



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

EXPLANATORY AND FINANCIAL MEMORANDUM

The Bill contains 6 sections as follows:

1. Amendment of Competition Act 2002 by inserting new Part 2A.
2. Amendment of section 30 of Competition Act 2002.
3. Amendment of section 45 of Competition Act 2002.
4. Revocation of Groceries Order.
5. Repeals.
6. Short title, collective citation and commencement.

SECTION 1

Section 1 of this Bill contains an amendment to the Competition Act 2002 by inserting a new Part 2A to prevent certain unfair trading practices in the grocery trade.

Part 2 of the Competition Act 2002 sets out the general competition rules (in relation to anti-competitive agreements, decisions and concerted practices, and also the abuse of a dominant position) and relevant enforcement provisions. *Section 1* of this Bill inserts new sections 15A, 15B and 15C into the Competition Act under new Part 2A.

Section 15A

Section 15A, Subsection (1) contains standard interpretation provisions (i.e. definitions) for the purposes of the Bill. Subsections (2), (3), (4) and (5) of section 15A set out operational issues, generally for the avoidance of doubt, regarding the application of the Bill to the grocery sector only.

Section 15B

This section sets out new rules in relation to anti-competitive conduct in the grocery sector.

Subsection (1) is designed to prohibit resale price maintenance in the grocery sector.

Subsection (2) prevents discrimination by requiring grocery undertakings to apply similar conditions to equivalent transactions in the sector.

Subsection (3) is designed to prohibit parties from compelling or coercing others to pay advertising allowances.

Subsection (4) is designed to prohibit “hello money” in relation to new or extended retail outlets.

Subsection (5) clarifies that the specified conduct is prohibited when it prevents, restricts or distorts competition in the grocery sector, either in the State or in any part of the State. This replicates language in the Competition Act 2002.

Section 15C

Subsection (1) confers a right of action on any person who is aggrieved as a result of the conduct prohibited under section 15B above and subsection (2) provides a similar right of action for the Competition Authority.

Subsection (3) provides that the right of action outlined as subsections (1) and (2) previous may be brought in either the Circuit Court or the High Court.

Subsection (4) contains technical provisions to apply the procedural arrangements in legal proceedings set out in the Competition Act 2002 to the right of action specified at subsections (1) and (2) above.

SECTION 2

Section 2 applies Section 30 of the Competition Act 2002 in respect of the right of action specified under section 15C of the Bill outlined above. Section 30 of the Competition Act contains provisions in respect of the functions of the Competition Authority. The amendment applies to Section 30(4)(b) which does not allow the Authority to delegate the power to initiate legal proceedings to a member of the Authority or a member of staff of the Authority.

SECTION 3

Section 3 applies Section 45 of the Competition Act 2002 in similar terms. Section 45 of the Competition Act contains provisions in respect of authorised officers of the Competition Authority relating to warrants of appointment.

SECTION 4

Section 4(1) of the Bill revokes the Restrictive Practices (Groceries) Order, 1987 in its entirety.

Section 4(2) contains provisions to provide clarity and legal certainty in relation to the revocation in subsection (1).

Section 4(3) contains provisions to ensure that any legal proceedings in relation to the Order may continue following revocation of the Order.

Section 4(4) contains a reference to the Interpretation Act 2005 for technical purposes.

SECTION 5

Section 5 of this Bill contains further repeal provisions in respect of the Statutes listed in the *Schedule* to the Bill. These Statutes are confirming Acts in respect of Orders made under the Restrictive Practices Acts which are now redundant.

SECTION 6

Section 6 contains standard provisions in relation to short title — *Subsection (1)*, collective citation — *Subsection (2)* and commencement — *Subsection (3)*.

Financial implications

The Bill does not involve any net additional costs for the Exchequer.

*An Roinn Fiontar, Trádála agus Fostaíochta,
Nollaig, 2005.*