

Government probe onto ongoing grocer-supplier dispute confirms rift 'needs attention'

<https://financialpost.com/news/retail-marketing/government-probe-onto-ongoing-grocer-supplier-dispute-confirms-rift-needs-attention>

Consultations have made it clear that the sector needs a coordinated response from all levels of government, Quebec's agriculture minister says

Author of the article:
Financial Post Staff

Publishing date:

Mar 05, 2021 • 2 hours ago • 5 minute read •

The minister leading an investigation into the Canadian grocery sector says he is now certain something must be done to ease tensions between the major supermarket chains and their suppliers.

The federal, provincial and territorial ministers of agriculture — who meet semi-annually to discuss national food chain issues — launched a working group late last year in response to food producers' outrage over grocers charging higher fees and fines during the pandemic.

The working group isn't expected to deliver its recommendations until the agriculture ministers' next meeting in July. But Quebec Agriculture Minister André Lamontagne said dozens of consultations with people in the grocery business have already made it clear that the sector needs a coordinated response from all levels of government.

“Certainly, we have highlighted an issue that needs attention, needs some resolution — this I have learned, I can tell you that,” said Lamontagne, who co-chairs the working group.

Last year, Walmart Inc. riled its Canadian suppliers by charging new fees to help pay for distribution network and e-commerce upgrades. The pandemic prompted an unprecedented swing toward online grocery orders, which are more expensive to fulfil. Walmart argued that suppliers were only shouldering a small part of the investment while reaping significant sales growth.

But farmers and food processors, already beset by extra pandemic-related costs and complications, argued that Walmart's fee increase — up to 6.25 per cent of the price of goods — would burst their margins.

For years, suppliers and supermarkets have been at odds over “shelving fees” and steep fines for late or light shipments. Manufacturers have long advocated that government regulate the sector, complaining they have no choice but to accept the charges because they can't afford to lose a customer in a heavily consolidated market.

The top three supermarket chains in Canada account for 75 per cent of supermarket sales, according to an August 2020 report by market research firm IBISWorld.

The latest fees appear to have pushed the sector to a tipping point. Food, Health and Consumer Products of Canada (FHCP), an industry group, last summer called Walmart's fees "diabolical" and warned that other big retailers would follow suit.

Within a week, United Grocers Inc. — a purchasing group representing Metro Inc. and other retailers — sent a letter to suppliers asking for similar treatment to Walmart. And within three months, Loblaw Cos. Ltd. also hiked fees, telling suppliers to "keep in mind" that it is investing \$6 billion over five years on e-commerce and other infrastructure upgrades.

But last fall, Michael Medline, chief executive of Empire Co. Ltd., which owns Sobeys, Safeway and FreshCo, came out against the fees and fines, and called the relationships between retailers and food producers the worst "I've ever seen in my couple of decades in retail."

In a speech to the Empire Club of Canada, Medline said he was now in favour of implementing a code of conduct, which would govern the relationship between retailers and suppliers.

Other countries with consolidated grocery markets, including the United Kingdom and Australia, have used codes of conduct to reign in retail bully tactics, such as fee hikes and fines. Unlike Australia's voluntary code, the U.K. code is mandatory and enforced by a third party.

It's a very complex industry and I don't want unintended consequences

John Sotos and Lauren Huxtable, at Toronto law firm Sotos LLP, earlier this year wrote that it's time for Canada to adopt a U.K.-style code.

"Unlike the failed push for regulation in the wake of the 2018 bread price fixing scandal, regulation in the wake of the industry turmoil created by COVID-19 seems overdue," they said.

But a code of conduct alone won't get to the root cause of the problems in grocery, Sotos said. That sort of action would involve reforming antitrust legislation.

"The issue is consolidation in the industry," Sotos said in an interview. "The problem with concentration is, you are disincentivizing small producers, local producers."

The federal government has so far declined to implement a code of conduct on its own because the terms of sale between suppliers and buyers "fall under areas of provincial jurisdiction," a spokesperson told the Post last September, leaving some to worry about a confusing patchwork of provincial regulations across a national food chain.

"There's lots of areas where the provinces and the feds have cooperated where it was desirable to do so," said Sotos, who focuses on the grocery industry. "Pensions, that's a provincial matter, but we've got the Canada Pension Plan. How was that done?"

Lamontange said the working group has found that any change to the sector will have to be a cooperative effort between the federal government and the provinces and territories.

“We cannot have initiatives just from one or two or three provinces,” he said. “It will need some leadership from the federal side.”

The office of federal Agriculture Minister Marie-Claude Bibeau, who also co-chairs the working group, said they have already conducted 24 hour-long interviews with representatives from 18 different industry associations.

Empire Co. Ltd. CEO Michael Medline said he now in favour of implementing a code of conduct, which would govern the relationship between retailers and suppliers. PHOTO BY PETER J. THOMPSON/NATIONAL POST/FILE

A number of different factions have emerged on the question of what should be done. Walmart Canada president Horacio Barbeito is against a code, arguing that the market has healthy competition and that fees are a “common part of commerce.”

Other major retailers have taken softer positions, but none are enthusiastic about government regulation.

“I don’t think a government unilaterally coming in and putting in legislation will probably help, because it’s a very complex industry and I don’t want unintended consequences,” Medline said last fall.

Metro on Thursday said it would usually favour a “market solution” over government intervention.

“While we do not believe that government intervention is required, we are open at looking at a best practice guide developed by suppliers and retailers that the vast majority would agree on,” Metro spokesperson Marie-Claude Bacon said in an email.

On the supplier side, the FHCP has been advocating for a legislated, U.K.-style code that would focus “on the practices of large retailers,” spokesperson Anthony Fuchs said.

But Gary Sands, senior vice-president at the Canadian Federation of Independent Grocers (CFIG), which for months has been aligned with the manufacturing sector in the campaign for government regulation, said the code has to apply to suppliers, too.