



Kraft Canada Inc.
Legal and Corporate Affairs

JOHN KELLY MACGREGOR
TELEPHONE (416) 441-5406
TELEFAX (416) 441-6328
E-MAIL kmacgregor@kraft.com

VIA COURIER and TELEFAX (819) 953-8546

March 12.2002

Francine Beaudry
Competition Bureau
Place du Pottage 1
15th Floor, 50 Victoria Street
Hull, Quebec
K1A 0C9

Dear Ms Beaudry

Re. Draft Enforcement Guidelines: The Abuse of Dominance Provisions as Applied to the Retail Grocery Industry (Sections 78 and 79 of the *Competition Act*) Our File No. 2307-1443

On behalf of Kraft Canada Inc., I am pleased to provide comments on the *Draft Enforcement Guidelines: The Abuse of Dominance Provisions as Applied to the Retail Grocery Industry (Sections 78 and 79 of the Competition Act)* (the "Draft Guidelines"). Kraft Canada appreciates the opportunity to participate in this process and strongly endorses the consultative approach that has been taken by the Competition Bureau to this and other recent initiatives.

By way of background Kraft Canada is one of the major Canadian packaged food and beverage companies, with over 7,000 employees in Canada, and some of the most familiar brand names in the world including *Kraft Dinner* macaroni and cheese, *Ritz* crackers, *Maxwell House* coffee, *Oreo* cookies and *Jell-O* jelly powder. In addition, we have offices, distribution centres, warehouses and production facilities in every region of the country.

Kraft Canada does not support the issuance of the Draft Guidelines.

Our position is based on the following points.

1. The ***Draft Guidelines*** do not effectively expand on the principles contained in the recently released ***Enforcement Guidelines of the Abuse of Dominance Provisions*** nor on section 79 of the Act.

As you are aware, in 1999, Bill C-402 proposed the addition of certain anti-competitive acts to the existing list in section 78 of the *Competition Act*. Of the five proposed additions, three had particular relevance to the retail grocery industry; namely (a) listing fees where the fee is unrelated to the actual costs incurred by the retailer, (b) squeezing by a vertically integrated retailer of the margin available to an integrated person competing with the retailer and (c) the unilateral withholding of amounts owing to a supplier.

Following the tabling of this and other Private Members' Bills in the House of Commons, the Public Policy Forum was retained to conduct an inquiry into the Bills and to recommend whether they should be adopted by the government or not. Following the recommendations of the Forum, the essential elements of a number of the Private Members' Bills were eventually incorporated into a government Bill.

However, the government Bill does not make any reference to the retail grocery industry and to the best of our knowledge, no further steps were or have been taken in connection with the proposed additions.

Concurrently though, the Competition Bureau released the *Enforcement Guidelines on Abuse of Dominance Provisions* (the "Issued Guidelines") and Kraft Canada believes that the Issued Guidelines clearly speak to the basic principles of abuse of dominance. In fact, it is noted in section 3 of the Draft Guidelines that nothing in them deviates from the Issued Guidelines.

Together with the provisions of section 79, the Issued Guidelines are and continue to be fully applicable to the retail grocery industry and no further industry specific interpretation appears to be necessary.

2. Publishing guidelines for specific industries should be limited to those industries where the Bureau has concluded that there is a greater need for concern about abuse of dominance in those industries than can be addressed through the Issued Guidelines or by application of section 79 alone. There is no evidence of such concern in respect of the retail grocery industry.

In the case of the *Draft Guidelines*, it is generally understood that they were intended to address the lack of consensus that arose during the Public Policy Forum review of the Private Members' Bills and not because the Bureau has come to any specific conclusion about the retail grocery industry

As mentioned above, Kraft Canada believes that industry specific guidelines should only be issued where the Bureau believes that such guidelines reasonably and necessarily expand on the principles of general application contained in the Issued Guidelines and section 79.

3. Conclusion


Kraft Canada strongly supports the issuance of interpretive and enforcement guidelines by government, including the Competition Bureau, as they are an effective tool by which Canadians can measure behaviours and practices against potentially subjective enforcement of legislation and regulations. They also help to ensure a level playing field in an industry and provide some assurance that similar activities will be treated consistently by regulators.

However, Kraft Canada does not support guidelines where they do not expand on the current understanding of how the regulators view certain behaviours and how they will enforce governing legislation. Further, we do not support industry specific guidelines unless the Bureau has come to the conclusion that the industry, or any particular participant in the industry, requires additional direction to measure its behaviour or additional interpretation of governing legislation. With respect to the retail grocery industry, we do not believe this to be case.

For these reasons, Kraft Canada does not support the issuance of the *Draft Guidelines*.

Thank you again for the opportunity to comment on the *Draft Guidelines*. If you have any questions on the foregoing, or if you wish us to elaborate on these comments, please feel free to contact the writer at your convenience.

Yours very truly,



John Kelly MacGregor,
Senior Counsel

JKM/