

**SUPERIOR COURT OF JUSTICE
(Toronto Region)**

BETWEEN:

HIS MAJESTY THE KING

-and-

CANADA BREAD COMPANY, LIMITED

STATEMENT OF AGREED FACTS

I. Overview

1. The Competition Bureau ("**Bureau**") has been conducting an investigation relating to the pricing of fresh commercial bread in Canada since January 2016. In December 2017, Weston Foods (Canada) Inc. ("**Weston**") and Loblaw Companies Limited ("**Loblaw**"), both subsidiaries of George Weston Limited ("**GWL**") during the period described in this Statement of Agreed Facts, announced their participation in what they described as an industry-wide price-fixing arrangement involving the coordination of retail and wholesale prices of certain packaged bread products over a period that they stated extended from late 2001 to March 2015. GWL, Weston and Loblaw were granted immunity from prosecution in exchange for their cooperation with the Bureau's investigation. Loblaw was at all material times a customer of Canada Bread Company, Limited ("**Canada Bread**"), and Weston.
2. As part of its investigation, the Bureau executed search warrants against Weston, Loblaw, Metro Inc. ("**Metro**"), Sobeys Inc. ("**Sobeys**"), Wal-Mart Canada Corporation, Giant Tiger Stores Limited, Overwaitea Food Group Limited and Canada Bread between October 31, 2017 and November 16, 2017, and later against Sobeys, Metro, and Canada Bread in May 2018, Canada Bread and Sobeys in September 2018 and Maple Leaf Foods Inc. ("**Maple Leaf**") in May 2019.

3. During the period described in this Statement of Agreed Facts, Canada Bread was controlled by Maple Leaf. The Chief Executive Officer of Canada Bread was also a senior officer of Maple Leaf (the **"Former Senior Officer"**).
4. **"Fresh Commercial Bread"** (also referred to as packaged bread) consists of sliced bagged bread and rolls. It is a fresh product with a short shelf life which is baked and shipped daily, and is packaged as branded or as private label. Fresh Commercial Bread does not include bread that is sold frozen to grocery stores to be further baked onsite (e.g., French bread baked and sold in the bakery section of a grocery store in an unbranded white paper or clear plastic bag).
5. **"Grocery Retailers"** consist of certain retailers who sell groceries, not including alternative channel retailers such as dollar stores, gas stations, convenience stores and cash and carries.
6. Canada Bread is pleading guilty to entering into arrangements with Weston, contrary to s. 45 of the *Competition Act* (as applicable at the relevant time), to increase wholesale Fresh Commercial Bread prices to Grocery Retailers on four occasions, resulting in two price increases, one implemented in October 2007 and the other implemented in March 2011.
7. Canada Bread's liability is resolved with the entering into of this plea; however, the Bureau's investigation continues with respect to other market participants.

Canada Bread

8. Canada Bread was established in June 1911 and has baked bread for Canadians for over one hundred years. Canada Bread operates across Canada through a national distribution network, with bakeries located in Western Canada, Ontario, Quebec and Atlantic Canada.
9. At the time of the offences set out below, Maple Leaf and Canada Bread were public companies the shares of which traded on the Toronto Stock Exchange. During that period, Maple Leaf controlled Canada Bread through its ownership of between 88% and 90% of Canada Bread's common shares (the remaining shares were held by other shareholders). Of Canada Bread's seven to nine directors, during the relevant period, a majority were senior officers of Maple Leaf. At the operating level, most of the senior officers of Canada Bread also held positions as

senior officers of Maple Leaf. In particular, the Former Senior Officer, who participated directly in the arrangements, served concurrently as a senior officer of Maple Leaf.

10. In October 2013, Maple Leaf announced it was considering the sale of its shares of Canada Bread. A process was established by Maple Leaf to attract potential purchasers of the Canada Bread shares. Maple Leaf structured the sale process of Canada Bread as a competitive bidding process.
11. Grupo Bimbo S.A.B. de C.V. ("**Grupo Bimbo**") is a multinational food company with a presence in over 34 countries located in the Americas, Europe, Asia, and Africa, and participated as a bidder in the above sale process.
12. As part of the sale process, Maple Leaf provided Grupo Bimbo with a management presentation and access to senior leaders of Maple Leaf and Canada Bread for questions. The Former Senior Officer participated in giving the management presentation. Grupo Bimbo was not told that Canada Bread had participated with Weston in the making of arrangements to increase the wholesale price of Fresh Commercial Bread, and the due diligence otherwise completed by Grupo Bimbo did not reveal that Canada Bread and Weston participated in such arrangements. All of the shares of Canada Bread were sold to Grupo Bimbo on May 23, 2014 by way of a Plan of Arrangement for a purchase price of \$1.83 billion, of which \$1.65 billion was paid to Maple Leaf for its 22,875,215 shares.
13. Grupo Bimbo only learned about the price-fixing arrangements described below after the Bureau executed a search warrant against Canada Bread on October 31, 2017. Commencing immediately upon learning of the Bureau's investigation, under Grupo Bimbo's ownership, Canada Bread provided full, frank, timely and truthful cooperation to the Bureau.

II. The Offences

14. The Bureau's investigation determined that in relation to two price increases (one in October 2007 and one in March 2011), the Former Senior Officer and one or more senior executive(s) at Weston had discussions about prices. Specifically, the Bureau's investigation determined that, on four occasions, one or more senior executive(s) at Weston spoke directly with the Former Senior Officer and engaged in arrangements relating to the wholesale price of Fresh

Commercial Bread sold to Grocery Retailers. This resulted in two price increases being implemented.

15. Canada Bread faced increasing requests for trade spend¹ from Grocery Retailers to fund discounts on Canada Bread's products at retail and was also struggling to keep up with rising costs in the time periods when the offences occurred.
16. The revenue from the conduct described in the four counts was used in part to fund cash dividends paid to Maple Leaf and other shareholders during the period of the offences.

Count One

17. In June 2007, the Former Senior Officer and one or more senior Weston executive(s) discussed coordinating Canada Bread and Weston's Fresh Commercial Bread price increases, leading to an arrangement to increase the wholesale price of Fresh Commercial Bread to Grocery Retailers.
18. Pursuant to this arrangement, Canada Bread announced a price increase of \$0.06 for private label and \$0.07 for branded Fresh Commercial Bread on July 16, 2007, with an effective date of October 14, 2007. Later in July, as part of this arrangement, Weston followed with an announcement of a \$0.07 price increase effective October 21, 2007. These announced price increases by Canada Bread and Weston were not implemented, as explained below in Count Two.

Count Two

19. Following the June 2007 arrangement, the Former Senior Officer and one or more senior Weston executive(s) spoke again to coordinate an amendment to Canada Bread and Weston's announced wholesale price increases effective October 2007. On September 4, 2007, Canada Bread amended its price increase notice to Grocery Retailers indicating, "Canada Bread will be adjusting the rate of the Oct 14 increase on all Private Label and Branded prices to \$0.12 and \$0.14 per unit from the previously announced rates of \$0.07 respectively." On September

¹ Trade spend is the term used to describe payments, discounts, allowances and rebates provided by suppliers to retailers to fund discounts on the suppliers' products at the retail level.

6, 2007, Weston amended its price increase, revising the amount of the increase from \$0.07 to \$0.16, with an effective date of October 21, 2007. These wholesale price increases were implemented on or about the end of October 2007. Canada Bread's price increase was not implemented on certain Fresh Commercial Bread products.

Count Three

20. In November 2010, the Former Senior Officer and one or more senior Weston executive(s) discussed increasing wholesale Fresh Commercial Bread prices. Based on these discussions, Canada Bread and Weston arranged to increase wholesale prices of Fresh Commercial Bread to Grocery Retailers by \$0.07.

21. In November 2010, Canada Bread announced a \$0.07 wholesale Fresh Commercial Bread price increase, effective January 23, 2011. On January 10, 2011, Weston announced a \$0.07 wholesale Fresh Commercial Bread price increase, effective March 27, 2011. These announced price increases by Canada Bread and Weston were not implemented as outlined below in Count Four.

Count Four

22. Due to customer resistance on the difference in the effective date in Weston and Canada Bread's price increases, Canada Bread announced a postponement to March 27, 2011 to align with Weston's implementation date. Canada Bread indicated in that letter that it was still determining the rate of the price increase. The Former Senior Officer discussed the price increase with one or more senior Weston executive(s) on or around January 31, 2011. The Former Senior Officer and the Weston executive(s) arranged to double the previously announced Fresh Commercial Bread wholesale price increase. Under this arrangement, on February 4, 2011, Weston announced that its Fresh Commercial Bread wholesale price increase would be 8%. On February 7, 2011, Canada Bread announced a \$0.14 wholesale price increase to Grocery Retailers for Fresh Commercial Bread. Canada Bread's price increase was not implemented on certain Fresh Commercial Bread products.

III. Aggravating and Mitigating Factors

a. Aggravating Factors

23. Bread is a dietary staple for many Canadians (as opposed to a more discretionary or luxury purchase) and is purchased by nearly all Canadian households.
24. Canada Bread's annual sales for its fresh bakery product category for calendar year 2007 were \$945.9 million, and for the calendar year 2011 were \$1.087 billion. Fresh Commercial Bread comprises the majority of the fresh bakery product category, however fresh bakery is not limited to Fresh Commercial Bread and therefore fresh bakery annual sales figures are higher than the annual sales figures for Fresh Commercial Bread alone.
25. The offences involved a high degree of planning and coordination by the Former Senior Officer and one or more senior executives of Weston to facilitate the arrangements described in this Statement of Agreed Facts, including communicating directly about effectuating the offences, as described above. The Former Senior Officer initiated the contact with one or more senior executives at Weston to arrive at the arrangements.

b. Mitigating Factors

26. As noted, on May 23, 2014, the shares of Canada Bread were sold to Grupo Bimbo for a purchase price of \$1.83 billion. At that time, the Board of Directors of Canada Bread recommended that the shareholders approve the transaction and Maple Leaf (which owned 90% of the common shares of Canada Bread) voted in support of the transaction. Despite asking questions about commercial practices and compliance with laws and regulations affecting the business, Grupo Bimbo was not told that Canada Bread had participated with Weston in the making of arrangements to increase the wholesale price of Fresh Commercial Bread. The Former Senior Officer left Canada Bread promptly after the company was acquired by Grupo Bimbo in 2014.
27. Prior to Grupo Bimbo's acquisition in 2014 and at the time of the offences, Canada Bread did not have an independent legal and compliance department responsible for its commercial and market practices; Canada Bread's legal and compliance functions had been directed by senior

management of Maple Leaf. In 2018, Canada Bread appointed a senior in-house counsel with responsibility for, among other things, legal and regulatory compliance, and developing and implementing a competition law compliance and training program for Canada Bread that has been shared with the Bureau.

28. Canada Bread has cooperated with the Bureau from the outset of its involvement in this matter and its cooperation has continued throughout the period of the Bureau's investigation. It has responded to requests from the Bureau and provided Bureau investigators with documents over and above those seized in the search of Canada Bread. Canada Bread has also made nine witnesses available for interviews by the Bureau.
29. Canada Bread's cooperation with the Bureau's investigation and entering of this plea have saved and will save the Bureau significant costs in relation to its investigation and will save the Public Prosecution Service of Canada significant costs in relation to the prosecution of the offences.
30. Grupo Bimbo has a strong history of dedication to compliance. Grupo Bimbo has been recognized by Ethisphere as one of the world's most ethical companies for six consecutive years, from 2017-2022. Under the ownership of Grupo Bimbo, Canada Bread presents a very low risk to re-offend.

VI. Joint Submission on Sentence

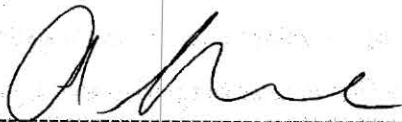
31. Canada Bread admits that all constituent elements of an offence under s. 45 of the *Competition Act* as applicable during the relevant time period have been established with respect to the four counts described above. Canada Bread is pleading guilty voluntarily, understands that this plea is an admission of the essential elements of the offence, understands the nature and consequences of this plea, and agrees that the facts support the charge.
32. Canada Bread understands that counsel for the Director of Public Prosecutions ("DPP") and counsel for Canada Bread will jointly submit that, given the volume of Canada Bread's annual sales during the time period covered by the counts herein, and taking into account the aggravating and mitigating factors, the appropriate sentence for Canada Bread in this matter is the maximum fine available under the *Competition Act*, being \$10 million for each of counts

one and two and \$25 million for each of counts three and four, subject to a leniency reduction of approximately 30% to account for Canada Bread's significant cooperation through the Leniency Program, for a total fine of \$50 million.

33. Canada Bread understands that the Court is not bound by any agreement between Canada Bread and the DPP as to the appropriate sentence.

34. Canada Bread through its duly authorized representative has been informed, agrees and admits these facts, pursuant to s. 655 of the *Criminal Code*, solely for the purpose of dispensing with their proof at trial in this proceeding, and for no other purpose.

Signed this 20 day of June, 2023.



Canada Bread Company, Limited, by its duly authorized representative

ALICE LEE



Director of Public Prosecutions

Francois Blachette, Crown Counsel for the OPP

Appendix C – Information

Canada Bread Company, Limited:

COUNT 1: In connection with price increases announced in July 2007, in or around the Greater Toronto Area in the Province of Ontario, conspired, combined arranged or agreed with Weston Foods (Canada) Inc. and others known and unknown to prevent, limit or lessen, unduly, competition in the sale or supply of fresh commercial bread to certain retailers who sell groceries by agreeing on the amount of the price increases for that product and did thereby commit an indictable offence contrary to s.45(1)(c) of the *Competition Act*.²

COUNT 2: In connection with price increases announced in September 2007, in or around the Greater Toronto Area in the Province of Ontario, conspired, combined, arranged or agreed with Weston Foods (Canada) Inc. and others known and unknown to prevent, limit or lessen, unduly, competition in the sale or supply of fresh commercial bread to certain retailers who sell groceries by agreeing on the amount of the price increase for that product and did thereby commit an indictable offence contrary to s.45(1)(c) of the *Competition Act*.

COUNT 3: In connection with price increases announced in November 2010 and January 2011, in or around the Greater Toronto Area in the Province of Ontario, conspired, arranged or agreed with its competitor Weston Foods (Canada) Inc. and others known and unknown to fix, maintain, increase or control the price for the supply of fresh commercial bread to certain

² At this time and continuing until March 11, 2010, s. 45(1) of the *Competition Act* read as follows:

45. (1) Every one who conspires, combines, agrees or arranges with another person

(a) to limit unduly the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any product,

(b) to prevent, limit or lessen, unduly, the manufacture or production of a product or to enhance unreasonably the price thereof,

(c) to prevent or lessen, unduly, competition in the production, manufacture, purchase, barter, sale, storage, rental, transportation or supply of a product, or in the price of insurance on persons or property, or

(d) to otherwise restrain or injure competition unduly,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million dollars or to both.

retailers who sell groceries and did thereby commit an indictable offence contrary to s.45(1)(a) of the *Competition Act*.³

COUNT 4: In connection with price increases announced in February 2011, in or around the Greater Toronto Area in the Province of Ontario, conspired, arranged or agreed with its competitor Weston Foods (Canada) Inc. and others known and unknown to fix, maintain, increase or control the price for the supply of fresh commercial bread to certain retailers who sell groceries and did thereby commit an indictable offence contrary to s.45(1)(a) of the *Competition Act*.

³ Since March 12, 2010, s. 45(1) of the *Competition Act* reads as follows:

45 (1) Every person commits an offence who, with a competitor of that person with respect to a product, conspires, agrees or arranges

- (a) to fix, maintain, increase or control the price for the supply of the product;
- (b) to allocate sales, territories, customers or markets for the production or supply of the product; or
- (c) to fix, maintain, control, prevent, lessen or eliminate the production or supply of the product.