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mBille um Shlabhra an tSoláthair Talmhaíochta agus Bia 2022

Deireadh Fómhair 2022

Joint Committee on Agriculture, Food and the Marine

Report on the Pre-legislative Scrutiny of the
Agricultural and Food Supply Chain Bill 2022

October 2022

Membership

The following Deputies and Senators are members of the Joint Committee on Agriculture, Food and the Marine of the 33rd Dáil Éireann and the 26th Seanad Éireann.



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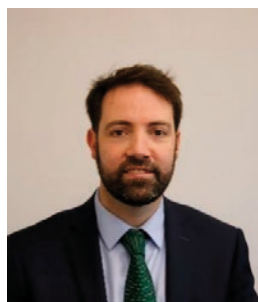
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Michael Ring T.D.
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Foreword



For years stakeholders in the agri-food sector have advocated for a regulator in the food supply chain to ensure fairness, equity and transparency from the primary producer to the consumer. This sector plays a vital role in rural employment and contributes significantly to both the national and rural economy. The Committee welcomes the Agricultural and Food Supply Chain Bill 2022 and the proposed establishment of the Office for Fairness and Transparency in the Agri-Food Supply Chain.

The Bill reflects the European Union's Unfair Trading Practices policy and the commitment made in the Programme for Government. The aim of the Bill is to seek to improve market transparency in the agricultural and food supply chain. The Committee hopes that with the establishment of this proposed Office the sector will see an improvement in the position of primary producers in the food supply chain and that with improved transparency greater relations between each part of the supply chain can be built upon.

As Cathaoirleach of the Committee, I would like to thank Members for their input and their commitment in the pre-legislative scrutiny of this important Bill and in bringing forward this Report. On behalf of the Committee, I would like to express my sincere gratitude to every stakeholder that forwarded a submission to the Committee or came before the Committee to give evidence. Engagement and discussions with representative organisations and government bodies were critical to the Committee's scrutiny of this Bill and the development of this Report.

A handwritten signature in dark ink that reads "Jackie Cahill".

Jackie Cahill T.D.
Cathaoirleach
October 2022

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Introduction

The agri-food sector is a significant part of Ireland's economy through its exports and employment. In 2021 there were 15.2 billion total agri-food sector exports, and it is estimated that the sector accounted for over 6% of Ireland's Modified Gross National Income in 2020. This sector plays a crucial role to rural economies as well as the national economy as it accounts for approximately 163,600 jobs or 7.1% of employment in Ireland. The importance of food security has been especially highlighted in recent years with climate change, Brexit and the ongoing war in Ukraine. These turbulences and challenges have impacted the agri-food sector in Ireland. It is now more important than ever that there is more transparency throughout food supply chain in order to bring fairness to all of those working throughout the agri-food sector.

Legislative Context

In April 2019 the European Union Directive 2019/633¹ on unfair trading practices in the agricultural and food supply chain (the Unfair Trading Practices (UTP) Directive or 'the Directive') was adopted by the European Parliament and Council. EU Member States were required to transpose the Directive into national law by 1 May 2021 and apply it six months later. In the 'Programme for Government – Our Shared Future' the Irish Government committed to:

Ensure fairness, equity, and transparency in the food chain by establishing a new authority called the National Food Ombudsman (NFO) to enforce the Unfair Trading Practices Directive. This new authority will enforce EU-wide rules on prohibited unfair trading practices in the food supply chain and will have powers to enforce this Directive, penalising those who breach regulations. The NFO

¹ Official Journal of the European Union, *DIRECTIVE (EU) 2019/633 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain*, Directive, 17 April 2019. [Link](#) to directive.

will have a specific role in analysing and reporting on price and market data in Ireland.²

In April 2021, the Minister for Agriculture, Food and the Marine signed Statutory Instrument No. 198 of 2021³ transposing the UTP Directive directly into Irish law. The Minister created an interim UTP Enforcement Authority within the Department of Agriculture, Food and the Marine, pending the adoption of primary legislation to create a 'National Food Ombudsman (NFO)' as described in the Programme for government.

Pre-legislative Scrutiny

On 5 May 2022 the Joint Committee on Agriculture, Food and the Marine ("the Committee") received a copy of the General Scheme of the Agricultural and Food Chain Supply Bill 2022⁴ and was instructed that it could begin the pre-legislative scrutiny (PLS) process as per Dáil Éireann Standing Order⁵ 173(1).

173(1) Prior to its presentation or introduction to the Dáil, the general scheme or draft heads of a Bill shall be given by a member of the Government or Minister of State to the Committee empowered under Standing Order 95 to consider Bills published by the member of the Government.

In May, as part of its PLS process the Committee agreed to seek submissions from a wide range of stakeholders including farming organisations, representatives of the chain and organisations at European level. The Committee received nine submissions from stakeholders which can be found in Appendix 1 of this Report.

² Government of Ireland, *Programme for Government – Our Shared Future*, Document, June 2020. [Link](#) to document.

³ Irish Statute Book, *European Union (Unfair Trading Practices in the agricultural and food supply chain) Regulations 2021*, S.I. No.198/2021, 28 April 2021. [Link](#) to Statutory Instrument.

⁴ Department of Agriculture, Food and the Marine, *General Scheme of the Agricultural and Food Supply Chain Bill 2022*, Webpage. [Link](#) to webpage.

⁵ Houses of the Oireachtas, *Consolidated Dáil Éireann Standing Orders*, Document, 26 May 2022. [Link](#) to document.

Stakeholders

In scrutinising the Bill's General Scheme, the Committee held three days of hearings between June 2022 and July 2022. It engaged with the Minister of Agriculture, Food and the Marine and various stakeholder groups of which the following table provides further details.

Table 1 - Joint Committee Hearings - Stakeholders / Witnesses

29 June 2022	
Department of Agriculture, Food and the Marine (DAFM)	Mr. Charlie McConalogue T.D., Minister for Agriculture, Food and the Marine <i>Accompanied by:</i> Ms. Angela Robinson, Principal Officer, Food Industry Development Division Mr. John Kinsella, Principal Officer, Head of Legal Services Mr. Noel Collins, Principal Officer, UTP Enforcement Authority
6 July 2022	
Consumer and Competition Protection Commission (CCPC)	Mr. Brian McHugh, Member of the Commission Mr. Seán Murphy, Director of Consumer Protection Division Ms Síona Ryan, Director of Policy and International Division
Retail Ireland	Mr. Arnold Dillon, Retail Ireland

13 July 2022	
Irish Creamery Milk Suppliers Association (ICMSA)	Mr. Pat McCormack, President Mr. John Enright, General Secretary
Irish Farmers' Association (IFA)	Mr. Tim Cullinan, President Mr. Damian McDonald, Director General Mr. Robert Malone, Senior Retail Policy Executive
Irish Natura & Hill Farmers' Association (INHFA)	Mr. Vincent Roddy, President Mr. Michéal McDonnell, Vice-President Ms. Sharon Cosgrove, National Secretary
Macra na Feirme	Mr. John Keane, National President Mr. Liam Hanrahan, Chair of the National Agricultural Affairs Committee

Transcripts

The transcripts of the meetings of 29 June 2022⁶, 6 July 2022⁷ and 13 July 2022⁸ are available online on the Committee's webpage.

Presentations and Submissions

The presentations and submissions made to the Committee for the meetings of 29 June 2022, 6 July 2022 and 13 July 2022 are available online on the Committee's

⁶ Houses of the Oireachtas, *Joint Committee on Agriculture, Food and the Marine*, Debate, 29 June 2022. [Link](#) to debate.

⁷ Houses of the Oireachtas, *Joint Committee on Agriculture, Food and the Marine*, Debate, 6 July 2022. [Link](#) to debate.

⁸ Houses of the Oireachtas, *Joint Committee on Agriculture, Food and the Marine*, Debate, 13 July 2022. [Link](#) to debate.

webpage.⁹ Submissions received by the Committee are also available in Appendix 1 of this Report.

⁹ Houses of the Oireachtas, *Joint Committee on Agriculture, Food and the Marine*, Webpage. [Link](#) to webpage.

Agricultural and Food Supply Chain Bill 2022

The General Scheme of the Agricultural and Food Supply Chain Bill 2022 is extensive, made up of five parts with 64 heads overall. The aim of the Agricultural and Food Supply Chain Bill 2022 is:

- establish an Office for Fairness and Transparency in the Agri-Food supply chain which will be a new State Body under the aegis of the Minister for Agriculture, Food and the Marine,
- provide for principles of fairness and transparency in the agricultural and food supply chain,
- strengthen the position of farmers, fishers and other suppliers in the agricultural and food supply chain,
- enforcement of unfair trading practice rules, and
- analysis and reporting of price and market data concerning the agricultural and food supply chain.

The Bill provides for the designation by the Minister for Agriculture, Food and the Marine to the proposed Office of an enforcement function concerning prohibited unfair trading practices in the agricultural and food supply chain:

An Enforcement Authority will be established under the remit of the Office and shall enforce the Unfair Trading Practices Directive (EU) No. 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain.

The Bill also provides that the Office, including the Enforcement Authority, may promote fair trading practices in the Agri-food chain. The Bill assigns powers to allow the Minister of Agriculture, Food and the Marine to extend, amend and add to existing Unfair Trading Practices. The Bill provides for the introduction of charges and levies. This Bill deals with business-to-business relationships in the agricultural and food supply chain rather than business-to-consumer relationships.

Office for Fairness and Transparency in the Agri-Food Supply Chain

As detailed in the General Scheme of the Bill the Office for Fairness and Transparency in the Agri-Food Supply Chain will be established rather than a 'National Food Ombudsman (NFO)' as referenced in the Programme for Government. The Committee notes that farmers organisations did express during hearings their preference for a regulator. The aim of the Office for Fairness and Transparency in the Agri-Food Supply Chain is to provide a service to support the principles of fairness and transparency in the agricultural and food supply chain. The Committee notes that farmers organisations in seeking a regulator, had sought an organisation more akin to an enforcement authority. According to the General Scheme the functions of the Office will include analysis and reporting of price and market data concerning the agricultural and food chain in Ireland to help enhance market fairness and transparency. The purpose of this Bill is to ensure the increased availability of market information with a view to strengthening the position of farmers, fishers and other suppliers in the agricultural and food supply chain against larger buyers with greater bargaining power.

The Bill also provides powers for the Office to:

- draft, approve and issue codes of practice and guidelines,
- raise awareness, to promote, cooperate and make recommendations on legal or other matters relating to its functions and matters concerning fairness and transparency in the agricultural and food supply chain.

The Committee is concerned that the proposed Bill, as it is currently constituted, may not deliver an organisation with sufficient stakeholder buy in, and one which will be fit for the purpose of securing full fairness and transparency in the food market.

Recommendations

The Committee welcomes the potential that this Bill and proposed Office could have in improving transparency and fairness in the agri-food sector and supply chain. After scrutinising the General Scheme of the Agricultural and Food Supply Chain Bill 2022 the Committee has made the following recommendations: -

1. In Part 1, the Committee notes that reference is made to business-to-business relationships, and believes that in order to fulfil its remit the Office would require knowledge of the full breadth of the supply chain. As such the scope should be broadened to include business-to-consumer relationships. It would be the Committee's preference that this would be achieved in the fullest manner through the transfer of competency from the Consumer Protection and Competition Commission of all functions relating to the sale of foodstuffs.
2. The Committee notes that in Head 7 the title of the Office is stated as 'the Office for Fairness and Transparency in Agri-Food Supply Chain'. The Committee further notes both that this title was not referenced in either the Programme for Government or during the consultation process and that stakeholders have expressed preference for a regulator. As such, the Committee believes that the title of the office as constituted should be titled the National Food Regulator.
3. The Committee welcomes the role and functions of the proposed Office listed under Head 8 and Head 9 of the General Scheme which includes investigation powers into suspected breaches of unfair trading practices and report regular analysis on price and market information with regards to the agricultural and food supply chain. However, the Committee notes that 9(1)(c) refers to the collection of publicly available price and market data in the agricultural and food supply chain. The Committee recommends that the proposed Office should also have the power to require market data that isn't publicly published. The Committee understands that market sensitive data does not need to be made publicly available however it must be available to the proposed Office if requested to ensure fairness in the food supply chain.

The collection and analysis of such commercially sensitive information (or information that isn't publicly published) should be reinforced with a commitment that '*such information would be protected from public dissemination*'. This could help to foster confidence from the purchaser's and producer's side in the Office's work and make them more amenable to co-operating.

4. The Committee recommends that under 'General functions and role of the Office' (Head 8) and 'Particular functions of Office' (Head 9) of the Bill, that the following is included:

'conduct random inspections on suppliers and buyers to ensure continued compliance with the rules on unfair trading practices'.

5. The Committee also believes that under Head 9 there is reason to oblige the Office to conduct and publish regular analysis and reports on comparable price and market information (where applicable) elsewhere in the EU, UK and among international trading partners. This could assist in comparing trends and determining whether domestic cartel-like behaviour could be taking place.
6. In particular the Committee welcomes under Head 9 the Office's function of promoting awareness and conducting public information campaigns for the purpose of educating the public on unfair trading practices in this sector. It is crucial that the public understand where their food supply comes from and to understand the work of the primary producer in providing it through the supply chain.
7. Following discussions with stakeholders the Committee believes that the suggested composition of the board of 6 members listed under Head 10 of the General Scheme is too small to adequately represent different parts of the agri-food sector and supply chain. Other state bodies under the aegis of the Department of Agriculture, Food and the Marine such as Teagasc and Bord Bia have 11 members on their boards which includes representation from farming representative organisations. The Committee recommends that

number of the proposed Office's board is expanded in line with the other state bodies and is made up of experienced representatives of participants involved throughout the agri-food food supply chain. The Committee would further recommend that an increased board size would warrant an increased quorum from the current 3.

8. Under Head 14 of the General Scheme with regards to the appointment of a Chief Executive to the proposed Office, the Committee recommends in line with Dáil Éireann Standing Orders 96(7) where the 'Chairperson designate of a body or agency under the aegis of a Department shall, prior to his or her appointment, attend before the Select Committee to discuss his or her strategic priorities for the role' that the Chief Executive designate of the proposed Office must attend before the relevant Sectoral Committee to discuss their strategic priorities for the role. As stated by the General Scheme the purpose of this proposed Office is to provide fairness and transparency in the agricultural and food supply chain therefore it is vitally important that prior to the Chief Executive's appointment their strategic priorities for the role are discussed and considered with the Sectoral Committee. The Committee notes that under Head 11 the Minister has responsibility to designate a member of the Board as Chairperson. The Committee recommends that Oireachtas approval be required for such appointments through the Sectoral Committee.
9. The Committee recommends that under Head 17 of the General Scheme specific reference is made to the Sectoral Committee which shadows the Department of Agriculture, Food and the Marine of which this proposed Office will be under the aegis of. The Committee believes that the Bill should make it clear that the Chief Executive of the proposed Office will be required to attend before this Sectoral Committee when it is requested.
10. The Committee notes that the remuneration of the Chief Executive of proposed Office will be reported to the Minister for Agriculture, Food and the Marine. However, the Committee recommends that reference is made in the

Bill that the remuneration of the Chief Executive will be publicly published for transparency's sake and in line with other public service appointments.

11. Under Head 38(4) of the General Scheme the proposed Office shall take necessary measures for the appropriate protection of the identity of the complainant where the complainant so requests. Following discussions with stakeholders the Committee recommends that this is amended to make it clear that the Office's default position should be to maintain confidentiality when dealing with the identity of a complainant or the information provided to it as part of the complaint, unless otherwise requested or consented to by the complainant.

12. The Committee recommends that under Head 38 it be clarified that farmers organisations be allowed to make complaints to the Office of their own volition without the prerequisite that it be on the behalf of a supplier.

13. The Committee recommends that 'in writing' is included to the text under Head 38(8) and 38(9) to read as:

*(8) Where the Office receives a complaint, it shall inform the complainant **in writing** within a reasonable period of time after the receipt of the complaint of how it intends to follow up on the complaint.*

*(9) Where the Office considers that there are insufficient grounds for acting on a complaint, it shall inform the complainant **in writing** of the reasons within a reasonable period of time after the receipt of the complaint.*

14. The Committee believes that clarity needs to be brought in respect of Head 41(4) 'Where the parties to an independent alternative dispute resolution mechanism reach a full and final conclusion, the Office may consider the issue closed.' The Bill does not follow up on what occurs when the alternative dispute mechanism fails to reach a full and final conclusion. The Committee recommends that a provision should be included that if the alternative dispute mechanism fails the Office will then resume consideration of the complaint.

15. The Committee recommends that any proposals made by the Office under Head 43 to the Minister regarding proposals for legislation be disclosed in the Annual Report of the Office, and that the Minister be obliged to furnish the Oireachtas Sectoral Committee to such on an annual basis.
16. Under Head 50 of the General Scheme the time limit for prosecution for an offence under this Bill may be brought at any time 2 years after the date of the alleged commission of the offence. The Committee believes that this is a tight deadline as due to the nature of the business of the sector it may take some time before a complainant may be aware that they have experienced an unfair trading practice. The Committee recommends that this deadline is changed to at least 3 years after the date of the alleged offence to cater for a potential delay on the part of the complainant in bringing a complaint to the Office.
17. The Committee recommends that the fine listed in Head 52(2)(b) of the General Scheme which is limited to €500,000 when a person commits an offence under sections 48(11) or 49(1) of the Bill is increased to €10 million or 10% of an operator's global turnover, whichever is greater, in order to act as a deterrent to larger operators in committing an offence under this Bill.
18. The Committee recommends that the new body shall be obliged to examine with a view to proposing mechanisms by which the purchase of food stuffs below the cost-of-production can be introduced.
19. The Committee recommends full enforcement powers including confiscation of any evidence in a case where the Office believes or suspects a processor or processors are collaborating in price.
20. The Committee recommends powers to be given to the Office to see all documentation of processor and retailer of prices achieved for product so as to ascertain the margins in all parts of market.

Appendix 1: Submissions received from Stakeholders

The Committee received nine submissions on the General Scheme of the Agricultural and Food Chain Supply Bill 2022 from the following stakeholders:

- Competition Consumer Protection Commission (CCPC)
- Food Drink Ireland
- Irish Creamery Milk Suppliers Association (ICMSA)
- Irish Farmers' Association (IFA)
- Irish Grain Growers' Group (IGGG)
- Irish Natura & Hill Farmers Association (INHFA)
- Macra na Feirme
- Musgrave
- Retail Ireland

The following submissions are also available online on the Committee's webpage.¹⁰

¹⁰ Houses of the Oireachtas, *Joint Committee on Agriculture, Food and the Marine*, Webpage. [Link](#) to webpage.

Submission 1.1 – The Competition and Consumer Protection Commission (CCPC)

1. Introduction

1.1 The Competition and Consumer Protection Commission (CCPC) welcomes the invitation by the Joint Oireachtas Committee on Agriculture, Food and the Marine to make a submission on the General Scheme of the Agriculture and Food Supply Chain Bill 2022 ('the General Scheme'). The CCPC welcomes the contents of the General Scheme and the establishment of an Office for Fairness and Transparency in the Agri-food Supply Chain ('the Office'). The General Scheme aligns with many of the recommendations made by the CCPC in its submission to the Department of Agriculture, Food and the Marine ('DAFM') for its Public Consultation on the functions to be assigned to a new Office (National Food Ombudsman/ Regulator or Equivalent Office) in May 2021¹. The CCPC believes that the Bill, as proposed in the General Scheme, would enable the effective implementation of Directive 2019/633² ('The Unfair Trading Practices Directive') and of some of the measures of the now revoked Grocery Goods Regulations³.

1.2 This submission will outline the CCPC's views and comments, in particular around the General Scheme's proposed role and functions of the Office, and its approach to complaints, to prohibitions, and to enforcement. The submission's main observations are:

- It will be crucial for the new Office to establish relationships with farmers and primary producers as well as buyers to facilitate effective communication channels where issues of concern, including complaints can be brought to the attention of the new Office.
- The CCPC recommends that provisions regarding confidentiality for complaints should be strengthened.
 - The CCPC recommends that the default position of the Office should be to maintain confidentiality when dealing with the identity of a complainant or the information provided as part of the complaint, unless otherwise requested or consented to by the complainant.

¹ <https://www.ccpc.ie/business/business/research/submissions/ccpc-response-to-the-public-consultation-on-the-functions-to-be-assigned-to-a-new-office/>

² Directive 2019/633 on Unfair Trading Practices in Business-to-Business relationships in the Agricultural and Food Supply Chain. [EUR-Lex - 32019L0633 - EN - EUR-Lex \(europa.eu\)](#)

³ S.I. No. 35/2016 - Consumer Protection Act 2007 (Grocery Goods Undertakings) Regulations 2016 [S.I. No. 35/2016 - Consumer Protection Act 2007 \(Grocery Goods Undertakings\) Regulations 2016. \(irishstatutebook.ie\)](#)

- The CCPC recommends that robust data security systems be put in place by the new Office.
- It is important that any Regulation made under the proposed Bill be appropriate and evidence based. The CCPC suggests that the Minister consult the Office in advance of the drafting of any new Regulations to be made under the Bill.
- It will be important for any Regulation made under the Bill to consider and clearly communicate the distinction between unfair trading practices which are prohibited in any circumstances, and those which are prohibited unless they have been previously agreed in clear and unambiguous terms in the supply agreement or in a subsequent agreement between the supplier and the buyer.
- The CCPC recommends that the time limit for a prosecution for an offence under the Bill to be brought after the date of the alleged commission of the offence should be increased to 3 years.

2. Role and Functions of the Office

2.1 The CCPC welcomes the role and functions as set out under Head 8 and Head 9 of the General Scheme. In particular, the CCPC welcomes that a key function of the Office will be to make available analysis of information on price and market data in the agricultural and food supply chain in Ireland, and that the Office will report and advise the Minister based on its analysis and research. We note the particular function set out under Head 9.1 (c) to 'collect, analyse and report on publicly available price and market data in the agricultural and food supply chain' and it might be expected to cover ensuring compliance with the Regulations on market transparency⁴.

2.2 This reflects the CCPC's recommendation to the DAFM that the new Office should take a broad, cross-market view and gather the data necessary for reporting on price

⁴ Commission Implementing Regulation (EU) 2019/1746 of 1 October 2019 amending Implementing Regulation (EU) 2017/1185 laying down rules for the application of Regulations (EU) No 1307/2013 and (EU) No 1308/2013 of the European Parliament and of the Council as regards notifications to the Commission of information and documents

formation mechanisms along the food supply chain. The CCPC remains of the view that this will enable the new Office to track market trends as they develop, and identify issues arising in the agri-food sector, including any presence of systemic UTPs with wider impacts throughout the supply chain. In turn, this will strengthen the Office's ability to support and advise the Minister and make recommendations in relation to any legislative or policy change.

2.3 The CCPC welcomes that a particular function of the Office will be to "promote awareness and conduct public information campaigns for the purpose of educating and providing information to the public concerning the functions assigned to the Office under this Bill". The CCPC is aware that this approach has worked well for the Groceries Code Adjudicator (the GCA) in the United Kingdom (UK).

2.4 The CCPC also welcomes the emphasis placed in the General Scheme on the importance of the Office engaging with stakeholders, and its empowerment to cooperate and consult with suppliers and buyers of agricultural and food products and other relevant stakeholders. This will not only assist the Office in the execution of its proposed function, but also encourage stakeholders to come forward and engage with the regulator, on a confidential basis if required, where unfair practices are being conducted.

3. Complaints

3.1 The CCPC welcomes the General Scheme's measures regarding complaints as set out under Head 38. In the CCPC's experience, such complaints are an important source of information and intelligence for any enforcement body. It will be crucial for the new Office to establish relationships with farmers and primary producers as well as buyers to facilitate effective communication channels where issues of concern, including complaints, can be brought to the attention of the new Office.

3.2 The CCPC would like to emphasise the importance of confidentiality so that suppliers and other key stakeholders have confidence that they will not face repercussions if they were to make a complaint. Therefore, it will be important for the new Office to communicate to stakeholders that it is wholly impartial in order for the UTP Directive to have the desired impact. Furthermore, it will be crucial to ensure that confidentiality measures during the course of an investigation are robust. For this reason,

the CCPC recommends that, overall, provisions relating to confidentiality for complaints should be strengthened.

3.2.1 The CCPC notes that the General Scheme currently entails under Head 38 (4) (a) that the Office shall take necessary measures for the appropriate protection of the identity of the complainant where the complainant so requests. The CCPC recommends instead that the default position of the Office should be to maintain confidentiality when dealing with the identity of a complainant or the information provided as part of the complaint, unless otherwise requested or consented to by the complainant.

3.2.2 The CCPC would also suggest that similar provisions to the Groceries Code Adjudicator Act 2013 (GCA Act) around confidentiality, as set out in Article 18⁵, should be considered. In particular, the GCA Act sets out that the GCA may not make an unauthorised disclosure of information that it thinks might cause someone to think that a particular person has complained about a large retailer failing to comply with the Groceries Code.

3.3 The CCPC further recommends that robust data security systems be put in place by the new Office to ensure that commercially sensitive data is handled appropriately. As part of that, the CCPC welcomes the amendments to the Freedom of Information Act 1997 to include the Office in the relevant schedules.

3.4 The CCPC agrees that the Office should organise its affairs in order to avoid any potential conflict of interests. However, the CCPC suggests that the wording used in Head 38 (11) that the Office should manage its affairs in a way that avoids giving rise to the perception of any conflict of interest should be reconsidered as this may be an onerous responsibility for the Office.

4. Prohibitions

4.1 The CCPC notes that the Bill as outlined in the General Scheme, would not, in itself, prohibit any practice but instead sets out a list of Regulations that the Minister may make in relation to the agriculture and food supply chain. The CCPC welcomes this approach as it will allow flexibility for the Minister to maintain or introduce national rules

⁵ <https://www.legislation.gov.uk/ukpga/2013/19/section/18/enacted>

designed to combat unfair trading practices that are not within the scope of the Directive, for example regarding the size of the buyers and suppliers, protection of buyers, the scope of products and the scope of services⁶, so long as the rules are proportionate and appropriate for the Agri-food sector in Ireland. This will provide the Minister, with the support of the Office, greater flexibility to create, amend and repeal rules based on evolving market trends and adapt to any changes in the Irish agri-food sector context. The approach also allows for the Minister to consider the reintroduction of the Grocery Goods Regulations' obligations on grocery businesses, which are outlined along with the Directive's list of prohibited unfair trading practices in Head 39 of the General Scheme.

4.2 It is important that any Regulation made under the proposed Bill be appropriate and evidence based. In this context, the CCPC very much welcomes the provisions set out in Head 43 of the General Scheme, where the Office is mandated to review the Regulations made under the Bill and assist in the preparation of relevant draft legislation as the Minister may direct. The CCPC also welcomes the provision under which the Office will consult relevant persons before submitting proposals to the Minister or any other Minister of the Government.

4.3 The CCPC notes that the Minister may make Regulations regarding unfair trading practices having consulted the European Commission. The CCPC would also suggest that the Minister consult the Office in the drafting and designing of each Regulation under the Bill.

4.4 The CCPC notes that the Directive's list of prohibited unfair trading practices are separated in two different categories. Article 3.1 sets out the list of unfair trading practices which are prohibited in any circumstances, and Article 3.2 sets out the list of unfair trading practices which are prohibited unless they have been previously agreed in clear and unambiguous terms in the supply agreement or in a subsequent agreement between the supplier and the buyer. This distinction is not made in the General Scheme.

⁶ The Directive states in Article 9 that Member States may maintain or introduce stricter rules aimed at combating unfair trading practices than those laid down by the Directive, provided that such national rules are compatible with the function of the internal market. It also states that the Directive shall be without prejudice to national rules aimed at combating unfair trading practices that are not within the scope of the Directive, provided that such rules are compatible with rule on the functioning of the internal market. [EUR-Lex - 32019L0633 - EN - EUR-Lex \(europa.eu\)](#)

It will be important for any Regulation made under the Bill to consider this distinction and to clearly communicate the type of prohibition.

5. Enforcement

5.1 Having an adequate and robust enforcement framework will be key to the Bill's success and the Office's effectiveness for a number of reasons.

- In the first instance there may be a significant imbalance between the parties concerned in terms of unequal bargaining power, expertise, resources and information so regulatory intervention through an appropriate framework is necessary.
- The enforcement model must be capable of deterring traders from engaging in the prohibited practices concerned.
- The Office must have a suite of interventions available to it which will address breaches at different times and with different effects.

In terms of offence provisions, the CCPC would highlight the effectiveness of strict liability offences as a means of addressing breaches in an efficient and timely manner in tandem with the provision of a defence of due diligence as a defence for an accused person.

5.2 The CCPC notes that, under Head 50 of the General Scheme, a prosecution for an offence under the Bill may be brought at any time within 2 years after the date of the alleged commission of the offence. The CCPC recommends that this time limit be extended to 3 years. It is the CCPC's view that a time limit of 3 years would cater for a potential delay on the part of the complainant to bring a complaint to the Office in the first instance. Furthermore, the time limit should also allow for the Office to conduct its investigations, especially given the potential complexity of some of the trading relationships which might be involved.

ENDS

Submission 1.2 – Food Drink Ireland



Ibec food and drink sectors submission to Joint Committee on Agriculture, Food and the Marine on Agricultural and Food Supply Chain Bill 2022

Introduction and opening comments

1. Food Drink Ireland (FDI) welcomes the opportunity to submit views, on behalf of the Ibec food and drink sectors (Dairy Industry Ireland, Drinks Ireland, Meat Industry Ireland, Prepared Consumer Foods Council) to the Joint Committee on Agriculture, Food and the Marine on the Agricultural and Food Supply Chain Bill 2022. The Irish agri-food and drink sector plays a central role in Irish society. It generates economic growth, is the mainstay of the rural economy providing hundreds of thousands of jobs and provides a market for over 90% of agricultural output.
2. The Bill has the potential to improve relations in the food chain. On the one hand it can address complaints between major grocery retailers and suppliers in Ireland by building on the recently transposed Unfair Trading Practices (UTP) Directive. On the other hand, functions on analysis and reporting of price and market data may help to increasing understanding of market dynamics and dispel misconceptions. The Bill and resulting implementing regulations cannot however influence commercial transactions, the normal functioning of the market and must respect commercially sensitive data or information.
3. UTPs faced by food and drink companies include a failure to respect contractual terms, de-listing threats and unilateral deductions off-invoice without sound business reasons. In the short-term these demands impact on individual suppliers, their margins and levels of investment, but ultimately, they are also bad for consumers. These unfair practices undermine the economic viability of food companies, leading to difficulties with business planning and cash management, an inability to reinvest in plant, equipment and innovation and costly inefficiencies along the supply chain. They impact on the returns achievable for suppliers up the chain including primary producers. Left unchecked, this will have profoundly negative long-term consequences for both the food chain and consumers.
4. Consumers are best served by a food chain and grocery market that is both fair and competitive, one that offers choice and convenience, and provides an outlet for new products and suppliers. The Bill has the potential to help to address some of the unfair pressures currently put on

suppliers by major retailers provided its scope is extended so as to reflect the provisions in the recently withdrawn Grocery Goods Undertakings Regulations 2016¹. The Bill must ensure that there is no rollback on the protections from UTPs for grocery suppliers in the 2016 Regulations.

5. Effective legislation can prevent retailers transferring excessive risks and costs of doing business onto suppliers without placing undue burdens on retailers. 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.
6. FDI has consistently supported grocery sector legislation. FDI retains its belief that only legislation that (i) covers the full grocery supply chain; (ii) outlaw's retrospective demands for arbitrary payments; (iii) insists on principles of fair dealing between retailer and supplier and (iv) is enforced effectively and proactively by an independent regulator focused exclusively on relationships in the sector, will result in the best outcome for the consumer. The legislation can have no remit in assessing the genuine commercial negotiations of suppliers and retailers. Such a level of intervention would negatively affect the dynamic in the sector to deliver on consumer demands for value, quality and convenience.
7. The true value of food also needs to be recognized by retail customers and consumers. High standards of safety, quality and choice are not cost free nor is the ongoing transition to a sustainable food system. Food accounts for only 10% of the cost of the consumer basket now compared with 25% a generation ago. The current inflationary environment is acutely impacting the agri-food chain. Cost recovery from retail customers and consumers must be fair both in quantum and in timing.

The scope should apply to all grocery suppliers (Head 44 / Head 39)

8. FDI believes that the scope should apply to all grocery suppliers and not just suppliers with a turnover of up to €350 million as is the case with the current UTP Regulations. Head 44(1)(i) would empower the Minister to make regulations relating to "rules on turnover levels and categories referred to in section 39(3)(d) which states "specify the turnover disparity between buyers and suppliers at which a trading practice becomes unfair and may set the thresholds relating to same".
9. Unfair trading practices by retailers do not discriminate by size of supplier. The legislation must be applicable to all grocery suppliers and not just farmers and suppliers up to €350m turnover

¹ The regulations dealt with certain practices in the commercial relationship between suppliers and grocery retailers/wholesalers relating to the supply of food and drink. The regulations set out the compliance requirements on retailers/wholesalers in that regard. The key provisions were written contracts; variations and terminations – consent of both parties required; no obligations re third party services; forecast requirements; prohibitions on payments (listing, marketing, positioning, advertising, wastage, shrinkage) except for specified circumstances and where both sides agreed etc; 30 day payment period; compliance measures applied to retailers / wholesalers; enforcement by CCPC. The regulations covered grocery goods (food and drink for human consumption, household cleaning products, toiletries and garden plants/bulbs).

as is currently the case with the transposed UTP Directive. Such an extension would align with the scope of the Irish Grocery Goods Regulations 2016 which covered the relationship between Regulated Grocery Goods Undertakings and suppliers regardless of size. Ireland had comprehensive protections in place for grocery suppliers until the 2016 Regulations were withdrawn and this should be rectified.

10. The European Commission acknowledged that suppliers of all sizes are affected by UTPs in the proposal for legislation COM (2018) 173 – but decided to exclude many players in the supply chain by focusing only on SMEs and farmers despite the integrated nature of the supply chain. This was done in favour of speed of agreement rather than on solid logic for exclusion. It acknowledged the cost to manufacturers in the proposal, and quoted evidence regarding the negative impact of UTPs (pg. 10, explanatory memorandum) - *In 2011, “UTP-related costs amounted to 0.5% of turnover [...] would be the equivalent of EUR 4.4 billion per year of overall food industry turnover”*. There is national legislation in 20 Member States in the EU (EC Impact Assessment, April 2018) – none focus on SME-only legislation. Whilst the final agreed Directive extended the scope to suppliers with a turnover of up to €350 million, it excluded larger companies. This exclusion is contrary to the evidence that exists through the sanctions laid down by the Courts across Europe which prove larger players are subject to UTPs.
11. An extended scope to all suppliers will avoid discrimination between operators, buyers being tempted to do business with larger suppliers (not protected by the transposed Directive) at the expense of smaller ones and ensure a level playing field for all suppliers in Ireland.

Unfair Trading Practices (Head 39)

12. In 2011 AIM and FoodDrinkEurope published the findings of a survey of 686 manufacturers (a mix of SMEs and larger players) in 15 European countries on retailers UTPs. The survey found that practically all companies (96.4%) had been exposed to on average six UTPs in 2009. The six most frequent UTPs imposed on producers were:
 - Non-respect of contractual terms (84%).
 - De-listing threat to obtain unjustified advantages (77%).
 - Unilateral deduction on invoices without sound business reasons (63%).
 - Paying for no reason (60%).
 - Providing payments clearly in no relation to the level of service provided (60%).
 - Paying retrospectively for items not foreseen in the contract (55%).
13. This trend has not changed. A 2017 survey reveals that 97% of brand manufacturers were exposed to UTPs in Europe in 2016, confirming the 2011 report as well as the Commission own surveys.

14. The UK Grocery Code Adjudicator 2020 annual survey of grocery suppliers² identified the following as the top priority issues:
 - No compensation for forecasting errors
 - Delays in payments
 - Not meeting duties in relation to de-listing
 - Obligation to contribute to marketing costs
15. A 2022 survey³ commissioned by the Interim UTP Authority found that 53% of supplier respondents had been subject to a Black UTP and the most common were:
 - 32% - Payment later than 30 days for perishable agricultural and food products.
 - 27% - Payment later than 60 days for other agricultural and food products.
 - 18% - Short-notice cancellations of perishable agricultural and food products.
 - 13% - Risk of loss and deterioration transferred to the supplier.
 - 11% - Unilateral contract changes by the buyer.
16. Therefore, the Bill must continue to reflect the provisions in the recently withdrawn Grocery Goods Undertakings Regulations 2016 namely:
 - Variation, termination or renewal of grocery goods contracts
 - Goods or services from third party
 - Non-performance due to factors beyond reasonable control of party to contract
 - Forecasts of supply of grocery goods
 - Payment from supplier as a condition of stocking, displaying or listing
 - Payment terms and conditions
 - Promotions
 - Payment for marketing costs
 - Payment for retention, increased allocation or better positioning of shelf space
 - Payment for advertising or display of grocery goods
 - Payment for wastage
 - Payment for shrinkage
17. The Bill must also reflect that the recently withdrawn Irish regulations and the transposed UTP Directive address trading practices not price. The Bill and resulting implementing regulations cannot influence commercial transactions or the normal functioning of the market

Effective and efficient enforcement (Head 8, Head 9, Head 46)

18. A fair-trading environment requires effective and efficient enforcement of UTP rules. Strong enforcement by the enforcement authority is key to success and this includes the ability to

² Slide 12 of GCA Annual Survey 2020 presentation

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/886761/GCA_YouGov_2020_Presentation.pdf

³ <http://www.utp.gov.ie/media/utp/Summary%20findings%20of%20surveys%20-%20UTP%20EA%20May%202022.pdf>

proactively investigate compliance e.g. to conduct general supervision of the supply chain, including random requests of information to buyers and suppliers, without it being necessary to open infringement proceedings. This is essential to the effectiveness of enforcement as is a complaints process for suppliers that ensures anonymity.

19. The enforcing authority must be a strong voice on these issues and the activity of the UK Grocery Code Adjudicator (GCA) is a best practice model. For example:
 - The GCA holds quarterly meetings with the compliance officers for the Top 12 designated retailers. This gives a good snapshot of the issues in the grocery sector and how they are communicated to retailers.
 - The GCA holds an annual conference
 - The GCA hold public consultations on relevant issues i.e. a consultation on payments for better positioning of goods
 - The GCA undertakes annual supplier surveys which measure awareness of the code, experience of code related issues, assessment of code compliance
20. However, the enforcement authority can have no remit in assessing the genuine commercial negotiations of suppliers and retailers. Such a level of intervention would negatively affect the dynamic in the sector to deliver on consumer demands for value, quality and convenience.
21. The Bill provides for the establishment of an Office of Fairness and Transparency that will enforce UTP legislation and provide increased analysis and reporting of publicly available price and market data. In this regard, it should be noted that the overwhelming majority of customers and consumers for Irish food output are based outside the country, where the scope of the Office would have very limited impact, if any.

Board and membership (Head 10)

22. The Board size being limited to five members may be overly restrictive. Also, the Bill is silent on the criteria for determining appointments. Will recruitment be through the State Boards facility?

Price and market information (Head 42)

23. While the proposed role of the new office in collecting, analysing and reporting on price and market information and carrying out studies may help to improve understanding of the supply chain and enhance transparency, there needs to be due regard given to commercially sensitive information of private enterprises.

Submission 1.3 – Irish Creamery Milk Suppliers Association (ICMSA)

Introduction

A properly functioning food supply chain in Ireland and the EU is central to ensuring that Irish farmers receive a fair share of the final consumer price and an income comparable with other sectors. Farmers have consistently lost out – due to the concentration of market power upstream and downstream (in term of inputs) and an unequal bargaining position among the various parties along the food supply chain. With the continuing growth and concentration of firms at the farm input stage, food processing and food retailing, the pendulum has swung even more to the detriment of farmers in recent times and the EU and Government have failed to act on this issue to date.

Overall, agricultural margins and incomes will not grow significantly from current levels due to higher input costs and increasing price and production risks. In addition, the relatively weak position of farmers in the food chain invariably means that they bear a disproportionate share of the risks within the chain. The key to improving margins for farmers is to bring about a proper functioning Irish and EU food supply chain both at processing and at retailing levels. There is quite considerable agreement, right across the political spectrum in Ireland, that the food market is not operating efficiently or fairly and that farmers and consumers both lose out. Where there is not agreement is the clear need for food prices to reflect the full cost of production and the fact that the price of food has been kept artificially low for decades.

Price volatility within Agricultural Markets is expected to remain significant due to a series of factors, among which are: - uncertainties over energy markets, input availability and pricing, increased extreme weather events due to climate change,

the financialisation of commodity markets and the use of market abuses which add to the natural instability of agricultural markets. The proper functioning of the whole food chain in Ireland is central to the favourable development of the market income of Irish farmers. Indeed, it may not be an exaggeration to say that farmers are now bound by unfavourable contractual terms on the purchase of farm inputs and sale of farm produce. Addressing this is not an easy task and there is likely to be ongoing concerns even after the implementation of the Office for Fairness and Transparency in the Agri-Food supply chain. Effective action to bring about the proper functioning of the food market from the establishment of this office is therefore welcome.

The Office for Fairness and Transparency in the Agri-Food supply chain must take the lead and be strong and independent to rule practices unfair where they see fit. Funding of this authority should be co-funded from EU and mandatory funding from industry such as retailers according to their market share and power.

Unfair Trading Practices

ICMSA welcomed the establishment of the Black and Grey list of UTP's but still have several reservations on the issues outside of the current UTP's.

An UTP that has gained much notoriety within agricultural sectors is the use of products such as milk or vegetables as "loss leaders" for retailers to gain market share. ICMSA believes that below cost selling should be banned and is disappointed that the Government is opposed to this. Below cost selling should have been included and should be outlawed and legislated as it strikes at the core of agricultural products and the viability of family farms. These products and others that are

regularly on “special offer” lead to consumers believing that the “offer” is normal and conditions consumers into expecting these products at ongoing low unsustainable prices.

ICMSA hope that the new office will lead to further progress on the food price monitoring tool and the establishment of more national price observatories. There has been utterance of a pilot project to create the first European price composition indicator for food products called the "FoodEuro" that would improve price transparency in the food supply chain and this indeed would be a welcome development within the new Office if it would be carried out. Indeed, the issue of sustainability is important. Large food processing and retailer companies have very comprehensive sustainability policies but yet pay unsustainable prices to primary producers. This “green washing” needs to be called out and the proposed office should have a role in monitoring and reporting on this matter.

What farmers require is the implementation of measures to address margins in the food supply chain. The quantification of the profit margins in the farm inputs sector, the food processing and the food retailing sector is the key to getting real and permanent progress on this important matter at an Irish and European level. Revenues, costs and margins at farm level are freely available, this is not the case at processing and retailer level and this is where a focus is required.

Regarding the food retailing sector, there should be specific reporting on food retailing firms that exceed certain thresholds to supply information and data on the profit margins they obtain on specific food items. This obligation should apply to large scale food retailers where the scale of the activity is above certain thresholds.

ICMSA believes omitting below-cost-selling is an error of such magnitude that it would effectively undermine the whole drive to reform and make fairer the supply-chain from farmer-producer to retailer. Objections raised by the Commission Competition's Directorate that classifying below-cost-selling as a UTP might work against legitimate promotional activities for new products was a clear case of mistaking an aspect of something for its essence: The essence of below-cost-selling is the subsidy it represents by the producer to the retailer. One would have to question the EU Commission's position on this in the context of their drive for sustainability and imposing more and more regulations on primary producers.

It's a win-win for the retailers, they don't carry the loss for the below-cost food because they just drop their price back to the food producers and they gain on the increased footfall and higher sales on realistically priced items. The companies supplying into the corporate retailers in turns drop their prices back to their farmer-suppliers who can't drop their input costs and effectively end up subsidising the whole exercise. Below-cost-selling is not just an Unfair Trading Practice, it's sheer abuse of dominant corporate retailer power and it is *a key Unfair Trading Practice*"

Greater transparency will highlight abuse of the undoubtedly dominant position currently enjoyed by the large retailers but once identified, it is clear that actions will be required both at Government and EU level to ensure that the food supply chain functions fairly. The resulting benefits would not alone accrue to the consumers and farmer producers, but the transparency measures would also protect food processors and all other food retailers operating in the European Union from UTPs regardless of their scale of operation.

Effective monitoring of the food sector to ensure proper functioning and competition requires detailed data and information including the direct monitoring and publication of margins of large food companies and particular production lines.

The new office must take the lead and be strong and independent to rule practices unfair. ICMSA feel that this office will succeed or fail on the implementation of such rules by the office. This new office must be led by a completely independent chairperson to lead and champion the cause of removing UTP's. There cannot be a situation whereby a farmer or primary producer does not have faith in an authority, feel that they will be discriminated if they bring a case or there is a burdensome level of bureaucracy. It would be the considered opinion of ICMSA that the office should also have powers to establish what is the sustainable price required for a primary producer to make an income comparable with other sectors in the economy and this should be included in the SI.

Specific Comments on the General Scheme of the Agricultural and Food Supply Chain Bill 2022

- The Bill states that “The functions of the Office shall include analysis and reporting of price and market data”. This also needs to include costs and margins along the supply chain because without such data, the issue of fairness cannot be established.
- ICMSA believes that it is important to clarify that this Bill also will apply to suppliers of farm inputs, a number of which are dominated by a small number of companies.
- ICMSA questions the introduction of levies and charges and such charges

cannot be imposed on the primary producer either directly or indirectly.

- ICMSA welcomes the general functions of the Office except that point (b) needs to include costs and margins in the supply chain and secondly, ICMSA believes that there needs to be stronger language than “encourage compliance” or “encourage fairness”.
- On the collection of data, there needs to be a focus on more than publicly available data and have the power to obtain market data to ensure that “fairness” is achieved in the food chain. This market sensitive data does not need to be publicly available but must be available to this office if requested.
- It is essential that publicly available data is freely available to farmers and the general public and a comparison with our European partners should be conducted on a regular basis.
- ICMSA is proposing that the farm organisations who are members of the Farming Pillar should have representation on the board and the size of the board adjusted accordingly.
- Given the potential importance of this office, ICMSA would question the size of the board and a quorum of three for a board meeting.
- ICMSA feel that all decision on prohibitions on UTP should be published and not use the language of “may be published”
- In relation to disclosure of interest, it would be advisable that all past or current interests are disclosed by the Board, Chief Executive or Staff to avoid issues later.
- In terms of staff and staffing, it is essential tat the office is resourced adequately from the start to ensure maximum enforcement of its powers.
- In terms of investigation what criteria is set out that a complaint is “too remote to justify investigation”

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ICMSA – The Family Farm Organisation

- The Office should always inform a complainant if their complaint will not be followed through at its earliest convenience.
- The level of fines that are enforceable by the Office should be determined by the market position of the law breaker.
- With regard to independent dispute resolution, it is likely that market power would disincentivise a smaller producer entering such a mechanism for fear of future retaliation and in addition, the potential costs associated with it.
- Publication of prices should be published monthly and in a timely fashion.
- ICMSA feel that the 2-year statute of limitations is too short.
- The level of €250 for a fixed fine notice is too small for someone who could be withholding information for a large company.

Submission 1.4 – Irish Farmers' Association (IFA)

General Scheme of the Agricultural and Food Supply Chain Bill 2022

Submission to the Joint Committee on Agriculture, Food and the Marine to be considered as part of the Committee's Pre-Legislative Scrutiny of the Agricultural and Food Supply Chain Bill 2022.

The IFA is Ireland's largest farming representative organisation, with 72,000 farmer members covering all production systems. The Association is structured with 947 branches and 29 County Executives across the country.

IFA President Tim Cullinan and commodity committee chairs, along with branch and county representatives are democratically elected by the membership to represent the interests of farmers in Ireland today. IFA represents all farming sectors including some of the most exposed sectors to the Irish domestic retail sector, namely the fresh fruit and vegetable growers, at National, European and International level. Through our office in Brussels, the IFA represents Irish farmers under the European umbrella body of farm organisations COPA/COGECA. In addition, the IFA is the representative for Irish farmers on the World Farmers' Organisation.

The IFA welcomes the introduction of this Bill and establishment of the Office for Fairness and Transparency in the Agri-Food Supply Chain, as committed to in the 2020 Programme for Government. IFA has long sought to highlight the inequalities in our food supply chain and the need for Government to legislate to rebalance the food value chain to ensure the primary producer is properly rewarded.

Irish Food Supply Chain

While there are over 125,000 farmers and fishers involved in the primary production of beef, lamb, dairy, pig meat, poultry and eggs, fish, grain, fruit and vegetables in Ireland, the domestic retail market is extremely concentrated at the final stage in the supply chain. Five main retailers control 91.2% of the Irish grocery market

Dunnes Stores, Tesco and SuperValu have 22.3%, 21.9% and 21.7% respective market share, with the recognised retail discounters, Lidl holding 13.1% and Aldi on 12.2% share. All remaining outlets collectively have 8.5% market share and this level outside the "big five" is continuously decreasing. (Source: Kantar World Panel Data 15/05/22).

The inequity in this supply chain is not hard to comprehend. Five major retailers are the main route to the Irish domestic consumer for all the food produced by farmers and processed by many hundreds of food business operators (FBO's) in Ireland today.

Through many years of dealing with the inequalities in the food supply chain, it is clear that there is need for greater fairness and for a greater portion of the value to be returned back to the farmer. The farmer is the weakest stakeholder at the bottom of the food supply chain and it is clear that the power lies at the top, with the largest players, the retailers.

A Broken Food Value Chain

Retailers that control a major percentage of the domestic retail market hold enormous power over all other actors in the supply chain. They are often the main, if not the only source of income for FBO's and the risks of losing supply contacts to a dominant buyer has led to today's situation where the food value chain is clearly dysfunctional.

The more reliant an agri sector is on the dominant retail buyers and the domestic retail market, the more unfairness and inequitable distribution of value occurs throughout the food supply chain. The supply of home-grown Irish vegetables and fresh produce are a case in point. There has been a constant decline in grower numbers from approximately 377 vegetables in 1999 to today's estimated numbers of 100 commercially viable vegetable growers.

The IFA commissioned independent report¹ into the horticulture sector, published in February 2022, shows that over the past 11 years, the average price of food fell by 9 percent while overall consumer prices increased by 13 percent. This report states that the price compression experienced in the horticulture sector has resulted in current market failure. If the issues associated with this price compression are not addressed the sector will continue to contract.

The General Scheme of the Agricultural and Food Supply Chain Bill 2022 cannot lose sight of the core issues within the food value chain and it must solve them. Too much focus on technicalities and the flow of food at the lower end of the supply chain will yield slower and less visible results.

IFA is clear that this Bill must be focused on addressing the imbalance of power that currently exists within the chain and putting in robust controls that will prohibit the currently dominant retailers from forcing down the farm gate price to levels that have already forced farmers out of business. We are now at a stage where security of food supply should be the overarching consideration rather than producing food as cheaply as possible.

Sustainability

There is now a relentless focus on sustainability. There are three pillars to sustainability; environmental, social and economic sustainability. Today in Ireland, we have legislation underpinning two of these pillars; environmental and social sustainability. There is no legal protection for the economic sustainability of food producers. This has to change. This Government has the opportunity today and must give the new Office of Fairness and Transparency, greater legal powers go beyond the EU UTP Directive².

IFA welcomes the authority in this Bill to investigate, but it remains to be seen if it will lead to proper sanctions of the major players, the big retail buyers, and ensure farmers position at the bottom of the food chain is not abused as it has been for many years.

Sustainability is an easy slogan for retailers to use today but farmers need this Government to enforce sustainability credentials and ensure that it's not just used as a marketing slogan to attract footfall. Despite all the rhetoric around sustainability from major retailers, ultimately price is the main factor that is influencing their food purchasing decisions. IFA is clear that unit product price of food is still the number one factor in determining supply contracts being awarded to FBO's or farmers.

The disruption to the food supply chain caused by the ongoing Russia/Ukraine conflict has highlighted to everybody, the brittle nature of both the energy and food supply chains.

¹ Retail Price Compression Threatens the Viability of Irish Horticulture - Jim Power

² Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain

If the dominant retailers are left to their own devices, they will, in time, eliminate all local production of fresh fruit and vegetables and other foods that are reliant on the domestic retail market. It is already happening in the horticulture sector with the availability of Irish grown vegetables being replaced by imports, purely based on price.

Comments of the Bill

The IFA welcomed the establishment of a new state body, the *Office for Fairness and Transparency in the Agri-Food supply chain*, which will come under the responsibility of the Minister for Agriculture, Food and the Marine. This new Office has the potential to serve a vital role in addressing and rectifying the current inequitable distribution of power in today's food supply chain, a food supply chain which is clearly broken.

The position of farmers and fishers at the lower end of the supply chain needs to be greatly improved. This is a stated purpose of the Bill and also the EU Unfair Trading Practices (UTP) Directive. Following scrutiny of the Bill, IFA believes that additions to the Bill are needed before final publication to ensure it is fully fit for purpose. Government must ensure the new Office has full powers to investigate, report and change practices leading to current inequitable distribution of value throughout the food chain.

Major retailers at the top of today's food chain and a small number of large food service providers currently hold inordinate power in Ireland's food supply chain. This power leads to an inequitable distortion of value being distributed down to primary producers of food. The Bill needs to specifically call out where the current power imbalance lies, and state that this is where the focus of the new office will be directed.

The Bill encompasses all stakeholders in the food chain and the EU UTP Directive affects many hundreds of food business operators (FBO's) involved in the agri-food supply chain, but ultimately it is the most powerful players that must be tackled and forced to change current practices.

IFA is calling on the Minister for Agriculture, Food and the Marine and this Government to include a stated focus on five major retailers and three main food service providers as the initial primary focus for the new office.

Analysis and Reporting

One of the functions of this new Office is to include a reporting function on price and market data along with associated analysis. The objective of this function is to enhance fairness and distribution of value throughout the food chain. It is imperative that this function includes proper value chain analysis which outlines what portion the primary producer is receiving. This is a key requirement - without it the inequity in the food chain cannot be properly addressed.

The current equitable distribution of value from the retailer shelf down to the primary producer must have deterring consequences for those responsible. Where the farmer is clearly not receiving a fair percentage of the final retail price, this new office must have the power to enforce price changes to existing supply contracts, and follow the money back through the supply chain to the farmer. Without this power to change contractual agreements there will be no change to the current power imbalance.

IFA is calling on the Minister for Agriculture, Food and the Marine to enshrine the responsibility of the new office to investigate where unfairness is clearly reported and ensure immediate action is taken to rectify it.

Unfair Trading Practices (UTP) Directive EU No. 2019/633

Today, the responsibility to ensure Ireland is fully compliant with this EU Directive falls to the Enforcement Authority; part of the Department of Agriculture, Food and the Marine. This role will be merged into the new *Office of Fairness and Transparency* when established.

IFA seeks that this role is much greater than ensuring compliance with an EU Directive, and must have a specific role to promote fair trading practices in the agri-food chain. This will initially be about stopping the current unfair trading practices which are endemic within the Irish retail sector.

IFA is aware from engagement with stakeholders throughout the food chain, that threats from dominant retailers to simply cancel and move contacts of supply are regularly made to wholesalers, who look to fully recoup costs for themselves and their farmer suppliers. Farmers and many FBO's are operating in a tough environment, negotiating with buyers than hold a huge advantage in terms of scale and power. This new office has a job to identify where unfair trading practices are happening and reprimand them in order to re-establish fairness.

IFA is aware of instances in the recent months where both farmers and FBO's sought price increases for food supply that were fully accepted by buyers for larger retailers only to be subsequently offered a much smaller price increase on a "take it or leave it" basis. This is the actual reality of what is currently happening in our food supply chain today.

The new Office must have opportunity for farmers and FBO's to report such practices anonymously without fear of retaliation from retailers. This is one of the biggest hurdles that the new office will face as many farmers and smaller suppliers fear the consequences of highlighting what they believe to be unfair trading practices.

Rising input costs driven by energy, feed and fertiliser prices are all challenging farmers today. However, they are faced with huge resistance from the dominant retailers in the food chain which is resulting in unsustainable negative margins on many family farms, a situation that cannot continue.

IFA welcomes the ability of the Minister to extend, amend and add to the existing UTPs which IFA is calling for in this submission.

There are 10 black UTPs that are prohibited in all circumstances and an additional 6 grey UTPs, prohibited unless previously agreed in clear and unambiguous terms in a supply agreement between buyer and seller.

IFA recognise that the UTP Directive, fully enforced, will be a positive step in rebalancing the positions of power in the food supply chain, but they will not be sufficient, on their own, to rectify the clear market failure evident in the food value chain. Additional prohibited black UTPs are required to be added by the Minister to achieve the goal of rebalancing power in an equitable fashion throughout the food chain.

IFA is seeking the Minister to follow through on the following additions to the Bill and ensure the new Office is up and running in 2022. In summary, the Bill must include the following addition to the current UTP's:

- Ban below cost procurement of food
- Ban on below cost selling
- Security for suppliers in all tendering process
- Stringent rules around retail food price promotion
- Minimum dedicated shelf space of at least 30% for branded food products
- Use of non-approved logos must be prohibited, particularly the use of the Irish Flag
- 'Fake Farm' brand names created to mislead the consumer must be prohibited

IFA requests the Minister and the Joint Oireachtas Committee on Agriculture, Food and the Marine to include 7 additional UTPs in the final legislation.

1. Ban Below Cost Procurement of Food

There must be an additional UTP to prohibit the buying of agri-food below the cost of production by food procurement managers in dominant positions. This needs to be clearly directed towards the retailers and main wholesale food service providers. This will ensure vulnerable sectors reliant with fresh, perishable produce which has a limited self-life, will be paid their costs of production as a minimum. IFA proposes that published sectoral costs of production be completed by Teagasc, the independent agricultural education, research and advisory body. These cost of production per sector, must be kept under regular review in response to input markets changes, should be enshrined in the Bill as a minimum price that buyers can pay producers and suppliers of food. While not solving all problems with this inclusion, it will go a long way to preventing the dominant buyer from pricing farmers out of production as has occurred in the horticulture sector for the past 20 years.

2. Ban on Below Cost Selling

IFA is seeking the reintroduction of a ban on the below cost selling of food. Originally prohibited as part of the 1987 Restrictive Practices (Groceries) Order, the ban prevented retailers from using food as a loss leader in their business. Unfortunately, this order was subsequently abolished in 2006 by the then Minister for Enterprise, Trade and Employment Micheál Martin TD. A reintroduction of a ban on below cost selling of food will help safeguard domestic production of food, in particular fresh perishable foods such as fruit and vegetables. This will reduce our reliance on imports which are less environmentally sustainable than locally grown produce.

Selling food below the cost of production completely undermines domestic food producers. Our esteemed President of Ireland Michael D Higgins called out this practice at the Bloom Event in Dublin recently (02.06.22) and urged consumers to end the destructive practice of below cost selling by choosing not to purchase artificially low-priced food.

IFA greatly acknowledge our President for calling out this practice but the consumer alone cannot solve the problem. The consumer is attracted to low-cost marketed groceries, while retailers have seemingly never-ending budgets to constantly barrage us with the low-cost food offerings. The IFA commissioned report into the Irish Horticulture Sector, February 2022, titled "*Retail Price Compression Threatens the Viability of Irish Horticulture*" shows that over the past 11 years, the average price of food fell by 9 percent while overall consumer prices increased by 13 percent. The report states that while it is not always in the best interests of the market to have a considerable level of regulatory intervention, it is necessary if there is clear market failure. The report identifies that the horticulture food supply chain is currently experiencing market failure, and if the issues facing this sector are not addressed, the sector will continue to contract, with considerable loss of rural employment; increased imports of fresh produce; and the potential of the sector to help the country in general and agriculture in particular to reduce emissions will be seriously undermined.

In 2013, in the period before Christmas a number of retailers discounted fresh vegetables to 5c for 1 kilogram of vegetables to attract footfall into their shops in the lucrative Christmas period. Without protesting demonstrations by growers organised by the IFA, this practice would have continued and gained traction, likely leading to the complete elimination of the Irish horticultural sector.

Reintroducing such a ban will give stability to the current cohort of very vulnerable growers of Irish fruit and vegetables in particular. Do we want to see a situation where, Ireland, as one of the most fertile crop-growing countries in the world, must import all our fresh fruit and vegetables? It may shock some that Ireland imports the majority of this produce today and the decline in farmers involved in growing of fresh produce for the local market can be traced back to the abolition of the Groceries Order.

Many lauded the removal of this ban on below cost selling and said the consumer would gain from cheaper food. This has been true to a large extent but at a massive cost to Irish primary producers. A national policy is needed that allows a greater proportion of our food to be grown locally in a recognised and measured sustainable fashion.

3. Tendering process

Tenders originating from the retailers to secure supplies of agri-food from farmers/growers/groups should be multi-annual in nature providing, in so far as possible, greater certainty and support against the impact of unpredictable seasonality on food production. Mechanisms should be provided within existing arrangements to facilitate continued engagement, negotiation and renewed terms/price in exceptional circumstances and unforeseen market dynamics, including an agreed lag period to their implementation where relevant. Terms must be agreed in advance of annual planting of crops.

4. Promotions

Where a retailer engages in any discounts on agri-food products as part of a promotion, the retailer shall, prior to a promotion specify the period of the promotion and the expected quantity of the agricultural and food products to be ordered while the promotion is on. Promotions must be clearly funded by retailers and not by suppliers.

5. Branded Food Products

IFA calls on the inclusion of a minimum dedicated shelf space of at least 30% for branded food products. Premium branded food selling at a higher price to consumers will result in a greater price being passed down the food chain back to the farmer. It is clear that where a retail does not offer branded food to the consumer, the farmer will receive less.

6. Use of Logos

IFA calls on the Minister for Agriculture, Food and the Marine to give the new Office the power to ensure that all retailers of agri-food only use Government and agency approved logos (e.g., Bord Bia Quality Assurance Mark; National Dairy Council logo) to indicate the Irish origin of produce. The Bill must include a prohibition of using the Irish tricolour flag and other self-created logos in the likeness of the Irish flag that may confuse the true provenance of products.

7. Fake Farms

Retailers of food must be prohibited from creating fictional 'fake farms' to sell their own branded food. These "fake farms" could be misleading to the consumer and be interpreted as being of local origin, which may not be the case. IFA raised that use of "fake farms" by food retailers in 2021. The use of "Coolree Creamery" by Lidl and "Clonbawn Irish Dairy" by Aldi to sell their own private label milk was publicised by IFA in 2021. An application for a court injunction prohibiting IFA was continued exposure of these 'fake farms', and was rejected by The High Court.

Focus Must be Directed to where the Core Problem is – the Food Value Chain

The EU UTP Directive covers all stakeholders in the food chain, not just the major retailers and main food service providers. While this is correct, we have to recognise that this is a Directive that was carefully considered for all EU members states, not Ireland alone. What makes Ireland different than other fellow European member states?

The co-operative movement has been very successful in the dairy sector, but it has not been as successful across other sectors of Irish agriculture. Our European counterparts have a greater establishment of co-operatives and producer organisations which gives a greater level of protection to the primary producers who are generally members of both of these organisations.

The ability of a single member of a co-operative or producer organisation to call out an unfair practice anonymously through their organisation is lacking in Ireland today.

The EU UTP legislation must not be used to overburden some of the smaller stakeholders that deal directly with farmers in farmer to business relationships in purchasing primary agri-products. The focus of the new *Office of Fairness and Transparency* must be directed to the dominant players in the food chain. This is what will get results and level the playing pitch.

Establishment of the New Office

IFA calls on the Minister for Agriculture, Food and the Marine to follow through on the above additions to the Bill and ensure the new Office is up and running in 2022.

Legal Interpretation and Definitions

The new Office must strive to ensure that the new Bill is clear and does not leave room for unintended legal interpretation. IFA has already experienced differing views from retail buyers on the definition of a perishable product. This is important in order to comply with payment terms under the UTP Directive. The new Office must clearly define what is perishable or not and not leave it open to interpretation by parties who may stand to gain from taking a differing view. For example, a different interpretation could allow a buyer to extend payment to 60 days rather than the required 30 for a perishable or non-perishable product. If on receipt of a query, that new Office must commit to giving a definitive answer to such queries in a prompt timeframe.

General Functions and Role of the New Office

- Promote fairness and transparency in the agricultural and food supply chain and in particular for farmers, fishers and small food businesses.
- IFA:** IFA seeks the Minister for Agriculture, Food and the Marine to state that the focus of attention of this Office will be on the actors at the top of the Food Chain; the main retailers of food in Ireland today. These are the actors that hold the buying power and have distorted the market against the primary producer.
- Make available analysis of information on price and market data in the agricultural and food supply chain in Ireland
- IFA:** IFA requests that the Minister for Agriculture, Food and the Marine clearly enshrines the reporting requirements on a regular basis. IFA suggests monthly reports publicised with at least quarterly information seminars (online & in-person) to assist in dissemination the data to stakeholders down the food chain. This analysis should also include data on percentage share of the food value chain that is returning to the primary producer.
- Encourage, enforce and investigate compliance with the rules on unfair trading practices provided for by or under this Bill.
- IFA:** The focus should be clearly stated that the new Office will tackle the stakeholders with the greatest power i. e. the main retailers, in the supply chain, not the smaller buyers, as a priority.
- Bring summary proceedings for offences under this Bill;
- IFA:** IFA seeks full powers of entry and investigation as outlined under this Bill to be used by all agents of the new office in bringing investigations and proceedings before the Courts.

The Bill gives very substantial powers to agents working for the new office. The Minister for Agriculture, Food and the Marine must get assurance from the Minister for Justice and the Garda Commissioner, that every support from An Garda Síochána will be given, when required to assist in investigations.

Board and Membership

The Bill outlines that the Board will consist of a Chairperson and five ordinary members, two of whom shall be primary producers. IFA seeks the expansion of this board to at least 5 primary producer members to allow greater representation.

The elected President of the IFA should be allocated the first primary producers' board seat. Also, the primary producers' members should not have conflicted interests in other sectors of the food chain such as food processing or retailing food.

Committees:

IFA welcomes the inclusion of the provision to establish necessary committees. IFA suggest that vulnerable sectors that are in severe decline due to their reliance on the domestic retail sector, must have representative committees established as a priority. Primary producers, independent advisory experts, Teagasc, Bord Bia and IFA staff should be considered in nominating membership of such committees.

Other agri-sectors which have a larger dependency on exports market should also have committee representation. However, the priority is the fresh produce sectors that are being squeezed out of existence by big retailers.

Office Engagement of Expert Consultants and Advisors

IFA encourages the practice of seeking the most suitable qualified expertise when and where needed. When setting baseline costs of production, IFA encourages the Minister for Agriculture, Food and the Marine to recommend that the Office engage with both Teagasc and UCD School of Agriculture and Food Science. Additional recognised expertise should be engaged when and where needed.

Complaints to Office

IFA is the only farmer representative body representing all agri-sectors, and the only representative body for the most vulnerable sectors which are dealing directly and the most reliant on retailers. This includes fruit and vegetable growers, liquid milk producers and pig and poultry farmers. The fear factor of making a formal complaint to the new office is a real barrier to suppliers making formal complaints.

Ensuring anonymity is fundamental to the success of this legislation.

IFA propose that Bill Head 38 Complaints, 3(b) is reworded to the following:

'Other organisations that have a legitimate interest in representing suppliers shall have the right to submit complaints, provided that such organisations are independent non-profit-making legal persons. This is required to encourage those that believe they are being negatively affected by more dominant buyers in the food chain and subject to UTPs'.

(Removing "at the request of a supplier, and in the interest of that supplier")

(9) Where the Office considers that there are insufficient grounds for acting on a complaint, it shall inform the complainant in writing of the reasons within a reasonable period of time after the receipt of the complaint.

(Inclusion of in writing)

Prohibition on Unfair Trading Practices – Regulation

Additions to Head 39

39. (1) A person shall not engage in an unfair trading practice prohibited by or under this Bill.

(2) Where the Minister considers it to be appropriate having regard to:

IFA Additions:

(i) to the viability of the primary producer

(m) there is a risk of the continued supply of Irish produced food

The Minister may, having consulted with the Commission of the European Union, by Regulations prohibit certain trading practices in business-to-business relationships in the agricultural and food supply chain (referred to as an "unfair trading practice") where such practice:

(iv) undermines the viability of the primary producer

(v) puts the supply of seasonality available Irish food at risk

Engagement with Suppliers

IFA call on the Minister for Agriculture, Food and the Marine to include in the regulations a stipulation that dominant retail buyers must engage with their suppliers when in receipt of written/email requests. Where requests to review terms of supply contacts, the supplier must be afforded the opportunity to outline supply issues to the more dominant retail buyer in the food chain.

IFA is aware of numerous incidents in 2022 where suppliers of agri-food have failed to get any engagement with their retail buyer regarding both ongoing supply contacts and contracts that were nearing renewal date. This must be clearly defined as a UTP and subject to severe repercussions when found to be used as a delaying tactic by dominant retail buyers.

Head 44

Agri-food Regulations

44. (1) The Minister may make regulations relating to, or for the purpose of—

IFA additional wording:

(j) the collection of price at *all stages in the food supply chain* and market information to address issues of lack of transparency and information asymmetry in the food supply chain

Head 52

Fines and Penalties

52. (1) A person who commits an offence under section 29(3) is liable, on summary conviction, to a class A fine.

(2) A person who commits an offence under sections 48(11) or 49(1) (a) is liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months, or to both, or (b) is liable, on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 3 years, or to both.

The Bill outlines that possible fine or imprisonment can be imposed upon conviction under this Bill. Financial penalties up to €500,000 are not going to rebalance the power between buyers and sellers in the agri food supply chain or level the playing field. €500,000 is a huge amount to a sole trader farmers/grower or small FBO but it is a small fraction of a percentage of the annual turnover of one of the larger retailers. IFA consider the upper limit of €500,000 on summary conviction too low in the context of the annual turnover of the largest most, dominant stakeholders in the food chain.

IFA propose a much higher limit of €4million or 4% of annual turnover, whichever is higher. This would coincide with similar penalty criteria as set out by the GDPR legislation.

Head 55

Fixed payment notice

(2) An officer who receives a report under subsection (1), if he or she considers it appropriate, may serve on the person a notice in writing ("fixed payment notice") stating that—

(b) the person may during the period of 28 days beginning on the date of the notice made to the Minister, at the address specified in the notice, a payment of €250 (or such other amount, being an amount not exceeding €1,000, as stands specified by order made, from time to time, by the Minister and different amounts may be specified in respect of different offences) accompanied by the notice.

IFA consider the Fixed payment of up to €1000 as too low in the context of the offence and damage to the supply of food. For payment of a fixed charge notice, an upper limit of €100,000 and a lower amount of €2,500 should be imposed in the Bill.

Head 56

Fees

56. (1) Subject to subsection (2), for the purpose of meeting expenses properly incurred by the Office in the due performance of its functions under this Bill, the Minister, with the consent of the Minister for Public Expenditure and Reform, may make regulations imposing fees to be paid by a person making a complaint under this Bill.

IFA considers it unnecessary and a deterrent to the success of this bill to have a legislative ability to impose fees to be paid by a person making a complaint under this Bill.

This provision should be removed.

Alternative Dispute Resolution

While IFA recognise that alternative dispute resolution methods can be very beneficial, it must be recognised the imbalance of power that exists between buyers and sellers in most incidences in the agri food supply chain. Asking a seller to enter into a mediation process with the buyer that they are in dispute with is entirely unfair given the power held by the buyer over the seller, particularly the power held by the 5 main retailers in the Irish food supply chain.

IFA seeks the office to intervene as a first step and use its powers given in this Bill to investigate and apply sanctions if deemed necessary as first practice.

Alternative dispute resolution can have a useful role especially between stakeholders that are more closely aligned in terms of power in the food chain, size and non-dependency on one party or the other.

Background to Unfair Trading Practices Regulations:

In April 2019, Ireland adopted the EU Directive on UTP *EU Directive No. 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain. European Union (Unfair Trading Practices in the agricultural and food supply chain) Regulations 2021.*

All new contracts /agreement covered by the UTP Regulations must be compliant from July 2021 and all existing contracts/agreements must be compliant by 28th April 2022.

The UTP regulations aim to protect weaker suppliers against unfair trading practices (UTPs) by stronger buyers in the agricultural and food supply chain.

There are 10 ('black') UTPs that are prohibited in all circumstances and an additional 6 ('grey') UTPs prohibited unless previously agreed in clear and unambiguous terms in a supply agreement between buyer and seller. The UTP regulation requires Ireland to establish an Enforcement Authority (EA) in the Department of Agriculture, Food and the Marine which is in place.

The 16 UTP's cover the following

- Payment timeframes period, (but not the actual payment terms!)
- Termination and security of supply contracts
- Change to contracts by the buyer without agreement
- Payment not related to a specific transaction
- Risk of loss and/or deterioration transferred to the supplier
- Misuse of trade secrets by the buyer
- Refusal of written supply agreement misuse of trade secrets by the buyer
- Commercial retaliation by the buyer
- Transferring the costs of customer complaints to the supplier

Six Grey UTP's which are prohibited unless both supplier and buyer agree.

- The buyer returns unsold products to the supplier without paying for those unsold products
- Payment by the supplier for stocking, display and listing
- Payment by the supplier for promotion
- Payment by the supplier for marketing
- Payment by the supplier for advertising
- Payment by the supplier for staff of the buyer, fitting out premises

Submission 1.5 – Irish Grain Growers’ Group (IGGG)

Irish Grain Growers Group
Food Chain Supply Chain Bill 2022
Submission.

Thank you for giving us the opportunity to forward our observations on the Bill.

We have a brief response :

- We observe that the language used throughout the Bill, (example Head 2) , uses "agricultural and Food products" and we note that an explainer is given. We are asking should the language used include "feed" also, that is "agricultural feed and food products"?
- We observe in Head 10 that the Board and Membership shall consist of a Chairperson and five ordinary members, two shall be primary producers. We recommend that of the 2 primary producers, one at least should have experience and capacity in non livestock matters at primary level.
- Head 44 The Title is Agri-food Regulations, should it include Agri-Feed Regulations in the title too?
- Head 58 (b) (i) Should "feed" also be included where "food" is mentioned, eg" food processing"

Thank you for your time.

Submission 1.6 – Irish Natura & Hill Farmers Association (INHFA)



Introduction

We welcome the opportunity to make this written submission on an issue of major importance to both farmers and the consumer. Unfortunately, in making this submission both farmers and the consumer have over time seen their influence diminished in favor of ever-increasing profits for our major supermarkets and the larger multiples.

In a society driven by perception rather than facts, consumers have been sold on the myth of, a cheap food policy that is also sustainable. This myth ignores the financial and environmental costs of producing food while promoting waste and driving poverty.

At all levels of society especially with regard to our workforce, there is legislation in place to ensure workers are not exploited and are guaranteed a minimum level of pay through a minimum wage. Unfortunately, this principle doesn't seem to apply to our farmers and food producers, and while someone stacking shelves in a supermarket is guaranteed a minimum payment the same supermarket will willfully exploit farmers, safe in the knowledge that there is no legislation in place to prevent this.

As a consequence of this, we have seen an exodus from agriculture and potential young farmers not committing to an industry that cannot deliver any level of certainty. For those that remain in the industry, the ever-increasing demands placed on farmers are clearly a factor in farm accidents and fatalities.



All of this is a damning indictment of legislation, both in Ireland and across Europe. Our hope is that you and other legislators, care enough to address this, and maybe, this process can be a critical first step.

What needs to happen

The following are proposals the INHFA maintains can make a positive impact if applied.

- Outlined in the Bill are proposals to establish an Office for Fairness and Transparency in the Agri-Food supply chain. This we support and maintain that as part of its remit, it will be tasked with the role of establishing the ongoing cost of food products. It should consider all input costs for farmers and other primary producers including fixed costs and insurance. Moreover, it should allow for a fair profit margin for food producers.
- From once we have an ongoing price index for the cost of producing all foods then we will be in a much stronger position to identify and prevent below-cost selling.
- This new office should also have the power to prevent supermarkets from using any food product as a loss leader.
- We need to reassess conformity with regard to certain food products. An example here includes the size and shape of certain vegetables, the colour of eggs, etc. By applying stipulations around conformity farmers are losing out on products they have produced but are unable to sell. This costs money and also contributes to food waste.



- In recognising that supermarkets are banned from demanding payment from suppliers for promotions and shelf space since 2016 we need to ensure adequate resources for the Consumer Protection Commission to ensure the laws around this are being enforced. Giving the new Office for Fairness and Transparency in the Agri-Food chain control over this is another option that should be considered.
- We need a national and European awareness campaign explaining the important role of food production and the need to respect and acknowledge food producer's basic right to a fair price that reflects their costs and their work. Any such campaign should include our schools and all education centers. It should also focus on food waste, the quality of our foods, and why some foods such as organic cost more.

Conclusion

The establishment of the new office to regulate and control fairness in the food chain is a positive step. However, it will need to be adequately resourced and have enough power through legislation to act. Politically as the price of food increases this office may become an easy target for the multiples in their determination to maintain the status quo. – This must not happen.

We have outlined clear proposals that if implemented can ensure the shoddy practices driven by the multiples and larger supermarkets are brought to an end. In addition to this our proposals, through the awareness campaign can enhance the role and perception of farmers and other food producers who provide the most basic but essential role for all of society.

Submission 1.7 – Macra na Feirme

Macra na Feirme's response to the general scheme of the agricultural and food supply chain bill 2022

For many years now there have been issues in relation to transparency in the food supply chain within Agriculture and the varying levels of both power and scale that exists within the supply chain. Farmers and primary producers including fishermen have long been at the receiving end of price inequality and an unfair bias towards larger-scale businesses that hold considerable power and determinant ability of both price and conditions when it comes to the point of sale or transaction.

The commitment within the programme for the government there is a commitment that a new National Food Ombudsman would be established. At the launch of the public consultation on the 26th of April 2021, The Minister for Agriculture himself referred to the office as The Food Ombudsman and said he wanted it to bring greater transparency to all parts of the supply chain (DAFM, 2021).

When we look at short-chain examples of the current position within the food supply chain and examine the interactions between large-scale businesses and small family-run primary producers it highlights in sharp focus the lack of fairness that currently exist in the food supply chain. The horticulture sector is one primary example where the number of actors in the supply chain is two:

1. The primary producer
2. The retailer

In recent years and months, Ireland has seen a reduction in the number of active farmers in this sector. Some exiting farmers cite the lack of available labour as an issue but the majority cite the price received being unsustainable for those family farms to remain in existence.

When examining the larger beef sector there have been serious concerns on behalf of farmers for a long number of years regarding the price breakdown in terms of payment received by the farmer but also in terms of the distribution of carcass value across the supply chain and the exact nature of that breakdown remains largely unknown. We have seen the Grant Thornton report that was compiled for the Beef taskforce and the evidence produced within said report reflects the willingness of the sector to engage constructively in providing transparency across all levels and all actors within the food supply chain.

With increasing costs associated with food production in recent months, there is an ever-increasing need for a clearly defined Food Ombudsman office, established to ascertain the breakdown within the food supply chain. There is also a need for a communication tool between the supply chain as a whole and the consumer to ensure that the primary producer is protected across all levels of the supply chain including at the point of sale. As it stands the primary producer has largely no direct point of contact with the consumer at the point of sale with the role to communicate left solely in the retailers' hands.

Response to General Functions

Macra na Feirme have previously highlighted that the need for the establishment of the National Food Ombudsman has been identified by farmers as an urgent measure that is needed to rebalance the position of farmers in the food supply chain. Farmers have long been at the receiving end of sharp price cuts and drops. As outlined in the Programme for Government the office of the Ombudsman was

committed. Macra na Feirme feel that the powers being attributed to the Office of Fairness and Transparency do not go far enough in ensuring that the office is successful in protecting farmers within the supply chain.

The Office of Ombudsman brings with it greater powers when it comes to enforcement and powers. The budget requirement set aside for the office of Fairness and Transparency is also insufficient when compared to budget allocation for other Ombudsman offices established. The Ombudsman for An Garda Síochána currently has a budget of €13.4 million.

Previous submissions in relation to UTP's Macra na Feirme also highlighted areas for additional legislative requirements to ensure greater transparency and Fairness. The option to add additional requirements under that legislation at the time of introduction was not availed of and was a missed opportunity for the Government. Macra na Feirme had given numerous examples of additional practices that could be added while also ensuring that all outlined practices were defined as black. Given the nature and distribution of primary producers, every effort must be made to ensure that their position in the food supply chain is protected and enhanced.

The powers laid out under Heading 8 General Roles and Function of the office should include,

1. *Establish fairness and transparency in the agricultural and food supply chain and in particular for farmers, fishers and small food businesses whose natural position is weaker within the food supply chain given their scale and distribution.*

Promotion and encouragement of the adoption of practices by large companies and huge corporations will not suffice in redistributing the power within the food supply chain. Ensuring fairness and transparency can only be achieved by the nature of enforceable regulations with penalties associated with the degree of the breach of rules and procedures.

2. *make an available analysis of information on price and market data in the agricultural and food supply chain in Ireland and also comparable with price returned in markets across the EU.*

An examination of price variability across the EU and also across global markets gives a far greater understanding of the market orientation at a given time. In recent years we have seen a divergence in the price received particularly in the beef sector when compared to the UK and indeed across The EU. Given the number of actors at certain levels within the food supply chain in Ireland, it is necessary to have this comparison and available research to give a completely transparent perspective on markets and prices.

3. *Ensure compliance with, and raise awareness of, the rules on unfair trading practices provided for by or under this Bill and examine on an ongoing basis the changing nature of the business-to-business relationships within the food supply chain.*

Encouragement is all well and good but ensuring that compliance is maintained is critical. A single breach of practices or a change in behaviour by a large purchaser may be catastrophic for a smaller primary producer. Therefore ensuring that the rules are abided by is a far better proactive approach than leaving all the enforcement to reactive measures.

4. *Enforce compliance with the rules on unfair trading practices provided for by or under this Bill and constantly revise practices to ascertain new unfair trading practices that may be required.*

There will be a market adjustment and relationship development as a direct result of the changes introduced in this Bill. Ensuring that the Bill has the flexibility to react to changes in contracts or changes in practices is crucial. Should this not be the case larger actors in the supply chain may amend particulars about agreements that operate within the nuances of grey about fairness and transparency.

5. *Investigate instances of suspected breaches of the rules on unfair trading practices and investigate reported breaches.*

Ensuring that the primary producer and small business have a direct route to reporting is critical to ensuring the success of the office but also the confidence that is needed to be built up amongst the primary producer. A direct route to the office must be established with a straightforward route to complain about the primary producer at no cost. Barriers to reporting will only create greater ambiguity and less transparency.

6. *Bring summary proceedings for offences under this Bill.*

Proceedings must lead to the enforcement of strict penalties including monetary payments. Ensuring that compensation for loss of earnings or loss of distribution access is also an important factor that needs consideration.

7. *At its discretion, to refer cases to the Director of Public Prosecutions where the Office has reasonable grounds for believing that an indictable offence under this Bill has been committed.*

There must be an assurance that where reasonable the office has the power to enforce penalties and restrictions at its own discretion. Ensuring that the office has its own enforceable rules means that there is greater confidence among primary producers, greater power amongst the larger actors in the food supply chain and also in keeping with the commitments made in the Programme for Government. The regulator within the UK has real teeth when it comes to enforcement and the office established in Ireland must begin at the same level.

8. *Investigation of the necessary regulation needed to ensure that below-cost selling is no longer permitted.*

This is a critical piece of primary legislation that is required to ensure that retailers and distributors are not acting in the good supply chain with prices below the cost of production/wholesale/distribution or retail. The result is the downward pressure on prices received by the farmers. In the short supply chain, we have seen this result in farmers going out of business. An investigation into short supply chain actions would provide an indicative outline of the interactions between the primary producer and supplier. This is a supply chain with little interpretation needed as

there are only two actors within the supply chain. If this reflects the actions on a wider scale within the supply chain greater focus and regulatory requirements may be needed.

9. Provision of below-cost selling regulations.

As outlined above a huge area of concern for Macra na Feirme is in relation to below-cost selling. It is also necessary to be conscious of the international nature of Irish Agriculture and the nature of the markets that are accessed.

In overview Macra na Feirme firmly believe that an Ombudsman office is the correct way to proceed. An office with attributable powers of enforcement as that of an Ombudsman is needed to give certainty clarity and independence. The make-up of the Board also needs clarification, there are currently two primary producers outlined for the positions on the Board but who or from what background will the remaining three positions be filled.

A review of the current UTP's is also needed with the establishment of more UTP's while also increasing the enforcement of the current grey UTP's. Funding is also a key concern in ensuring any office has the resources to meet the demands of its brief. Farmers and primary producers need the utmost protection and assurance that all legislation is screened to ensure this is achieved is paramount.

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Submission 1.8 – Musgrave

Written submission to the Joint Committee on Agriculture, Food and the Marine Pre-Legislative Scrutiny (PLS) stage of the Agricultural and Food Supply Chain Bill 2022

INTRODUCTION

Musgrave welcomes the opportunity to share our views with the Joint Committee on Agriculture, Food and the Marine during the Pre-Legislative Scrutiny (PLS) stage of the Agricultural and Food Supply Chain Bill 2022.

The Irish food retail environment is unique with a vibrant market of local producers and businesses. Musgrave is a family business supporting other family businesses in Ireland. We partner with independent retailers, who are entrepreneurs providing vital employment in towns, villages and cities across the country. Our retail partners and their teams live and work in the heart of the communities they serve.

Musgrave is committed to ensuring fairness and sustainability in the agri-food supply chain, and that commitment has been proven through our actions over the past 145 years. Musgrave has always been a champion of the Irish agri-food sector. Some 75 per cent of all our goods are sourced in Ireland and more than 1,800 local food producers and suppliers, along with thousands of primary producers, are supported by our brands. Our Taste of Local initiative showcases hundreds of small Irish food and drink producers in stores across the country and SuperValu's Food Academy programme currently supports 320 Irish food and drink producers, 52 weeks of the year.

IRISH LANDSCAPE

The introduction of this bill is set against the backdrop of unprecedented and rising inflation with resultant cost of living increases. This further underpins the absolute need for fair but also robust competition throughout the food supply chain. Irish consumers must have access to value for money, choice and quality. Given the large percentage of Irish produce that is exported, it is important to note the significant influence of global markets on the prices paid to primary producers, and the more limited influence of domestic demand.

In this context, we ask that compliance with this bill is not overly laborious, otherwise it may deter retailers from working with local suppliers and could also drive costs into their businesses at a time where they are already facing major increases in the cost of doing business and particularly in energy.

MARKET AND PRICE REPORTING FUNCTION

As a grocery retailer, we are aware that there will be a requirement to report on the price paid for mince and butter in the proposed legislation. We would like to have more detail on the methodology to be employed to satisfy this requirement. We would welcome assurances that market sensitive data will be treated in a confidential manner and that accurate, like for like comparisons will be used. We would also like to understand in greater detail what is envisioned by the phrase "contingency issues".

GREY TO BLACK PRACTICES

Within the UTP directive, there was a clear distinction between 'black' prohibited practices and 'grey' practices that may be mutually agreed between supplier and buyer. This distinction is not reflected in the bill, as it is currently drafted.

The practices described as 'grey' are activities that are jointly agreed in advance between the buyer and the supplier, and often initiated by the supplier.

Promotions, advertising and marketing are highly effective drivers of consumer demand, which is important to all participants throughout the supply chain. The ability to run and market promotions is in the interest of the supplier, retailer, and the consumer. It is particularly important in the current inflationary environment that the consumer can continue to find value across their entire shopping basket, including in Irish produce. Allowing these practices will support and protect all players in the market, including the supplier.

In the UK, the ability to agree promotions, advertising and marketing is permitted under the Groceries Supply Code of Practice (GSCOP). It is vital that a similar right to agree promotions, advertising and marketing is permitted in Ireland in order to protect Irish producers, retailers and consumers, providing a level playing field with Northern Ireland and the UK which is essential particularly following the UK's exit from the EU.

REPRESENTATION ON THE BOARD OF THE OFFICE FOR FAIRNESS AND TRANSPARENCY

To represent all parts of the supply chain fairly and ensure balance, it is crucial that the Board has experienced representatives of retail, wholesale, farmers, processors and any other relevant participants involved in the supply chain.

Consumer interest and consumer protection is key and therefore it is critical that the voice of the consumer is represented. There is strong precedent for this proposal, for example the Commission of the Central Bank of Ireland, the authority members of the Legal Services Regulatory Body and the board members of the Higher Education Authority of Ireland all have consumer representation on their respective boards.¹

We also request that the retail industry is consulted on relevant matters contained in the strategy.

TURNOVER THRESHOLD

The UTP Regulations cover any supplier of agricultural and food products with turnover up to €350 million. Those with turnover exceeding €350 million are large suppliers with significant bargaining power. The purpose of the UTPs was to protect smaller, primary producers and not larger multi-national corporations. As such, we believe there is no justification to increase turnover thresholds beyond the thresholds set by the EU.

FUTURE CHANGES

There is a strong history of Irish law covering supplier protections. The EU Unfair Trading Practices directive was pre-empted by the introduction of the Consumer Protection Act 2007 (Grocery Goods Undertakings) Regulations 2016.

Given this context, we ask that time is given to examine the effectiveness of existing UTPs before any other changes are proposed. This is particularly important given the current unprecedented inflationary environment, supply chain disruption, and other challenges the entire Irish food industry is facing as a result of these pressures.

If there is to be any consideration given to changing this legislation in the future, this should be done only when it can be fully informed by an appraisal of the effectiveness of the regulatory obligations and with adequate time for a full consultation with all relevant stakeholders.

CONCLUSION

Musgrave appreciates the opportunity to submit our views as part of the pre-legislative scrutiny process, we are happy to respond to any queries relating to the positions outlined in this submission.

Footnotes:

1

- The members of the commission of the Central Bank of Ireland: <https://www.centralbank.ie/about/who-we-are/the-commission/bios>
- The members of the authority of the Legal Services Regulatory Body: <https://www.lsr.ie/about-us/authority-members/>
- The board members of the Higher Education Authority: <https://hea.ie/about-us/board/>
- Each of these bodies have not only consumer representatives but also representatives with backgrounds in the sectors they regulate (financial services, legal and education respectively).

Submission 1.9 – Retail Ireland

Retail Ireland submission to the Joint Committee on Agriculture, Food and the Marine on the Agricultural and Food Supply Chain Bill 2022

June 2022

Retail Ireland would like to thank the Committee for affording us this opportunity to submit the views of retailers as part of the pre-legislative scrutiny process of the on the Agricultural and Food Supply Chain Bill 2022

Retail Ireland is the representative body for the entire retail sector in Ireland. Our members include Ireland's main retail brands, including major supermarket groups, department stores, DIY, electrical retailers, clothing and fashion retailers, symbol groups, forecourts and specialist retailers. Retail is Ireland's largest industry and largest employer, with a presence in every city, town and village, right across the country.

Retailers in Ireland worked closely and effectively with the Competition and Consumer Protection Commission and their suppliers to embed the Grocery Goods Regulations introduced in 2016, and more recently have engaged with the Unfair Trading Practice Enforcement Authority to ensure compliance with the Unfair Trading Practices Regulations. As such, retailers have done extensive work to prepare for the introduction of this legislation.

Retail Ireland and its members recognise the need to ensure fairness and sustainability in the agri-food supply chain and can see the benefits in addressing gaps between the European Union (Unfair Trading Practices in the Agricultural and Food Supply Chain) Regulations, 2021 and the repealed Consumer Protection Act, 2007 (Grocery Goods Undertakings) Regulations 2016.

However, it is worth noting that the Regulations are still relatively new and, as highlighted in the research presented to the UTP seminar hosted by the Department of Agriculture, Food and the Marine on the 5 April, many suppliers are still not fully aware of the provisions and protections that are in place under the UTPs.

Given this context, it is vital that current UTP obligations are afforded the necessary time to bed in. If there is to be any consideration given to changing the UTP list in the future, this should be done only when it can be fully informed by an appraisal of the effectiveness of the established regulatory obligations and with adequate time for a full consultation with all relevant stakeholders.

It is also important to note, particularly given the context of rising inflation and increases to the cost of living, that fair but also robust competition throughout the food supply chain is vital in delivering value for money, choice, and quality to Irish consumers. Working with partners across the supply chain, the retail sector has demonstrated its ability to do this over the last decade. It is crucial that nothing is done to undermine its ability to do the same over the course of the next ten years.

Please find below some specific observations regarding the legislation currently under consideration by the Committee. Retail Ireland is happy to follow up if there are any queries relating to the positions outlined in this submission.

HEAD 9

Section 9 (1) (c) and (d) say: *Without prejudice to the generality of section 8, the particular functions of the Office shall be to: (c) collect, analyse and report on publicly available price and market data in the agricultural and food supply chain; (d) publish regular analysis and reports on price and market information or contingency issues in regard to the agricultural and food supply chain.*

Grocery retailers have already been advised that there will be a requirement to report on the price paid for mince and butter, and feedback has been provided on and how this would work from a practical perspective. If it is envisaged that more products will fall under the scope of this, it will be important to engage with retail (and producers etc.) to ensure an understanding of the logistics around this. With regards to 9 (c) which references *publicly available price and market data*, again, engagement with industry on this would be welcome, to ensure like-for-like comparisons are used, and the confidentiality of market sensitive data is maintained.

HEAD 10 and HEAD 12

In relation to the Board, section 10. (1) states that *The Office shall have a Board which shall consist of the following members: (a) a chairperson; and (b) five ordinary members, of which two shall be primary producers.* In addition, section 12. (3) states that *the quorum for a meeting of the Board shall be 3.*

Retail Ireland views the purpose of the Office as providing (amongst other things) independent governance on and compliance with the provisions of the Bill.

Specifying, as a starting point, that 40% of the ordinary members of the Board will comprise of primary producers, seriously reduces the balance of the Board particularly in circumstances where the Chairman is designated by the Minister (Head 11(1)), the Chairman has a second or casting vote (Head 12 (6)), the quorum for a board meeting is 3 (Head 12 (3)), and each board member has a vote notwithstanding any conflict or perceived conflict.

To represent all parts of the supply chain fairly and ensure balance, it is important that the Board has experienced representatives of retail, wholesale, farmers, processors etc. We suggest that a representative of the retail sector should constitute at least one of the ordinary members of the board. Consumer interest and consumer protection is also key. It is important that the voice of the consumer is also represented. In addition, we would suggest that a quorum should need to consist of at least one ordinary member (i.e., that a chairperson and two primary producers cannot constitute a quorum).

HEAD 20

20 (3) states: *When preparing the strategy statement, the Board may consult such persons as it considers appropriate.*

Retail Ireland suggests that the retail industry should be consulted on relevant matters contained in the strategy.

HEAD 21

21 (5) states: *Without prejudice to the generality of subsection (4), the Office shall- (a) publish an annual report detailing the number of complaints received and the number of investigations opened or closed during the previous year, and (b) for each closed investigation the report shall summarise a description of the complaint, the outcome of the investigation and where applicable, the decision taken, subject to the confidentiality provisions of Regulation 38.*

21 (6) states: *The Office may publish details of its decisions relating to (a) prohibitions of unfair trading practices, or where the buyer was required to bring such prohibited trading practices to an end, or (b) the imposition, or initiation of proceedings for the imposition of fines and other penalties, and interim measures relating to unfair trading practices.*

Retail Ireland would ask that, if buyers are to be named in this report, they should be given fair notice of this and an opportunity to comment.

HEAD 38

Head 38 covers the scope of the Office to investigate complaints and provides that:

'(2) Suppliers may address complaints to the Office where:

- a) The supplier is established in the state, or*
- b) Where the buyer is suspected to have engaged in a prohibited practice is established in the State.'*

The 2021 Regulations similarly specify that they apply to:

'Sales where either the supplier or the buyer, or both, are established in the Union'.

Retail Ireland believes that both definitions create difficulties in respect of jurisdiction for the Office and/or of primacy in terms of similar unfair trade practices legislation enacted in other member states or non-member states. We would appreciate clarity around what powers of enforcement is it anticipated the Office will have in a scenario where a supplier is established in the State, but the buyer is established outside the EU. Using the UK as a specific example, are any issues of precedence anticipated with local UTP provisions (the Groceries Supply Code of Practice) where the buyer and sales are in the UK.

HEAD 39

Section 3a)

This section describes the activities or practices that the Minister may specify as unfair trade practices but does not yet appear definitive in terms of what will be legislated within the Bill. This includes the Black and Grey practices identified in the current 2021 Regulations under points (3) (a) (i) to (xiv) although it is noted that:

- Point (3) (a) (i) and (ii) only prohibit late payment, and do not refer to the maximum payment terms of 30 and 60 days incorporated in the 2021 Regulations.
- These points do not include the provisions contained in the 2021 Regulations on payments and allowances, albeit they are referred to later in the Head.

Points 3 (a) (xv) to (xxxii) are additional to the requirements in the 2021 Regulations and it is noted that there is duplication within these points and with earlier provisions (for example (xx) & (xiii) or (xxv) & (xxiii)).

The Bill as drafted has lost the clear distinction between 'black' prohibited practices and 'grey' practices that may be mutually agreed between supplier and retailer. So, for example, whilst it would clearly be unacceptable for agreement on a promotion to be obtained by duress, mutually agreed promotions will be to the benefit of all parties in the supply chain including the consumer.

In a post Brexit world, it is vitally important to ensure a level playing field still exists with Northern Ireland and the rest of the UK, where the ability to agree promotions and advertising and marketing is permitted under the UK's Groceries Supply Code of Practice. Respecting freedom of contract is key to continue to allow flexibility to all players in this market.

More generally, it is also crucial that due time is afforded to allow the new provisions to bed in and be fully appraised before any consideration is given to any further material changes. A failure to do this risks the introduction of counterproductive amendments, which that could ultimately be to the detriment of all, including the consumer.

With the above points in mind, we would recommend:

- The provisions in section 3a) are reviewed to remove duplication / overlap
- Clarity is provided on whether 30- and 60-day maximum payment terms will continue to be mandated by the Bill
- The provisions are grouped as either Black or Grey similarly to the current UTP
- Consideration is given to whether certain clauses are overly restrictive potentially undermining competition and / or hampering positive working relationships (in particular 3a xv, xvi, xvii, xviii, xxi and xxiv)

Section 3 (d)

This section says the Minister may *'specify the turnover disparity between buyers and suppliers at which a trading practice becomes unfair and may set the thresholds relating to same'*

Clarity would be welcomed in relation to this section and how it relates to the existing UTP Regulations. We note that the UTP Regulations afford protection for any supplier of agricultural and food products with graduated turnover limits of up to €350 million subject to the supplier's turnover being lower than the buyer's turnover within the stated categories.

Suppliers with turnover exceeding €350 million are large suppliers with significant bargaining power and this is recognised as such by the EU when determining turnover thresholds. The purpose of the UTPs is to protect smaller, primary producers and not larger multi-national corporations. Retail Ireland believes there is no justification in any move to increase turnover thresholds and would welcome confirmation that these will remain unchanged.

Head 58

Head 58 provides the power to impose levies to meet the expenses of the Office incurred in the discharge of its functions under the Bill.

Given the scope of the Bill will extend to all organisations within the end-to-end supply chain, we would welcome clarity on how the Minister anticipates a levy be equitably apportioned and recovered. Additionally, how will the Minister provide assurance that value for money is achieved in respect of the utilisation of the levy by the Office?

Head 62

Head 62 covers the potential for buying organisations to submit additional voluntary codes of practice for approval by the Office. From experience of other industries, voluntary codes of practice are usually created in the absence of statutory or regulator provision mandating minimum standards in respect of a particular activity or market. We would ask that the Minister provide further details of the circumstances envisaged where a voluntary code could be relevant in addition to the mandatory provisions that will be included in the final Bill.

Appendix 2: Terms of Reference of the Committee

Scope and context of activities of Select Committees (DSO 94 and SSO 70)

DSO 94

- (1) The Dáil may appoint a Select Committee to consider and, if so permitted, to take evidence upon any Bill, Estimate or matter, and to report its opinion for the information and assistance of the Dáil. Such motion shall specifically state the orders of reference of the Committee, define the powers devolved upon it, fix the number of members to serve on it, state the quorum, and may appoint a date upon which the Committee shall report back to the Dáil.
- (2) It shall be an instruction to each Select Committee that—
 - (a) it may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;
 - (b) such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil;
 - (c) it shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Order 125(1) ¹; and
 - (d) it shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
 - (i) a member of the Government or a Minister of State, or
 - (ii) the principal office-holder of a State body within the responsibility of a Government Department or
 - (iii) the principal office-holder of a non-State body which is partly funded by the State,

Provided that the Committee may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

- (3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice to the Business Committee by a Cathaoirleach of one of the Select Committees concerned, waives this instruction.

¹ Retained pending review of the Joint Committee on Public Petitions.

SSO 70

- (1) The Seanad may appoint a Select Committee to consider any Bill or matter and to report its opinion for the information and assistance of the Seanad and, in the case of a Bill, whether or not it has amended the Bill. Such motion shall specifically state the orders of reference of the Committee, define the powers devolved upon it, fix the number of members to serve on it, state the quorum thereof, and may appoint a date upon which the Committee shall report back to the Seanad.
- (2) It shall be an instruction to each Select Committee that—
 - (a) it may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;
 - (b) such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Seanad;
 - (c) it shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Order 108 (1) ¹; and
 - (d) it shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
 - (i) a member of the Government or a Minister of State, or
 - (ii) the principal office-holder of a State body within the responsibility of a Government Department, or
 - (iii) the principal office-holder of a non-State body which is partly funded by the State,

Provided that the Committee may appeal any such request made to the Cathaoirleach, whose decision shall be final.

¹ Retained pending review of the Joint Committee on Public Petitions

Functions of Departmental Select Committees (DSO 95 and SSO 71)

DSO 95

- (1) The Dáil may appoint a Departmental Select Committee to consider and, unless otherwise provided for in these Standing Orders or by order, to report to the Dáil on any matter relating to—
 - (a) legislation, policy, governance, expenditure and administration of—
 - (i) a Government Department, and
 - (ii) State bodies within the responsibility of such Department, and
 - (b) the performance of a non-State body in relation to an agreement for the provision of services that it has entered into with any such Government Department or State body.
- (2) A Select Committee appointed pursuant to this Standing Order shall also consider such other matters which—
 - (a) stand referred to the Committee by virtue of these Standing Orders or statute law, or
 - (b) shall be referred to the Committee by order of the Dáil.
- (3) The principal purpose of Committee consideration of matters of policy, governance, expenditure and administration under paragraph (1) shall be—
 - (a) for the accountability of the relevant Minister or Minister of State, and
 - (b) to assess the performance of the relevant Government Department or of a State body within the responsibility of the relevant Department, in delivering public services while achieving intended outcomes, including value for money.
- (4) A Select Committee appointed pursuant to this Standing Order shall not consider any matter relating to accounts audited by, or reports of, the Comptroller and Auditor General unless the Committee of Public Accounts—
 - (a) consents to such consideration, or
 - (b) has reported on such accounts or reports.
- (5) A Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann to be and act as a Joint Committee for the purposes of paragraph (1) and such other purposes as may be specified in these Standing Orders or by order of the Dáil: provided that the Joint Committee shall not consider—
 - (a) the Committee Stage of a Bill,
 - (b) Estimates for Public Services, or

- (c) a proposal contained in a motion for the approval of an international agreement involving a charge upon public funds referred to the Committee by order of the Dáil.
- (6) Any report that the Joint Committee proposes to make shall, on adoption by the Joint Committee, be made to both Houses of the Oireachtas.
- (7) The Cathaoirleach of the Select Committee appointed pursuant to this Standing Order shall also be Cathaoirleach of the Joint Committee.
- (8) Where a Select Committee proposes to consider—
 - (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 133, including the compliance of such acts with the principle of subsidiarity,
 - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
 - (c) non-legislative documents published by any EU institution in relation to EU policy matters, or
 - (d) matters listed for consideration on the agenda for meetings of the relevant Council (of Ministers) of the European Union and the outcome of such meetings,

the following may be notified accordingly and shall have the right to attend and take part in such consideration without having a right to move motions or amendments or the right to vote:

- (i) members of the European Parliament elected from constituencies in Ireland,
 - (ii) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (iii) at the invitation of the Committee, other members of the European Parliament.
- (9) A Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department consider—
 - (a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and
 - (b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 130 apply where the Select Committee has not considered the Ombudsman report, or a portion or portions thereof, within two months (excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.²

² Retained pending review of the Joint Committee on Public Petitions.

SSO 71

- (1) The Seanad may appoint a Departmental Select Committee to consider and, unless otherwise provided for in these Standing Orders or by order, to report to the Seanad on any matter relating to—

- (a) legislation, policy, governance, expenditure and administration of-
 - (i) a Government Department, and
 - (ii) State bodies within the responsibility of such Department, and
 - (b) the performance of a non-State body in relation to an agreement for the provision of services that it has entered into with any such Government Department or State body.
- (2) A Select Committee appointed pursuant to this Standing Order shall also consider such other matters which –
- (a) stand referred to the Committee by virtue of these Standing Orders or statute law, or
 - (b) shall be referred to the Committee by order of the Seanad.
- (3) The principal purpose of Committee consideration of matters of policy, governance expenditure and administration under paragraph (1) shall be—
- (a) for the accountability of the relevant Minister or Minister of State, and
 - (b) to assess the performance of the relevant Government Department or a State body within the responsibility of the relevant Department, in delivering public services while achieving intended outcomes, including value for money.
- (4) A Select Committee appointed pursuant to this Standing Order shall not consider any matter relating to accounts audited by, or reports of, the Comptroller and Auditor General unless the Committee of Public Accounts—
- (a) consents to such consideration, or
 - (b) has reported on such accounts or reports.
- (5) A Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Dáil Éireann to be and act as a Joint Committee for the purposes of paragraph (1) and such other purposes as may be specified in these Standing Orders or by order of the Seanad: provided that the Joint Committee shall not consider-
- (a) the Committee Stage of a Bill,
 - (b) Estimates for Public Services, or
 - (c) a proposal contained in a motion for the approval of an international agreement involving a charge upon public funds referred to the Committee by order of the Dáil.

- (6) Any report that the Joint Committee proposes to make shall, on adoption by the Joint Committee, be made to both Houses of the Oireachtas.
- (7) The Cathaoirleach of a Joint Committee appointed pursuant to this Standing Order shall be a member of Dáil Éireann.
- (8) Where a Select Committee proposes to consider—
 - (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 116, including the compliance of such acts with the principle of subsidiarity,
 - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action, non-legislative documents published by any EU institution in relation to EU policy matters, or
 - (d) matters listed for consideration on the agenda for meetings of the relevant EC Council (of Ministers) of the European Union and the outcome of such meetings,

the following may be notified accordingly and shall have the right to attend and take part in such consideration without having a right to move motions or amendments or the right to vote:

- (i) members of the European Parliament elected from constituencies in Ireland,
 - (ii) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (iii) at the invitation of the Committee, other members of the European Parliament.
- (9) A Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department consider—
 - (a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and
 - (b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 113 apply where the Select Committee has not considered the Ombudsman report, or a portion or portions thereof, within two months (excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.²

² Retained pending review of the Joint Committee on Public Petitions.

Powers of Select Committees (DSO 96 and SSO 72)

DSO 96

Unless the Dáil shall otherwise order, a Committee appointed pursuant to these Standing Orders shall have the following powers:

- (1) power to invite and receive oral and written evidence and to print and publish from time to time—
 - (a) minutes of such evidence as was heard in public, and
 - (b) such evidence in writing as the Committee thinks fit;
- (2) power to appoint sub-Committees and to refer to such sub-Committees any matter comprehended by its orders of reference and to delegate any of its powers to such sub-Committees, including power to report directly to the Dáil;
- (3) power to draft recommendations for legislative change and for new legislation;
- (4) in relation to any statutory instrument, including those laid or laid in draft before either or both Houses of the Oireachtas, power to—
 - (a) require any Government Department or other instrument-making authority concerned to—
 - (i) submit a memorandum to the Select Committee explaining the statutory instrument, or
 - (ii) attend a meeting of the Select Committee to explain any such statutory instrument: Provided that the authority concerned may decline to attend for reasons given in writing to the Select Committee, which may report thereon to the Dáil, and
 - (b) recommend, where it considers that such action is warranted, that the instrument should be annulled or amended;
- (5) power to require that a member of the Government or Minister of State shall attend before the Select Committee to discuss—
 - (a) policy, or
 - (b) proposed primary or secondary legislation (prior to such legislation being published),

for which he or she is officially responsible: Provided that a member of the Government or Minister of State may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil: and provided further that a member of the Government or Minister of State may request to attend a meeting of the Select Committee to enable him or her to discuss such policy or proposed legislation;

- (6) power to require that a member of the Government or Minister of State shall attend before the Select Committee and provide, in private session if so requested by the attendee, oral briefings in advance of meetings of the relevant EC Council (of Ministers) of the European Union to enable the Select Committee to make known its views: Provided that the Committee may also require such attendance following such meetings;
- (7) power to require that the Chairperson designate of a body or agency under the aegis of a Department shall, prior to his or her appointment, attend before the Select Committee to discuss his or her strategic priorities for the role;
- (8) power to require that a member of the Government or Minister of State who is officially responsible for the implementation of an Act shall attend before a Select Committee in relation to the consideration of a report under Standing Order 197;
- (9) subject to any constraints otherwise prescribed by law, power to require that principal officeholders of a—
 - (a) State body within the responsibility of a Government Department or
 - (b) non-State body which is partly funded by the State,

shall attend meetings of the Select Committee, as appropriate, to discuss issues for which they are officially responsible: Provided that such an office-holder may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil; and

- (10) power to—
 - (a) engage the services of persons with specialist or technical knowledge, to assist it or any of its sub-Committees in considering particular matters; and
 - (b) undertake travel;

Provided that the powers under this paragraph are subject to such recommendations as may be made by the Working Group of Committee Chairmen under Standing Order 120(4)(a).

SSO 72

Unless the Seanad shall otherwise order, a Committee appointed pursuant to these Standing Orders shall have the following powers:

- (1) power to invite and receive oral and written evidence and to print and publish from time to time –

- (a) minutes of such evidence as was heard in public, and
 - (b) such evidence in writing as the Committee thinks fit;
- (2) power to appoint sub-Committees and to refer to such sub-Committees any matter comprehended by its orders of reference and to delegate any of its powers to such sub-Committees, including power to report directly to the Seanad;
- (3) power to draft recommendations for legislative change and for new legislation;
- (4) in relation to any statutory instrument, including those laid or laid in draft before either or both Houses of the Oireachtas, power to –
 - (a) require any Government Department or other instrument making authority concerned to –
 - (i) submit a memorandum to the Select Committee explaining the statutory instrument, or
 - (ii) attend a meeting of the Select Committee to explain any such statutory instrument: provided that the authority concerned may decline to attend for reasons given in writing to the Select Committee, which may report thereon to the Seanad, and
 - (b) recommend, where it considers that such action is warranted, that the instrument should be annulled or amended;
- (5) power to require that a member of the Government or Minister of State shall attend before the Select Committee to discuss–
 - (a) policy, or
 - (b) proposed primary or secondary legislation (prior to such legislation being published),

for which he or she is officially responsible: provided that a member of the Government or Minister of State may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Seanad: and provided further that a member of the Government or Minister of State may request to attend a meeting of the Select Committee to enable him or her to discuss such policy or proposed legislation;
- (6) power to require that a member of the Government or Minister of State shall attend before the Select Committee and provide, in private session if so requested by the attendee, oral briefings in advance of meetings of the relevant EC Council (of Ministers) of the European Union to enable the Select Committee to make known its views: Provided that the Committee may also require such attendance following such meetings;

- (7) power to require that the Chairperson designate of a body or agency under the aegis of a Department shall, prior to his or her appointment, attend before the Select Committee to discuss his or her strategic priorities for the role;
- (8) power to require that a member of the Government or Minister of State who is officially responsible for the implementation of an Act shall attend before a Select Committee in relation to the consideration of a report under Standing Order 168;
- (9) subject to any constraints otherwise prescribed by law, power to require that principal office-holders of a –
 - (a) State body within the responsibility of a Government Department, or
 - (b) non-State body which is partly funded by the State,

shall attend meetings of the Select Committee, as appropriate, to discuss issues for which they are officially responsible: Provided that such an office-holder may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Seanad; and

- (10) power to-
 - (a) engage the services of persons with specialist or technical knowledge, to assist it or any of its sub-Committees in considering particular matters; and
 - (b) undertake travel;

Provided that the powers under this paragraph are subject to such recommendations as may be made by the Working Group of Committee Chairmen under Standing Order 107(4)(a).

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