International developments

From Canada

The following items were extracted from media releases of the Competition Bureau, dated 18 March, 2 February and 11 March 1999 respectively.

Changes to the Competition Act — telemarketing

On 18 March 1999 changes to the Competition Act came into force, including provisions targeting deceptive telemarketing. They make deceptive telemarketing a criminal offence and give the Competition Bureau new powers to investigate deceptive telemarketers, including allowing the Bureau to use wiretapping to investigate phone fraud. Other changes clarify competition law, streamline legal processes and give the courts more flexibility in dealing with anti-competitive conduct.

Under the new provisions deceptive telemarketing is a criminal offence carrying a punishment of a maximum of five years jail and a fine, within the discretion of the court. They also require telemarketers to disclose who they work for, the value of the products they are promoting, and other specified information to help consumers to distinguish legitimate telemarketers from criminals. In addition they permit the Bureau to apply for judicial authorisation to use wiretapping in their investigation of the most serious cases involving price fixing and market sharing, bid rigging and deceptive telemarketing.

Other changes to the Act:

- create a civil process which enables the Bureau to use court orders to stop misleading advertising and deceptive marketing practices quickly;
- increases the penalty for deliberate or reckless misrepresentation;
- streamline the merger review process;
- enable the Bureau to apply for court orders prohibiting persons from engaging in criminal offences under the Act and requiring them to take positive steps to prevent future offences; and
- provide for protection of the identity of 'whistleblowers' who report offences under the Act to the Bureau.

Also changed under the Act is the title of the head of the Bureau from 'Director of Investigation and Research' to 'Commissioner of Competition' to better reflect the dual law enforcement and policy roles of the position.

Telemarketing operation fined $300 000

On 1 February 1999 the Competition Bureau announced that telemarketing firm 3076784 Canada Inc., trading as National Clearing House–Nationwide Clearing House and The National Clearing House, and its president, Jack Stroll aka Jack Strulovitch, had been fined $290 000 and $10 000 respectively in relation to deceptive telemarketing charges and direct mail practices.

The fine is the highest ever imposed against a deceptive telemarketing firm under the misleading advertising provisions of the Competition Act.

During November 1994–October 1995, National Clearing House mailed 'Official Claim Certificates' to consumers in every province of

Canada except Quebec. The mail piece said that they had been selected to receive at least one of five valuable awards, but had to call the firm within 72 hours to be eligible to receive the award. The odds of receiving them, and the fact that the consumer must make a purchase to receive the award, was disclosed in very small print on the reverse side.

The awards included a Ford Explorer, a satellite TV dish, a diamond and sapphire pendant, an airfare for two to Hawaii, and a cellular telephone. Investigators did not uncover one winner of the Ford Explorer or the satellite dish. In relation to the other three awards, so many terms and conditions applied to the airfare and cellular phone that they essentially had no value, and the pendant was comprised of a low value commercial grade diamond. The conditions that applied to the awards were either not disclosed or were only partially disclosed at the time of the transaction.

In addition the Court imposed a prohibition order on the company, Mr Stroll and a number of managers and telemarketers to prevent the repetition of the conduct.

Prison terms imposed on deceptive telemarketers

On 11 March 1999 the Competition Bureau announced that its investigation into a Montreal based deceptive telemarketing firm had resulted in the first prison terms imposed by a Canadian court on deceptive telemarketers.

The firm, operating as American Family Publishers, Publishers Central and First Canadian Publishers and the companies' president, Mr Vijay Sharma, pleaded guilty to misleading advertising and will face criminal sentencing on 5 May 1999.

Four telemarketers also pleaded guilty to charges of misleading advertising and received jail terms ranging from two to six months as well as 20–120 hours of community work. Two other individuals also pleaded guilty: one was fined $5000 and the other faces sentencing in June 1999.

The charges related to prize-pitch telemarketing that occurred between December 1995 and February 1997. Consumers were told that, in order to claim their mystery prizes, they would have to purchase various items such as pen and letter opener sets from the company at what turned out to be grossly inflated prices. Later, many customers were contacted by a more aggressive telemarketer who would convince them that they could receive even more valuable prizes if they made more purchases. This pattern continued until either the customer ran out of money or refused to continue dealing with the company. Consumers spent thousands of dollars buying promotional products in order to receive valuable prizes that were never sent.

The Bureau was assisted by OPP Project PhoneBusters and the Montreal Metropolitan Urban Police Force in its investigation.

The Court also imposed a prohibition order on several individuals to prevent repetition of the conduct.