

While the point does not appear to have been argued, it is not clear on what basis the Commission was named as a party to the proceedings. Orders under s. 17 are issued only by a Member, not by the Commission as such, and at the stage reached in the inquiry a statement of evidence had not been submitted to the Commission pursuant to s. 18 nor did it involve an application to the Commission under Part IV.1. Therefore, the Commission as such does not appear to have been seized of the case.

CANADIAN PACIFIC FAILS TO UPSET TELESAT LINK WITH TRANS-CANADA TELEPHONE SYSTEM

The Supreme Court of Ontario, in a judgment by Mr. Justice Dupont on March 9, 1981, dismissed an action by Canadian Pacific Limited seeking a declaration that a 1976 agreement between Telesat Canada and the member companies of the Trans-Canada Telephone System (TCTS) is in contravention of the Telesat Canada Act. The decision is being appealed.

The TCTS was, until the 1976 agreement, composed entirely of telephone companies. It provides telecommunications services on an inter-provincial and national basis. Telesat was created by the Telesat Canada Act of 1970 to establish satellite telecommunications systems with which to provide telecommunications services on a commercial basis. Its customers include members of the TCTS, CN/CP Telecommunications and the Canada Broadcasting Corporation. Shares of Telesat are owned by the federal government, by telecommunications common carriers including Canadian Pacific, and the general public.

Telesat became a member of the TCTS by virtue of the 1976 agreement, one effect of which was to transfer much of the control over satellite channel services from Telesat to the Board of Management of the TCTS. In 1977 the Canadian Radio-Television Commission turned down an application for approval of the agreement, partly on grounds of competition policy. However, its decision was reversed by Order-in-Council.

The Director of Investigation and Research, Combines Investigation Act, intervened in the 1977 hearings before the CRTC. He argued that the agreement would constrain competition between competing technologies, that it contained clauses specifically restricting competition and that it would impair the regulatory process. However, in her statement announcing Cabinet approval of the agreement, then Minister of Communications Jeanne Sauvé stated:

"The Government continues to hold the view -- as it always has -- that Telesat is a complement to, not a competitor with, existing

telecommunications carriers, and that a closer association with these carriers must develop if efficient, effective integration of satellite and terrestrial facilities is to be ensured, thereby making new services available to Canadians at the lowest possible costs."

Canadian Pacific, in its action before the Supreme Court of Ontario, argued unsuccessfully that Telesat had exceeded its powers in entering the agreement by delegating its powers as they relate to the operation of satellite services to the Board of Management of the TCTS and by entering a partnership relationship which it was allegedly prohibited from doing.

MATSUSHITA FINED \$50,000
FOR PRICE MAINTENANCE

Matsushita Electronics of Canada Ltd. was convicted on one count under s. 38(1)(a) and one count under s. 38(1)(b) of the Combines Investigation Act in York County Judge's Criminal Court on January 30, 1981. A fine of \$50,000 on the first count was imposed on February 13. Passing of sentence on the second count was suspended since it in essence was involved in the first count.

S. 38 provides in part:

"38.(1) No person who is engaged in the business of producing or supplying a product... shall, directly or indirectly,

(a) by agreement, threat, promise or any like means, attempt to influence upward, or to discourage the reduction of, the price at which any other person engaged in business in Canada supplies or offers to supply or advertise a product within Canada; or

(b) refuse to supply a product to or otherwise discriminate against any other person engaged in business in Canada because of the low pricing policy of that other person."

The case involved differences between Matsushita, whose product trade names include Panasonic and Technics, and a retailer operating under the name of Canadian Electronics. The latter published an advertisement offering Technics stereo systems components at low prices. The Court concluded from the evidence that there was an outright flagrant contravention of s. 38(1)(a) and that employees of Matsushita had made threats to the retailer in an effort to induce him to raise his prices, and had subsequently refused to continue supplying him because of his low pricing policy.