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**BY EMAIL & COURIER**

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6 March 2015

**Re: Grocery Regulations Consultation**

Dear Sirs,

We are pleased to participate in the Consultation on draft regulations in the grocery goods sector (December 2014). The within represents the submission for and on behalf of Tesco Ireland Limited ("Tesco") and comprises:

1. This letter;
2. Our comments on the draft regulations – **Appendix 1**;
3. Our comments on the related questions raised – **Appendix 2**; and
4. Estimate of likely costs in complying with the draft regulations – **Appendix 3**;

Tesco supports the general objective of the draft regulations (as expressed in Regulation 4) that trading relationships be conducted in good faith and in a fair, open and transparent manner. Our long-standing commitment to these objectives is demonstrated by the fact that we are a signatory of the European Voluntary Supply Chain Initiative which promotes fair business practices in commercial relationships throughout the food supply chain. Treating suppliers fairly is key to our success and is a cornerstone of our Code of Business Conduct.

Tesco Ireland has long-standing relationships with suppliers in Ireland and has worked with many to grow and develop their businesses into export ones, with Tesco Group selling almost €900 million worth of Irish food and drink products in its international stores, along with selling another almost €950 million worth of Irish products in Ireland. We work, and intend to continue to work, collaboratively with our suppliers to implement fair business practices in our commercial relations throughout the supply chain.

However, we would urge you to take careful stock of some consequences, very probably unintended, which we believe will flow from the Regulations if they are enacted as currently drafted.

Our concerns in this regard can be broadly summarised as follows:

- a. There is a lack of reciprocity of obligations on both retailers and suppliers, with the draft Regulations appearing to assume that the retailer is automatically the larger company which

Phil J Clarke (Chief Executive) (UK), Geoff Byrne, Christine Heffernan, Adrian Lewis (UK)  
Gary Mills (UK), John Paul O'Reilly, Tony Keohane (Chairman)



is very often not the case. Reciprocal obligations would be fairer and would ensure protection for the smaller party to a commercial relationship, irrespective of whether they are a retailer or a supplier.

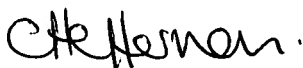
- b. The Regulations would benefit from a simpler compliance regime to avoid administrative costs that will invariably be passed on to the consumer – see our comments in respect of Regulation 21.
- c. For the same reasons, the Regulations should include a dispute resolution process which would benefit both grocery goods undertakings and suppliers in the resolution of disputes. Oversight and sanctions undoubtedly have their part to play but ideally only after the parties have failed to resolve their difficulties.
- d. It is important that a provision is made for a transition period after enactment to enable retailers and suppliers to put in place the necessary processes and frameworks to ensure compliance.

Finally, we believe any final decision to implement should be made contingent upon:

- (i) Completion of a full Regulatory Impact Assessment as appears to be envisaged by the Consultation Paper to assess impacts (including but not limited to financial ones) on consumers, primary producers, food processors, distributors/wholesalers, retailers, the food industry generally and the State; and
- (ii) A review of the European Voluntary Supply Chain Initiative and its effectiveness in achieving the objective of the draft Regulations.

Please do not hesitate to contact me if you have any questions on the above.

Yours sincerely



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**Christine Heffernan**  
**Corporate Affairs Director**

**APPENDIX 1  
COMMENTS ON THE DRAFT REGULATIONS**

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| <p><b>NOTE:</b> Our comments are preliminary in nature and limited to high-level impacts on Tesco. Further more detailed consultation will be essential to ensure that impacts of the draft Regulations are properly understood and any adverse effects or unintended consequences on consumers and the industry avoided.</p>   |  |
| <p><b>Draft Grocery Regulations, as published in December 2014</b></p>  | <p><b>Initial Comments on Draft Grocery Regulations</b></p>  |
| <p><b><u>PART 1 PRELIMINARY MATTERS:</u></b><br/> <b>Citation and Commencement:</b><br/>           1.(1) These Regulations may be cited as the Consumer Protection Act 2007 (Section 63B) (Regulation of Aspects of the Commercial Relationships Between Suppliers and Relevant Grocery Goods Undertakings) Regulations 2015.<br/>           (2) These Regulations come into operation on [...] and apply to contracts entered into after that date.<br/>           (3) In the case of contracts in place prior to [...] these Regulations shall apply to any renewal of such contracts after that date.</p>  | <p>We would ask that the operative date be at least 6 months from publication in final form to allow a sufficient period of transition.</p>  |
| <p><b>Interpretation:</b><br/>           2.(1) In these Regulations -<br/>           'Act of 2007' means the Consumer Protection Act 2007;<br/>           'Act of 2014' means the Competition and Consumer Protection Act 2014;<br/>           'annual compliance report' means the report referred to in Regulation 21 of these Regulations;<br/>           'Commission' means the Competition and Consumer Protection Commission;<br/>           'grocery goods' means – any food or drink that is intended to be sold for human consumption and includes -<br/>           (i) any substance or thing sold or represented for use as food or drink for human consumption,<br/>           (ii) any substance or thing sold or represented for use as an additive, ingredient or processing aid in the preparation or production of food or drink for human consumption, and that is intended to be sold by a retailer as such an additive, ingredient or processing aid, and<br/>           (iii) intoxicating liquors, but does not include food or drink served or supplied on the premises of a grocery goods undertaking in the course of providing catering, restaurant or take-away services or any similar hospitality services, or</p> | <p>No comment other than to include a definition of "grocery goods undertaking" which would mean either a relevant grocery goods undertaking or a supplier – see comments in relation to Regulation 4 and 5 below.</p> |

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| <p>intoxicating liquor served or supplied for consumption on the premises of a grocery goods undertaking;<br/> 'grocery goods contract' means a contract for the sale or supply of grocery goods by a supplier to a relevant grocery goods undertaking;<br/> 'writing' has the meaning given in Part 1 of the Schedule to the Interpretation Act 2005;<br/> 'relevant grocery goods undertaking' means a grocery goods undertaking engaged in the wholesale or retail of grocery goods in the State that has, or is a member of a group of related undertakings that has, an annual worldwide turnover of more than €50 million;<br/> 'supplier' means a grocery goods undertaking carrying on (or actively seeking to carry on) a business in the direct supply to any wholesaler or retailer of grocery goods</p> |   |
| <p><b>Application</b><br/> 3. These Regulations apply to commercial relationships and contracts between suppliers and relevant grocery goods undertakings engaged in the wholesale or retail of grocery goods.</p>  | <p>For certainty and clarity, the application of the Regulations should be focussed on contracts rather than relationships.</p> <p>We would suggest the following amendments:</p> <p><b>3. These Regulations apply to commercial contracts and the negotiation of commercial contracts between suppliers and relevant grocery goods undertakings engaged in the wholesale or retail of grocery goods.</b></p>   |
| <p><b><u>PART 2 COMMERCIAL RELATIONSHIPS AND CONTRACTS BETWEEN SUPPLIERS AND RELEVANT GROCERY GOODS UNDERTAKINGS:</u></b><br/> <b>Good faith and transparency:</b><br/> 4. (1) Grocery goods undertakings shall conduct their trading relationships in good faith and in a fair, open and transparent manner. (2) In assessing the compliance of a relevant grocery goods undertaking with the provisions of these Regulations, the Commission and a court may take into account the undertaking's compliance with the obligations of good faith, openness and transparency.</p>  | <p>We agree with this provision but query whether "grocery goods undertaking" needs to be defined in Regulation 2 (Interpretation) to make it explicit that the obligation applies to suppliers as well as to grocery goods undertakings and relevant grocery goods undertakings.</p> <p>We suggest subsection (2) be amended to read as follows:</p> <p><b>(2) In assessing the compliance with the provisions of these Regulations, the Commission and a court may take into account an undertaking's compliance with the obligations of good faith, openness and transparency.</b></p> |
| <p><b>Grocery goods contracts to be in writing:</b><br/> 5. (1) A relevant grocery goods undertaking shall ensure that –<br/> a) all of the terms and conditions of a grocery goods contract to which it is a party, and<br/> b) any subsequent contractual agreements or</p>   | <p>We agree with principle of what is sought to be achieved by this provision but the obligations should be mutualised so as to ensure that they apply regardless of whether the contract being used is the relevant grocery goods undertaking's or the supplier's.</p>   |

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| <p>arrangements made under or pursuant or in relation to that contract are expressed in plain intelligible language and recorded in writing.<br/>(2) The form of contract used by a relevant grocery goods undertaking shall require a written copy of any grocery goods contract to be signed by the supplier and the undertaking.</p>  | <p>See comments in respect of the Regulation 2 (Interpretation) and Regulation 4 above.</p>  |
| <p><b>Unilateral variation, etc. of grocery goods contract:</b><br/>6.(1) A relevant grocery goods undertaking shall not unilaterally vary, terminate or renew a grocery goods contract unless –<br/>a) that contract makes express provision for such variation, termination or renewal and the circumstances in which these can occur,<br/>b) specifies the period of written notice to be given by the relevant grocery goods undertaking prior to any such variation, termination or renewal, and<br/>c) the relevant grocery goods undertaking acts in accordance with the provisions of the contract in relation to variation, termination or renewal and gives the required written notice to the supplier.<br/>(2) The period of notice to be given by a relevant grocery goods undertaking in accordance with paragraph 1 shall be reasonable, having regard to all the circumstances of the contract.</p>  | <p>We have no objection in principle to this provision but repeat our previously expressed concerns that the reasons for varying are not always foreseeable (eg. fluctuating input costs, weather, tax or law changes etc.) and so the limitation may be contrary to the intentions and interests of both parties.</p>   |
| <p><b>Goods or services from third party:</b><br/>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 –<br/>(a) fails to meet any reasonable quality standards laid down for the goods or services by the relevant grocery goods undertaking, or<br/>(b) charges more for the goods or services than is charged for the supply of goods or services of an equivalent quality and quantity by the third party proposed by the relevant grocery goods undertaking.<br/>(2) In the absence of contract terms in accordance with those specified in paragraph (1), a relevant grocery goods undertaking shall not require a supplier to obtain goods or services from a third party from whom the undertaking receives payment for this arrangement.</p> | <p>We have no objection to this provision provided it is limited to goods rather than goods <b>and services</b>. Including the supply of services in this provision seems anomalous with the other provisions contained in the Regulations and represents a (possibly unintended) extension in their scope beyond the supply of grocery goods.</p> <p>For that reason, we would suggest that the reference to “services” should be removed as follows:</p> <p><b>Goods or services from third party:</b><br/>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 <del>or services</del> 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 <del>or services</del> –<br/>(a) fails to meet any reasonable quality standards laid down for the goods <del>or services</del> by the relevant grocery goods undertaking, or</p> |

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|   | <p>(b) charges more for the goods <del>or services</del> than is charged for the supply of goods <del>or services</del> of an equivalent quality and quantity by the third party proposed by the relevant grocery goods undertaking.</p> <p>(2) In the absence of contract terms in accordance with those specified in paragraph (1), a relevant grocery goods undertaking shall not require a supplier to obtain goods <del>or services</del> from a third party from whom the undertaking receives payment for this arrangement.</p> |
| <p><b>Non-performance due to factors beyond reasonable control of party to contract:</b></p> <p>8.(1) A relevant grocery goods undertaking shall ensure that any grocery goods contract to which it is a party incorporates the terms and conditions specified in paragraphs (2) and (3).</p> <p>(2) A party to a grocery goods contract shall not be liable for delays or failure in the performance of the contract resulting from circumstances beyond the reasonable control of that party.</p> <p>(3) The party affected by the circumstances referred to in paragraph (2) shall promptly notify the other party in writing of –</p> <p>(a) of the specific circumstances causing the delay or failure in performance,</p> <p>(b) the time from which these circumstances caused the delay or failure in performance, and</p> <p>(c) where applicable, the time at which they ceased to do so.</p> <p>(4) A grocery goods contract may provide that, if the circumstances referred to in paragraph (2) continue for a specified period, either party may terminate the contract by written notice.</p> | <p>No comment</p>  |
| <p><b>Forecasts of supply of grocery goods:</b></p> <p>9. A relevant grocery goods undertaking shall –</p> <p>(a) prepare any forecast of the supply of grocery goods from a supplier in good faith and with due skill, care and diligence, and</p> <p>(b) communicate to the supplier in writing the basis on which the forecast has been prepared, and</p> <p>(c) on request from a supplier, consult with the supplier on the forecast and its basis.</p>  | <p>No comment.</p>   |
| <p><b>Payment for purchase of grocery goods:</b></p> <p>10. (1) A relevant grocery goods undertaking shall not seek payment from a supplier for the purchase of grocery goods for resale by the relevant grocery goods undertaking unless -</p> <p>(a) in the case of the supply of grocery goods</p>   | <p>We have no objection to this provision provided it is amended to include a declaration that, subject to demonstrable compliance with the relevant paragraphs of the Regulation, any estimate ultimately agreed or paid is an objective and reasonable one. We suggest</p>   |

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| <p>from a supplier to an individual store of a relevant grocery goods undertaking, the payment –</p> <p>(i) is sought in respect of grocery goods from that supplier which have not been stocked, displayed or listed in that store in the previous year, and</p> <p>(ii) is based on an objective and reasonable estimate of the cost to the undertaking of stocking, displaying or listing those grocery goods, or</p> <p>(b) in the case of the supply of grocery goods from a supplier to multiple stores of a relevant grocery goods undertaking, the payment -</p> <p>(i) is sought in respect of grocery goods from that supplier that have not been stocked, displayed or listed in 25 per cent or more of those stores in the previous year, and</p> <p>(ii) is based on an objective and reasonable estimate of the cost to the undertaking of stocking, displaying or listing those grocery goods.</p> <p>(2) Where a relevant grocery goods undertaking seeks payment from a supplier in accordance with this Regulation, it shall, on request from the supplier, provide the supplier with its estimate of the cost of stocking, displaying or listing the grocery goods and the basis on which this estimate has been prepared.</p> <p>(3) This Regulation does not apply to payments in respect of a promotion.</p> | <p>additional wording below in bold:</p> <p><b>Payment for purchase of grocery goods:</b></p> <p>10. (1) A relevant grocery goods undertaking shall not seek payment from a supplier for the purchase of grocery goods for resale by the relevant grocery goods undertaking unless -</p> <p>(a) in the case of the supply of grocery goods from a supplier to an individual store of a relevant grocery goods undertaking, the payment –</p> <p>(i) is sought in respect of grocery goods from that supplier which have not been stocked, displayed or listed in that store in the previous year, and</p> <p>(ii) is based on an objective and reasonable estimate of the cost to the undertaking of stocking, displaying or listing those grocery goods, or</p> <p>(b) in the case of the supply of grocery goods from a supplier to multiple stores of a relevant grocery goods undertaking, the payment -</p> <p>(i) is sought in respect of grocery goods from that supplier that have not been stocked, displayed or listed in 25 per cent or more of those stores in the previous year, and</p> <p>(ii) is based on an objective and reasonable estimate of the cost to the undertaking of stocking, displaying or listing those grocery goods.</p> <p>(2) Where a relevant grocery goods undertaking seeks payment from a supplier in accordance with this Regulation, it shall, on request from the supplier, provide the supplier with its estimate of the cost of stocking, displaying or listing the grocery goods and the basis on which this estimate has been prepared.</p> <p><b>(3) For the avoidance of doubt, where a relevant grocery goods undertaking can demonstrate compliance with paragraphs 10(1)(a)(ii)/10(1)(b)(ii) and 10(2) where applicable, then any payment ultimately agreed or paid shall be deemed to have been based on an objective and reasonable estimate of the costs to the undertaking of stocking, displaying, or listing those grocery goods.</b></p> <p>(4) This Regulation does not apply to payments in respect of a promotion.</p> |
| <p><b>Payment terms and conditions:</b></p> <p>11. (1) A relevant grocery goods undertaking shall ensure that any grocery goods contract to</p>  | <p>No comment.</p>  |

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| <p>which it is a party incorporates terms and conditions specifying the manner and timeframe in which payments for grocery goods supplied to that undertaking are to be made.</p> <p>(2) Unless otherwise agreed between the parties, the grocery goods contract shall, subject to paragraph 3, provide that payment shall be made to the supplier by the relevant grocery goods undertakings within 30 days of the date of receipt of the invoice for the grocery goods.</p> <p>(3) Where the date of receipt of the invoice for the grocery goods is uncertain or the relevant grocery goods undertaking receives the invoice before the delivery of the grocery goods, the grocery goods contract shall provide that payment shall be made to the supplier by the undertaking within 30 days of the date of delivery of the goods.</p> <p>(4) This Regulation is without prejudice to the provisions of the European Communities (Late Payment in Commercial Transactions) Regulations 2012 (S.I. No. 580/2012).</p> <p>(5) In this Regulation –<br/> ‘invoice’ means a written document, electronic transmission or equivalent request for payment provided by a supplier to a relevant grocery goods undertaking in respect of the sale or supply of grocery goods.</p> |                    |
| <p><b>Variation of supply or delivery arrangements:</b></p> <p>12. (1) Where a relevant grocery goods undertaking requests a supplier to vary significantly previously agreed arrangements in relation to the supply or delivery of grocery goods, including the frequency and timing of such supply or delivery, it shall give reasonable notice in writing to the supplier.</p> <p>(2) The reasonableness of the notice given under paragraph (1) will depend on the circumstances of the case, including:</p> <p>(a) the duration of the grocery goods contract;</p> <p>(b) the frequency with which the relevant grocery goods undertaking places orders for the grocery goods;</p> <p>(c) the characteristics of the grocery goods, including their durability, seasonality and external factors affecting their production; and</p> <p>(d) the value of any order for grocery goods affected by the variation in supply or delivery arrangements requested by the relevant grocery goods undertaking relative to the turnover of the supplier.</p>   | <p>No comment.</p> |



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| <p><b>Promotions:</b></p> <p>13. (1) A relevant grocery goods undertaking shall ensure that any grocery goods contract to which it is a party that provides for the participation of, or payment by, a supplier for a promotion in respect of the grocery goods of that supplier incorporates the terms and conditions specified in paragraph (2).</p> <p>(2) The terms and conditions referred to in paragraph (1) shall -</p> <p>(a) specify the period of written notice to be given to the supplier prior to any such promotion,</p> <p>(b) provide that the written notice of the promotion shall specify</p> <p>(i) the duration of the promotion, and</p> <p>(ii) the quantity of grocery goods to be ordered for the promotion and the basis for this quantity, and</p> <p>(c) provide that any payment sought by the relevant grocery goods undertaking in respect of the promotion of the grocery goods of the supplier is based on an objective and reasonable estimate of the cost of the promotion to the undertaking.</p> <p>(3) In the absence of contract terms in accordance with those specified in paragraph (2), a relevant grocery goods undertaking shall not –</p> <p>(a) require a supplier to participate in a promotion, or</p> <p>(b) directly or indirectly compel a supplier to make any payment in respect of a promotion of the grocery goods of the supplier in the premises of the relevant grocery goods undertaking.</p> <p>(4) Where a relevant grocery goods undertaking seeks payment from a supplier in accordance with this Regulation, it shall, on request from the supplier, provide the supplier with its estimate of the cost of the promotion and the basis on which this estimate has been prepared.</p> | <p>We have no objection to this provision provided it is amended to include a declaration that, subject to demonstrable compliance with the relevant paragraphs of the Regulation, any estimate ultimately agreed or paid is an objective and reasonable one. We suggest additional wording below in bold:</p> <p><b>(5) For the avoidance of doubt, where a relevant grocery goods undertaking can demonstrate compliance with paragraphs 13(1), (2) and (4), then any payment any payment ultimately agreed or paid shall be deemed to have been based on an objective and reasonable estimate of the cost of the promotion to the undertaking.</b></p> <p>In addition, it might be helpful to include clarity that the details of the promotion are only required in the notice and not in the original contract. This appears to be the intention and in our view, is sensible on the basis that the parties will not have this detail at the commencement of the contract term.</p> |
| <p><b>Payment for marketing costs:</b></p> <p>14. (1) A relevant grocery goods undertaking shall not seek payment from a supplier for marketing costs unless –</p> <p>(a) the grocery goods contract contains terms that make express provision for such payment,</p> <p>(b) the payment is sought in accordance with those contract terms, and</p> <p>(c) the payment is based on an objective and reasonable estimate of the marketing costs.</p>   | <p>We have no objection to this provision provided it is amended to include a declaration that, subject to demonstrable compliance with the relevant paragraphs of the Regulation, any estimate ultimately agreed or paid is an objective and reasonable one. We suggest additional wording below in bold:</p> <p><b>(4) For the avoidance of doubt, where a relevant grocery goods undertaking can demonstrate compliance with paragraphs 14(1),</b></p>  |

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| <p>(2) Where a relevant grocery goods undertaking seeks payment from a supplier in accordance with this Regulation, it shall, on request from the supplier, provide the supplier with its estimate of the marketing costs and the basis on which this estimate has been prepared.</p> <p>(3) This Regulation does not apply to payments in respect of a promotion.</p>   | <p><b>(2) and (3), then any payment ultimately agreed or paid shall be deemed to have been based on an objective and reasonable estimate of the cost of the marketing costs.</b></p>  |
| <p><b>Payment for shelf space:</b></p> <p>15. (1) A relevant grocery goods undertaking shall not seek payment from a supplier for the retention, increased allocation or better positioning of shelf space for the grocery goods of that supplier unless –</p> <p>(a) the grocery goods contract contains terms that make express provision for such payment, and</p> <p>(b) the payment is sought in accordance with those contract terms.</p> <p>(2) In the absence of contract terms in accordance with those specified in paragraph 1, a relevant grocery goods undertaking shall not directly or indirectly compel a supplier to make any payment to retain shelf space, to secure better positioning on shelves, or an increase in the allocation of shelf space, for the grocery goods of that supplier.</p> <p>(3) This Regulation does not apply to payments in respect of a promotion.</p> | <p>No comment.</p>  |
| <p><b>Payment for advertising, etc.:</b></p> <p>16. (1) A relevant grocery goods undertaking shall not directly or indirectly compel a supplier to make any payment for the advertising or display of the grocery goods of the supplier in the premises of the relevant grocery goods undertaking.</p> <p>(2) This Regulation does not apply to payments in respect of a promotion.</p>  | <p>No comment.</p>  |
| <p><b>Payment for wastage:</b></p> <p>17. A relevant grocery goods undertaking shall not seek payment from a supplier for wastage occurring at the premises of the undertaking unless –</p> <p>(a) the grocery goods contract contains terms that make express provision for such payment,</p> <p>(b) those contract terms provide that payment shall be sought only where wastage arises from the negligence or fault of the supplier, and specify the circumstances in which wastage is to be considered as due to negligence or fault on the part of the supplier,</p>  | <p>The provision should reflect the agreed allocation of risk between the parties. Suppliers will often assume or share wastage costs on product lines to ensure that displays are bountiful etc, and are willing to bear the risk of that in return for an uplift in sales volumes.</p> <p>Furthermore, if relevant grocery goods undertakings are required to bear all of the cost for wastage not arising from the negligence or fault of the supplier, this will have the unwelcome side effect of creating a barrier for new suppliers and new products to the market.</p> |

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| <p>(c) the payment is sought in accordance with those terms, and<br/> (d) the payment is based on an objective and reasonable estimate of the cost of the wastage to the undertaking.</p>   | <p>For that reason, we suggest removal of the requirement to show negligence or fault on the part of the supplier by removal of paragraph (b) in its entirety.</p> |
| <p><b>Payment for shrinkage:</b><br/> 18. A relevant grocery goods undertaking shall not seek payment from a supplier for shrinkage unless –<br/> (a) the grocery goods contract contains terms that make express provision for such payment,<br/> (b) the payment is sought in accordance with those contract terms, and<br/> (c) the payment is based on an objective and reasonable estimate of the cost of the shrinkage to the undertaking.</p>  | <p>No comment.</p>   |
| <p><b>19. Payment for customer complaints:</b><br/> (1) A relevant grocery goods undertaking shall ensure that any grocery goods contract to which it is a party that provides for a supplier to make any payment, either directly or indirectly, towards the resolution of a customer complaint incorporates the terms and conditions specified in paragraph (2).<br/> (2) The terms and conditions referred to in paragraph (1) shall provide that the relevant grocery goods undertaking may require payment from a supplier for the resolution of a customer complaint only where –<br/> (a) the complaint is reasonably attributable to the negligence or fault of the supplier, and<br/> (b) the payment sought does not exceed the costs incurred by the relevant grocery goods undertaking in resolving the complaint.<br/> (3) Where a relevant grocery goods undertaking seeks payment from a supplier in accordance with this Regulation, it shall, on request from the supplier, provide the supplier with details of the amount and composition of the costs incurred in resolving the customer complaint.</p> | <p>No comment.</p>   |
| <p><b><u>PART 3 COMPLIANCE REQUIREMENTS FOR RELEVANT GROCERY GOODS UNDERTAKINGS:</u></b><br/> <b>Designation and training of staff</b><br/> 20. (1) A relevant grocery goods undertaking shall designate and train appropriate members of its staff to be responsible for compliance with these Regulations and for the dissemination of information on the implementation of the Regulations to other staff in the undertaking.<br/> (2) A relevant grocery goods undertaking shall nominate a suitably qualified staff member</p>   | <p>No comment.</p>   |

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| <p>designated under paragraph (1) as the contact person for dealings with the Commission in relation to these Regulations.</p> <p>(3) The relevant grocery goods undertaking shall, before the start of each calendar year, inform the Commission in writing of the name, position and contact details of the person nominated under paragraph (2)</p> <p>(4) The relevant grocery goods undertaking shall notify the Commission of any change to the name, position or contact details of the nominated contact person in a calendar year in writing and without undue delay.</p>   |  |
| <p><b>Annual compliance report</b></p> <p>21. (1) A relevant grocery goods undertaking shall, as soon as practicable, but not later than 3 months, after the end of each calendar year, submit a report to the Commission detailing the undertaking's compliance with these Regulations in that year.</p> <p>(2) The report shall -</p> <p>(a) be signed by a director of, or secretary to, the relevant grocery goods undertaking</p> <p>(b) be submitted in a format and manner specified by the Commission and,</p> <p>(c) set out accurately and in detail -</p> <p>(i) the relevant grocery goods undertaking's compliance with the requirements of these Regulations, including instances where a breach or alleged breach of these Regulations has been identified by, or notified to, the undertaking, and the steps taken to rectify it,</p> <p>(ii) the name, location and function of the staff of the undertaking designated under Regulation 20 for the period of the annual compliance report,</p> <p>(iii) the training of staff undertaken in accordance with Regulation 20, including details of the number, position and location of staff trained, the person(s) undertaking such training, the nature of the training and the frequency of both new and refresher training undertaken, and</p> <p>(iv) the dissemination in accordance with Regulation 20 of information on the implementation of these Regulations to staff of the relevant grocery goods undertaking, including the nature, format and frequency of the dissemination of such information.</p> <p>(3) Notwithstanding paragraph (1), the first such report shall cover the period from the date these Regulations come into operation up to, and</p> | <p>The requirement to comply with the Regulations and to document that compliance brings with it a significant, although difficult to categorically estimate, cost.</p> <p>We feel that the additional cost of an annual compliance report is unlikely to enhance compliance levels and will, in return for little if any added value in terms of delivering the objectives of the Regulations, lead indirectly to increased consumer prices.</p> <p>Our view is that the requirements in relation to the maintenance of records provided in Regulation 22, the powers of the CCPC to inspect as set out in Sections 63C(1), coupled with the CCPC powers as set out in Sections 63D &amp; 63E are sufficient to ensure compliance with the Regulations.</p> |

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| including, 31 December 2015.   |             |
| <p><b>Maintenance, etc. of records:</b></p> <p>22. (1) A relevant grocery goods undertaking shall maintain any information, documents or records in relation to the sale or supply of grocery goods from suppliers that the Commission may specify for the purpose of exercising its functions under sections 63C to 63E of the Act of 2007 and section 10 of the Act of 2014.</p> <p>(2) The information, documents and records referred to in paragraph (1) shall be retained by the relevant grocery goods undertaking for a period of 6 years after the end of the financial year to which the information, documents or records relate.</p> | No comment. |
| <p><b>PART 4 ENFORCEMENT:</b></p> <p><b>Regulations cannot be waived, etc.</b></p> <p>23. (1) Any purported waiver by a supplier of a provision of these Regulations is of no effect.</p> <p>(2) Any term of a grocery goods contract which directly or indirectly contravenes, waives or restricts a provision of these Regulations is not binding on, or enforceable against, the supplier.</p>  | No comment. |

**APPENDIX 2**  
**OUR COMMENTS ON THE RELATED QUESTIONS RAISED**

1. *The Act provides that Guidelines may also be issued in respect of any regulations brought into force: suggestions as to what might be included in any such Guidelines would be appreciated (in relation to the draft Regulations);*

**Response:**

A degree of clarity on the application of the Regulations by way of non-binding Guidelines would be helpful to facilitate clear and uniform understanding of them. Ideally, this would be by reference to regularly-occurring, real-life scenarios in the industry. We are happy to assist in this if the Department think this would be useful. Those Guidelines would ideally be easily accessible on the CCPC website from the date of enactment of the Regulations.

2. *In relation to household cleaning products and toiletries (which the Act also foresees may be covered by regulations), which specific provisions in the draft Regulations (covering food and drink) should be included in any separate regulations covering such products?*

**Response:**

We do not see a need for additional regulations to cover this category. But if it is ultimately decided that they be captured, we see no reason why the same provisions should not apply.

3. *In relation to large suppliers which supply smaller retailers (viz. those with an annual turnover of less than €50 million), which specific provisions in the draft Regulations (covering food and drink) should be included in any separate regulations covering such situations?*

**Response:**

Please see our comments in respect of Regulation 2, 4 and 5 in relation to the importance of these Regulations imposing mutual obligations on grocery goods undertakings, relevant grocery goods undertakings and suppliers. Therefore, our view is that there is no need for separate Regulations as these Regulations can and should cover situations in which large suppliers supply smaller retailers (viz. those with an annual turnover of less than €50 million).

4. *In relation to garden plants and bulbs (which the Act also foresees may be covered by regulations), the Department is currently examining the comments and inputs received as a result of the recent consultation process held in the matter. Notwithstanding this examination, which specific provisions in the draft Regulations (covering food and drink) should be included in any separate regulations covering garden plants and bulbs?*

**Response:**

As per 2 above, we do not see a need for additional regulations to cover this category. But if it is ultimately decided that they be captured, we see no reason why the same provisions should not apply.

### APPENDIX 3

#### LIKELY COSTS IN MEETING COMPLIANCE PROVISIONS OF DRAFT REGULATIONS

*As the Department will be drawing-up a Regulatory Impact Analysis (RIA) in relation to the introduction of the proposed Regulations, the Department invites interested parties to supply an estimate of the likely cost in meeting the compliance provisions of the proposed Regulations (as currently drafted and as appended to this letter) e.g. in terms of the provision of training, maintenance of records, compliance reports, legal advice, responding to disputes, responding to enforcement audits, etc. It is fully appreciated that it may be difficult to provide precise estimates of these costs: hopefully, however, interested parties will be in a position to provide indicative information in relation to the likely additional regulatory cost that could arise were such Regulations to be introduced on the basis of the draft supplied. In addition to the foregoing, the Department would be glad to receive any other information that interested parties consider relevant in the area of administrative costs/burdens arising or benefits from the introduction of the draft Regulations.*

It is hard to accurately calculate the likely cost in meeting the compliance provisions of the proposed Regulations. We do not disagree with the figure suggested by Retail Ireland, namely a cost to the industry as a whole of somewhere in excess of €10 million.