



**Submission to the Department of Jobs,  
Enterprise and Innovation on the Consumer  
Protection Act 2007 Section 63B (Regulation of  
Aspects of the Commercial Relationships  
between Suppliers and Relevant Grocery  
Undertakings) Regulations 2015**

**February 2015**

## **Retail Ireland responds to draft grocery regulations consultation**

The following reflects the views of the members of Retail Ireland on the issues raised in the Draft Regulations for Consultation under the Consumer Protection Act 2007 (Section 63B).

### **1. Introduction**

Retail Ireland is the representative body for the entire retail sector in Ireland and its membership includes major supermarket groups, symbol groups and Independent retailers.

Retail is Ireland's largest industry and largest employer, with a presence in every city, town and village, right across the country. The sector employs over 270,000 people while contributing over €5 billion in taxes to the exchequer. There are close to 44,000 retail and wholesale businesses in Ireland with 90% of these Irish-owned and Irish-operated.

Retail Ireland and its members have significant concerns regarding the effect some of the regulations outlined in the course of this consultation document may have and the potential for market distortion should some or all of them be introduced.

### **2. A delicate economic environment**

The last 6 years has been a very difficult time for the retail sector in Ireland. While key indicators are pointing to improvements in the sector's performance in 2015, the retail recovery is still in its infancy and many pressures remain. The sector is still operating at levels far below that reached during the boom years. Turnover is down nearly 20%; employment in the sector has fallen by 44,000; and 3,500 retail units closed during the recession. Many businesses are still constrained by boom time costs and charges. The retail sector has been one of the last sectors of the economy to experience an uplift in performance and recovery in the sector continues to lag behind the general economy.

In this period the Grocery sector has seen intense competition with new entrants to the market successfully capturing market share from the incumbents. This has helped keep prices down as value for money has become the main driving force behind the consumers' choice of shopping destination. The performance of the grocery sector in recent months has been mixed. Overall it was a generally satisfactory Christmas for supermarkets, with marginal year-on-year growth of a little over 1% recorded. However, the recovery is uneven with the greater Dublin area continuing to record the strongest recovery, with regional locations lagging behind.

In terms of the coming year there is renewed hope of growth following positive trends during 2014 and a Christmas trading period up on 2013. Strong January VAT returns, which were €225 million or 12.9% ahead of last year, suggest the recovery may finally be starting to gain traction.

### **3. European Supply Chain Initiative (SCI)**

Through the European Voluntary Supply Chain Initiative (SCI) Retail Ireland's grocery members already adhere to strict rules which govern the relationship between supplier and retailer. The SCI is an initiative that is supported by eight representative bodies (including Retail Ireland's partner, EuroCommerce) and already hundreds of European companies have declared their commitment to the Initiative, including a significant number of Retail Ireland grocery members, who between them account for over 70% of the Irish grocery retail market.

Negotiations on formulating the initiative took place over two years, with retailers and suppliers working hard to agree a set of mutually beneficial principles that will enshrine fairness in trading practices. The principles are simple and demonstrate retailers' commitment and dedication to fairness and transparency in their dealings with suppliers. The principles include the following:

- That all agreements should be in writing
- That unilateral change to contract terms shall not take place unless such a possibility has been agreed in advance
- That all agreements are complied with
- That information is exchanged in strict compliance with competition law
- That all contracting parties in the supply chain should bear their own appropriate entrepreneurial risk
- That there shall be no application of threats in order to obtain an unjustified advantage or transfer an unjustified cost

Retail Ireland has strongly encouraged all Irish retailers to register their commitment and demonstrate their support for fair trading practices through this proven mechanism. This, we believe, is a far more effective method of ensuring a fair and balanced relationship between all parties along the supply chain. By its very nature it is a voluntary system of good practice principles, observed by both retailers and suppliers, and it has received widespread support. We believe, ultimately, that this is the best way to ensure a competitive and fair supply chain, and urge your consideration of this initiative while drafting the final regulations.

### **4. Guiding Principles of the Regulations**

Retail Ireland has fully supported the process to merge the National Consumer Agency and the Competition Authority, and the creation of the Competition and Consumer Protection Commission (CCPC) as a cost-effective and efficient way to ensure the twin policy aims of consumer protection and adherence to competition law are met. We also welcomed the new powers being granted under Section 9 of the Bill to the merged entity, provided they are used carefully and in the context of a fair and balanced regulatory system.

### **a) Proportionate regulation**

Retail Ireland would, however, have significant concerns that the powers to regulate certain areas of the food supply chain, proposed under the regulations as currently drafted, closely mirror those contained in the draft “Travers Code” of 2009 which, as stated in previous correspondence, was one-sided, anti-retailer and would have led to the imposition of extra costs on consumers. It is important, we believe, to ensure that in deciding against such a costly code of conduct that new regulation does not impose a similar burden.

When considering introducing regulations in the grocery sector, the primary concern should be that of the potential effect on both the levels of competition within the sector and the direct effect or otherwise on consumers.

### **b) Grocery Goods Undertaking Definition**

Retail Ireland would also suggest that insufficient consideration has been given to how these proposed regulations would impact upon the relationship between individual wholesalers/retailers and their subsidiaries. Many wholesalers and retailers captured under the definition of a grocery goods undertaking would operate structures under which a parent company either based in Ireland, or otherwise, supply wholesalers/retailers operating under license or some other such arrangement. Under the strictest definition of a grocery goods undertaking as outlined in the draft regulations, these entities would then be required to report upon their relationship with their “suppliers” (i.e. their parent company). This would introduce a completely unworkable layer of regulatory complexity which is surely not the aim of the regulations. Retail Ireland believes this area requires significant further clarification and amendment.

### **c) Unnecessary extension of regulations to services**

In the current draft of the regulations, point 7 ‘Goods or services from third party’ states that;

*7.(1) A relevant grocery goods undertaking shall ensure that any grocery goods contract to which it is a party that provides for the supplier to obtain **goods or services** from a third party from whom the undertaking receives payment for this arrangement permits such payments only where the supplier’s source for those goods or services*

Retail Ireland would be concerned about the potentially unintentional broadening of the scope of this measure due to the current wording. Whilst not having any objection to this provision provided it is limited to goods, we are concerned about the inclusion of the term ‘services’ also. Including the supply of services in this provision seems not to be in keeping with the other provisions contained in the regulations and represents an extension in their scope beyond the supply of grocery goods. For that reason, we believe the reference to “services” should be removed.

#### **d) Supplier obligations**

Retail Ireland and its members have concerns that the regulations as currently formatted, retain a singular focus and burden on retailers. The draft regulations create obligations for Relevant Grocery Goods Undertakings only, meaning there are no obligations on suppliers at all in these Regulations. This imbalance must be addressed as the reality is that some suppliers are actually much larger than the retailer/wholesaler and should be required to comply with the Regulations in full. There also needs to be a mechanism to reduce the regulatory burden between wholesalers/retailers and smaller suppliers, such that smaller suppliers have the option to opt out.

Due consideration should be given to the obligations of suppliers while engaging in a commercial relationship with a wholesaler/retailer regardless of size. These obligations should include complying with the terms of their agreements including in the areas of price, promotional activity and other normal trading practices.

In addition, suppliers should also be subject to the same record maintenance requirements as proposed under these regulations for grocery good undertakings. This would enable a more fulsome investigation should a requirement arise in future.

#### **e) Overly restrictive regulations**

Commercial reality dictates that the relationship between supplier and wholesaler/retailer is a fluid one. This benefits both parties and allows the flexibility required for both parties to react to changes in the environment (e.g. fluctuating input costs, weather, tax or law changes etc). Retail Ireland, while supportive of the principle of the regulations, would have significant concerns that the regulations, as currently drafted, may in fact only serve to limit the flexibility available to both parties and will only result in the hindering of fluent commercial activity. By seeking to overly prescribe the relationship between supplier and wholesaler/retailer, this would serve to introduce unnecessary cost which would not benefit anyone in the supply chain not least the end consumer whose interest, as stated above, should be of primary importance.

We believe the regulations as drafted are too broad in scope and require amendment particularly in the areas of forecasting, promotions and agreed payments between suppliers and wholesalers/retailers. Effective regulations should lead to tangible benefits for all participants in the supply chain. As drafted currently, this will not be achieved.

### **5. Compliance Cost Implications**

The annual reporting requirements as outlined within the proposed regulations will require grocery goods undertakings to produce detailed reports outlining their relationships with their suppliers'. The compliance reporting requirements are overly onerous and will mean that retailers will incur large costs which are inevitably related to such undue bureaucracy. While it is difficult to put an estimate on the monetary cost of industry wide compliance with the regulations as currently formed, Retail Ireland would suggest that given the range

of in-company resources which would be required and the resulting allocation of time and administration to meeting these requirements, industry wide cost, could be in excess of €10 million. This, however, is only an estimate based on the best available evidence currently. The true cost to the sector will not be known until the full extent of the regulations become clear and the sector must begin reporting on compliance. A further initial outlay would also be required to update existing supplier relationship management systems and modify stock recording systems etc.

Retail Ireland would have concerns that the current reality of how the Irish grocery market works is not reflected within the draft regulations. The Irish grocery sector is a complex mix of thousands of suppliers of varying scale and provenance. The Irish grocery retail sector has worked hard in recent years to build linkages with Irish suppliers and local producers who can on occasion supply a small number of stores in their particular region. The industry's method of operation with suppliers will vary by supplier type, in order to reflect the scale of the supplier and the nature of the product range they supply. A one size fits all solution does not always work and the imposition of such rigid protocols for supplier engagement could have quite a negative impact upon small suppliers who require that flexible relationship given their limited size and resources.

Retail Ireland would also hold significant concerns around the proposals in the draft regulations relating to promotions, forecasting and marketing investment. It is our belief that if the regulations are passed as currently drafted, a substantial change in the way the market operates for all suppliers, retailers and wholesalers will be required. This would only work to add to the already large burden which regulation within the sector places on all parts of the supply chain. The current draft of the regulations would also affect the manner in which grocery goods are ordered and supplied. This would lead to uncertainty for all parties as to whether agreed terms are enforceable or not. The threat of criminal sanctions that attach to any breach of the regulations is a very serious one and one which all retailers take very seriously. The likely effect of this potential sanction is that retailers will likely amend all practices and ways of working to ensure full compliance with the regulations. This would most likely lead to significant cost additional cost in the supply chain and the introduction of unnecessary inefficiencies into the system. A single approach to all suppliers would introduce a standardised way of operating thereby removing previously used discretion for fear of contravention of the regulations.

We propose that no such compliance report be required. Retailers deal with thousands of suppliers in both verbal and written form. To add to the already stringent requirements as detailed in contract law would prove very costly and ultimately add to consumer prices.

Any requirements in the area of training to ensure staff compliance should be an internal matter, with grocery goods undertakings required simply to state that they consider their staff trained and familiar with all regulations in this area.

We note that the Competition and Consumer Protection Bill empowers you to introduce regulation having regard, amongst other things, "to the interests of consumers of grocery goods, in particular in relation to quality, value for money and choice". We suggest this be

the paramount concern when considering any regulation, as it is the consumer upon which the sustainability of the supply chain rests.

## **6. Dispute Resolution**

Retail Ireland believes the adjudication process as proposed is not fit for purpose and would propose an alternative system. In an iteration of the previous draft Voluntary Code, a dispute mechanism to deal with issues that arise between parties to agreements was suggested. Given that any issues that may arise under the regulations are likely to be bilateral contractual disputes where there are two different versions of the same events, we believe that there should be a requirement for complaints under the regulations to be set out in detail so that Wholesalers/Retailers have the opportunity to enter into a process which enable them to rebut allegations made by other parties. With this in mind Retail Ireland would suggest it may be helpful if the Regulations provided for an initial investigation by the Commission which then facilitated mediation with a named expert from a panel with the costs to be borne by the party found to be in default or at the discretion of the mediator. This may result in a more effective resolution of issues before they are escalated unnecessarily. There would also be a significant cost saving to the Commission for Competition and Consumer Protection as a lengthy investigation would not be required in the first instance.

It is the firm belief of Retail Ireland that such a mechanism for resolving issues arising under these regulations should be explored.

## **7. Closing remarks**

2015 is a critical year for Irish retail. Unless costs are kept under control, retailers will not be in a position to offer lower prices to consumers, thus endangering sales, threatening jobs and slowing recovery in the domestic economy. Over 40,000 jobs have already been lost in our sector and it is vital that nothing is done to undermine efforts to replace those lost jobs.

Retail Ireland reiterates its support for your decision not to introduce a code of conduct and the burdensome and costly bureaucracy that would have come with that. We urge you now to ensure that the passage of these regulations does not introduce unnecessary extra cost into the supply chain, and thus an extra cost burden on consumers.

Any regulations in this space should adhere to the principles of good regulation. Namely they should be proportionate, cost effective, encouraging of competition and should not impact upon the consumer.

**For further information:**

**Should you require any further information, Retail Ireland and its members would be happy to provide it. In order to clarify any aspects of this submission please contact the Thomas Burke, Director of Retail Ireland, at [thomas.burke@ibec.ie](mailto:thomas.burke@ibec.ie) or by phone at 01-6051558.**