

## Bread price-fixing scandal reveals rift between Canada's big grocers

PRICE-FIXING PROBE

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The Loblaws flagship location on Carlton Street in Toronto on Thursday May 2, 2013.

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The Competition Bureau's investigation into the fixing of bread prices is shining a light on a growing rift between Loblaw Cos. Ltd. – the country's top grocer – and its biggest rivals, Sobeys Inc. and Metro Inc., which have been put on the defensive in the probe.

Loblaw along with its parent George Weston Ltd., which also owns a top bread maker, have been the focus of the inquiry after they revealed in December they had participated

in what they called an industrywide scheme to fix the prices of packaged bread over more than 14 years.

Now major grocery rivals Sobeys and Metro – which are among seven companies alleged to have conspired to fix prices – are asking Ontario Superior Court to disclose the names of the two Weston witnesses who provided the bureau with much of the information on which it based its price-fixing case.

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The latest scuffle in the price-fixing probe underscores the growing divisions in the grocery sector but also raises questions about the fairness of the bureau's process.

It allows Loblaw to gain immunity from prosecution in exchange for exposing industry information, while in many ways setting the agenda and still keeping its sources secret.

Loblaw "is doing a very good job of controlling the message," said Sylvain Charlebois, dean of the management faculty at Dalhousie University and a food expert. "Loblaw is in control, putting Sobeys and Metro in the defensive mode."

In their court requests to disclose the two Weston witnesses' identities, Sobeys and Metro say in separate documents the witnesses were involved in the alleged conspiracy between Weston Bakeries and Canada Bread – the country's largest bread producer – to allegedly fix the price of packaged bread products.

"Witness 1 was not only a witness to the events, but a primary party involved on behalf of Weston Bakeries in the alleged conspiracy between Weston Bakeries and Canada Bread," says a document filed last week by Sobeys's lawyer Nicholas McHaffie of Stikeman Elliott LLP.

"During their time employed by Weston Bakeries, Witness 2 was actively involved in the conduct alleged to have constituted the anti-competitive conspiracy between Canada Bread and Weston Bakeries."

Sobeys needs both witnesses' names to "ascertain the vague allegations made against Sobeys ... that are based solely on statements made by the witnesses," Mr. McHaffie says. As well, Sobeys needs to verify the accuracy of information in court documents that were released this week, he says. Metro's lawyers have made similar arguments.

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Even so, the chief executive officers of both Sobeys and Metro have both denied that their companies violated the Competition Act.

"To state that there was an 'industry-wide price fixing arrangement' was unfair, unsubstantiated, and quite possibly defamatory," Michael Medline, CEO of Sobeys,

wrote in a letter to Galen G. Weston, CEO of Loblaw, just a few days after the the grocer rattled the industry with its disclosure of the price-fixing scheme in December.

Mr. Medline asked Mr. Weston for a public and immediate retraction of his implication that Sobeys conducted itself in the same manner as Loblaw, accusing it of throwing Sobeys "under the bus." (Mr. Weston did not apologize.)

This week, Metro CEO Eric La Flèche strongly denied any wrongdoing in the price-fixing probe, saying it's extraordinary that the situation has turned into a "marketing event" by Loblaw offering \$25 gift cards to customers to make amends for its misdeeds.

"We refute the allegations of industrywide collusion," Mr. La Flèche told reporters. "From what we see at this stage, we haven't contradicted the Competition Act."

Metro "is firmly of the view that transparency is key to getting to the bottom of this investigation swiftly," its spokeswoman, Marie-Claude Bacon, added on Thursday. "It's a matter of transparency and fairness."

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Loblaw and Weston will support the bureau in its opposing the removal of the redactions, said Loblaw spokesman Kevin Groh. (The requests of Sobeys and Metro were brought against the bureau, he noted.) The bureau's normal practice is to protect informants through redaction – blacking out their names in documents, he said, adding Loblaw and Weston waived their rights to have their companies' names redacted.

Court documents released this week show that Loblaw went to the bureau in March, 2015, to divulge its part in the 14-plus-year scheme to raise the price of bagged bread products 15 times by an average of 10 cents a loaf each time (7 cents wholesale).

Others alleged to be part of the scheme are discounters Walmart Canada Corp. and Giant Tiger, and bread maker Canada Bread, owned by Maple Leaf Foods Inc. until 2014 when it was acquired by Grupo Bimbo of Mexico.

From 2001 to 2015, prices of food overall sold in stores rose an average 2.7 per cent while prices of bread, rolls and buns increased an average of 4.9 per cent, according to data collected by food market analyst Kevin Grier.

A loaf of bread cost \$1.35 in 2000 and, in 2015, \$2.93, a 117-per-cent increase, according to Statistics Canada. But if the price of that loaf had increased by the rate of food inflation, it would have cost \$2.06 in 2015, Mr. Grier said.

"We can never know what the price would have been if there was a competitive market," he added.

The price-fixing probe also puts a spotlight on the dangers of highly concentrated industries, said Gary Sands, senior vice-president of the Canadian Federation of Independent Grocers.

Canada Bread and Weston Bakeries together control roughly 80 per cent of the bread-making market, according to court documents. In the 2016 grocery field, Loblaw (excluding its Shoppers Drug Mart chain) had a 33.5-per-cent share; Sobeys (including Safeway), 18.9 per cent; Metro, 15.5 per cent; Walmart, 8.8 per cent; and Giant Tiger, 1.4 per cent, they say.

"The logistical challenges and costs associated with distributing bread constitute a barrier to entry for new players in the Canadian fresh commercial bread market," Simon Bessette, senior competition law officer at the bureau, says.

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