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Chair: Mr. Kody Blois



Standing Committee on Agriculture and Agri-Food

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• (1100)

[*Translation*]

The Chair (Mr. Kody Blois (Kings—Hants, Lib.)): I call the meeting to order.

Honourable members, welcome to meeting number 90 of the Standing Committee on Agriculture and Agri-Food.

I want to start with a few reminders. Today's meeting is taking place in a hybrid format. The proceedings will be made available via the House of Commons website. Just so that you are aware, the webcast will always show the person speaking rather than the entire committee. Taking screenshots or photos of your screen is, of course, not permitted.

Pursuant to Standing Order 108(2) and the motion adopted by the committee on Thursday, October 19, 2023, the committee is resuming its study on efforts to stabilize food prices.

I would now like to welcome today's witnesses. From Competition Bureau Canada, we have Anthony Durocher, deputy commissioner, competition promotion branch, and Bradley Callaghan, associate deputy commissioner, policy, planning and advocacy directorate.

[*English*]

I'd also like to welcome Mr. Williams to the committee, who I think will be joining in a moment in place of Mr. Steinley. There's Mr. Williams. Welcome to the committee.

We have Mr. McLeod subbing in today for Mr. MacDonald. Welcome, Mr. McLeod.

Colleagues, we will be with the Competition Bureau for the first hour of our study and then we'll be going in camera for some committee business.

Thank you to the folks from the Competition Bureau. We're going to allow for five minutes. We have a bit more time, so if you need a bit more, I'll be flexible on that. We'll turn it over to questions from there.

It's over to you, gentlemen.

[*Translation*]

Mr. Anthony Durocher (Deputy Commissioner, Competition Promotion Branch, Competition Bureau Canada): Good morning, Mr. Chair and members of the committee.

My name is Anthony Durocher. I'm the deputy commissioner in the competition promotion branch. Joining me today is my col-

league Brad Callaghan, associate deputy commissioner in the policy, planning and advocacy directorate.

I would like to begin by recognizing the importance of your study. We believe it has been invaluable to shaping and advancing the public discourse around food affordability, and the testimony at this committee has benefited the Competition Bureau in our efforts to protect and promote competition in the grocery sector.

The Competition Bureau is an independent law enforcement agency that protects and promotes competition for the benefit of Canadian consumers and businesses.

We do this because competition drives lower prices and innovation, while fuelling economic growth. We administer and enforce the Competition Act by investigating and taking action to address anti-competitive business practices that harm consumers, competition and our economy.

[*English*]

In June 2023, the bureau released its retail grocery market study report. Our report found that grocery prices have been increasing at their fastest rate in more than 40 years and since late 2021 have been significantly outpacing the general rate of inflation in the Canadian economy. Additionally, the retail grocery industry has become much more concentrated over time. Today most Canadians purchase their groceries from only a few grocery giants that operate most grocery store banners, including the top discount chains.

Our report makes a number of principle-based recommendations to federal, provincial and territorial governments to improve competition in the grocery industry. They include stimulating innovation and supporting the growth of independent grocers, as well as the entry of international grocers through government policies and programs; limiting—and potentially banning—property controls; and lastly, introducing accessible and harmonized unit pricing requirements.

We continue to be actively engaged with policy-makers on our report's findings and its recommendations.

We recognize that food price inflation remains a significant issue for Canadians and that we need to approach our work in the grocery industry with heightened vigilance and scrutiny to ensure that Canadians benefit from greater choice and more affordable groceries. This includes by thoroughly and quickly investigating allegations of wrongdoing. To that end, we are actively pursuing an enforcement investigation in the grocery sector relating to the use of property controls.

Recent amendments to the Competition Act, particularly through Bill C-56, have given the bureau more tools to protect and promote competition in Canada and mark a key step in modernizing Canada's competition law. The bureau is committed to using the new tools made available through these amendments wherever necessary to protect competition. Further, as you know, Bill C-59 contains several other amendments that will, if passed, further strengthen Canada's Competition Act.

Before fielding your questions, I would note that the law requires the bureau to conduct investigations in private and to keep confidential the information it has. This obligation may prevent us from discussing past or current investigations.

I would like to thank the committee very much for the invitation to appear today, and we look forward to your questions.

• (1105)

The Chair: Thank you very much, Mr. Durocher and Mr. Callaghan.

We'll do exactly that. I'm going to start with Mr. Williams for up to six minutes, please.

Mr. Ryan Williams (Bay of Quinte, CPC): Thank you very much, Mr. Chair.

Welcome, Competition Bureau, to this committee.

For those listening at home, I always think of the Competition Bureau as being like the sheriff's office. We have the sheriff, and then today we have the deputy. It's nice to have you at committee here today, sir.

I want to start by focusing on mergers and acquisitions. Your grocery study report is very well done, by the way. One glaring point is that in 1986 we had eight Canadian-owned grocery chains, whereas in 2024 we have three that have 80% and two American ones that have entered the market since 1986. We have Walmart and Costco, which each have around 10%.

During your time with the bureau, you always act with the laws and powers that you're given to look at these mergers and acquisitions. When we look over the last eight years, we see that there were three in particular that you reviewed. One was Metro's purchase of Jean Coutu. Then we had Sobeys, which acquired both Farm Boy and Longo's. Did you approve, or make a recommendation to approve, those mergers for each one of those that you looked at?

Mr. Anthony Durocher: The bureau reviews mergers but does not necessarily approve them. It's more a question of whether or not we oppose them or challenge them.

In recent years, there were some mergers that we did not challenge because we didn't have the evidence. Others—for example, Loblaw's acquisition of Shoppers, Sobeys' acquisition of Safeway, or even before that, the acquisition of Provigo by Loblaw's—were cases in which we had remedies and divestitures, the sale of stores or assets, to try to preserve competition.

Mr. Ryan Williams: Maybe comment on a direct one that you were involved with in the last couple of years. Did you approve the merger of Rogers and Shaw, yes or no?

Mr. Anthony Durocher: No. That is a transaction that we sought to block at the Competition Tribunal, but the Competition Tribunal ruled in favour of letting the merger proceed. It ruled against our application. Therefore, the merger did proceed, notwithstanding our attempt to block it.

Mr. Ryan Williams: The point I'm making is that what we've done in our research and found is that mergers and acquisitions result in higher prices. Earlier last month, we did see that Rogers announced that they're increasing their cellphone rates by \$9 a month for consumers. When we look at data for North America, we see that mergers and acquisitions result in higher prices 95% of the time. Given the powers that your bureau has to look at M and As, when we look at the massive consolidation of this industry from 1986 to 2024, to have only three Canadian companies competing is probably a good reason that prices are up. Do you agree?

Mr. Anthony Durocher: Certainly when we talk about merger review, we often say that it's the first line of defence for competition in the economy because it can lead to structural changes in industries that can result in higher concentration and lower competitive intensity. Harmful mergers would typically result in higher prices, less innovation and fewer choices.

It depends on the evidence for each merger review, of course.

Mr. Ryan Williams: We only have so many independents left. There are about 6,000 independent grocers left in Canada. One in Alberta is Freson Brothers. I talk to them quite a bit. That's one we'd want to see grow. That's a Canadian grocery store that we'd want to see get more market share. The bigger problem we have right now is vertical integration. Some of these bigger grocers, Sobeys and Loblaw's especially, also have control of the wholesale market, so it's not just the grocery; it's also the wholesale side.

Do you feel that we need to really look at that side of the business—not just the grocery and the retail, but how that wholesale market is also dictating prices?

• (1110)

Mr. Anthony Durocher: Yes, that's certainly something we flagged in our report as being top of mind for independent grocers: the fact that in many cases they are beholden to purchasing their product from vertically integrated competitors, the larger competitors, because they don't have the scale required to make those purchases themselves.

Of course, some participate in buying groups to help make those purchases, but certainly from our perspective, we're alive to the fact that there is vertical integration along the chain, and independents in some instances have to rely on that. There is a need for us to be vigilant against potential anti-competitive conduct in the form of foreclosing access or otherwise harming competitors when you know that they're relying on your inputs to compete.

Mr. Ryan Williams: Another phenomenon that's happened in the last while—it's been happening for a while, but it's more advanced now—is shrinkflation, manufacturing shrinking products. When we talk about wholesale, we're also talking about how Loblaw's and Sobeys also manufacture products, so we have President's Choice and Compliments. Part of that has been shrinkflation as well.

One recommendation from your report was to make shrinkflation illegal. When the government introduced their legislation to create more powers for the Competition Act, did they consult with you? Why did they not make shrinkflation illegal?

Mr. Anthony Durocher: We don't tackle shrinkflation head-on in our report, other than recognizing that it is an issue. We heard about it from many Canadians. In many ways, shrinkflation can be a phenomenon akin to a price increase or the exercise of market power in the marketplace.

From our perspective, competition is a key solution to deter that, because at the end of the day, the more competition you have in a marketplace, including among manufacturers, the less ability there is for firms to raise prices or otherwise reduce the value of goods, including through shrinkflation.

The Chair: We're at time. Thank you very much, Mr. Williams.

Thank you, Mr. Durocher.

[*Translation*]

We now go to Mr. Drouin for six minutes.

Mr. Francis Drouin (Glengarry—Prescott—Russell, Lib.): Thank you, Mr. Chair.

Thank you, gentlemen. This isn't the first time you've appeared before the committee.

After you were here last, the CEOs of the major grocery chains repeatedly told us not to worry because they were going to provide the Competition Bureau with all the information it needed to properly analyze food prices and determine whether food profits were in fact excessive. Mr. Weston told the committee numerous times that his company had made higher profits, not on food, but rather, on drugs. That isn't necessarily any better.

The last time you appeared before the committee, you said the bureau didn't have the power to compel the companies to provide

information. Do you have that power, now that Bill C-56 has been passed?

Mr. Anthony Durocher: Bill C-56 does give us the power to conduct inquiries and obtain orders for the production of documents going forward.

The co-operation we received from the major grocery retailers for our market study varied greatly depending on the retailer. On the whole, the level of co-operation wasn't sufficient. It was important for us to examine the industry's financial data and gross margins in order to isolate food profits, given that the grocers sell many non-food products as well.

After analyzing food gross margins for the five-year period between 2017 and 2022, we are confident, on the basis of the information we received, that the food gross margins of the grocery giants increased by a modest yet meaningful amount. We noted that profits increased by one to two percentage points, which is modest given that profits are very much volume-driven in the grocery industry. However, this increase can make a big difference to Canadians.

• (1115)

Mr. Francis Drouin: I see.

This week, the committee heard from a professor who said that concentration in the grocery retail sector could potentially lead to abuse of a dominant position, to the detriment of consumers. As far as abuse of a dominant position is concerned, how do the powers you had under the previous version of the Competition Act differ from those you have under the new version? What new powers do you have to address that issue? What can you do under the new act that you couldn't do before?

Mr. Anthony Durocher: You're right that the passage of Bill C-56 has changed things significantly on that front. Previously, in order to prove abuse of a dominant position, three conditions had to be met. It was necessary to show, one, that a company or group of companies controlled the market, two, that the company or group of companies had engaged in anti-competitive acts, and, three, that the anti-competitive acts had an effect on the market.

Under section 79 of the new Competition Act, it's still necessary to show that the person or persons control the market. However, only one of the other two conditions has to be met, either that the person or persons engaged in anti-competitive acts or that the conduct had an effect on the market. The bureau can then apply to the Competition Tribunal for an order prohibiting the practice or conduct in question. That's a significant change to the law.

Other changes in section 79 of the new act relate to administrative monetary penalties. In addition, with the bureau's newly granted powers in relation to market studies, the removal of the efficiencies defence in the context of a merger review will make a significant difference. Yes, the Competition Bureau will be better equipped going forward to protect competition in the face of mergers.

Mr. Francis Drouin: I see.

I heard that the new act will prevent companies from selling a product for less than what it costs. That is a marketing strategy grocers commonly use called loss leading. I don't know whether that's true, so can you tell me whether the new act will in fact prevent grocers from using that kind of strategy?

Mr. Anthony Durocher: No, the act does not affect a company's ability to use strategies like loss leading. That practice has always been possible under the act.

However, predatory pricing is a practice of anti-competitive acts that could amount to abuse of a dominant position.

Predatory pricing consists of setting the price of a product lower than it costs, in order to get rid of a competitor, as opposed to engaging in healthy competitive pricing. We want to see companies lowering prices through competitive pricing, but in very specific circumstances, the price would amount to a predatory price meant to drive a competitor out of business. A situation like that could be considered abuse of a dominant position.

Mr. Francis Drouin: According to—

The Chair: Unfortunately, your time is up, Mr. Drouin.

Mr. Francis Drouin: Thank you.

The Chair: Thank you, Mr. Drouin.

We now go to Mr. Perron for six minutes.

Mr. Yves Perron (Berthier—Maskinongé, BQ): Thank you, Mr. Chair.

Thank you for being with us today, gentlemen. We are pleased to have you back.

Things have changed a lot since we last saw you, thanks to the passage of Bill C-56, which you and Mr. Drouin were discussing.

Does the legislation do enough to really make a difference, or is it still missing something?

Mr. Anthony Durocher: Bill C-56 has been very significant for us. It has brought about major changes that will help bring Canada in line with other countries as far as enforcing the law is concerned.

In our view, the Competition Act can always be strengthened in order to ensure a modern and effective regime. Bill C-59 also includes significant changes to the act. Through the government's consultation process, the bureau made over 50 recommendations to improve the act. Considerable progress has been made.

• (1120)

Mr. Yves Perron: Thank you.

You said that you're happy with Bill C-56 and that Bill C-59 will be helpful. You made recommendations to the government. Can you give us your top two or three recommendations, the ones that are crucial to strengthen the act? We could include them in our report to the government.

Mr. Anthony Durocher: A number of recommendations that aren't covered in Bill C-59 come to mind.

I think provisions pertaining to mergers are important, which ties in with the discussion with Mr. Williams. Specifically, I'm talking about provisions to ensure that mergers don't harm competition.

I'll give you an example: the remedy standard for transactions that have an anti-competitive effect on the market. Currently, when a transaction lessens competition substantially, the remedy standard in the case law merely requires that the lessening of competition cease to be substantial. It's fine if competition is lessened, because there's no remedial requirement that competition be restored to pre-merger levels. That's one of the recommendations we provided during the consultations.

We also submitted recommendations pertaining to concentration thresholds and the importance of building concentration-related presumptions into merger reviews to ensure that the merger does not exceed a certain concentration threshold. The burden would be on companies to prove that it was not an anti-competitive merger, which is similar to the practice in the U.S.

Mr. Yves Perron: What's the ideal threshold in the market?

Mr. Anthony Durocher: It really depends on the market.

Mr. Yves Perron: Thank you for those three tips. We will make sure to move them forward.

I'm listening to everything you're saying, and you seem to be very knowledgeable and well-intentioned. Given how the bureau is structured, however, I've always had the feeling that it is more about optics than it is about results. Things are heading in the right direction, but we aren't there yet. Unfortunately, a lot of things in government are like that. The government tries to look as though it is doing the right thing, but nothing really gets done in the end. That's just an editorial comment.

I listened closely to what you said about being careful when it comes to mergers. If I look back over the mergers that have taken place in the grocery industry, as a citizen—not even as an MP—I can't help but wonder what happened. We saw mergers in 1986, 1990, 1992 and twice in 1998. More followed in 2003, 2005, 2009, 2013, 2017, 2018 and 2019. Thanks to the transactions that took place in each of those years, the number of grocery chains in Canada went from 13 in 1986 to just three today. Luckily, we have two American chains, which brings the total to five. Even at five, we are dealing with an oligopoly. No matter what the CEOs say, the industry is an extremely powerful oligopoly.

I think it's awful that it was allowed to happen. I know the bureau had less power back then, but it existed. I'm not blaming you, personally, but I do question all these government bodies.

As I listened to the Conservative member's questions and the discussion you were having earlier, I couldn't help but get a little worked up.

Correct me if I'm wrong, but you said that you opposed the merger of Rogers and Shaw. Is that right?

Mr. Anthony Durocher: Yes.

Mr. Yves Perron: The merger still went through. Who decides? Who is to blame?

Mr. Anthony Durocher: The Competition Tribunal decides.

In the case of the Rogers-Shaw merger, the Competition Bureau applied to the Competition Tribunal to block the transaction. The tribunal works just like a court. It hears witnesses and considers evidence, and in the end, it decided that the transaction could go through.

Mr. Yves Perron: What we need to do, then, is change the laws that the tribunal interprets, because this is ridiculous. We are studying a situation that is totally unacceptable to the public at large, and the same thing is happening in another sector. You'll have to forgive me for getting worked up this morning, but the situation is really mind-boggling.

I think the three recommendations you listed earlier fit this description, but if there are any crucial changes you feel the act needs, you can send them to the committee in writing. We would certainly appreciate it.

Again, thank you very much for working so co-operatively with the committee.

The Chair: Thank you, Mr. Durocher and Mr. Perron.

[*English*]

I'll echo what Mr. Perron said. I think this committee would benefit from having some of the recommendations that ultimately didn't find their way into legislation—particularly the most pertinent. Maybe that's a submission you can make, independent of your testimony here today.

We'll go to Mr. MacGregor for six minutes, please.

• (1125)

Mr. Alistair MacGregor (Cowichan—Malahat—Langford, NDP): Thank you very much, Mr. Chair.

Thank you, both of you, for appearing before our committee.

Ever since this committee embarked on this study at the end of 2022, there has been a flurry of activity. We have seen several pieces of legislation. We've seen your bureau act. There has been a tremendous amount of public and political interest in this issue.

After decades of far too much corporate deference from successive governments, both Liberal and Conservative, I think the pendulum is finally swinging the other way. That's a good thing for consumers.

You are from the competition promotion part of the Competition Bureau. My colleagues have outlined how three companies, in a sense, over the last number of years have swallowed up their competition. You just need to look at all of their subsidiary companies. Many of those used to be their competitors.

I'm wondering what the challenges are for you in this kind of environment to promote competition when we've had such a concentration over the years. We've all seen the direction it's taken.

How do you promote competition in the grocery sector with those realities having happened?

Mr. Anthony Durocher: Thank you very much for the question.

I think we promote competition relentlessly. We try to be as persuasive as we can, because we think the evidence speaks for itself. Competition is good for consumers. It lowers prices and leads to innovation. Competition is good for the economy. We have a productivity issue in this country. We firmly believe, and the evidence is clear, that competition is the key to unlocking this and stimulating economic growth.

What I would say is that my colleague Mr. Callaghan and I are in the business of promoting competition. There are a lot of positives coming out of the last year. It really feels like the pendulum is swinging, not only in terms of our law and strengthening our law, but in terms of the discourse. We're starting to see parliamentarians in particular speaking about competition and holding companies to account. It makes a difference. We're seeing this. The Globe and Mail had a really good editorial a couple of days ago. Its editorial board spoke to this shift in the culture and tone in Canada about prioritizing competition.

Our desire is for this to continue. We're going to work very hard to make sure that we continue to have these discussions in Canada, because they are very important.

Mr. Alistair MacGregor: I think you're right. As a case in point, Loblaws had to climb down from its tone-deaf decision to reduce discounts from 50% to 30%. Of course, we then had the Manulife and Loblaws climbdown because of the intense scrutiny, I think, that exists at the moment.

You made mention of a couple of pieces of government legislation: Bill C-56, which has received royal assent, and Bill C-59, which is still in the works. There is another bill that received a second reading vote yesterday, which is Bill C-352 from NDP leader Jagmeet Singh. There are some similarities, but one of the interesting aspects of his bill—I know this is primarily with the Competition Tribunal—is that it would require the Competition Tribunal “to make an order dissolving a completed merger or prohibiting the merger from proceeding if the merger would result in excessive combined market share.”

I would just like to understand the Competition Bureau's understanding of that term “excessive combined market share.” How would you interpret that particular phrase in the law?

Mr. Anthony Durocher: We would want to give that some careful thought. If and when we appear at the INDU committee for the study of that bill, we want to be as helpful as we can with the interpretation.

Part of these issues come to something that we've advocated, which is the potential benefit of structural presumptions. This is how the U.S. jurisprudence around antitrust has evolved. It's basically the notion that past a certain increase in concentration and threshold, the onus should shift to companies to prove that they are not anti-competitive. That's certainly a discussion worth having.

There are changes in Bill C-59 that are important in that regard. We're removing a requirement that existed in section 92 so that we could not challenge mergers on the basis of market shares or thresholds. There might be a greater role to play in looking at market share and concentration in our work.

Of course, there are other factors that are always going to be relevant, such as looking at barriers to entry, effective remaining competition and the role of innovation in the marketplace. We hear there are significant concerns about concentration in the Canadian economy. We think it's important to debate these issues, especially when we look at our merger review framework and the law.

• (1130)

Mr. Alistair MacGregor: I think grocery companies, because of their concentration, know that many Canadians are creatures of habit. They will just continue going to the same store. In a sense, they're a captive audience once they're stuck inside the store.

Just very briefly, we're doing a second round on this study because Minister Champagne has been talking a lot about his disappointment and about efforts to stabilize. This is in relation to his most recent letter at the end of January. What actions did it prompt the Competition Bureau to take when you saw the letter from Minister Champagne?

Mr. Anthony Durocher: You're referring to his letter from last week, on January 29. Obviously, it's a letter we took very seriously. I would say that we're an independent agency, but I think our interests are very much aligned. We want to protect and promote competition in this sector.

We truly are prioritizing our work here in a couple of respects. One is on the findings and recommendations of our market study. We continue to very actively work with policy-makers, including provincial and territorial governments, about them in the hope of enacting some of these recommendations. They will make a difference.

The other component is our enforcement role. Enforcing the law and making sure that it works in the grocery sector is really front and centre. As I mentioned, we have an active investigation in the grocery sector related to property controls or restrictive covenants. We will continue to prioritize this work.

It's a letter that we took very seriously. I think we're very much aligned in prioritizing grocery prices and competition here.

The Chair: Thank you, Mr. MacGregor.

We'll now turn to Mr. Barlow for five minutes.

Mr. John Barlow (Foothills, CPC): Thanks, Mr. Chair.

Thanks for being with us once again. It's much appreciated.

I know that you don't study the grocery code specifically, but you do mention in your report that it would be of benefit by providing

more accountability. When Mr. Weston from Loblaws appeared at this committee, he said that the grocery code of conduct will cost Loblaws a billion dollars.

In any of the work that the Competition Bureau has done, have you seen any data in the grocery code that would verify that comment, that the costs would be devastating to the grocery chains?

Mr. Anthony Durocher: We're certainly familiar with those statements. To answer your question directly, we have not seen anything that would make the bureau concerned in that regard. I think if we thought that the code could result in significant price increases, the Competition Bureau would be concerned and we would share that concern. Right now, the truth of the matter is that we've been keeping our finger on the pulse of the code. We talk with stakeholders about it and have reviewed it carefully. We have not seen any red flags.

Our role as we see it, with respect to the code, is as a competition advocate to provide a pro-competitive perspective on its implementation, should it be implemented. Our position on the code has been that if it can lead to greater predictability, transparency and certainty for suppliers in particular about how to conduct business in this sector, that can be a good thing for consumers.

Mr. John Barlow: The Minister of Innovation made the comment that he's looking at trying to attract international companies to come to Canada to add to that competition. It was interesting. In the same news article, I saw that when Target came to Canada it had a massive footprint, invested \$8 billion and lasted less than three years, even though it had all the Zellers locations. How is it possible that a company like Target...? The innovation minister says we're just going to get another company in here to add competition, but it's been tried and it failed. How do we expect a small Alberta company like Freson to grow and have an impact?

What are some of the impediments you're seeing that are keeping some of these companies first from coming, and then from being able to be successful in the long term?

Mr. Anthony Durocher: Certainly the Target experience came up. We mention it in our report in terms of something the international grocers told us about the Canadian market. We asked them what the barriers were that were keeping them out. What are some of the reasons? Target was mentioned, but there are other factors too that are related to it.

One that I can perhaps mention, in response to your question, is restrictive covenants in property controls. That is something that can really be a major barrier to entry and expansion in the Canadian marketplace. You can't start a new grocery store if you can't get access to the land. That is something that we heard particularly from independents as being problematic. That is why one of our recommendations in the report is something that a number of other countries have done—namely, consider limiting their use or banning them altogether in the grocery sector, because they can be harmful to competition.

Of course, we also have an enforcement interest in this space as well.

● (1135)

Mr. John Barlow: On that same theme, I don't know if you've had those conversations, but in some of the work that you do you say you're trying to promote that competition, which is critical. Do other companies look at the landscape in Canada in terms of front-of-pack labelling changes, P2 plastic bans, carbon taxes? With some of the regulatory burdens that may be there, are they seeing that there is not a clear path to success in Canada?

Mr. Anthony Durocher: It's a difficult question to answer, because every industry, every company's calculus, when they look at the prospects of investing and entering Canada, is different. At the bureau, we believe fundamentally in the importance of pro-competitive regulations, and we're constantly trying to provide advice to governments at all levels in that regard.

In some instances it's removing regulations; in others it's making sure that regulations are smart and promote competition. One example is open banking. That is, from our perspective, a smart and important regulation to unlock competition in financial services.

All of that is to say I think every industry is different in terms of how companies are assessing the viability of entry in the role of regulation. Our job is to try to advocate in favour of smart, pro-competitive regulation and to lower barriers to entry when we can.

The Chair: Thank you very much, Mr. Barlow.

Thank you very much, Mr. Durocher.

We now turn to Ms. Taylor Roy for up to five minutes.

Ms. Leah Taylor Roy (Aurora—Oak Ridges—Richmond Hill, Lib.): Thank you very much for being here, and indeed it's good news to hear the pendulum's swinging and that food prices are coming down more in line with general inflation and that Bill C-56 did help.

We also have Bill C-59 right now under consideration, and you mentioned that there were aspects of that bill that you thought would be very helpful in continuing to combat the concentration and issues around competition. What, in particular, would those aspects be?

Mr. Anthony Durocher: Do you mean specifically to the grocery industry or just more generally?

Ms. Leah Taylor Roy: I mean generally, but if that has an impact on groceries.... I think our main focus here is making sure Canadians have lower food prices.

Mr. Anthony Durocher: One of the most important changes flowing from Bill C-59 is opening up the Competition Act to more private enforcement so that it's not just the Competition Bureau as the sole authority that can bring cases. There are changes there that I think are capturing a lot of interest from stakeholders in the competition space. The role of private enforcement and the test for obtaining leave have been clarified, so what we might see emerge there is a more robust space where private actors, not just the Competition Bureau, can bring cases directly to court.

As I mentioned, in respect to mergers there are certain important changes. One is to allow greater emphasis on market share and concentration evidence as well. As another, there are important changes to section 90.1—which is the competitor collaboration provision of the Competition Act—with an ability to look at past conduct, which allows for a broader range of remedies too. These are examples.

Also, to give an example, one very interesting change relates to reprisal actions. It adds a new civil provision that would prohibit a party from taking reprisal action against another person for their co-operation under the act. That is a very interesting change and potentially important, because whenever companies complain to us, there's always the concern about reprisal. If you're complaining about the actions of one of your business partners, obviously confidentiality is paramount to our work. It's something we take extremely seriously and protect, but additional protections and peace of mind about lowering the risk for reprisal action are important.

These are just a few examples, but there's a lot to cover with Bill C-59.

● (1140)

Ms. Leah Taylor Roy: We've been trying to get Bill C-59 passed since the fall, and the Conservative Party has been very against Bill C-59. Recently we found out that Jenni Byrne, who is advising the Conservative Party and joins their caucus advising their leader, is actually a consultant or a lobbyist, we could say, for Loblaws. I'm wondering.... It sounds to me as though Loblaws might not be in favour of some of these changes, but it seems that Bill C-59 is very important. Would you recommend, from your perspective in the Competition Bureau, that Bill C-59 should be passed so that we can get these measures in place?

Mr. Anthony Durocher: The way we're going to approach Bill C-59 is that if and when we're called to committee, we will certainly provide our views.

As I mentioned, and as was in our opening statement, there are important improvements to the Competition Act contained in the bill, and what we really want to do is help inform parliamentarians and provide whatever evidence we can in committee to help deliberations.

Ms. Leah Taylor Roy: At this committee, we're looking at grocery prices. There has been progress, but we want them to come further and we want stability.

From your perspective, would it be useful in this study to recommend that the changes in Bill C-59 be adopted? Would that be useful in addressing some of the concerns you have?

Mr. Anthony Durocher: I think it's fair to say that some of the Competition Act changes proposed in Bill C-59 are certainly desirable and are in line, frankly, with some of the recommendations that we made in the government's consultation on the bill.

Ms. Leah Taylor Roy: Thank you very much.

Do I have any more time, Chair?

The Chair: You have about 15 seconds, but—

Ms. Leah Taylor Roy: I'll give it back to you.

The Chair: —you might be gracious and give that back to us.

[*Translation*]

We now go to Mr. Perron for two and a half minutes.

Mr. Yves Perron: Thank you, Mr. Chair.

As you know, Mr. Durocher, the committee had previously met with the grocery CEOs, and we recently met with them again. The first time they were here, we knew that you were doing a study on the retail grocery market. I asked them to formally commit to providing the bureau with certain information, and they all said they would hand it over. You can understand my great disappointment when I read in your report that, in many cases, the bureau was unable to obtain detailed and comprehensive financial data despite its repeated requests.

You probably can't tell me which grocers failed to send you the information, but, when they were here again, I had quite the time reminding them of the commitment they had made to send you the data. I pointed out that, according to your report, not all of them provided the data, so I asked each of them whether they had done so. Funnily enough, they all said they had.

Can you give us more information on that? Can you tell us which grocers did not send you the data? I have my suspicions, since some of them aren't in favour of a grocery code of conduct, and that makes me leery. Otherwise, what kind of information did they refuse to provide? Under the new act, will they have to provide you with the information the next time you ask?

Mr. Anthony Durocher: I would say that the level of co-operation varied greatly. Some companies were really co-operative and provided information, while others gave us all kinds of excuses as to why they couldn't hand over the information we were looking for. Most of them provided information, but not necessarily the information we had asked for. There was a big difference in the level of co-operation. Some companies provided nothing or only information that was publicly available.

Nevertheless, we found that we had received the information we needed to make determinations and sound recommendations.

Mr. Yves Perron: Sorry to cut you off, but I gather that you can't tell us who or which groups. Can you?

Mr. Anthony Durocher: No, I can't.

Mr. Yves Perron: I understand. Your answer was clear.

Some grocers don't want to follow a grocery code of conduct. Most of those grocers weren't even at the negotiating table or had other organizations represent them, and now, here they are at the end of the process, trying to derail the whole thing.

What do you make of a code that doesn't apply to all the players in the market? Do you think it could work, or is it doomed to fail?

Mr. Anthony Durocher: It's very hard to say what would work and what wouldn't. I can understand why some companies would be hesitant about a situation where some might have a competitive advantage by virtue of participating or not participating. That's possible.

We are keeping an eye on developments related to the code, but we haven't studied whether participation should be mandatory. We are co-operating and discussing the code with our partners in government. We'll have to see how it will all work.

• (1145)

The Chair: Thank you, Mr. Durocher and Mr. Perron.

Just to let everyone know, we will be starting the third round shortly.

[*English*]

Monsieur MacGregor, I didn't forget you. We will go over to you for two and a half minutes. I just wanted to let everyone else know.

Mr. Alistair MacGregor: Thank you, Mr. Chair.

These last couple of years have been incredibly frustrating for so many Canadians because of the constant rise in food prices. They can see from the publicly available data from Statistics Canada, which one of our witnesses, Jim Stanford, provided to us, that food retail profits have doubled since 2019, and even the margins.

Every time people go shopping, they see increased prices. I personally have noticed that the net weight of many of the food items I purchase has gone down while the price has either remained constant or has sometimes gone up. It's a double insult. There's an incredible amount of frustration out there.

With regard to the study that was released in June 2023, would that study have been different or how do you think your conclusions would have been different if you had had the powers you now have under Bill C-56? Do you feel at the Competition Bureau that you would like to revisit that study and maybe make use of the new legislative powers? Can you explain the differences that now exist?

Mr. Anthony Durocher: Now, with the changes that have been made, we can seek a court order to compel the information to complete a study. It's difficult to hypothesize as to how it could have been different had it played out. Fundamentally, I think we were satisfied that we got sufficient information from the marketplace in what we asked for—not everything, but it was sufficient for us to make meaningful findings and recommendations.

Right now, I think our frame of mind as an organization is that we want to move from study to action by implementing and working with policy-makers to implement the recommendations and also by focusing on and prioritizing enforcement work in the sector to protect competition.

Mr. Alistair MacGregor: Do you have plans to revisit the issue? Can the Canadian public expect more studies in the future? Is that something you're actively working on?

Mr. Anthony Durocher: Everything is on the table right now in regard to our work in the grocery sector.

One issue that is a consideration is identifying where we can provide the most value for Canadians. We don't have infinite resources as an organization. We are prioritizing the grocery sector in terms of getting the most value from an investigation. Again, right now we're very much solution-focused. We're focused on the implementation of our recommendations from the study and on enforcement work in this space as well and driving those forward, but nothing is off the table. We're obviously very mindful of Minister Champagne's letter from last Monday that asked us to prioritize and made mention of a potential follow-up study.

I think these are all on the table, but we truly want to be focused on solutions rather than more study of the sector. Nothing is off the table.

Mr. Alistair MacGregor: Thank you.

The Chair: Thank you, Mr. MacGregor.

We'll go to Ms. Rood for about five minutes and then we'll have Mr. Louis after that.

Ms. Lianne Rood (Lambton—Kent—Middlesex, CPC): Thank you, Chair.

At the industry committee in December 2020, I had the opportunity to ask Mr. Matthew Boswell, the commissioner of competition, some questions. I told the commissioner the Prime Minister had said that he was going to ask the Competition Bureau to investigate the fees that are charged to producers and processors by the grocery giants. I asked the commissioner if he had launched an investigation. Mr. Boswell said that the bureau was very much aware of these issues with respect to retailers and their suppliers and was already engaging at the federal, provincial and territorial level with respect to this issue and sharing its expertise on competition issues.

Was there an investigation of the fees charged to producers and suppliers by the grocery retailers? If so, what were the findings of that investigation?

Mr. Anthony Durocher: We had a very comprehensive abuse of dominance investigation into Loblaw about their policies and fees as part of their dealings with suppliers. The investigation culminated in 2017 or thereabouts.

Over the course of our review, Loblaw stopped many of the practices in question. We concluded the investigation and published a pretty detailed position statement to provide more transparency on the nature of our investigation and also on where companies can cross the line in their dealings with suppliers such that they might run afoul of the Competition Act.

Since that time, there has been work in respect of the code of conduct that has really been aiming to address that. I think we've been privy to these developments and we've trying to share our knowledge of the industry from our investigation. It is a fine line between an imbalance in bargaining power between parties and crossing the line to an abuse of dominance. A lot of actions in this sector might be more defined as an imbalance in bargaining position and some of the problems emanating from that, and not necessarily a competition law problem.

We continue to work with governments at all levels to try to inform them and lend our experience with some of these issues in the sector.

• (1150)

Ms. Lianne Rood: On that, the commissioner indicated at that time, and I'll quote him, that “competition law in Canada does not provide for a tool to regulate imbalances in bargaining power.” Does the Competition Tribunal now have any power to investigate and regulate imbalances in bargaining power, or what tools do you need in order to do that?

Mr. Anthony Durocher: Typically, competition law, not just in Canada but elsewhere, is not really meant to address imbalances in bargaining power in how a large company deals with suppliers or customers. If a large company imposes unfair prices or unfair fees on suppliers or charges high prices to customers, that is not offside according to the Competition Act. What is offside is if you abuse your dominant position by taking steps to undermine competition and make it so the competition isn't working by raising barriers or excluding competitors.

It is a fine line between the two, but typically, competition law is not meant to address imbalances in bargaining power.

Ms. Lianne Rood: You mentioned the grocery code of conduct. I'm wondering if the Competition Bureau believes that the grocery code of conduct should be mandatory or voluntary.

Mr. Anthony Durocher: We haven't studied in any depth the prospects or desirability of having a permanent code. We do note and are aware that in the U.K., they do have a code. It started as voluntary and then became a mandated code to ensure compliance.

We're going to continue to make ourselves available on how this is going to play out in Canada and we'll make sure that it's as pro-competitive as possible, but whether it should be mandatory versus voluntary is, in all honesty, not something we've studied in any depth.

Ms. Lianne Rood: Thank you.

We've been talking about the government's new P2 plastics ban and the impact that it would have on Canadians and the cost of groceries. We've heard that it could cost upwards of \$6 billion. We import two-thirds of our fresh produce into this country. I'm wondering if the Competition Bureau has looked at the new proposed plastics ban on the fresh produce industry and how that would impact competition in getting produce onto the grocery store shelves here in Canada for Canadians and how it may affect the price.

Mr. Anthony Durocher: That is not an issue that we would have studied or looked at.

Ms. Lianne Rood: Thank you very much.

Mr. Chair, just before I give up my time, I'd like to take a moment to table a motion today in this committee. We have talked to many different witnesses who have said that the plastics ban is going to have a very profound effect on the price of food for Canadians, and while we're looking here in this committee at what we can do to lower the price of food for Canadians, we have government policy coming out that is going to increase the price of food for Canadians.

I can send the motion to the clerk in French and English. It reads:

That this committee begin a study of the impacts of existing and potential regulations on primary food plastic packaging in respect of the production, processing, transport, retail marketing, sale, costs and safety of food products, and the impact on access to healthy, affordable food and food security for Canadians.

That this committee allocate no fewer than six meetings to hear from stakeholders as witnesses before the committee; and

That this committee report its findings and recommendations to the House no later than June 1, 2024.

• (1155)

The Chair: Thank you, Ms. Rood.

I know that we're looking at studying the horticultural sector in the next couple of weeks. We'll talk as a committee about whether or not we move forward with your motion or if it can be incorporated into some of our existing work plan, but thank you for that.

We'll now turn to Mr. Louis for up to five minutes.

Mr. Tim Louis (Kitchener—Conestoga, Lib.): Thank you, Chair.

Thank you to the witnesses for being here. It's important to have conversations with the Competition Bureau.

We're hearing the word "imbalance" a lot. Your position is to potentially look into the abuse of that dominant position—that's what you said—to shape this legislation that we've put forward and one piece of legislation that's passed.

There were many consultations. I think there were about 400 submissions and a dozen round tables. It took about 18 months. It was focused and targeted, and we got consensus from many perspectives, including industry, academics and advocate groups.

In my understanding, one of the barriers that the commission faced in your investigation of concentration in the grocery sector was your limited ability to compel documents from grocery chains as part of your probes.

Bill C-56 will give the Competition Bureau the ability to do that, as well as give more market study powers and subpoena powers to compel those large grocery chains to provide more information, which is going to address the lack of transparency that we're seeing from these grocery giants. They submitted reports and information to us with various degrees of transparency and thoroughness.

How can the new powers that you have help your office to issue stronger and more informed recommendations and decisions?

Mr. Anthony Durocher: I think, going forward, to enable us to do complete and thorough market studies in all sectors of the economy that warrant study because there are competition issues or because we want to look to increase competitive intensity and find out what's going on in a sector, these study powers are going to be helpful. They're very much in line with what many of our foreign counterparts already have in their own competition laws. It will absolutely be an important tool to equip us to make fully informed recommendations and to make determinations examining competition.

Mr. Tim Louis: Do you tend to see that the larger these corporations are, the easier it is for them to resist being transparent, and that they have more push-back as they are consolidating more and more?

Mr. Anthony Durocher: Every company is different in how they interact with the Competition Bureau. Some are more forthcoming than others, and they all have different incentives at play.

What we've come to see is that it's important to have a tool that you can use as a recourse. In our enforcement work, we have always had the ability to issue subpoenas or go to court to get subpoenas. Sometimes you don't need to do that, because companies know that this is a possibility and so they are going to fully cooperate.

Obviously, it's going to change the nature of the catalyst for companies, because before Bill C-56, the fact of the matter was that for market studies, co-operation was voluntary and we did not have recourse. If they didn't want to co-operate fully, there was no recourse. That will change going forward, and it is certainly going to be a helpful tool for us.

Mr. Tim Louis: That's good to know. Just the fact that you can use that tool will help a lot of these companies comply with what you're asking for, which is only what Canadians are asking for—transparency and competition, which would lower prices.

In your report, you mentioned stimulating innovation, supporting independent grocers, unit pricing requirements and property controls. In order to protect our independent grocers, I want to talk about property controls. You mentioned restrictive covenants. These controls limit competition in the sector because they have prevented independent grocers from opening up in our communities, and with that comes less competition, less choice and higher prices.

How will the bureau's ability to challenge these controls and agreements like restrictive covenants help competition in the grocery sector?

Mr. Bradley Callaghan (Associate Deputy Commissioner, Policy, Planning and Advocacy Directorate, Competition Bureau Canada): You're absolutely right. This was a topic of focus that we covered in our report.

As Mr. Durocher mentioned, at their essence they are things that limit what a property holder can do with their property. Oftentimes, these are included in leases or things of that nature. The effect is that they can ultimately just make it harder for a competitor to get into the same space. It could be the same commercial mall or it also could cover a wider geographic area, but the impact is the same: It can make it harder for an entrant to get in and compete.

There are really a couple of ways that we're thinking about how we can improve competition in this space. One is by using our enforcement mandate. As Mr. Durocher mentioned, we do have an active investigation in that space.

We've also recommended that there may be legislative options for governments to think about limiting the use of these property controls or to ban them entirely, which would obviously be an instrument that would have a much broader effect; whereas the bureau's work is much more on a case-by-case basis and would obviously have to determine the facts to make sure that something would be in violation of the Competition Act.

• (1200)

Mr. Tim Louis: Thank you very much.

We've heard the importance of protecting our independent local grocers from our study too, so thank you.

Thank you, Chair.

The Chair: Thank you.

Colleagues, I'm going to take a few minutes.

I was particularly interested with Mr. Williams' line of questioning. He talked about mergers and acquisitions as being somewhat

anti-competitive, or having the ability to be. I appreciated your comments, Mr. Durocher, that it's dependent on the facts in a particular industry.

Because there was a focus on how there has been a consolidation in the Canadian grocery sector, can you tell this committee how that would compare to elsewhere in the world? I would expect that there has been consolidation elsewhere in this sector as well. Is that a fair assumption, or would I be wrong in that suggestion?

Mr. Anthony Durocher: I think that's fair. Maybe I'll make a couple of points here.

One is that other countries often had stronger merger review laws than Canada to begin with, so they may have been in a position to take action against concentration more than we were prior to this legislative modernization.

The other point is that in the context of our grocery market study, we contacted a number of our foreign counterparts to get a sense of what is going on in their own jurisdictions with respect to this aspect. Concerns about grocery concentration and pricing are very much top of mind in a number of other countries. Their competition authorities are looking at these issues too. The reality is that Canada is not alone. We do speak with one another.

It's really for the small proportion of mergers that are harmful that we want to make sure we have the right tools to address. The vast majority of mergers don't harm competition. It's really for the small proportion that do, especially in concentrated sectors, that we want to make sure that the competition authority is well equipped to swiftly bring cases forward and handle them.

The Chair: Let me ask you quickly about the efficiencies defence. I believe the government is working on phasing that out.

I have a commerce background. There is, I think, an interesting tension between economies of scale, which can actually bring down unit price production and potentially the cost. I can appreciate that it can also lead to a situation in which the price mechanism can be controlled by a few companies that have that market power and market dominance.

How do you balance legitimate elements around economies of scale and the ability to disperse your cost of capital over a larger market share so that the unit price actually can come down, versus an efficiencies defence that can also be monopolistic? Where's that balance? Can you try to explain that to this committee?

Would you agree that there is some element in economies of scale in the idea that some concentration can be good, but can go too far the other way as well?

Mr. Anthony Durocher: The efficiencies defences now no longer exist. When Bill C-56 became law, the efficiency defence was no longer there. It was repealed.

One problem—there are quite a few—with the efficiencies defence was that it allowed harmful mergers. Those were mergers for which we could prove that the merger was going to lessen competition, prices were going to go up and it would be harmful to consumers and the economy, but that defence, the way the jurisprudence evolved, would go through. Canada was very much an anomaly in terms of how we looked at it.

Going forward, there is certainly scope for mergers that can be pro-competitive, such as when two companies are bringing their resources together. That actually can be good for consumers because it can stimulate competition.

Every case is different as to the net effect and how they're going to use resources and how they can argue that it is actually good for competition and pro-competitive, but since the passage of Bill C-56, it is a new day for how efficiencies are viewed.

• (1205)

The Chair: This is my last one.

Mr. MacGregor talked about Manulife and Shoppers and the idea that folks who were under a Manulife plan were only going to be able to buy from Shoppers. Would that have been a prima facie case of non-competitive behaviour?

Mr. MacGregor talked about the company backing off and how that might not actually become a reality, but would that have been

something that would have triggered the Competition Bureau to intervene? Would it actually have been contrary to competition law?

Mr. Anthony Durocher: Thank you for the question.

Obviously, this was very much in the public discourse and in the spotlight last week. We were monitoring this very actively and we received a lot of media inquiries as well.

Because of our confidentiality obligations, all I can say with respect to that agreement is that it was very much on our radar, in part because protecting access to, and affordability of, prescription drugs is an absolute priority and is important for Canadians. These are things that were very much top of mind when they came to be known.

Coming back to Mr. MacGregor's question on this point, I'll just add that this is one where we've seen the discourse around competition and the backlash perhaps showing that we're really prioritizing competition more in our economy. From our perspective, that's certainly a welcome change.

The Chair: Thank you very much, colleagues. I thought that there were great lines of questioning from all sides.

Thank you to Mr. Durocher and Mr. Callaghan for being here for the Competition Bureau.

Colleagues, we're going to be going in camera to do some committee business, so I'm going to suspend for two or three minutes.

Mr. McLeod and Mr. Carr, make sure you hop on the other link in virtual mode.

Colleagues, we'll see you in two or three minutes.

[*Proceedings continue in camera*]

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