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**Global Forum on Competition**

**Competition in the Food Supply Chain – Contribution from Canada**

**- Session IV -**

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This contribution is submitted by Canada under Session IV of the Global Forum on Competition to be held on 2-3 December 2024.

More documentation related to this discussion can be found at: [oe.cd/gfc24](https://oe.cd/gfc24).

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## *Competition in the Food Supply Chain*

### *- Contribution from Canada –*

#### **Introduction**

1. Canada's Competition Bureau (the "**Bureau**") is pleased to provide this submission to the Organisation for Economic Cooperation and Development's ("**OECD**") Roundtable on Competition in the Food Supply Chain.

2. The Bureau, headed by the Commissioner of Competition, is an independent law enforcement agency of the Government of Canada. The Bureau has a dual mandate of protecting and promoting competition for the benefit of Canadian consumers and businesses. As part of its enforcement mandate, the Bureau investigates potential breaches of Canada's *Competition Act* (the "**Act**") and takes appropriate action to remedy any harm. As a part of its [promotion mandate](#), the Bureau participates in a range of activities to promote and advocate for the benefits of a competitive marketplace, including providing regulatory advice and interventions, and doing market studies.

3. The Bureau welcomes this opportunity to comment on competition in the food supply chain. In this submission, the Bureau highlights both promotion and enforcement work in the grocery sector:

- The Retail Grocery Market Study (the "**Study**"), a competition promotion initiative; and
- Enforcement case developments since the Study.

4. The Bureau's comments come in the wake of a number of important changes to the Act.<sup>1</sup> These changes marked a key step in modernizing Canada's competition law and ensuring the Bureau can better protect and promote competition across all sectors of the Canadian economy, including grocery.

#### **1. Retail Grocery Market Study**

5. As mentioned above, one of the key ways that the Bureau works to promote competition is through market studies. These involve an in-depth, holistic examination of how competition is working in an industry or sector.

##### **1.1. Context for the Study**

6. The Bureau's [Retail Grocery Market Study](#) came at an important time. In 2022, when we launched our study, grocery prices in Canada had been increasing at their fastest rate in more than 40 years. Additionally, the retail grocery industry

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<sup>1</sup> In October 2021, Senator Howard Wetston launched a [consultation](#) to examine the Canadian *Competition Act* in the digital era. In 2023, the federal department of Innovation, Science and Economic Development Canada launched [a consultation on the future of competition policy in Canada](#). Following three sets of amendments, the Bureau released guidance on these changes to the Act in [June 2022](#), in December [2023](#) and in June [2024](#).

had become much more concentrated over time. We found that most Canadians purchased groceries from a few giants who operated most grocery store banners, including the top discount chains.

Figure 1.1. Stores owned by or affiliated with Loblaws, Sobeys, or Metro



Source: <https://competition-bureau.canada.ca/how-we-foster-competition/education-and-outreach/canada-needs-more-grocery-competition>

## 1.2. Scope of the Study

7. The Bureau studied the grocery industry to understand its competitive dynamics and to explore ways that governments across Canada can act to promote greater grocery competition. To do this, we considered three broad questions:

- How can Canadian governments lower barriers to entry and expansion to stimulate grocery competition?
- To what extent are higher grocery prices a result of changing competitive dynamics?

- What can we learn from steps that other countries have taken to increase grocery competition?

8. We noted at the outset of the study that the Bureau would not focus on the increase in food price inflation. While this is an important question, the purpose of the study was not to understand all of the reasons why grocery prices may have increased. Given its mandate, the Bureau focused on whether competition issues could be contributing to rising grocery prices and if there were steps that governments can take to improve competition as a way to reign in grocery prices.

9. The Bureau also did not focus on issues relating to the purchase of groceries from suppliers by retailers, except to the extent that they had an impact on retail competition. Although the Bureau recognizes that the relationship between retailers and suppliers can affect the competitive dynamics of the industry, competition law in Canada does not regulate imbalances in bargaining power. At the time of our study, key stakeholders were actively negotiating a code of conduct that dealt with this aspect of the industry.

10. The [Grocery Code of Conduct](#) (the “Code”) is a voluntary, industry-led initiative. It aims to enhance transparency, predictability and fair dealing within the Canadian grocery supply chain. It is designed to address the unique challenges faced by small and medium-sized enterprises and ensure equitable practices among all stakeholders, including producers, processors, distributors, and retailers. The Code will be overseen by the Grocery Code Adjudication Office, a membership-based organization funded by annual dues, with an elected Board of Directors representing all supply chain partners. It also includes mechanisms for resolving disputes, which previously did not exist. As of July 2024, all the major grocers and key suppliers in Canada have committed to support the Code, and the goal is to implement by June 2025.

The Bureau was not involved in the development of the code. However, we have committed to provide a pro-competitive perspective to support its implementation.

### Box 1.1. Competition Act Amendments – Information Gathering in Market Studies

For this Study, the Bureau had to rely on information that was publicly available or provided voluntarily by stakeholders. Many grocers were happy to speak with us; others were more reluctant to share information. This limited our ability to fully answer some questions of study.

Since [December 15, 2023](#), following the adoption of Bill C-56, An Act to amend the Excise Tax Act and the Competition Act, a new framework with information-gathering powers for market studies were added to the Act. This will ensure that the Bureau can better protect and promote competition in Canada.

## 1.3. Key Findings and Recommendations

11. In its report, the Bureau recommended a number of principles-based actions that federal, provincial, and territorial governments across Canada can take to improve competition in the grocery industry:

***1.3.1. Canada needs a Grocery Innovation Strategy aimed at supporting the emergence of new types of grocery businesses and expanding consumer choice.***

12. There are new businesses that want to disrupt how the industry works, including by selling groceries to Canadians online. While online grocery shopping is still relatively new – and for now amounts to only a fairly small portion of sales – these options are gaining traction.

13. Governments at all levels should work together to encourage the emergence of new types of grocery businesses that are willing to take risks to shake things up.

***1.3.2. Federal, provincial, and territorial support for the Canadian grocery industry should encourage the growth of independent grocers and the entry of international grocers into the Canadian market.***

14. We found that there are a number of important independent grocers across Canada who already compete against Canada’s grocery giants. However, given their relative scale, they face real challenges growing into national competitors. Among other reasons, we heard that:

- Consolidation makes it tougher for independents and new stores to stay in business.
- Many independents have to buy groceries from their competitors at wholesale, instead of having their own warehousing operations or buying directly from suppliers. This dependency can make it more difficult for them to compete on price.
- Large grocers often receive listing fees in exchange for shelf space, while independent grocers typically do not.
- Finding appropriate real estate at which to open and operate a grocery store can be difficult, because many of the prime locations are already controlled by the largest grocers.

15. During the study, we also heard from a number of international grocers that while Canada is an interesting market, entry could be challenging for a variety of reasons:

- They viewed the Canadian market as tough to break into, given the strength of the large chains. Certain elements of the Canadian grocery shopping experience could impact their ability to compete. For example, there is a strong private label presence in Canada, and to be competitive, grocers may need to offer a wider range of specialty and ethnic products to serve Canada’s multicultural population. Also, Canada’s labelling laws – which require bilingual labels on packaged foods – can be a difficult additional cost for international grocers to take on.
- We also heard about certain challenges that were beyond the control of governments. For instance, the size of Canada’s geography along with our low population density can make it hard for new entrants to establish the necessary distribution channels, and to obtain a return on investment.

16. To encourage more competition in the industry, we recommended that governments implement policies to support the growth of independents, as well as the entry of international and discount grocers. This could take the form of grants and incentive programs that are targeted to them rather than to the grocery giants.

***1.3.3. Provincial and territorial governments should consider introducing accessible and harmonized unit pricing requirements.***

17. With trends like shrinkflation on the rise, where suppliers decrease the size of their packages often in a way that is unnoticeable to the average consumer, it has become harder for consumers to know whether they are getting value for money. They need tools to help them compare grocery prices and empower them to make informed purchasing decisions. Unit pricing can help with this by showing the price of a product based on a standard package size, alongside the total price. This information is key to shop better and shop smarter, and to encourage more competition in the industry.

18. To achieve these goals, we recommended that provincial and territorial governments consider working together to develop and implement accessible and harmonized unit pricing requirements.

***1.3.4. Provincial and territorial governments should take measures to limit property controls in the grocery industry, which could include banning their use.***

19. A property control limits how a person can use a property. They are clauses typically found in a legal agreement like a lease or a deed that transfers title to the land.

20. Property controls make it difficult, or even impossible, for new grocery stores to open, which reduces competition in communities. Moreover, for consumers who already have the fewest options or those who typically walk to the grocery store, property controls can sometimes contribute to the creation of food deserts, which are communities with no or at least very limited options within a reasonable distance for consumers to purchase healthy food.

21. We recommended that provincial and territorial governments consider limiting the use of these property controls.

22. Since the publication of its market study report, the Bureau has been focused on supporting governments to take action. Where governments are looking to act on our recommendations, we are here to discuss and support those efforts in line with our own mandate.

## **2. Developments since the study**

23. In addition to advocating for more competition in the grocery sector, the Bureau has been advancing its enforcement work.

### **2.1. Investigations into use of property controls in retail food sector**

24. [Property controls](#) are common across Canada, especially in retail settings. These controls have also been the subject of international enforcement action because of the impact they can have on competition.

25. The Bureau is currently focused on two types of property controls: exclusivity clauses and restrictive covenants.

- **Exclusivity clauses** are generally found in commercial leases. They can prohibit the landlord from leasing space to another tenant that competes with the existing tenant. They may also limit how that property is used by another tenant by, for

example, limiting the food products or categories of food products that can be sold or limiting the area that can be used for the sale of these products. These clauses generally last for the duration of the lease and any renewal period.

- **Restrictive covenants** are restrictions on land that prevent a buyer or landowner of a commercial property from using the location to operate or lease to operators of certain types of businesses. These covenants may include many of the same restrictions as exclusivity clauses. However, restrictive covenants tend to “run with the land,” which means that they may extend beyond ownership of the land, sometimes for decades.

26. On June 11, 2024, the Bureau [announced](#) that the Federal Court issued two court orders to advance investigations into the use of property controls by Canada’s two largest grocers, Sobeys<sup>2</sup> and Loblaws.<sup>3</sup> These investigations currently focus on the use of property controls in the Halifax Regional Municipality, a city on the East coast of Canada. There is no conclusion of wrongdoing at this time in these investigations.

27. The court orders require the companies to produce relevant records and written information. This information will help determine whether Sobeys and Loblaws are imposing anti-competitive restrictions on the use of real estate which impact the retail sale of food products. In addition to court orders, the Bureau also issued a public call out, inviting market participants to provide input about the use of property controls in the Canadian grocery industry as a whole, and to inform the Bureau’s ongoing investigations into Sobeys and Loblaws.

28. More broadly, and separate from the ongoing investigation in the grocery sector, the Bureau has consulted the public on draft guidance on property controls following recent changes to the Act. Property controls used by dominant firms could already be reviewed as an abuse of dominance. However, changes to the abuse of dominance provisions (sections 78 and 79) and the upcoming changes in December 2024 to the anti-competitive collaborations provision (section 90.1) are relevant to our enforcement approach. The draft guidance outlines the Bureau’s preliminary enforcement approach to competitor property controls. The consultation closed on October 7, 2024.

## 2.2. Fines Issued in Criminal Price-Fixing Case

29. The Bureau continues to advance its ongoing investigation into alleged price-fixing between producers to raise wholesale bread prices, as well as alleged price-fixing between grocery stores to raise retail prices.

30. On [June 21, 2023](#), the Ontario Superior Court handed down a \$50 million fine for price-fixing, the highest price-fixing fine imposed by a Canadian court to date. Canada Bread Company Limited (“**Canada Bread**”) was fined after pleading guilty to four counts of price-fixing under the Act. This guilty plea is the result of the Bureau’s ongoing investigation.

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<sup>2</sup> Sobeys Inc. (“Sobeys”) operates 1,600 stores across all ten provinces. Its grocery store brands include Sobeys, Safeway, IGA, FreshCo, Foodland, Longos, Farm Boy, Thrifty Foods, Les Marchés Tradition and Marché BoniChoix.

<sup>3</sup> Loblaw Companies Limited (“Loblaws”) operates over 2,400 stores across Canada. Its banners include Loblaws, No Frills, Real Canadian Superstore, Provigo, Zehrs, Fortinos, Valu-mart, Dominion, Atlantic Superstore, Your Independent Grocer, City Market, Extra Foods, T&T Supermarket and Maxi.

31. Canada Bread admitted that it arranged with its competitor, Weston Foods (Canada) Inc., to increase prices for various bagged and sliced bread products such as sandwich bread, hot dog buns and rolls. The price-fixing resulted in two price increases, one in 2007 and one in 2011. Weston Foods and Loblaws, who, at the time of the price-fixing, were both subsidiaries of George Weston Limited (“GWL”), received immunity from prosecution in exchange for their full cooperation with the Bureau’s investigation. In December 2017, Weston Foods, Loblaws and GWL announced their role in what they described as an “[industry-wide price-fixing arrangement](#)” involving the coordination of retail and wholesale bread prices.

32. This \$50 million fine for Canada Bread is a significant milestone in the Bureau’s ongoing investigation. The Bureau continues to investigate price-fixing by other companies, including Metro Inc., Sobeys Inc., Wal-Mart Canada Corporation, Giant Tiger Stores Limited, and Maple Leaf Foods Inc.

33. Most recently, Loblaws and George Weston [settled nationwide class-action lawsuits](#) that were launched following the Bureau’s execution of search warrants in this matter. The companies agreed to pay a \$500 million settlement for their role in the bread price-fixing arrangement. This is the largest antitrust class action settlement on record in Canada.

### 3. Conclusion

34. When businesses compete, consumers benefit from lower prices, greater choice, and increased levels of innovation. That is why the Bureau will continue to approach its work in the Canadian grocery industry with heightened vigilance and scrutiny.

35. Competition is a key part of the solution to help keep grocery prices in check.