



Canadian  
Council of  
Grocery  
Distributors

Conseil  
canadien des  
distributeurs en  
alimentation

**CCGD'S RESPONSE TO**

**THE COMPETITION BUREAU'S**

**DRAFT ENFORCEMENT GUIDELINES ON**  
**THE ABUSE OF DOMINANCE PROVISIONS**  
**(SECTIONS 78 AND 79 OF THE COMPETITION ACT**

**AS APPLIED TO THE RETAIL GROCERY**  
**INDUSTRY**

March 6,200

## A. INTRODUCTION

The Canadian Council of Grocery Distributors ("CCGD") is pleased to provide its comments on Competition Bureau's "Draft Enforcement Guidelines on The Abuse of Dominance Provisions (Sections 78 and 79 of the Competition Act) as Applied to the Retail Grocery Industry" (the "Draft Guidelines").

CCGD represents grocery distributors and retailers across Canada. Members are located from Victoria, British Columbia to Gander, Newfoundland, and operate in every Canadian province. (Members include national, regional, and smaller (niche-oriented) retailers.

CCGD's comments have been organized in the following manner:

- Comments on whether there is a need for industry specific guidelines of this nature.
- Review of the current structure of the retail segment of the grocery industry and competitive environment within which this sector of the industry operates.
- Specific comments on the Draft Guidelines.
- Summary of CCGD's recommendations.

Further details on the information contained in this brief can be obtained by contacting David Wilk Senior Vice President, at CCGD's Toronto office either by telephone at 416-922-6228 ext. 324 or email at [dwilkes@ccgd.ca](mailto:dwilkes@ccgd.ca).

## B. NO NEED FOR INDUSTRY SPECIFIC GUIDELINES

CCGD has been an active participant in the recent discussions regarding possible amendments to the *Competition Act* (the "Act") incorporating industry specific amendments to the Act's abuse of dominance provisions. In this regard, CCGD has appeared before the House of Commons Industry Committee on two occasions to provide comments on Bills C-235 and C-402. It also has participated in the Public Policy Forum's consultative process and engaged in various discussions with the Competition Bureau (the "Bureau").

CCGD's position, which it believes accords with that of the Bureau, has consistently been that the Act is framework legislation and thus should not include industry-specific provisions absent exceptional circumstances (such as may be the case with respect to airlines). In particular, CCGD has advocated and still maintains the view that the Act's abuse of dominance sections, as elaborated by the Bureau's Abuse of Dominance Guidelines (the "Abuse Guidelines") are sufficiently broad such that there is no need for additional provisions designed to target allegedly abusive practices relating to specific industries.

CCGD also has been guided in its approach by the Bureau's interpretation of the purpose of the Abuse of Dominance provisions. As outlined in the Bureau's Abuse Guidelines, these provisions are intended to preserve the competitive process within markets, not to "provide an umbrella of protection for individual competitors" or to "promote... the interest of any one competitor or group of competitors". CCGD has supported and continues to support this stated objective.

Accordingly, CCGD disputes the need for interpretative guidelines targeted specifically at the grocery industry. No other industry, with the exception of the airline industry, has been singled out as the subject of a specific set of abuse of dominance provisions or guidelines. The Bureau has explained the need for provisions targeted at the airline industry by making reference to the uniqueness of the airline industry due to the dominance of that industry by a single entity', the fact that the airline industry has highly mobile assets and low variable costs, and a great potential for predation.\* In a letter to the Minister of Transportation, the Commissioner of Competition cited a United States Department of Transportation report which stated: "Compared to firms in other industries, a major carrier can price-discriminate to a much greater extent, adjust prices much faster, and shift resources between markets much more readily [than in other industries]."<sup>3</sup>

The retail sector of the Canadian grocery industry does not demonstrate any of these exceptional characteristics. Rather, as set out in the next section of this brief, this sector is highly competitive, offering consumers a wide array of product choices and formats within which to purchase their grocery needs. This view is confirmed in the paper by Professor Wen commissioned by the Bureau where the statement is made that "the national trends in Canada do not provide evidence that relative food prices are rising or that supermarket profits have increased relative to food manufacturer profits". Professor Wen goes on to note "that recent structural changes may have increased local levels of competition". CCGD concurs with Professor Wen's conclusions, although, as discussed below, it draws these conclusions despite a far too narrow interpretation of the scope of competition within the retail sector of the grocery industry.

It is also noteworthy that, to the best of CCGD's knowledge, and as indicated in Professor Ferris's paper, competition authorities in other jurisdictions, including the United States, United Kingdom, Australia and New Zealand, continue to rely on general interpretations and precedents to assess competition issues within the grocery industry. In fact, the United Kingdom Competition Commission and the Australian Competition and Consumer Commission have each considered this issue in their reports on the grocery industry.<sup>4</sup> Ultimately, neither report recommended establishing a set of specific guidelines for the grocery industry.

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<sup>1</sup> See *Opening remarks by Konrad von Finckenstein, Q.C. Commissioner of Competition to the Standing Committee on Transport Canada's Airline Restructuring Legislation* Delivered in Ottawa on April 12, 2000.

<sup>2</sup> Letter dated August 30, 1999 from K.V. Finckenstein Q.C. to the Honourable David Collenette, Minister of Transportation. ["von Finckenstein letter"]

<sup>3</sup> *Statement of the Department of Transportation's Enforcement Policy Regarding Unfair Exclusionary Conduct in the Air Transportation Industry*, Department of Transportation, Office of the Secretary, April 1998, Docket No. OST-98-3713, Notice 98-16, p. 7. Cited in von Finckenstein letter.

<sup>4</sup> See *Supermarkets: A report on the supply of groceries from multiple stores in the United Kingdom*. United Kingdom Competition Commission, October, 2000; and "Senate Order to the Australian Competition and Consumer Commission On Prices Paid to Suppliers by Retailers and Wholesalers in the Australian Grocery Industry *Discussion Paper*, Australian Competition and Consumer Commission, August 2001.

Moreover, CCGD also believes that the issuance of guidelines specific to the grocery industry, their very nature, cannot but create the misconception that the grocery industry merits particular scrutiny and attention because of uniquely anti-competitive features. In CCGD's view, this is inconsistent with and could be misleading given the actual state of competition in this industry.

CCGD, of course, welcomes any guidance that the Bureau may give from time to time in respect of approach to competition in the grocery industry. However, CCGD believes that the Bureau has many other less formal and perhaps more effective avenues pursuant to which it may convey such guidance and achieve the goal of greater transparency. These avenues include speeches, information bulletins, backgrounders and statements, all of which have been used in the past to great effect for other industries. CCGD would thus encourage the Bureau to utilize these traditional approaches rather than the less flexible tool of formal guidelines.

### **C. AN OVERVIEW OF THE CANADIAN RETAIL GROCERY INDUSTRY**

Canadian consumers are being served by a highly competitive retail sector in the grocery industry providing a wide variety of product choices and retail formats to purchase groceries.

A recent report completed in the Spring of 2001 illustrates the competitiveness of the sector. The study, conducted by ACNielsen, compared the cost of a similar basket of groceries purchased in Canada and the United States between December 1999 and December 2000. Adjusting for exchange rate differences, Canadians paid \$97.24 (Cdn) for a standard basket of groceries versus a range of \$119.27 (Cdn) in Albany to \$151.15 (Cdn) in San Francisco in the United States.

This study also showed that there had been 0% inflation in this basket of goods between 1999 and 2000 in Canada while inflation rates in the corresponding United States basket of goods ranged as high as 3%.<sup>5</sup>

#### **1. A Changing Industry – Increasing Competition**

Over the past several years, Canadian consumers have benefited from a significant broadening in the types of retailers that are offering grocery products. Consumers regularly purchase grocery products not only from traditional grocery stores, but also from drug stores, mass merchandisers, warehouse clubs, general merchandisers, convenience stores, specialty stores, delicatessens, e-retailers, gift stores and dollar stores. In aggregate these competitive channels account for over 25% of total grocery purchases. Grocery stores are similarly offering products, which traditionally were offered through other channels. For example, many grocery stores now make available "ready to eat" meals prepared for at-home consumption. This extension of the type of food offered by grocery stores has resulted in new competition from fast and prepared food establishments. Consequently, these channels are now direct competitors to supermarkets and grocery stores. All of this has had the effect of grocery stores losing market share in many food categories to these many and varied new competitors.

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<sup>5</sup> Based on the latest CPI information, inflation in food items increased in 2001 due to increases in current sensitive commodities such as fresh fruit and vegetables.

<b>SHARE OR NATIONAL GROCERY PURCHASES 2001 AND 2000</b>		
<b>Retail Channel</b>	<b>2001</b>	<b>2000</b>
	<b>Period Ended Sept 15</b>	<b>Period Ended Sept 16</b>
	<b>% of Total Purchases</b>	
<b>Grocery</b>	74.3	74.9
<b>Drug Stores</b>	6.5	6.3
<b>Warehouse Clubs</b>	6.3	6.2
<b>Mass Merchandisers</b>	6.3	6.1
<b>General Merchandisers</b>	1.7	1.7
<b>Dollar Stores</b>	1.9	1.8

- Drug stores include Shoppers Drug Mart, Pharmaplus.
- Warehouse Clubs include Costco.
- Mass Merchandisers include Wal-Mart and Zellers.
- General Merchandisers include Canadian Tire
- Dollar Stores include numerous independent retailers and Buck or Two.
- Information for other channels not available

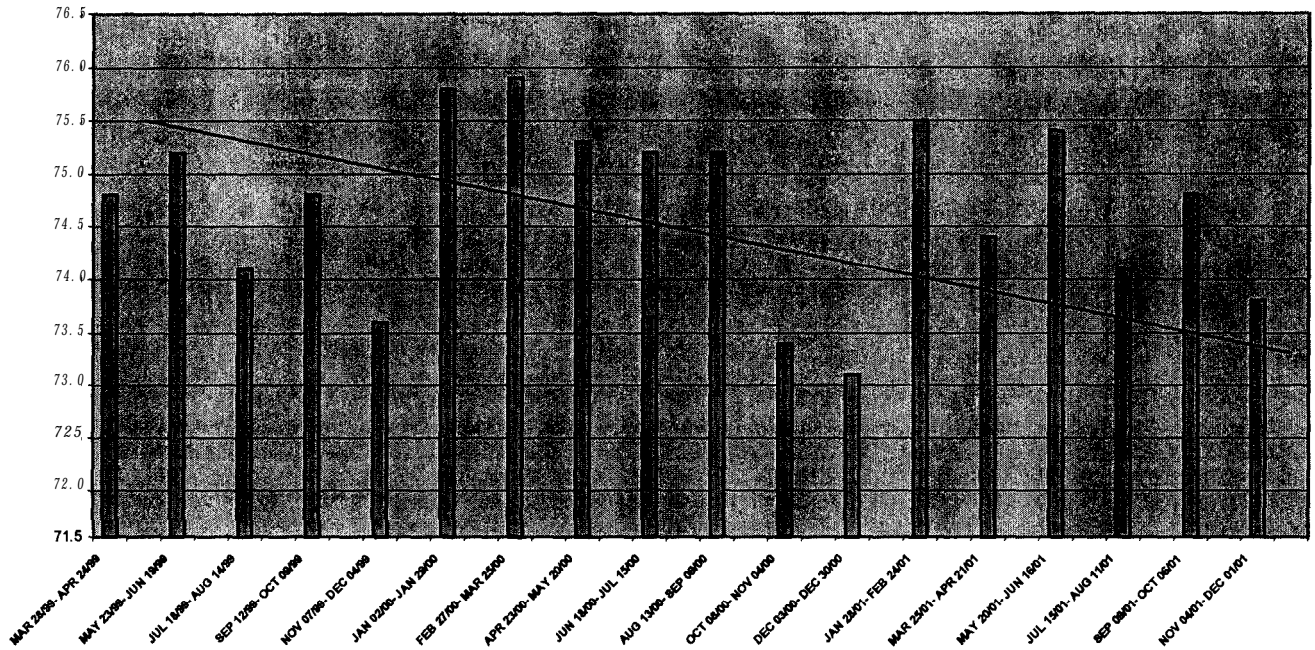
Source: ACNielsen Homescan Grocery Watch

The competitive nature of the grocery industry is further illustrated by looking at the share of grocery purchases accounted for by grocery retailer on a monthly basis.

Two key conclusions from the attached chart are that there are dramatic and regular fluctuations in the share of grocery products purchased at traditional grocery stores and an overall decline in share confirming the trends seen in the previous chart.

**MARKET SHARE FLUCTUATIONS**

**Grocery Channel Share of Total Grocery Category Purchases**



Source: ACNielsen Homescan

**2. A Changing Industry – Consumer Patterns**

Canadians have taken advantage of the increasing competition for grocery purchases. The following table demonstrates that Canadians regularly purchase groceries in every channel offering these types of products.

CONSUMER SHOPPING OCCASIONS BY CHANNEL FOR GROCERY PRODUCTS	
CHANNEL	SHARE OF SHOPPING OCCASIONS
Grocery	60.3
Drug	11.1
Mass Merchandise	9.0
Warehouse	3.0
General Merchandise	4.6

Source: ACNielsen Homescan

These competitors offer a wide variety of grocery products to attract consumers to their stores. As indicated, consumers regularly purchase grocery items at drug stores and warehouse clubs. The following charts consider certain core grocery items, which are stocked by traditional grocers, and demonstrate how competitive channels are penetrating this market.

Drug		Mass		Warehouse	
Product	Development <sup>6</sup> Index	Product	Development <sup>6</sup> Index	Product	Development Index
Bathroom Tissue	218	R & G Coffee	216	Salad Dressing/ Mayo	130
Diapers	295	Fabric Softeners	411	Rice	124
Batteries	704	Paper towels	232	Spec. Cheese	158
Facial Tissue	405	Cat Food	278	Snack/ Granola Bars	135
Shampoos	1074	Diapers	493	Fruit Drinks	139
Razor Blades	1223	Nuts	404	Refrigerated Pizza	153
Boxed Chocolates	1099	Dishwasher Detergent	249	Laundry Detergent	265

Source: ACNielsen

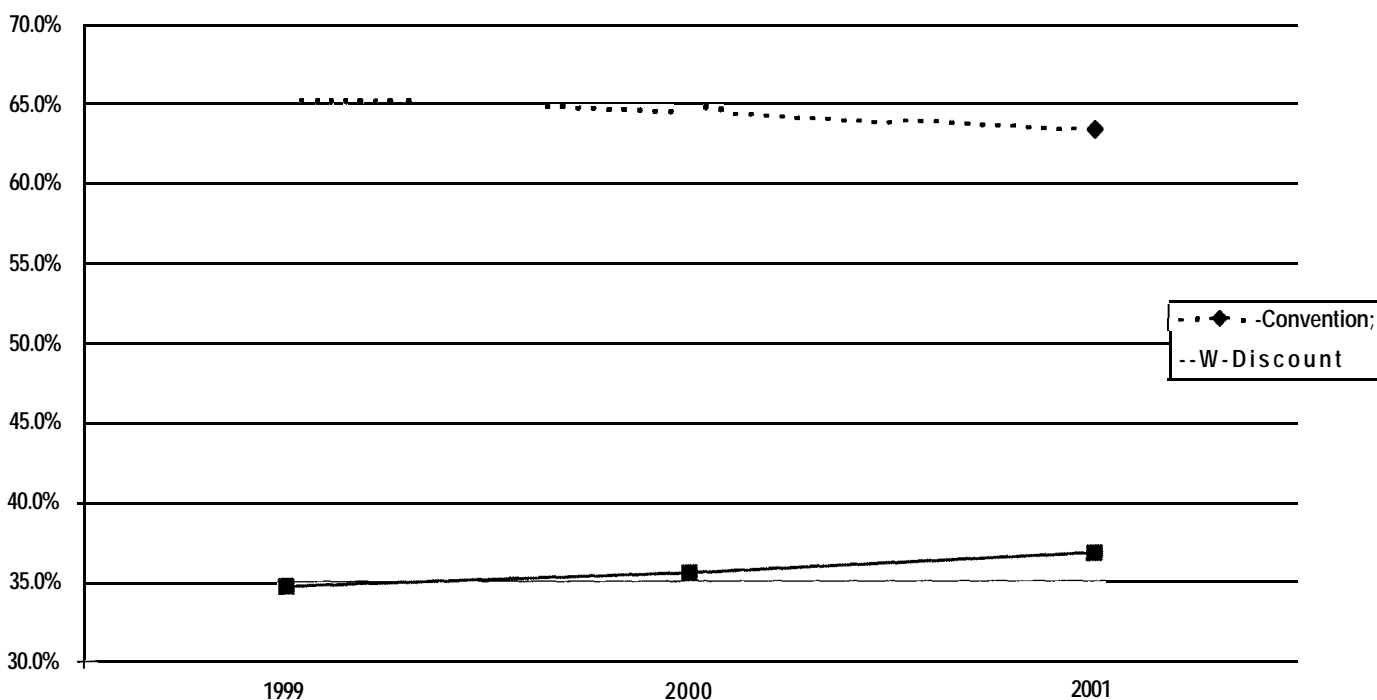
### 3. A Changing Industry – Broadening Grocery Formats

Within traditional grocery segments there is an increasing diversification of retail formats. In Canadian regions, consumers are provided a variety of banner choices that can be broadly categorized as traditional grocers and discount banners. Discount and conventional grocery banners employ significantly different marketing strategies to respond to increased competition within the marketplace.

The primary marketing tool of discount banners is to offer consumers the lowest price for their grocery items, whereas conventional grocers will offer a more diversified merchandising approach and combine various factors to enhance the overall shopping experience.

<sup>6</sup> The Development Index measures the market share of a particular product and compares that against the overall market share represented by that category. (For example, a development index of 200 indicates that the referenced channel has gained approximately double the market share for that product versus the channel's overall share).

### SHARE OF GROCERY PURCHASES BY CHANNEL



As illustrated above, discount banners have increased their share of the grocery market from 34.7 in 1999 to 36.7% in 2001. This increase has both further intensified price competition within the marketplace, and ensured that continued value is provided to Canadian consumers.

In addition to these distribution channels, on-line grocery retailers such as Grocery Gateway, specialty meat, bakery and other retailers are offering consumers unique purchasing opportunities and have a significant impact on the market as a whole.

#### 4. Summary – A Highly Competitive, Diversified Industry

The retail grocery industry is highly competitive involving an increasing variety of competitive forces. Canadian consumers are offered unparalleled value and choice to fulfill their grocery needs. There are at least six different and competing channels and a variety of competing formats. Consumers have responded by routinely evaluating and rewarding retailers who have most closely satisfied their needs.

#### D. COMMENTS ON DRAFT GUIDELINES

Although CCGD does not believe that the Draft Guidelines are necessary or desirable, in the spirit of an informed discussion, it is providing the following comments in the event that the Bureau should decide to proceed with these Draft Guidelines.



## **1. General**

In response to lively competition, grocery retailers make use of a wide variety of merchandising and marketing techniques. These techniques result in tremendous value to consumers. As a general matter, the Draft Guidelines do not adequately reflect the complexity, diversity and variety of the legitimate competitive responses. If the Draft Guidelines are to be issued, revisions must be made to accurately reflect these competitive processes.

## **2. Scope**

The Draft Guidelines purport to specifically target the retail grocery sector of the grocery and food industry, as reflected by the title "The Abuse of Dominance Provisions as Applied to the Retail Grocery Industry". Yet the Draft Guidelines contain extensive discussion concerning manufacture and other sectors of the grocery and food industry. Indeed, in many parts of the Draft Guidelines, it appears that the Bureau has greater concerns with the activities of sectors other than the retail grocery sector. Given the significant changes in the composition of the firms involved in complying with the retail grocery sector, consideration must be given to all firms involved in food retailing and not only grocery retailers or supermarkets.

Accordingly, CCGD recommends that, if the Draft Guidelines are to be issued, the title be amended and simply entitled "The Abuse of Dominance Provisions as Applied to the Canadian Grocery and Food Retailing Industry." The text of the Draft Guidelines should then be clarified so that it is clear when the Bureau intends to refer to the "grocery and food retailing industry" as a whole or to various sectors therein, including food retailing.

## **3. Section 5.1 .1. - Defining Relevant Markets**

In defining relevant markets, insofar as retailers are concerned, the Draft Guidelines do not account for the other non-traditional channels that now actively compete to service consumers' grocery needs.

Within the retail grocery sector, the relevant "class of business" must include all retailers of grocery and food products (both packaged and ready to eat) including each of the following: traditional grocers, gas stations, drug stores, delicatessens, mass merchandisers, warehouse clubs, general merchandisers, convenience stores, specialty stores, e-tailers, dollar stores and fast food outlets. Otherwise the Draft Guidelines will not accurately reflect the true nature of competition.

These various competitive channels must also be considered as part of any inquiry into the ability of a firm or firms to exercise market power.

## **4. Section 5.1.2 - The Retail and Wholesale Grocery Markets**

The Draft Guidelines indicate the Bureau's estimates (based on a 1987 investigation) of shopping patterns in terms of the purchase of a basket of individual products that normally constitute the core bundle of weekly household food requirements. The Draft Guidelines go on to recommend that markets sometimes must be defined by using store format measures such as the size of the store and number of SKUs available in the store.

CCGD does not support this approach to market definition, as it does not accurately reflect competition.

Specific changes that CCGD recommends are:

- The 1987 product definition model does not reflect current market structure. Rather, the Bureau should use a definition that reflects actual competitive activity within the marketplace. ACNielsen indicates that there are 500 grocery products that are regularly purchased by consumers. The danger of restricting product definitions to a few products is that it does not take into account legitimate loss leader activity.
- Similarly, limiting a core bundle of products to food items does not reflect consumers' shopping patterns, as many core consumer items such as paper products and cleaning products would not be included.
- Excluding stores of less than 7,000 square feet and which stock below 5,000 SKU's would exclude significant competitors. Indeed, the Bureau itself recognizes the need to include other retailers defining relevant markets at the end of this section of the Draft Guidelines, where it states that "the competitive impact that non-traditional grocery stores have on the market also needs to be considered."

#### 5. Section 5.1.3. - Geographic Market

The Draft Guidelines state that, in most urban areas, a consumer travel time of 5-10 minutes by car serves as a reasonable proxy for determining the parameters of a geographic market. The Draft Guidelines indicate that when considering the trading area targeted by individual stores, the Bureau will look at advertising efforts, home deliveries, shopper surveys and other available data indicating where local supermarkets attract business.

Again, CCGD believes that this approach (i.e., the scope and the factors used to define the geographic market) is too narrow. As indicated above, consumers shop at a variety of stores to fulfill their regular grocery needs and travel varying distances to reach these stores. For example, many consumers now are willing to travel periodically significant distances to a regional "power centre" to purchase large quantities or bulk items of goods which, prior to the increase in the types of retailers offering grocery products, would have been purchased at their local grocery store.

CCGD recommends that the Draft Guidelines' approach to geographic market definition be amended to reflect this diversity of choice. In particular:

- A standard definition based on travel time is not appropriate. Rather, trading areas of specific stores must be assessed on a case-by-case basis.
- The trading area definition must be broadened to include:
  - all relevant competition, not just traditional grocery stores;
  - hours and days of operation;
  - location specific factors, such as type of center (e.g., community centre versus regional power centre) and draw of a location's co-anchors;
  - physical and traffic pattern barriers;
  - ease and availability of parking; and
  - urban versus rural markets.

## 6. Section 51.5 - Market Share

In discussing the Bureau's approach to market shares, the Draft Guidelines indicate that a market share of 35% or more will generally prompt further examination; in the case of a group of firms alleged to be jointly dominating a combined market; a market share of 60% or more will generally prompt further examination.

CCGD questions the use of these 35% threshold in this context, as it is doubtful that either level market share is sufficient to establish "dominance".

Regardless of the threshold used, however, it is important that market shares be measured according to the availability of grocery products within the entire competitive universe and not merely among traditional grocery retailers. Therefore, all channels offering grocery products must be included in calculation of total market share.

It is also important to note that certain small communities throughout Canada cannot support multiple grocery retailers. In these cases, a single store may directly service a small community, but depending on specific conditions, consumers will travel to other communities to purchase groceries,

In addition, reference should be made in the Draft Guidelines to the fact that many firms that provide food and grocery retailing services are also engaged in the wholesale distribution of food. Retail distribution is carried on through corporate owned retail outlets whereas wholesale distribution involves the supply of inventory to independent franchised stores or independent accounts. These independent accounts should not be included in the market share of the firm's retailing activities given that the independent accounts operate as separately owned and operated business.

## 7. Section 51.6 - Barriers to Entry

In discussing barriers to entry, the Draft Guidelines indicate that "entry is likely to be prevented by the presence of absolute cost differences between the incumbent and the entrant, or by the entrant's need to make investments that are not likely to be recovered if entry is unsuccessful".

This definition unnecessarily restricts the interpretation of market entry to the establishment of new stores. It does not recognize that "entry" may occur through the repositioning or broadening of existing product offerings to include new or non-traditional offerings. This is exactly the type of activity that has been occurring in the grocery industry as various retail channels have entered the market simply redefining their product assortment to include fast-moving grocery items. As previously illustrated, drugstores, mass merchandisers and warehouse clubs offer a wide variety of grocery products. These entities do not necessarily incur the type of investments contemplated in this section of the Draft Guidelines.

Based on this more accurate portrayal, there are significantly fewer barriers to entry than would appear to be the case from the Draft Guidelines' approach. Thus, the Draft Guidelines should be amended to reflect this type of behaviour.

## 8. Section 52.1 (a) - Exclusive Rights

In commenting on exclusivity arrangements, the Draft Guidelines indicate that grocery retailers may ask for exclusive rights for selling a certain manufacturer's good within their trading area. In examining these types of arrangements, the Draft Guidelines also indicate that the Bureau would assess the availability of substitute products, the scope of the territory involved, the duration of the arrangement and any other relevant factors.

The Bureau indicates that it would be particularly concerned about contracts that include clauses which specify:

- the tie-up of a specific percentage share of shelf space devoted to a specific product category;
- limiting competitors to a specific number of SKUs;
- excluding specific competitor's SKUs;
- requiring some form of pricing parity with competitors;
- specifying when and how competitors may advertise; or
- obtaining information on the terms of competitors' contract offers.

These activities relate to supplier activity and further illustrate the need to apply the Draft Guidelines to the entire grocery industry, not just to the grocery retail sector.

It is also important to note that grocery retailers will often develop exclusive arrangements with commodity and other products such as sugar, spices and flour, where competition is based on the product itself and not on the brand. These types of relationships seek to ensure efficiency while minimizing costs, and are legitimate merchandising techniques to ensure consumers are offered the products they seek.

Similarly, grocery retailers and franchisees are encouraged to seek out exclusive arrangements with local and unique suppliers to differentiate their product offering within the trading area. Being recognized as the retailer which offers the best and most variety of local produce is a legitimate competitive response.

## **9. Section 5.2.1(b) - Slotting Allowances and Other Listing Fees**

In previous briefs, CCGD has outlined the cost recovery nature of listing fees and detailed the expenses associated with listing new products, the high failure rate of new product introductions and the corresponding opportunity costs of the retailer.

To summarize, slotting allowances and other fees that are designed to recover costs associated with new product introductions include:

- review by category manager;
- delisting of the item, which has been removed from the shelves (or, in some cases, price discounting);
- the creation and publishing of a new Planogram;
- listing of items in internal merchandising, computer and financial systems for both warehouse and retail operations;
- chain-wide distribution of start-up quantities of the new products;
- initial product promotion, such as featuring the item in a weekly flyer;
- shelf tag creation; and
- realignment of store shelves.

Another consideration is the opportunity cost if a product is not successful. Based on the ACNielsen definition of a successful new product, failure rates can range up to 70%. This ultimately affects retailers through lost selling opportunities from shelf space that is occupied by unsuccessful products.

CCGD supports the Bureau's conclusion that these fees are utilized by retailers for cost recovery purposes and are not in contravention of the abuse of dominance provisions of the Act. The reference to "soliciting rents" in the Draft Guidelines is not accurate, however. As the Bureau itself acknowledges, these allowances relate to cost recovery activities. The reference to "rents" should accordingly be eliminated from the description within this section.

#### **10. 5.2.2. • Predatory Conduct**

CCGD supports the following conclusions in this section of the Draft Guidelines:

- that loss-leading activity of the type described is a legitimate competitive response and does not contravene section 79 of the Act.
- that the impact on differing cost structures must be taken into account when assessing the ability of different retailers to take advantage of scale.

However, CCGD questions the rationale for the 6 month timeframe within which the Bureau suggests that new entrants may offer lower prices to establish themselves in a particular market(s). As a general matter, CCGD believes that low prices offered by new entrants are pro-competitive rather than anti-competitive. Accordingly, CCGD also questions the statement that new entrants will be obliged to demonstrate that discounts will be offset by higher prices in the future. In the view of CCGD, this appears to be inconsistent with the stated intent of the Act, which is to promote competition and thus lower prices to consumers.

#### **11. 5.2.3 • Interdependence or Tacit Collusion Among Firms: Facilitating Practices**

The Draft Guidelines quite rightly point out that there has been no evidence of interdependence or tacit collusion among firms in the grocery industry. Consequently, CCGD questions the need for the inclusion of this section.

### **E. SUMMARY OF CCGD RECOMMENDATIONS**

CCGD disputes the overall need for guidelines that are specifically targeted at the grocery industry, given that (i) the Act is framework legislation and (ii) at the very least, the retail sector of the industry is highly competitive. There is no demonstrated regulatory, interpretative or economic need for these Draft Guidelines.

That said, should the Bureau decide to proceed with the Draft Guidelines, CCGD has recommended that the following changes be made:

SECTION	RECOMMENDATION
<b>Title</b>	<ul style="list-style-type: none"> <li>Guidelines should be re-titled as “The Abuse of Dominance Provisions as Applied to the Canadian Grocery and Food Retailing Industry”. All change necessary to clarify terminology used in the text should also be made.</li> </ul>
<b>Section 5.1 .1. Defining Relevant Markets</b>	<ul style="list-style-type: none"> <li>Relevant market definition must include all retailers of food prepared for a home consumption traditional grocery stores, drug stores, mass merchandisers, warehouse clubs, general merchandisers, gas store! specialty stores, delicatessens, convenience stores, e-tailers and dollar stores.</li> </ul>
<b>Section 5.1.2 The Retail and Wholesale Grocery Markets</b>	<ul style="list-style-type: none"> <li>Product basket be defined as Top 500 items purchased.</li> <li>All grocery items, not just food items, must be included in basket.</li> <li>Stores representing all competing channels must be included in a competitive analysis including those firms selling food for at-home consumption (i.e. take out). SKU definitions and square footage reference are irrelevant and misleading should be eliminated.</li> </ul>
<b>Section 5.1.3. Geographic Market</b>	<ul style="list-style-type: none"> <li>A standard trading area definition should not be included; rather, trading areas should be assessed on a case-by-case basis.</li> <li>In determining trading areas, factors to be examined must be broadened to include: <ul style="list-style-type: none"> <li>all relevant competition, not just grocery stores;</li> <li>hours and days of operation;</li> <li>location - specific factors type such as type of centre (e.g., community centre versus regional power centre) and draw of location co-anchors;</li> <li>physical and traffic-pattern barriers;</li> <li>ease and availability of parking; and</li> <li>urban vs. rural location.</li> </ul> </li> </ul>
<b>Section 5.1.5 Market Share</b>	<ul style="list-style-type: none"> <li>Market share determinations must take into account all competing channels.</li> <li>Distinction between retailing and wholesale distribution in calculating market shares.</li> </ul>
<b>Section 5.1.6 Barriers to Entry</b>	<ul style="list-style-type: none"> <li>Interpretation of barriers to entry must be broadened to reflect the use of competing retailers, broadening product mix to offer grocery items within existing stores.</li> </ul>
<b>Section 5.2.1 (a) Exclusive Rights</b>	<ul style="list-style-type: none"> <li>Legitimate arrangements between suppliers and retailers must be recognized.</li> </ul>

<b>SECTION</b>	<b>RECOMMENDATION</b>
<b>Section 52.1 (b) Slotting Fees and other Listing Fees</b>	<ul style="list-style-type: none"><li>• Support conclusion in Draft Guidelines that listing fees do not contravene Abuse of Dominance provisions.</li><li>• Reference to “renting” space is not accurate and should be eliminated.</li></ul>
<b>Section 52.2 Predatory Conduct</b>	<ul style="list-style-type: none"><li>• Recognition of appropriate loss leader activity is supported.</li><li>• Clarification required on 6 month timeframes and need to quantify future price increases.</li></ul>
<b>Section 5.2.3. Interdependence of Tacit Collusions Among Firms: Facilitating Practices</b>	<ul style="list-style-type: none"><li>• No need for this section. It should accordingly be eliminated.</li></ul>