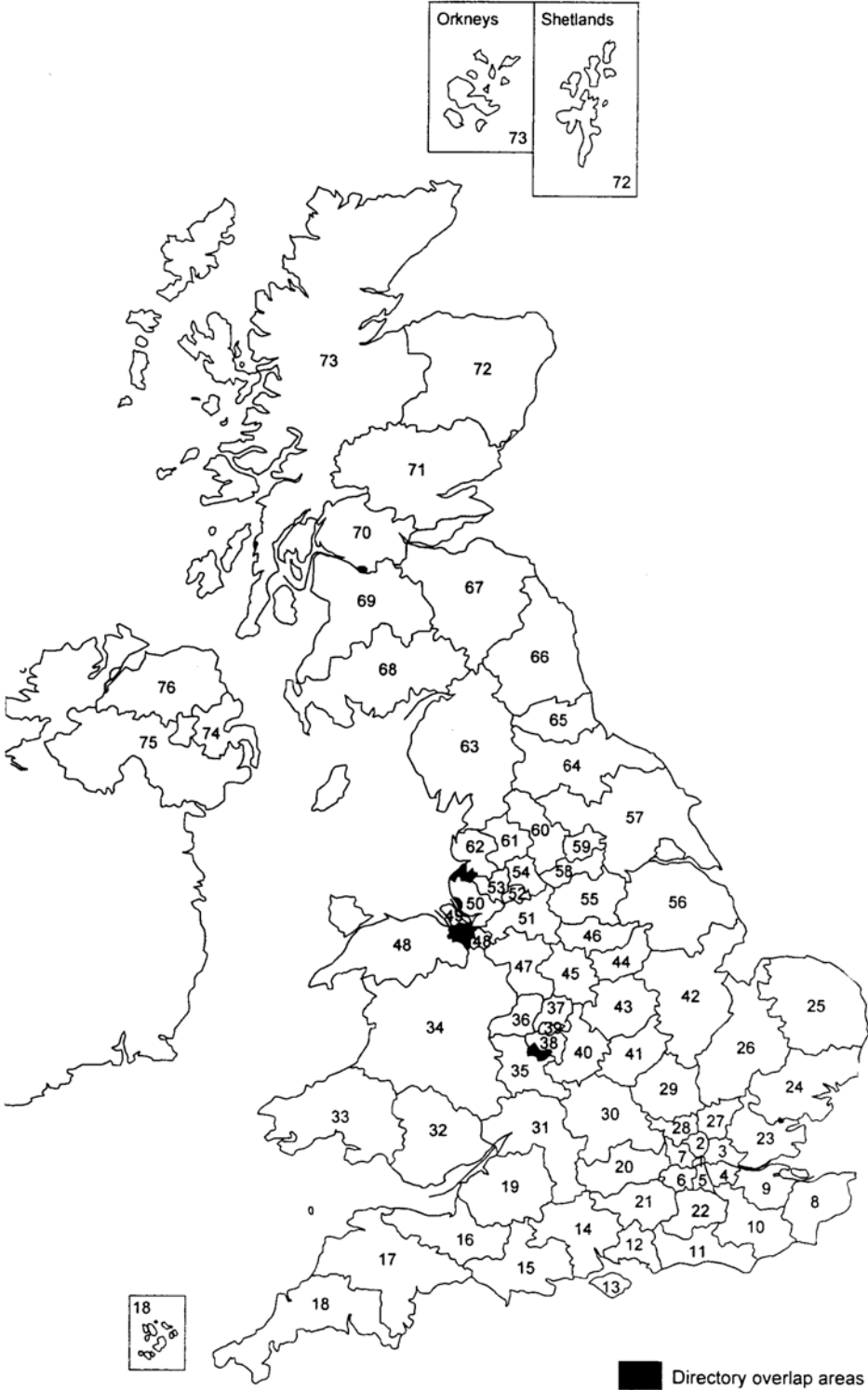
  
.....  
~~Company Secretary~~ DIRECTOR

For and on behalf of Castaim Limited

For and on behalf of Castaim Limited

FIGURE 3.1

**Yellow Pages directory areas**



Source: BTYP.