



Canadian Council of Grocery Distributors
Conseil canadien des distributeurs en alimentation

January 17, 2008

Rachel Lavallee
Competition Bureau
50 Victoria Street
Gatineau Quebec
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Email: lavallee.rachel@cb-bc.gc.ca

Dear Ms. Lavallee,

Thank you for the opportunity to comment on the Competition Bureau's draft Predatory Pricing Enforcement Guidelines.

As you are aware, the Canadian Council of Grocery Distributors ("CCGD") is a not-for-profit organization committed to advancing and promoting the grocery and foodservice distribution industry in Canada, at both the regional and national levels. The food distribution industry is Canada's second largest commercial sector. Member sales represent \$71.8 billion in retail and \$12 billion in foodservice. Members employ over 428,100 Canadians, and represent over 85% of all grocery (i.e. food, non-food, non-alcoholic beverages) distribution sales in Canada.

CCGD has been involved in previous consultations and discussions concerning these sections of the Competition Act. The direction contained in the draft Enforcement Guidelines is generally consistent with our past recommendations.

Accordingly, CCGD supports the principle that the "Commissioner is an advocate for competition, not for individual competitors."

CCGD also agrees that, in examining predatory pricing complaints, it is imperative that the Competition Bureau consider legitimate business objectives associated with aggressive competition such as clearing stock and price matching. The predatory pricing provisions should not be used to chill healthy competition by impeding the many innovative approaches that retailers use to bring value to consumers. The benefits secured by innovative competition are nowhere more evident than in the Canadian grocery sector.

2007-2008

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CCGD also supports the enforcement approach outlined in the Draft Predatory Pricing Guidelines, namely that complaints will generally be analyzed under the Competition Act's abuse of dominance provisions. CCGD agrees that predatory pricing is best dealt with in a civil context and that at a minimum, criminal prosecution should be reserved to the limited circumstances in which; the conduct is egregious, such as using predatory pricing in furtherance of actual or attempted cartel activity; the alleged predator is a recidivist; or the person or firm has a history of non-compliance with the Competition Act. Indeed, as we have indicated in previous submissions (September 2003), CCGD would support the complete decriminalization of predatory pricing under the Competition Act. We would also like to support the repeal of the Act's other criminal pricing provisions such as price discrimination, promotional allowances and geographic price discrimination.

However, CCGD notes that the Competition Bureau has advocated in the past the adoption of administrative monetary penalties ("AMPS") for cases of abuse of dominance. Most recently, the Bureau has suggested to the Competition Policy Review Panel that AMPS are necessary to deter anti-competitive behaviour by dominant parties. CCGD continues to oppose the adoption of AMPS as being inconsistent with the civil character of the abuse of dominance provisions. For that reason, and in this context, CCGD believes that the adoption of AMPS for abuse of dominance cases would negate the value of shifting the enforcement of the predatory pricing provisions from the criminal to the civil sphere.

Please do not hesitate to contact me at 416 922 6228 ext 324 or by email at dwilkes@ccgd.ca if you require further information or have questions.

Sincerely,

David Wilkes
Senior Vice President, Trade and Business Development
Canadian Council of Grocery Distributors

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