

March 31, 2023

Innovation, Science and Economic Development Canada
Marketplace Framework Policy Branch
235 Queen St
Ottawa, Ontario K1A 0H5

Sent via email to competition-consultation-concurrence@ised-isde.gc.ca

Dear Marketplace Framework Policy Branch officials,

Re: Consultation on the future of competition policy in Canada

The Ontario Federation of Agriculture (OFA) is the largest general farm organization in Ontario, proudly representing more than 38,000 farm family members. OFA has a strong voice for our members and the agri-food industry on issues, legislation and regulations administered by all levels of government. We are passionate and dedicated to ensuring that the agri-food sector and rural communities are considered and consulted with for any new or changing legislation that would impact the sustainability and growth of our farm businesses.

Ontario's agri-food sector is an economic powerhouse – producing more than 200 farm and food products, fuelling rural communities, generating nearly 750,000 jobs, and contributing over \$47 billion to Ontario's annual GDP. The province's agri-food strategy, Grow Ontario, aims to strengthen the agri-food sector, support economic growth, and ensure an efficient, reliable and responsible food supply. By removing barriers, unnecessary costs and red tape, Ontario farmers will be positioned to seize opportunities and rise to the challenge of an ambitious growth strategy, allowing the agri-food sector to drive the economy forward. Strong Canadian competition policy can help provide the resiliency required in the agri-food sector to maximize the sector's economic potential.

OFA appreciates the opportunity to comment on the future direction of The Competition Act. Since the last comprehensive review of the *Competition Act* in 2007-08, Canadians and Canadian businesses have experienced the effects of supply chain disruptions and vulnerabilities due to the COVID-19 pandemic, the war in Europe, and inflationary pressures increasing business costs and ultimately the cost of living.

We agree that fundamental improvements to the competition framework are needed, including enhancing the role of the Competition Bureau, the *Competition Act's* enforcement agency. Currently the Competition Bureau ability to intervene is limited to a narrow set of circumstances. The Bureau's investigations are constrained in many respects, and available remedies it can impose to address certain anticompetitive behaviour are limited.

Although the Competition Bureau reviews potential mergers and acquisitions on a case-by-case basis “to ensure that they will not cause a substantial lessening or prevention of competition”, market concentration in some sectors already exists. OFA recommends more emphasis be placed on ensuring firms with market power do not abuse their dominant position through anti-competitive behaviours.

In addition to the objective of providing consumers with competitive prices and product choices, the purpose of the *Competition Act* includes “ensuring that small- and medium-sized enterprises have an equitable opportunity to participate in the promoting the efficiency and adaptability of the Canadian economy”. OFA recommends amending the *Competition Act*’s purpose clause to expressly consider monopsony (purchaser) power that larger firms may from time-to-time exercise on small- and medium-sized enterprises that supply products and services to them, this includes unilateral changes in contract terms and conditions, and the threat of contract termination without just cause.

Most farm businesses would typically fit the definition of small- and medium-sized enterprises and be characterized as price-takers, not price-leaders or price-setters. The farm sector has the unenviable position of dealing with market-dominate firms when purchasing some input supplies and also when selling certain farm products.

As an example, market-concentration in the meat processing sector has left livestock farmers with few potential buyers. Smaller, independent abattoir businesses struggle financially. A similar situation exists in the United States. In 2021 the United States Department of Agriculture (USDA) announced the Meat and Poultry Inspection Readiness Grant (MPIRG) program, investing \$32 million (US) in 167 independent abattoirs. The purpose of the program is to help these smaller businesses expand and modernize their production facilities so that they can compete with larger abattoirs. OFA believes that supporting the financial viability of smaller, independent abattoir businesses in Canada is crucial to ensuring a competitive marketplace.

The grocery retail sector is also dominated by a few large firms. A 2017 Bureau investigation revealed collusion among firms to set higher consumer prices for bread. More recently in 2021, the House of Commons Standing Committee on Industry and Technology considered issues in the grocery sector, including the possibility of employer wage coordination. Along with other grocery suppliers, farmers have faced challenges with large grocery retail sector firms. One large firm used its market power to unilaterally decide that suppliers would subject to a deduction on amounts owed for products shipped to raise funds to put towards the retailer’s investment in their online sales platform. Some large grocery retailers have imposed “retail fees” on suppliers for failure to deliver, failure to deliver on time or other performance-related outcomes. During the recent supply chain disruption due to the COVID-19 pandemic lockdown, these penalties plus the threat of a significant financial loss of losing a large retail customer meant that suppliers had to prioritize deliveries to their largest customers over independent grocers. “During the height of the pandemic, a large independent grocer confirmed that while supply orders pre-COVID-19 were satisfied at around 95%, in April 2020 service levels dipped to 60%.”¹ To improve the supplier-retailer relationship, development is underway of a Grocery Industry Code of Conduct. The Code is intended to “support fairness in the commercial dealings between suppliers, independent retailers, and large Canadian grocers, to ensure that consumers continue to enjoy affordable and

¹ Retail fees in the Canadian food industry - Findings of the Federal-Provincial-Territorial (FPT) Working Group on Retail Fees, July 2021 <https://agriculture.canada.ca/en/sector/data-reports/retail-fees-issue-canadian-food-industry#Toc75955875>

innovative product choices, as well as to support the long-term sustainability and growth of the Canadian food, health and consumer goods manufacturing sectors and retailers across Canada.”

Another example of the adverse effect of anti-competitive behaviour is the insistence by original (farm) equipment manufacturers on “brand purity” among its farm equipment dealerships. Farm equipment dealerships are independent small- or medium-sized enterprises. To diversify their revenue, some dealerships would like to also sell equipment produced by “short-line” manufacturers”. Major farm equipment manufacturers insistence on “brand purity” results in not only the loss of a potential income stream for the dealerships but also limits the marketing channels for “short-line” manufacturers and limits opportunities for farm businesses to purchase “short-line” manufactured farm equipment.

OFA recommends strengthening the *Competition Act*’s anti-competitive conduct provisions, such as abuse of a dominant position and exclusive dealing, tied selling and market restriction. An anti-competitive act is defined as an “act intended to have a predatory, exclusionary or disciplinary negative effect on a competitor, or to have an adverse effect on competition”.

With respect to anti-competitive conduct, OFA recommends that Bureau be authorized to intervene when it is convinced that a firm has engaged in an anti-competitive practice, regardless of whether there is evidence that the practice has caused or has the potential to cause harm. OFA supports explicitly stating “fair competition” provisions in the *Competition Act* and requiring less onus on proving harm to competition, in the interests of maintaining a level playing field and checking gatekeepers with monopolistic or monopsonistic power.

We believe the Competition Bureau should be given the tools and resources necessary to remedy anti-competitive conduct with a greater emphasis on proactively investigating violations of the Act. We also note investigation must be conducted within a reasonable time frame.

OFA agrees with the Organisation for Economic Co-operation and Development’s (OECD) recommendation that the Bureau be granted formal market study powers like its G7 counterparts. Market studies can be equally valuable in sectors where competition does not appear to be working well but where root causes are not obvious, or where identified market failures would require a regulatory solution.

In terms of remedies, OFA believes firms should be given the option of providing the Bureau with a written assurance of voluntary compliance which would have the same force and effect as an order. For firms concerned about practicing corporate social responsibility, voluntary compliance offers an avenue to both address the anti-competitive behaviour and uphold their public reputation.

OFA supports measures to improve competitiveness across the agriculture and agri-food sector. Ensuring Ontario farmers have access to competitive markets is important to the sustainability of our farm businesses and farm families.

Sincerely,



Peggy Brekveld
President

cc: The Honourable Marie-Claude Bibeau, Minister of Agriculture and Agri-Food Canada
Beverley J. Leavitt, President/CEO, Canada East Equipment Dealers Association
Keith Currie, President, Canadian Federation of Agriculture
OFA Board of Directors