



DÁIL ÉIREANN

AN BILLE IOMAÍOCHTA (LEASÚ) 2005 COMPETITION (AMENDMENT) BILL 2005

LEASUITHE COISTE COMMITTEE AMENDMENTS

DÁIL ÉIREANN

AN BILLE IOMAÍOCHTA (LEASÚ) 2005 —ROGHCHOISTE

COMPETITION (AMENDMENT) BILL 2005 —SELECT COMMITTEE

Leasuithe Amendments

SECTION 1

1. In page 3, to delete lines 25 to 27 and substitute the following:

“ ‘grocery goods’ means any household necessary, or food or drink for human consumption, that is intended to be sold as groceries, and includes—”.

—Phil Hogan.

2. In page 4, between lines 7 and 8, to insert the following:

“ ‘household necessary’ means any product normally sold in a grocery retailer which is used for household upkeep or maintenance or for personal hygiene by members of a household;”.

—Phil Hogan.

3. In page 4, between lines 33 and 34, to insert the following:

“(6) A person who contravenes section 15B shall be guilty of an offence and shall be liable to the penalties provided by this Act for breach of sections 4 and 5.”.

—Brendan Howlin.

4. In page 4, to delete lines 34 to 49 and in page 5, to delete lines 1 to 32 and substitute the following:

“Anticompetitive
conduct in grocery
goods trading.

15B.—(1) Subject to the provisions of this section, all arrangements, decisions, and practices, by grocery undertakings, which have as their object or effect, the prevention, restriction or distortion of competition in trade in grocery goods, in the State or any part of the State, shall be prohibited, including in particular, without prejudice to the generality of this subsection, those which—

(a) directly or indirectly attempt to compel or coerce another grocery goods undertaking, whether by threat, promise or any means, to resell or advertise for resale any grocery goods at—

(i) a price fixed directly or indirectly by the first mentioned grocery goods undertaking, or

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- (ii) a price above a minimum price fixed directly or indirectly by the first mentioned grocery goods undertaking,
- (b) apply dissimilar conditions to equivalent transactions with any other grocery goods undertaking,
- (c) directly or indirectly compel or coerce, whether by threat, promise or any means, any grocery undertaking to make a payment or grant any allowance for the advertising or the display of grocery goods, or
- (d) directly or indirectly compel or coerce, whether by threat, promise or other means, another grocery undertaking to make any payment or grant any allowance to a retailer in respect of the provision of space for the display marketing or sale of grocery goods within a retail outlet.

(2) Following the commencement of this Act and without prejudice to the generality of subsection (1), the Minister may make such regulations as may be appropriate to prescribe any additional arrangements, decisions or practices that are contrary to section 15B(1) or to provide for any related aspect required for the effective enforcement of this section 15B(1).

(3) Nothing in this subsection shall affect any right of the Authority to bring proceedings for an offence under section 6 of this, or of any other person to issue proceedings under section 14 of this Act.”.

—Phil Hogan.

5. In page 4, between lines 45 and 46, to insert the following:

“(2) A retailer (whether or not it enjoys a dominant position) shall not engage in predatory pricing or any other unfair conduct in relation to price which is likely to eliminate or significantly reduce competition.”.

—Brendan Howlin.

6. In page 5, line 5, after “the” to insert “provision of space or”.

—Phil Hogan.

7. In page 5, between lines 27 and 28, to insert the following:

“(5) Subject to this section, a retailer, as defined in this Part, shall not—

- (a) engage in predatory pricing for the purpose and intent of eliminating or reducing competition in the provision of trade in any grocery good in the State or any part of the State,
- (b) directly or indirectly impose unfair selling prices, or
- (c) impose any quota in respect of goods offered for sale at any retail outlet owned or operated by that retailer.

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For the purposes of this subsection, ‘predatory pricing’ or ‘unfair selling prices’ constitutes the sale by a grocery goods undertaking at a retail price and in a manner that is likely to have the effect of eliminating or reducing competition from a particular competitor in the State or any part of the State, but does not include grocery goods that have been offered for sale in good faith for a substantial period of time.”.

—Phil Hogan.

8. In page 5, line 29, to delete “has” and substitute “is likely to have”.

—Phil Hogan.

9. In page 5, between lines 32 and 33, to insert the following:

“(6) A grocery goods undertaking that engages in an activity that is prohibited by this section shall be guilty of an offence in the same manner and with the same effect as if the undertaking had committed an offence under section 4 or 5 of this Act.”.

—Phil Hogan.

10. In page 5, line 33, after “person” to insert the following:

“, including the National Consumer Agency and consumer groups,”.

—Phil Hogan.

11. In page 5, line 49, after “the” to insert “District Court or in the”.

—Phil Hogan.

12. In page 6, between lines 9 and 10, to insert the following:

“(5) Without prejudice to section 15B, any retailer selling grocery goods directly to the public at a retail price level that is less than the cost to the retailer of such goods, shall offer the goods for sale at that retail price in all retail outlets owned or operated by the retailer (whether directly or by a subsidiary or associated company) without restriction or quota.”.

—Phil Hogan.

13. In page 6, between lines 9 and 10, to insert the following:

“(5) For the purposes of this section, the cost to the retailer of the grocery goods shall be calculated inclusive of all discounts, rebates or other allowances received by the retailer on the supply of the goods.”.

—Phil Hogan.

14. In page 6, between lines 9 and 10, to insert the following:

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“(5) It shall be open to any person who takes an action under subsection (1) of this section, to obtain damages in respect of relief against any offence under section 15B.”.

—Phil Hogan.

15. In page 6, between lines 9 and 10 to insert the following:

“Duty to file accounts.

15D.—All retailers shall prepare a statement listing gross turnover, and gross and net profitability achieved on the supply of grocery goods in the State during the preceding 12-month period ending on 31st December each year, and shall file such statement with the Registrar of Companies no later than 31st March of the following year.”.

—Phil Hogan.

SECTION 2

16. In page 6, before section 2, to insert the following new section:

“Amendment of section 6 of the Competition Act 2002.

2.—Section 6(1) of the Competition Act 2002 is amended by substituting the existing subsection with the following:

“6.—(1) An undertaking which—

(a) enters into, or implements, an agreement, or

(b) makes or implements a decision, or

(c) engages in a concerted practice,

that is prohibited under any one of section 4(1) or 15B of this Act, or by Article 81 of the Treaty, shall be guilty of an offence.”.

—Phil Hogan.

17. In page 6, before section 2, to insert the following new section:

“Insertion of new section 51A in the Competition Act 2002.

2.—The Principal Act is amended by inserting the following section after section 51:

“Predatory pricing.

51A.—The Minister may—

(a) determine, and from time to time revise, priorities for the Authority in performing its functions under this Act, and

(b) by Ministerial regulation, confer additional powers on the Authority at his or her discretion, but in particular in relation to—

(i) predatory pricing, and

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(ii) the activities of cartels.”.”

—Phil Hogan.

SECTION 3

18. In page 6, before section 3, to insert the following new section:

“Insertion of new section 8A in the Competition Act 2002.

3.—The Principal Act is amended by inserting the following section after section 8:

“Administrative fine.

8A.—(1) Where the Authority has reasonable grounds for believing that a person has committed a summary offence which is subject to summary prosecution, the Authority may deliver to the person or, where the person believed to have committed the offence is a company, to an officer of the company, a notice in the prescribed form stating—

- (a) that the person or company is alleged to have committed that offence,
- (b) that the person to whom the notice is delivered may during a period of 21 days beginning on the date of the notice—
 - (i) remedy as far as practicable to the satisfaction of the Authority any default that constitutes the offence, and
 - (ii) make to the Authority a payment of a prescribed amount which shall be accompanied by the notice,and
- (c) that a prosecution of the person to whom the notice is delivered in respect of the alleged offence will not be instituted during the period specified in the notice or, if the default is remedied to the satisfaction of the Authority and the payment specified in the notice is made during that period, at all.

(2) Where a notice is given under subsection (1)—

- (a) a person to whom it applies may, during the period specified in the notice, make to the Authority the payment specified in the notice, accompanied by the notice,
- (b) the Authority may receive the payment and issue a receipt for it, and no payment so received shall in any circumstances be recoverable by the person who made it, and

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(c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice and, if the default is remedied to the satisfaction of the Authority and the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence shall be instituted at all.

(3) In a prosecution for an offence to which this section applies, the onus of showing that a payment pursuant to a notice under this section has been made shall lie on the defendant.

(4) All payments made to the Authority in pursuance of this section shall be paid into or disposed of and for the benefit of the State in such manner as the Minister for Finance may direct.”

—Phil Hogan.

SECTION 4

19. In page 6, before section 4, to insert the following new section:

“Amendment of section 20.

4.—The Principal Act is amended in section 20(1), by inserting the words “which comes within the scope of section 18(1)(a),” after “notification received by it”.”

—Phil Hogan.

SECTION 5

20. In page 7, before section 5, to insert the following new section:

“Amendment of Competition Act 2002 – new section 4A.

5.—The Competition Act 2002 is amended by inserting the following section after section 4—

“4A.—(1) Where an individual carries on business by engaging for gain in the doing or performing personally of work or services (whether manual, clerical, professional, vocational or otherwise)—

(a) a trade union (being a trade union which is the holder of a negotiation licence under Part II of the Trade Union Act 1941) of which that and other individuals so engaged are members is not an association of undertakings,

(b) section 4 does not apply to any agreement, decision or concerted practice affecting the terms or conditions under which such work or services is or are done or performed by two or more such individuals for the same undertaking or for members of an association of undertakings.”

—Brendan Howlin.

21. In page 7, lines 3 and 4, to delete subsection (2).

—Brendan Howlin.

[*SCHEDULE*]

SCHEDULE

22. In page 7, after line 53 to insert the following:

“

No. 11 of 1972	Restrictive Practices Act 1972	The whole Act insofar as it is unrepealed
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”

—Brendan Howlin.

TITLE

23. In page 3, line 14, after “ACTS” to insert “, AND TO PROVIDE FOR
OTHER MISCELLANEOUS MATTERS”.

—Phil Hogan.