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Immunity program under fire in bread scandal

Competition Bureau sees Immunity Program as effective way to uncover anti-competitive behaviour, but critics see it as giving up too much in return for too little.

Bakeries and grocery chains met to fix bread prices, says Competition Bureau

The Competition Bureau says Canada's two largest bread wholesalers, along with major grocers, agreed to raise bread prices. (The Canadian Press)

By **FRANCINE KOPUN** Business Reporter
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Consumers and activists are angered over allegations that grocery chains fixed the price of bread in Canada for 14 years without detection and want to know what is being done to ensure it doesn't happen again.

"We believe that unless these people are held personally accountable and dealt with by the law it will be an encouragement to others to do this without fear," said Bruce Cran, president of the Consumers' Association of Canada.

George Weston Ltd., Weston Foods (Canada) Inc. and Loblaw Companies Ltd., were granted immunity from prosecution after turning themselves in to the Competition Bureau in 2015.

In documents made public on Wednesday, the Bureau is alleging that Canada's two largest bakers, Canada Bread and Weston Bakeries, fixed the price of certain bread products and policed those prices in co-operation with the country's largest grocers: Loblaw, Sobeys Inc., Metro Inc., Walmart Canada and Giant Tiger.

Sobeys, Metro and Giant Tiger have denied participating in the alleged price-fixing scheme. Walmart Canada has declined to comment, citing the ongoing investigation as the reason.

Sobeys CEO Michael Medline said Thursday that George Weston Ltd. "should keep checking the mailroom" for upcoming legal action for unfairly implicating the grocery chain, according to The Canadian Press. He said he's been in multiple meetings with lawyers over the past two days to consider options for legal action against George Weston Ltd.

Critics say that as a result of increased consolidation in the grovery sector in Canada, grocers are more often putting pressure on suppliers to give them retroactive price breaks. (RICK MADONIK / TORONTO STAR FILE PHOTO)

The allegations have not been proven in court.

Under the Competition Bureau's Immunity Program, the first party to disclose to the Competition Bureau an offence not yet detected, or to provide evidence leading to the laying of charges, may receive immunity from prosecution.

The bureau maintains that the Immunity Program has been an effective tool in uncovering anti-competitive behaviour in the marketplace, but critics believe it gives too much up in return for too little.

Duff Conacher, co-founder of Democracy Watch, believes the bureau should instead set up a robust whistleblower program that offers a substantial reward and an office to support whistleblowers, who may lose their jobs and have to find new work, or deal with reprisals in the workplace.

"If there was a $5-million reward, it probably wouldn't have happened because everyone would have been too scared it would blow up in their faces," said Conacher.

"All they would need to have is one person who feels guilty enough to take $5 million and that is a pretty low bar."

Gary Sands, a spokesperson for the Canadian Federation of Independent Grocers, believes consolidation in the grocery industry in Canada is responsible for increasing levels of distortions in the marketplace.

Consolidation has been increasing generally over the last 15 to 20 years, Sands points out. The tipping point came when Loblaw bought Shoppers Drug Mart and Sobeys bought Safeway.

"We absolutely feel it's overly consolidated. We believe this issue of the bread has underscored some of the distortions and market practices that have arisen as a result of this concentration."

Sands said that in the wake of increased consolidation in the sector, grocers are more often putting pressure on suppliers to give them retroactive price breaks.

"Is the grocery industry in Canada too concentrated? I am starting to think so," said Sylvain Charlebois, professor in food distribution and policy and dean of the Faculty of Management, Dalhousie University.

"Compared to the U.S., oligopolistic powers in Canada are significant."

Cran believes a lot could be accomplished with a more robust Competition Bureau.

"I think it would be damn nice to start with if the Competition Bureau did its work and didn't take 14 years to find out that these conspiracies have been going on without being apprehended."

What do you think of Loblaw offering customers $25 cards?

- It's a fair offer.
- It doesn't go far enough.
- It might be enough to keep me shopping there.
- Not sure.

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Slicing up the market

Canada Bread is the largest supplier of fresh commercial bread in Canada, with approximately a 40 per cent share as of February 2016, according to figures cited in the documents. Weston Bakeries is the second largest, with approximately a 38 per cent share.

Loblaw Cos is Canada's largest grocer, with 33.5 per cent market share of the grocery market in Canada, under banners that include Loblaw, Superstore, Dominion Stores (in Newfoundland and Labrador), Maxi & Cie., Provigo, Zehrs, Fortinos, Your Independent Grocer and No Frills.

Sobeys is Canada's second-largest grocer, with 18.9 per cent market share, under banners that include Sobeys, Safeway, Thrifty Food, IGA, Foodland and FreshCo.

Metro is Canada's third-largest grocer, with 15.5 per cent market share under banners including Metro, Super C and Food Basics.

Walmart held an 8.8 per cent share of the grocery market and Giant Tiger had a 1.4 per cent market share, according to AC Nielsen data cited in the documents.