

## IN THE COURTS

**SUPREME COURT OF CANADA CONFIRMS  
ACQUITTAL OF PHILIPS ELECTRONICS  
ON PRICE MAINTENANCE CHARGES**

The Supreme Court of Canada, in a decision delivered orally on November 24, dismissed an appeal by the Crown against the judgement of the Ontario Court of Appeal in R.V. Philips Electronics Ltd., (1981) 30 O.R. (2d) 129, thus confirming the acquittal of Philips on two counts of price maintenance under s. 38(1)(a) of the Combines Investigation Act. The Ontario Court of Appeal held that advertisements by a manufacturer showing a retail price for a product do not violate the prohibition of price maintenance unless an attempt to influence the price upward by agreement, threat or promise is proven (See also Canadian Competition Policy Record, December 1980).

**ONTARIO APPEAL COURT CONFIRMS PREDATORY  
PRICING CONVICTION OF HOFFMAN-LAROCHE  
AND CONSTITUTIONALITY OF COMBINES LAW**

The Ontario Court of Appeal, in a judgement delivered by Mr. Justice Martin on October 6, confirmed the conviction of Hoffman-LaRoche Limited on a charge of predatory pricing under s. 34(1)(c) of the Combines Investigation Act. It is also confirmed the findings of the trial court (R.V. Hoffman-Laroche Limited) (1980) 28 O.R. (2d) 164) that the Act can be supported under the federal powers to make laws for the peace, order and good government of Canada and for the regulation of trade and commerce as well as under the federal power over criminal law. The Crown's cross appeal against the sentence of a fine of \$50,000.00 was dismissed.

S.34(1)(c) makes it an indictable offence for everyone engaged in a business to engage "in a policy of selling articles at prices unreasonably low, having the effect or tendency of substantially lessening competition or eliminating a competitor, or designed to have such an effect".

Faced with competition from Frank Horner Ltd. and others, Hoffman-LaRoche in the period 1970-71 supplied Valium free to hospitals for a year and supplied it to all governments in Canada for one dollar per tender call. The trial court found that the policy was designed to eliminate competitors and