

Submission on the Grocery Code of Practice Consultation

Irish Dairy Industries Association

The Irish Dairy Industries Association (IDIA) represents the primary and secondary dairy processing industries in Ireland. An affiliate of IBEC, its primary objective is to achieve a competitive and sustainable commercial environment for the industry.

The Irish dairy industry is globally focused, exporting €2.7 billion of dairy products in 2008 comprising of Infant nutritional products, milk powders, butter, cheese and casein.

The Irish retail market is an important market for Irelands growing range of value added dairy products. This market is important for branded Irish dairy products and their development. The increased market share for own label products has been important for the Irish dairy industry, in that, the development of own label product for the domestic market has been instrumental in supply contracts for the wider market.

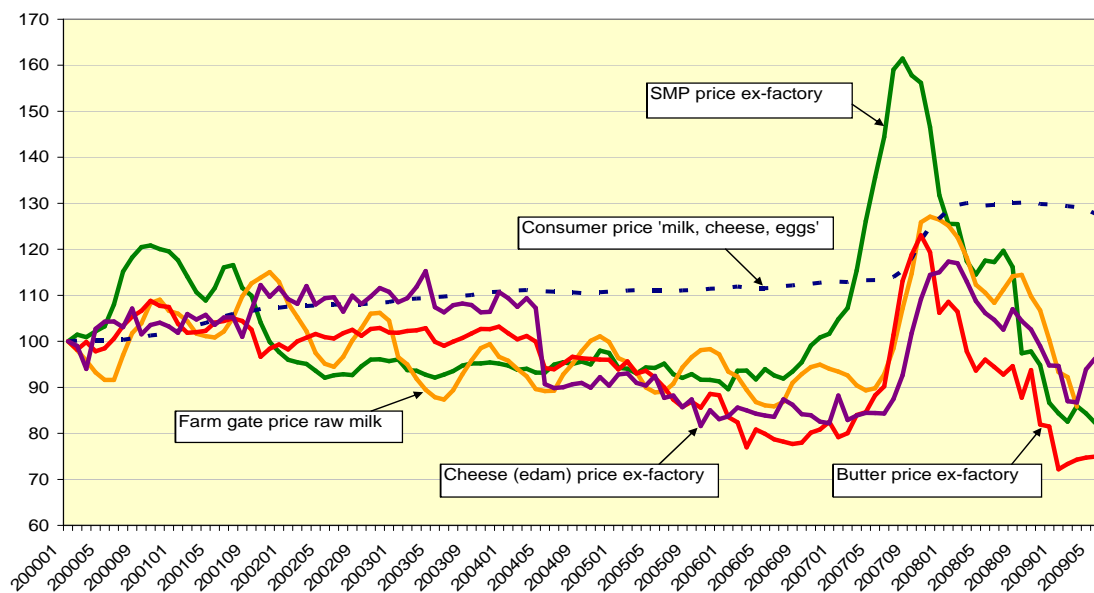
Introduction

These past twelve months have been the most challenging in recent memory. There is now a real pessimism amongst dairy farmers who up to very recently were looking at an optimistic future driven by unquestioned predictions of demand growth. However the full impact of the global recession could not have been foreseen and the resultant financial crisis has brought all aspects of the food industry under the public spotlight.

The publication, in July, of a report by the European Commission on the Dairy Market Situation 2009¹ highlighted a disturbing price trend that had for many

¹ COM (2009) 385, Communication from the Commission to the Council, Dairy Market Situation 2009, {SEC(2009)1050}

years been suspected. It illustrated in a very clear way that price reductions at producer and processor level were not being transferred to consumers. In the words of the Commission, this trend illustrated “inefficiencies in the supply chain” and has resulted in calls throughout the community for action to resolve this pricing anomaly.



Graph 2 Price index developments at different stages of the EU dairy supply chain (Jan 2000=100)

The IDIA is fully supportive of measures to ensure that the supply chain operates effectively to the benefit of all stakeholders. The food production supply chain is not complex; farmers must be rewarded with sufficient returns to ensure adequate supply; industry requires a return on its investment to deliver a route to market for producers; retailers are the marketplace for all and the consumer requires choice. Operating correctly, consumer choice drives efficiency in the supply chain to the benefit of all parties. However it is clear that there are problems within the European food chain.

Code of Practice

The key underlying difficulty in the European and Irish food chain is one of imbalance. In Ireland, there is a large number of suppliers to a small number of retailers. This imbalance will not change through rationalization.

The IDIA welcomes the Tanaiste's commitment to introduce a Code of Practice (COP) into the grocery retail sector. It is our view that a Code of Practice enforced by the Office of an Ombudsman, is an important element in addressing the issue of imbalance in the food supply chain and as importantly, a key policy response to mistrust amongst consumers of all players within the industry.

An effective code can prevent retailers transferring excessive risks and costs of doing business to suppliers without placing undue burdens on retailers or impinging the passing on of lower prices to consumers. Rather it should ensure that the risks and costs of responding to changing consumer demands are shared equitably between supplier and retailer, allowing both to grow sustainable businesses.

The Ombudsman

A Code of Practice requires effective compliance enforcement

The Ombudsman must:

- Be established on a statutory footing with powers to proactively investigate compliance levels amongst retailers.
- Have the authority to pro-actively investigate designated retailers' compliance with the code at their discretion.
- Have the legal capacity to provide 'whistleblower' protection to suppliers who come forward to make a complaint.
- They must be able to impose a range of agreed penalties on retailers who transgress the code.

A strong code and Ombudsman will inject some certainty into the relationship between suppliers and retailers. This will allow suppliers to forecast and plan accurately, invest in R&D, and improve service levels to their customers.

The code and Ombudsman should seek to balance the need for minimum standards in supplier/retailer agreements with the need to maintain scope for commercial negotiations that are mutually beneficial. The code should not hinder genuine co-operative efforts between suppliers and retailers to respond to rapidly changing consumer demand.

Response to Questions Posed

Q.1 Should the introduction of any Code be on a voluntary or statutory basis? Who should draw-up such a Code? How do you see compliance costs varying between a voluntary and a statutory Code?

1.1: Should the introduction of any Code be on a voluntary or statutory basis?

The Code must be established on a statutory basis. The competitive pressure in the market and the lack of any viable regulation has created a culture where a significant part of retailers' income is derived from arbitrary financial demands placed on suppliers. A voluntary code will be insufficient to compel retailers to forgo this income.

1.2: Who should draw up such a code?

The Department of Enterprise, Trade and Employment should draw up such a code in consultation with suppliers, trade associations, retailers, academics and EU experts on retailer buying power. This consultation process should be treated as the first part of a short process to refine the code before implementation.

1.3: How do you see compliance costs varying between a voluntary and a statutory Code?

In line with current Government budgetary policy, the development and operation of a Code should be simple, effective and operate at the lowest cost to the exchequer.

Question 2

- 2.1 Depending on whether any Code is voluntary or statutory, how should it be enforced?**
- 2.2 How should such enforcement be funded?**

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The Code should be written into the legislation currently being drafted to merge the National Consumer Agency and the Competition Authority. It's essential that this newly formed body have sufficient scope to examine the market with a view to identify unfair commercial practices deriving from buying power from stakeholders.

This legislation should outline the establishment of the code and its enforcement under the aegis of the Department of Enterprise, Trade and Employment or a nominated body such as an Ombudsman.

2.2 How should such enforcement be funded?

Funding of enforcement operations must not compromise the integrity or credibility of its operations and as such the programme must be funded entirely by the Exchequer.

Q.4 What type of grocery chain elements should be covered by the Code? Should a threshold be introduced to limit the application of the Code? If so, on what criteria should it be based and at what level should it be set?

4.1 What type of grocery chain elements should be covered by the Code?

To be effective, this code must apply to all retailers and groups of retailers with sufficient scale in the Irish market to exercise buying power.

Q.5 Should any Code be limited in geographical extent and, if so, what should that limitation be and how would the provisions of the Code be enforced against grocery goods undertakings located outside the jurisdiction?

The code should apply to all grocery goods offered for sale in the Republic of Ireland.

Further information

For further information, please contact:

Michael Barry

Director IDIA

e-mail: michael.barry@ibec.ie

Claire McGee

Executive IDIA

e-mail: claire.mcgee@ibec.ie