

Competition Bureau ramps up probe into Loblaw pricing practices

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The Competition Bureau has stepped up its investigation of Loblaw Cos. Ltd. and its pricing practices with its suppliers in a high-stakes grocery industry inquiry.

Competition commissioner John Pecman this month asked the Federal Court to force four key Loblaw suppliers, including General Mills Canada Corp. (Cheerios cereal) and Wrigley Canada (Excel gum), to produce documents and sworn evidence about their dealings with the country's largest grocer compared with those at key rivals to assess whether Loblaw activities could be anti-competitive.

The move comes more than 2 1/2 years after the bureau approved Loblaw's \$12.4-billion takeover of Shoppers Drug Mart in 2014 and, at the same time, launched its investigation into Loblaw's pricing practices. More than a year later the supermarket chain advised the bureau it would drop some of those policies on Jan. 3, 2016.

But the competition commissioner thinks Loblaw still may be applying some of the questionable practices aimed at forcing suppliers to meet a predetermined profit margin based on the advertised prices of competing retailers, according to court documents.

"Further, I have reason to believe that Loblaw is engaged in additional conduct towards suppliers relevant to the inquiry," Michael Tobias Packer, a senior competition law officer with the bureau, says in a filing.

The expanded investigation comes amid a fierce food fight in the consolidating Canadian grocery market after Loblaw acquired Shoppers, while Sobeys Inc., the second-largest in the field, purchased Safeway Canada for \$5.8-billion. They battle titans Wal-Mart Canada Corp. and Costco Wholesale Canada Ltd., which also press their suppliers for low prices.

Loblaw's practices raised red flags at the bureau, which got court orders for pricing information and business strategies from 12 suppliers in December of 2014. Now it is seeking evidence of even more of Loblaw's conduct from four vendors for an extended period – until Oct. 1, 2016.

"It's very clear the bureau is treating this seriously and is devoting a lot of resources to it," said Michael Osborne, a competition law expert and partner at Affleck Greene McMurtry LLP, which is not involved in the case. Bureau officials declined to comment.

Mr. Osborne said that among suppliers "there are a lot of concerns around practices that Loblaw and other retailers ... essentially impose on suppliers. Other retailers follow suit. Obviously, the smaller ones don't have the leverage to do that."

Loblaw spokesman Kevin Groh said it is aware of the bureau's decision to look at more recent activities, including new initiatives introduced this year "to simplify our dealings with suppliers, improve our offer to customers, and put money back in the pockets of Canadians. We have been and remain an open book for the bureau, co-operating with their investigation and voluntarily providing pro-active updates and advance notice on significant supplier-related initiatives."

The bureau is concerned about whether a host of Loblaw's supplier programs are an abuse of its dominant industry position, including some it hadn't looked at previously:

- **Cost-of-goods-sold demands**, where Loblaw requests or demands a specified reduction in the cost of all or some of a supplier's products for a stated period;
- **Harmonization demands**, where Loblaw requests or demands that its suppliers that ship to both Loblaw and Shoppers match costs between the two based on the lowest cost offered to either one; then Loblaw seeks compensation retroactive to the Loblaw-Shoppers acquisition in March, 2014.
- **Listing fees**, where a supplier pays Loblaw to have a product offered for retail sale, including compensation to stock a product that the grocer previously dropped.
- **Supply chain fines**, where Loblaw requests or demands compensation from a supplier if it fails to ship enough products or deliver goods on time.

The bureau's agreement with Loblaw for its Shoppers takeover had restricted the grocer from applying some of the practices tied to suppliers and product categories common to both Loblaw and Shoppers.

Mr. Pecman, the competition commissioner, said last week that many suppliers haven't co-operated with the bureau for fear of retaliation by Loblaw, prompting the federal agency to seek court orders forcing vendors to hand over information. He said the investigation has proven to be highly complex amid shifting business practices.

Among the changes, Loblaw in September started to reduce the amount it paid its major suppliers by 1.45 per cent to help cover what it said was more than \$1-billion in price increases it had got from its vendors since 2014. The grocer said the deductions were aimed at helping lower prices for consumers. Other retailers, such as Overwaitea Food Group, followed suit, creating more tension with suppliers and more material for the bureau's probe.

"It's a bit unfortunate that it's got to this point," Michael Graydon, chief executive officer of Food & Consumer Products of Canada, representing suppliers, said.

He said manufacturers face the "perfect storm" of cost pressures from fluctuating currencies, new food labelling and other regulations as well as the squeeze from consolidating retailers. "As the retail environment shrinks, it gets to be more difficult and complicated to work within it."

Marion Chan, principal at TrendSpotter Consulting, said rising price demands of retailers can result in suppliers cutting back on spending on crucial product improvements and innovations.

The Canadian Federation of Independent Grocers has called for a code of conduct to regulate grocer-supplier practices, although large retailers oppose such government intervention.

Robert Jackson, a retired bureau investigator, said it is likely investigating whether Loblaw's policies are hurting a competitor in ways that are "predatory, exclusionary or disciplinary ... It is important to note that the test relates to the negative effect on a competitor, not a supplier."

Representatives of the four suppliers, General Mills, Wrigley, Reckitt Benckiser (Canada) Inc. and A. Lassonde Inc., declined to comment.