

DÁIL ÉIREANN

AN COMHCHOISTE UM THALMHAÍOCHT, BIA AGUS MUIR

JOINT COMMITTEE ON AGRICULTURE, FOOD AND THE MARINE

Dé Céadaoin, 13 Iúil 2022

Wednesday, 13 July 2022

Tháinig an Comhchoiste le chéile ag 5.30 p.m.

The Joint Committee met at 5.30 p.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Martin Browne,	Lynn Boylan.
Matt Carthy,	
Michael Collins,	
Joe Flaherty,	
Paul Kehoe,	
Michael Ring.	

I láthair / In attendance: Senator Niall Ó Donnghaile.

Teachta / Deputy Jackie Cahill sa Chathaoir / in the Chair.

Business of Joint Committee

Chairman: Apologies have been received from Senator Paul Daly. I propose we go into private session to deal with some housekeeping matters.

The joint committee went into private session at 5.39 p.m. and resumed in public session at 5.44 p.m.

General Scheme of the Agricultural and Food Supply Chain Bill 2022: Discussion (Resumed)

Chairman: I remind members and witnesses to turn off their mobile telephones.

The purpose of today's meeting is to continue our pre-legislative scrutiny of the general scheme of the agricultural and food supply chain Bill 2022. The committee will hear from representatives of the agricultural sector.

Since 28 February, the legal requirement for mask wearing in public settings no longer applies. However, it is good practice to continue to use face masks or coverings, particularly in crowded areas. The service encourages all members of the parliamentary community to wear face masks when moving around campus and when they are in close proximity to others.

Before we proceed, I bring to the attention of witnesses that in giving evidence within the parliamentary precincts, they are protected by absolute privilege in respect of the evidence they give to the committee. This means they have a full defence in any defamation action arising out of anything said in a committee meeting. However, witnesses are expected not to abuse this privilege and may be directed to cease giving evidence on an issue at the Chair's direction. Witnesses should follow the direction of the Chair in this regard. They are reminded of the long-standing parliamentary practice to the effect that, as far as is reasonable, no adverse commentary should be made against an identifiable third party or entity.

Witnesses who give evidence from a location outside the parliamentary precincts are asked to note that they may not benefit from the same level of immunity from legal proceedings as does a witness giving evidence within those precincts. They may consider it appropriate to take legal advice on this matter. Privilege against defamation does not apply to the publication by witnesses, outside the proceedings held by the committee, of any matters arising from the proceedings.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the House or an official either by name or in such a way as to make him or her identifiable. Parliamentary privilege is considered to apply to utterances of members participating online in a committee meeting when their participation is from within the parliamentary precincts. There can be no assurance in regard to participation online from outside the parliamentary precincts and members should be mindful of this when contributing.

In our first session between 5.30 p.m. and 7 p.m., the committee will hear from the following representatives of the Irish Farmers' Association, IFA: Mr. Tim Cullinan, president; Mr. Damian McDonald, director general; and Mr. Robert Malone, senior retail policy executive.

We are also joined by the following witnesses from the Irish Creamery Milk Suppliers Association, ICMSA: Mr. Pat McCormack, president; and Mr. John Enright, general secretary. I invite Mr. Cullinan to make his opening statement.

Mr. Tim Cullinan: I thank the Chairman for the opportunity to appear again before the committee. I am joined today by the IFA's director general, Mr. McDonald, and our retail policy executive, Mr. Malone.

The IFA welcomes the publication of the scheme of the Bill and its proposal for the establishment of an office for fairness and transparency in the agrifood supply chain, as committed to under the programme for Government. The association has long advocated and lobbied for greater regulation and transparency to be brought into our food supply chain. It is farmers, as the primary producers of food, who are the weakest link at the bottom of this supply chain.

In Ireland, we have implemented the EU directive on unfair trading practices, UTPs, as required, and this function is being carried out by the enforcement authority within the Department of Agriculture, Food and the Marine. It is clear there is a need for an independent body to carry out the role of ensuring compliance with the UTP directive. The directive has been carefully considered at length by our elected EU representatives and it is a positive step. We must now ensure that we strengthen this proposed legislation and strengthen the legal powers of the new office for fairness and transparency in the food chain beyond the scope of the UTP directive.

The IFA welcomes the opportunity to make a submission and meet with the committee today. We have referenced a number of amendments and additions in our submission that we would like to see included before the Bill progresses. In order to strengthen the legislation and allow for a more equitable position for farmers in the food supply chain, the IFA is seeking the following additions to the Bill: a ban on below-cost procurement of food, a ban on below-cost selling, security for suppliers in all tendering processes, stringent rules around retail food price promotion, minimum dedicated shelf space of at least 30% for branded food products, a prohibition on the use of non-approved logos, particularly the use of the Irish flag, and a prohibition on fake farm brand names created to mislead the consumer. We are also seeking an assurance that the new office for fairness and transparency in the food chain will be up and running this year. I will now go through each of our requests in more detail.

There must be an additional UTP provision to prohibit the buying of 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. The IFA proposes that independent published costs of production should be kept under regular review and should be enshrined in the Bill as a minimum price buyers can pay producers and suppliers of food. While not solving all problems, this inclusion 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.

The IFA is seeking the reintroduction of a ban on the below-cost selling of food, as originally prohibited under the Restrictive Practices (Groceries) Order 1987. That ban prevented retailers from using food as a loss leader in their business. Selling food below the cost of production completely undermines our domestic food producers. The IFA commissioned a report into the Irish horticulture sector in February 2022, entitled Retail Price Compression Threatens the Viability of Irish Horticulture, which shows that over the past 11 years, the average price of food fell by 9%. In 2013, in the period before Christmas, a number of retailers discounted

fresh vegetables to 5 cent a kilogram to attract footfall into their shops in the lucrative Christmas period. Without protesting demonstrations by growers, organised by the IFA, that practice would have continued and gained traction, likely leading to the complete elimination of the Irish horticultural sector. Reintroducing a ban on below-cost selling will, in particular, give stability to the current cohort of very vulnerable growers of Irish fruit and vegetables. Do we want a situation where, Ireland, as one of the most fertile crop-growing countries in the world, must import all its fresh fruit and vegetables? Tenders from the retailers to secure supplies of food from farmers and growers should be multi-annual in nature, providing insofar as possible greater certainty and support against the impact of the unpredictable seasonality of food production. Mechanisms should be provided within existing arrangements to facilitate continued engagement, negotiation and reward terms or price in exceptional circumstances and unforeseen market dynamics, including an agreed lag period to their implementation when relevant. Terms must be agreed in advance of annual planting of the crops.

Where a retailer engages in any discounts on agrifood 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 product to be ordered while the promotion is on. Promotions must be clearly funded by the retailer and not by the supplier.

The IFA calls for 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 back down the food chain to the farmer. It is clear that where a retailer does not offer branded food to the consumer, the farmer receives less.

The association calls on the Minister for Agriculture, Food and the Marine, Deputy Charlie McConalogue, to give the new office the power to ensure all retailers of agrifood only use Government and agency approved logos, such as the Bord Bia quality assurance mark and the National Dairy Council logo, to indicate the Irish origin of produce. The Bill must include a prohibition on use of the Irish Tricolour and other self-created logos in the likeness of the Irish flag that may confuse the true provenance of products.

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. The IFA raised the 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 the association in 2021. An application made by Lidl for a court injunction prohibiting IFA’s continued exposure of these fake farms was rejected by the High Court.

We have watched with great interest the committee’s previous sessions on the Bill with the Minister and his officials from the Department of Agriculture, Food and the Marine, and enforcement authority and the committee’s meeting last week with the Competition and Consumer Protection Commission, and Retail Ireland.

Greater fairness and transparency is at the core of the Bill and the reason it is needed is the imbalance of power in the food supply chain. Farmers, the primary producers of food, are unquestionably the weakest link in the supply chain. As John F. Kennedy famously said, “The farmer is the only man in our economy who buys everything at retail, sells everything at wholesale, and pays the freight both ways.” This is still true today and the Bill must go a long way to change this.

Major retailers at the top of today's food chain and a small number of large food service providers currently hold the 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 IFA is calling on the Minister and the Government, to include a stated focus on five major retailers and main food service providers as the initial primary focus of the new office. The IFA commissioned a report in February 2022 by the economist, Mr. Jim Power, on the retail price compression and how it is threatening the viability of the Irish horticultural sector. The report showed that over the past 11 years, the average price of food fell by 9% while the overall consumer prices increased by 13%. This report states that the retail price compression experienced in the horticulture sector has resulted in the current market failure. If the issues associated with the price compression are not addressed, the vegetable growing sector, in particular, will continue to contract. There has been a constant decline in vegetable grower numbers from approximately 377 in 1999 to today's estimated number of 100 commercially viable growers.

It is imperative the analysis and reporting function includes proper value chain analysis which outlines what portion the primary producer is receiving. We must see where the money is going. The IFA is calling on the Minister to enshrine the responsibility of the new office to investigate the value trail in the food chain and where unfairness is clearly reported, ensure immediate action is taken to rectify it. The association suggests monthly reports publicised with at least quarterly information seminars, both online and in-person, to assist in dissemination of the data to stakeholders down the food chain. This analysis should also include data on the percentage share of the food value chain that is returning to the primary producer.

The IFA submission to the committee sets out a number of specific observations regarding the legislation currently under consideration. All of those are documented in our statement so I will not go through them again. I thank the Chair and the committee for the opportunity to present here this evening.

Mr. Pat McCormack: I thank the Chair for the opportunity to put forward our observations on the 69-page proposed Bill. A properly functioning food chain in Ireland, and indeed in Europe, is central to ensuring food security. It is equally central to securing sustainable food production. When we hear of sustainable food production at the minute, there are three legs to the stool but it is very much one leg in focus at the moment and that is the environmental aspect. Without the economic focus we will not have environmental or social sustainability. It is imperative with all the challenges that have arisen. We have heard a lot about food inflation in the past 18 months but in the previous 25 to 30 years there was no food inflation. It was stagnation from a farm gate perspective. In that time, processes and retailers and their concentration of market power in particular from a retailer, has forced down the margin for the primary producer. We are involved with the European Milk Board, EMB, and it is equally a European issue. It is not confined to Ireland. If we want the family farm structure to remain in place, action has to be taken and there needs to be strength in this position. We need to see improved margins for farmers to bring about a properly functioning supply chain and above all, we need transparency. That is critical along the price chain. There will always be price volatility but we need transparency to develop a level of fairness out there.

The office for fairness and transparency in the agrifood supply chain must take the lead, be strong and independently rule on practices of unfairness where it sees fit. This authority should be co-funded by the EU and mandatory funding from industry such as retailers because it can-

not be carried by the primary producer.

The Competition (Amendment) Act 2006 created huge issues as regards below-cost selling. Mr. Cullinan alluded to it from the perspective of the vegetable growers - the stress, the anxiety, the trend among farmers to reduce numbers as a result. The retailers concern is footfall and our produce, whether it is dairy, beef or vegetables, is used to gain those feet in the door. This form of low-cost selling has to be stopped.

There are two clear points in the supply chain and one of those, which is quite transparent, is the farm gate price. Equally as transparent, to be fair, is the sale price on the shelf but we need transparency in between. It is critical for our food chain. Large food processing and retailing companies have comprehensive sustainability policies but when it comes to economics and sustainability for the primary producer, they do not understand the effects of their actions.

I will be brief on this as I would especially like to be involved in questions and answers, but the new office must take the lead, be strong and independent, and prepared to rule. As regards specific comments on the general scheme, the Bill states: "The functions of the Office shall include analysis and reporting of price market data." This data needs to be up to date and to include the costs associated with production and the margin along the supply chain. Without such data, fairness cannot be established. The ICMSA believes that it is important to clarify that the Bill also will apply to suppliers of farm inputs, a sector dominated by a small number of companies. We have seen the impact of inflation there, whether on fertiliser or oil, in recent months. That has a huge effect on the margin for the farmer. We question the introduction of levies and charges. Such charges cannot be imposed on the primary producer either directly or indirectly. The ICMSA welcomes the general functions of the office outlined in the general scheme but, on a technical point, the function set out in head 8(1)(b) must include making available analysis of information on costs and margins in the supply chain. We must use stronger phrases than "encourage compliance" or "encourage fairness". There must be fairness to ensure farm families have a sustainable income as we move forward. On the collection of data, there needs to be a focus on more than just publicly available data. The office must have the power to obtain market data to ensure that fairness is achieved in the food chain. It is true that some data may be market-sensitive. Such data do not need to be published, but they must be available to the office if we are to achieve fairness.

The ICMSA proposes that the farm organisations that are members of the farming pillar should have representation on the board. My understanding is that currently, membership of the board is limited to six, with three members required for a quorum. Given the importance of the issue of fairness for farmers, we need to see a greater level of representation on the board. The ICMSA feels that the office should publish all decisions relating to prohibitions of UTPs. We do not support the use of the phrase "may publish" in the general scheme. It is critical that all decisions be published. On the disclosure of interests, it is advisable that all past or current interests are disclosed by the members of the board, chief executive and staff to avoid issues later.

Regarding the criteria set out in the general scheme on the basis of which the office may decide not to investigate a complaint, such as a practice occurring "at too remote a time to justify an investigation", we feel that there must be an investigation if a complaint has been made. The office should always inform complainants if their complaint will not be followed through at its earliest convenience. The fines that are enforceable by the office should be realistic and should be determined by the market position of the lawbreaker and the level of offence committed. With regard to independent dispute resolution, it is likely that market power will disincentivise smaller producers for using such a mechanism for fear of future retaliation, and because of the

potential costs associated with it. Prices should be published on a monthly basis and in a timely fashion. It is critical that we get this legislation right. Farm families have been waiting a long time for it. There must be a level of sharpness to the focus of the office.

Chairman: I thank the witnesses for their comprehensive opening statements. I call Deputy Carthy.

Deputy Matt Carthy: I thank our guests for joining us today. I do not know if they have been following the debates that we have had on the legislation to date. So much of what this committee and the Department do is locked into the CAP. This is one of the few areas in which the Government can bring measures through the House that will potentially make a substantive difference to the relationship of farmers with the overall market chain. Following every interaction, I am becoming more concerned that this could be a missed opportunity. I have a number of specific questions and perhaps I will ask a few of them together.

Mr. McCormack touched on the issue of publicly available information, on which the general scheme is quite specific. It appears that the new office will not have additional powers to get information that is not publicly available. As all the farm organisations have correctly stated in their submissions, we know, by and large, precisely how much farmers receive for their product either at the mart or in the factory. It is publicly available information. We know exactly how much we pay in the supermarkets for those goods, whether it is here or internationally. The information that we do not have, which is contested and in dispute, is on what happens in between, how much profit is being made and by whom. Do the organisations represented here believe that the legislation will be flawed if the final Act does not provide scope for the office to get that information? I take Mr. McCormack's point that the office does not necessarily need to publish the information, but it must be able to obtain it. My second question concerns the seats on the board that have been preserved for producers. The organisations have made very valid points about the need for them to be represented on the board. We have heard other organisations make similar points previously. I ask the witnesses to outline what they think the overall make-up of the board should be. How many members should it have and how many producer representatives should be on it? What other expertise would the board benefit from having?

Mr. Tim Cullinan: The Deputy mentioned the CAP in his comments. It is a critical time for legislation such as this to be brought forward. We are all familiar with the debate surrounding the CAP. The funding model is changing from supporting farmers to produce food to ensuring that they comply with environmental measures. That is a fundamental shift in itself. It is critically important that we get this legislation right to ensure that we can get more back from the market to the primary producers. Looking at the situation in Ireland, a number of sectors sell predominantly to Irish retailers. We have seen, time and again, the impact that has had on those businesses. For example, there are only 100 horticultural producers left in the country. That demonstrates the impact it has had. Those producers are wholly dependent on Irish retailers. The liquid milk, pig and poultry sectors are predominantly dependent on the Irish retail sector. It is critical for those sectors and all the other sectors.

The Deputy mentioned the availability of information. We have been very clear on the issue from the start. Information relating to the whole supply chain must be made available. Otherwise, we will have failed. As he pointed out, we know what the primary producer is receiving. From there on, it is a mystery. That information must be made available. As we have been saying for a number of years, it is about equity and fairness in the supply chain. The UTP regulations will not do enough there. It is critically important that we implement the proper legislation to ensure that equity and fairness are delivered.

On the Deputy's question regarding membership of the board, it is critically important that primary producers have seats on the board. We must ensure that all the different sectors that are supplying and dealing with retailers are represented. Earlier this year, horticultural farmers were concerned about raising issues with retailers directly. They were approaching us and asking us to act as an intermediary between them and retailers. That is how serious the issue is. It is critically important that when the seats on the board are being allocated, people representing the primary producers in each of the sectors that are dealing with retailers are given a seat.

Mr. Pat McCormack: As I alluded to earlier, it is critical that we know what is happening in the supply chain between the farmyard and the shop shelf. Published figures will be inadequate. We need this office to have the ability and power to go in and examine exactly what is happening along the food chain. My farmers, Mr. Cullinan's farmers or any other farmer who will come in here in the next four or five hours to address the committee is open to scrutiny. Equally, that level of scrutiny needs to be right along the food chain. A few different things that affect our ability as a nation. I once heard us described as a food-producing island. A few factors can affect that going forward, including the margin for the primary producer and the climate Bill. If Government goes beyond 22% in its target for emissions reduction, we will be in a huge red zone as regards closing the farm gates. Equally, we need transparency along the food chain. I do not like to use the word "middlemen", but there are people with significant margins between the shelf and the farmyard and that needs to be exposed.

My colleague, Mr. Enright, will go into the governance issues.

Mr. John Enright: On the structure, we certainly believe that a board of six is too small. If this legislation is properly structured, it could have a significant impact on farmers. Our proposal is that members of the farming pillar would be represented on that board, so certainly the six will have to be expanded. There are other examples of State boards in the agricultural sector with larger numbers. If the legislation is properly structured, we believe that the farming pillar bodies, which are membership organisations, need to be represented on that board so they can represent their members on an issue that is critical to them, because it is effectively their income. The price they get for their produce at the end of the day determines their income. A board of six is way too small for that purpose.

Deputy Matt Carthy: I am just conscious that we could get called for divisions so I will let others in. I will come back in if there is time.

Deputy Joe Flaherty: I thank the farm organisations for coming in. I agree with the IFA that there needs to be a focus on the five main retailers and the three main food service providers from the outset. Small start-up retailers, for example, should not be inhibited or fear this. It should be seen as a red flag for those five big retailers that a vehicle is coming in that will endeavour to police what they are doing.

Following on from Mr. Enright's comment on the board, we teased that out to some degree with the Minister when he was before the committee and we asked him how it was going to be staffed and the type of people who would be recruited. I would probably take the view that more people are needed below the board level. Forensic accountants and IT specialists are needed to be able to go in and ferret out the information that they need from these companies when they get access to it. That is where we need the personnel and bodies. Mr. Enright referenced other State bodies as an example. Could he mention a farm-related State body that he sees as an example that he could work with *vis-à-vis* the six that is proposed?

Mr. John Enright: We can talk about forensic accountants, etc., but if they are not allowed access to private information, they will be of no use. If it is only public information, we can get that ourselves. It has to be-----

Deputy Joe Flaherty: I know, but a board member will not get that either.

Mr. John Enright: Yes. However, I just wish to make that point. Looking in the agricultural sector, Teagasc and Bord Bia have farming pillar organisations represented on their boards. Those are two examples of board structures.

Deputy Joe Flaherty: I refer to the UTPs, and the IFA minimum shelf space of 30% for branded food products. I am moving beyond the five main retailers. For example, for a smaller independent supermarket, do the witnesses not think that would be an imposition on them to provide that level of space? How would a “branded” good be defined?

Mr. Tim Cullinan: This is very important because over the years we have seen the erosion of private labels. Retail own-label is dominating the retail shelf now. The point we are making is that we need fairness. We have many smaller food producers and they need a fair crack at the whip and should be afforded the shelf space. This came about with the introduction in Ireland of the discounters a number of years ago and it has evolved from there. The discounters have been using more and more of their own label products. That has crept into the larger retailers here as well. This is very important. For smaller retailers, this will be a protection for them as well because many of them rely more on the private brands that they buy.

Deputy Joe Flaherty: Mr. Cullinan is suggesting the 30% makes up all branded products and the other 70% is for the multiples to fill in as they wish. Is that what he is saying?

Mr. Tim Cullinan: Yes, that is very important. The 70% of own label is the maximum we need to have, because what is happening is there is an erosion of the private-----

Deputy Joe Flaherty: Would Mr. Cullinan not see an issue that they would be forcing out smaller food producers from being the household’s automatic choice when it comes to what brand they will go with? Let us use, for example, a smaller, bespoke food producer. If the shelf space is minimised to 30%, does he not think some of those smaller food producers will be forced out?

Mr. Tim Cullinan: What is happening at the moment is they do not have the 30%. That is the problem. Mr. McDonald would like to comment on this as well.

Mr. Damian McDonald: The point is that certainly one of the biggest issue in the erosion of value right along the chain is the move towards private branded labels owned by the supermarkets themselves. What that allows them to do is have their own brand. We have examples of what we refer to as “fake farms”. However, take any brand, for example. If you go into a shop you will see Egan’s potatoes. However, there is no Egan’s potatoes. The fact is that the supermarket is in a position to ask all potato suppliers to compete against each other to provide the cheapest potato to go in that bag from one week to the next. Rather than the actual person supplying the potatoes building up a brand value, the brand value is being taken by the supermarket. We cannot end up in a scenario where supermarkets are filled only by their own brand products. This is not just an Irish problem; it is a global strategy by retailers to try to take more of the chain for themselves. If there is an Egan’s potatoes, it should be Egans that is putting the potatoes into the bag, and the consumer believes that is what is happening. I am just using that as an example. There are many more examples of that. There are others that are clearer

that they are brands owned by supermarkets, going back to the original yellow pack where this whole thing started. The point we are trying to make, and I agree it is not the simple thing to do, is that there should be some requirement or a minimum below which retailers cannot go in terms of pushing out all of the brands. Many of the products on shelves that are branded by the supermarket sit alongside the supplier's own branded product, which may be selling at a higher price. To remain viable, the supplier has no option other than to supply the product to fill the own-brand order as well. It is an issue. It is not easy to solve it, but we want to flag it clearly here that this where we are going if we do not do something about it.

Deputy Joe Flaherty: Mr. McCormack said the level of fines enforceable by the office should be determined by the market position of the lawbreaker. Can he just expand on that?

Mr. Pat McCormack: The level of fine has to affect the company, otherwise there will not be a change in practice. That is what is critical. It is the scale of the company as well as the level of offence, shall we say. Obviously, the significant offence is to sell below cost. There needs to be a margin for everybody to stay at anything they do and that is the critical issue. In the past, we have seen the liquid milk trade in a race to the bottom driven by retailers. It can become an unstoppable momentum. Mr. McDonald referred to the potato sector. It is right across the sector but there is no point in a multimillion euro company getting a €250 fine.

Deputy Joe Flaherty: No. On the market share, the retail sector at the minute does its own tracking and publishes its own market share statistics quarterly. Is that what Mr. McCormack would be looking at - tracking it against that?

Mr. Pat McCormack: Yes, that would certainly be a relevant place to start.

Deputy Joe Flaherty: Mr. McCormack referred to the €250 fixed notice fine. Does he want that imposed *pro rata* in the context of market share? How does the fine work *vis-à-vis* market share?

Mr. Pat McCormack: My colleague, Mr. Enright, wants to come in.

Mr. John Enright: My understanding of the legislation is that a €250 fine will apply to an individual in the organisation. That needs to be reviewed depending on the size of the organisation. If my turnover is €20,000, then a €250 fine would be significant. If my turnover is €100 million, it is irrelevant. That needs to be reflected.

Deputy Joe Flaherty: I thank the Chair.

Mr. Damian McDonald: In the GDPR example, the fine is attached to turnover. A company can be fined up to 4% of its turnover which for larger companies is a large amount. A flaw in this legislation is that it states the fixed-price fine cannot exceed €1,000. The upper limit for that must be far bigger. If retailers are fined €1,000 and they pay that, they are off the hook. It does not make any sense. There must be a much higher number than that in terms of what the office can impose as a fixed penalty.

Deputy Martin Browne: I welcome the witnesses. To return to the board, given the potential importance of it and the office, the ICMSA questioned the size of the board and a quorum of just three. The number of members that should be on the board has been raised on a number of occasions but when asked about the size of the board, the Minister referred to setting up subcommittees and the whole lot. Is it reasonable, in Mr. McCormack's opinion, to have such a small board with six members and all these subcommittees? Should the board be bigger? Three

seems a small number for a quorum for such an important office.

Mr. Pat McCormack: It is extremely small. The various boards that are in place servicing the industry reasonably well are large boards that have subcommittees. It is hard for a board that size to have a subcommittee unless it brings different people in. How efficient and transparent is it then and how does the message get back to the main board? It would be more realistic to have a double-digit board where there is opportunity for subcommittees to do specific research and work on the various issues that may come up from time to time. Three is a dangerous number for a quorum. There could be three people from one specific side of the sector or involved in the trading practice. A much larger board with a much larger quorum is needed.

Deputy Martin Browne: We accept that subcommittees are there but to have such a small number-----

Mr. Pat McCormack: It is impractical to have a subcommittee of one, two or three people. That is why a board of 14 or 16 has opportunity for people with various different strengths to go on relevant subcommittees.

Deputy Martin Browne: Is the IFA of the same opinion?

Mr. Tim Cullinan: That is a relevant question. It is important that the right people are on the board. We are here because we are trying to protect the primary producer. It is critical that there are enough people representing primary producers on the board. What is important is, as we said earlier in this debate, it is about the power that will be given here as well around the legislation and going back to see where the margin is at. The make-up of the board is one issue and it is important that there is a sufficient number of people on that board but what that board can do is more important. We have many boards throughout the country that sit week in, week out and deliver. This has to be given the power by the Minister and the legislation has to be there. We spoke about the fines. If there is not a deterrent to doing something, it will not stop that happening. That is critically important. My colleague, Mr. Malone, has done a great deal of work in this area. He might want to comment on that.

Mr. Robert Malone: Fundamentally, we have to look at what the aim of the new office is. It is to level the playing pitch, bring more power back from the top of the food chain, including the retailers and the food service buyers, to the primary producers. I believe the board as proposed is too small. However, it is about what is in the legislation and to have enough powers to open up the food chain and see where the value is going and put power back in the position of the farmers. One of the big asks we have is the ban on below-cost procurement of food. That is a big issue. The cost of producing that food has to be taken into consideration, whether it is a head of broccoli, a kilo of beef or a litre of milk, and retailers should not be able to purchase that at below the cost of production. That will mean the primary producer is more sustainable. We have asked for a ban on below-cost selling but the consumer needs to get value as well. We are all for that. It is very important. We need the consumer with us in all this.

Earlier this year Teagasc produced costings for the production different field vegetables. They went up by various margins of between 15% and 25%. Not one grower was offered that as an increase from whoever they were dealing with, whether it is a middle person or a retailer. They had to fight their best to get close to it but they should not have to fight to stay in business and remain viable. As part of this legislation in terms of fairness and transparency, they should be able to outline the cost of production and the margin they need to stay viable. It is not a margin to get rich but a margin to keep producing food and not rely on imports from somewhere

outside of Ireland. We can do all of this here. That is what it has to be about. We need more representation for primary producers with two or three people in dedicated seats on the board for primary production. Boards such as Bord Bia's have similar set-ups to this proposed new office and they are models we should look at for a board. It is important that the subcommittees, possibly like Bord Bia, represent different sectors. Vulnerable sectors are on life support such as the horticulture, pig and poultry sectors and any sector that is reliant on retail to sell its produce. It is not the world market. They are the sectors that suffered most this year when inputs rose. They could not get the increases out from the retailer. We need subcommittees set up specifically for those to investigate and have powers in order that they can ask authorised officers of this new office to find out where the value is, make it transparent that there are people who are not getting paid the cost of production, and be transparent and publicise that.

Deputy Martin Browne: The Minister said he was open to getting approval from the Oireachtas to nominate a chair. Are the organisations happy with that?

Mr. Tim Cullinan: A chair of a board is critically important. The farm organisations need a say in that as well. I keep going back to the fact that the reason we are here is the primary producer has been left behind in all of this up to now. It is the Minister's prerogative at the end of the day but normally on a board, the board members make the decision as to who the chair is. I would like to see a board appointed and the members of that board would have an input into the appointment of the chair as well.

Mr. Pat McCormack: It is necessary for the position of chairperson that whoever is appointed is willing to facilitate the discussion around the board and bring back to the Minister and the various relevant bodies the feelings of the board, allows the board to express itself in the function and comes in with no preconceived ideas. It is necessary that person be open-minded to the full functioning of the office.

Deputy Martin Browne: I have one last question on heading 9 relating to the particular functions of the office. The general scheme states:

- (a) encourage fairness and transparency in the agricultural and food supply chain;
- (b) encourage compliance with and enforce the rules on unfair trading practices including the publication of notices containing practical guidance as to how statutory provisions may be complied with or on related matters;

In both cases the term "encourage" is used in regard to fairness, transparency and compliance with the rules and unfair trading. Macra na Feirme referred to the need to be proactive rather than reactive in ensuring compliance with the UTP guidelines. I take it the witnesses are also concerned that the wording is too gentle to be a significant deterrent from engaging in prohibited practices.

Mr. Pat McCormack: The language needs to be stronger and the actions need to be stronger still.

Mr. Damian McDonald: Head 44 gives the Minister a lot of powers to make regulations, including the collection of price and market information to address issues of a lack of transparency and information asymmetry in the food supply chain. Under subsection (j), the Minister should be asked to publish a regulation on that immediately together with this Bill. If we do not have that, we cannot address the lack of transparency. The ICMSA has made the same point. That is the first step here. We need to get the truth and understand what is happening before

we can address it. What has happened to the sector this year with input increases is a shocking scenario. The world market generally has operated, given a return to farmers and driven that but our domestic market has failed in that the people who are dependent on selling their produce to Irish retailers are suffering the most. That means there must be a serious lack in our system somewhere along the line. We hear a lot of talk about increasing horticulture and it is mentioned as a priority in the programme for Government. Whatever about the feasibility of that with the growing conditions in various parts of the country, what is happening is the exact opposite. Our horticulture sector is contracting at an inordinate rate. Certain products can be produced abroad cheaper than they can be produced in Ireland because our production costs are higher. If there is not some intervention there, it is inevitable that more and more of our horticulture growers will go out of business. That is the reality of the situation because the retailers can get some of these products cheaper from other countries as they can be produced cheaper there.

The Minister is on the record now as saying he does not like the ban on below-cost selling. He is not the only one who has said that. We have tried to come up with a new idea, which is a ban on below-cost procurement. If retailers are buying a commodity, whether liquid milk, potatoes, fruit or broccoli, they should be required to at least cover the cost of production for the person writing it off as part of their sustainability criteria. That is not happening at the moment. There is no recognition. The market is not working quick enough to give recognition to primary producers for their input cost increases. The data on horticulture in particular are shocking in respect of how few growers we have left in the country at the moment.

Deputy Martin Browne: I agree with Mr. McDonald. I was with one of them the other day and there is a risk of losing 250 jobs in Golden, County Tipperary if something is not done. Mr. McCormack mentioned the word “encourage”. Is that word too gentle? Does it help? Are these soft words a deterrent?

Mr. Pat McCormack: It would be far better if there were enforced fair trading practices rather than encouraged fair trading practices. It is imperative that we have that. Mr. McDonald is correct that the people dealing with the retailers are not in a position to acquire the uplift that was in the marketplace. We had a meeting of the EMB in the past couple of weeks and that is a common theme across Europe for people selling to retailers. The passback was not coming with the improvement in the marketplace. It is not confined to this island. This will have a significant impact on family farm production across Europe if it is not dealt with in a significant and enforced manner.

Deputy Matt Carthy: I want to raise a couple of the technical aspects of the Bill. My first question relates to the language about who can make complaints. The IFA’s submission suggested that language needs to be clearer. Do the organisations see a role for themselves in providing a service to members to make complaints? We have had quite a lot of debate about confidentiality for those making complaints. The witnesses’ organisations know better than most about the relationships there. Is it possible, never mind practical, to have confidentiality measures in place that will protect people making complaints? If someone makes a complaint against a supplier or a buyer, it would probably be easy enough for them to know who it is, if it is in any way specific. Is that the case? Maybe it is not. How much importance would the witnesses attach to the need for strengthened confidentiality measures?

Mr. Damian McDonald: The Deputy is right. That is the difficulty. The number of growers is small now because there has been so much consolidation and, therefore, it is clear enough in a lot of cases who it is because there is not a large number of suppliers. However, we made a particular proposal under head 38(3)(b), which states, “Other organisations that have a legiti-

mate interest in representing suppliers shall have the right to submit complaints, at the request of a supplier". If the IFA or the ICMSA wanted to make a complaint, that would mean we could only do so at the request of a particular supplier and, therefore, we would have to identify them for the complaint to be legitimised. We would prefer to be able to make a complaint without having to identify the supplier. That would be much fairer. As the Deputy said, that may be hard in practice because in many cases there may be a small number of suppliers of a particular commodity. We do not believe we should have to wait for the request of the supplier to make a complaint. We think we should be allowed to make a complaint without the request being made. That way, we would not have to identify the supplier.

Mr. John Enright: We will support members if they wish to make a complaint. If issues are raised with the new office or generalised issues are happening with private producers, we believe the office should take a proactive approach to that. There will be certain issues that may or may not affect a lot of people. Rather than taking an individual complaint, the office should be proactive in dealing with those issues upfront. That is our view.

Mr. Tim Cullinan: This is very relevant for producers who are dealing directly with retailers. We know what has happened in the past and what may happen in the future. That is why it is very important that there is an intermediary there, such as the farming organisations. There must be confidentiality around this as well. People are entitled to make a complaint if they are not being treated in a proper manner and there needs to be a system so they can get recognition for the problem they are experiencing. That is critically important in the Bill.

We had a discussion earlier about being able to go along the food supply chain to see where the margins are at. A lot of this would come from the beef task force. When Grant Thornton was commissioned to try to discover where the margin was in the beef industry, it found that very difficult. We have an opportunity now to ensure this legislation is right so we can see where the margin is at. There are certain groups of farmers in production relying on retailers in Ireland and we are going to lose more of them. That is a fact. We have seen it. The Deputy has seen it in the pig and poultry sector in recent times. He has seen the lengths farmers had to go to try to get a margin back for themselves. It was about survival. We had people outside retailers 24-7 for a number of weeks trying to get a margin back for their sectors. That is how serious this is. I want to stress the importance of this. When this Bill comes to the floor of the Dáil, we will look for the committee's support on this matter.

Mr. Pat McCormack: It is very important with supply contracts, the vast majority of which are on the milk side, that there be no penalty for primary producers if they make a complaint. That is imperative. It needs to be kept out of all contracts. It defeats the purpose if people have to sign a contract and declare they are not going to make a complaint. We need to keep an eye on those milk supply contracts as we move forward, as well as any other supply contracts, as regards the ability of the primary producer to make a consequential complaint.

Deputy Matt Carthy: That is a good point that we might look at with regard to amendments. Dealing with the Government and Department, this is the best time to secure changes to legislation. They do not like to accept amendments from anybody else, since they would have to acknowledge it was someone else's idea. One can achieve anything if one lets someone else take the credit for it. We have to entice the Department and the Minister in the right direction. Mr. Cullinan raised points. The suggestion that compulsory reporting of price data would apply above a certain threshold is a fair proposition in the ICMSA's submission. A small local retainer would not have to divulge information. What do the witnesses see that threshold as? Mr. McDonald talked about moving the debate from below-cost selling to below-cost procure-

ment, which would be considered attractive.

I had this difficulty in the European Parliament when dealing with the original UTP legislation. Even the European Commission argued that it is almost impossible to identify and set out the cost of production, because it could be different for two different farmers depending on inputs and so on. Do the witnesses see a role for this new body if we moved in that direction? Could it be charged with setting out the sectoral costs of production that would underpin the legislation? They could then be set independently and would recognise the realities. Has the IFA sought any legal advice about whether it is possible for the Oireachtas to introduce such legislation? I assume it would have to be legally binding on imported products as well as domestically produced products, otherwise it would potentially undermine the objective.

Mr. Tim Cullinan: The core of the issue is a farmer having a margin. During procurement, retailers have to build in the cost of production. Somebody will have to have the authority to establish the cost of production. We have a State body, Teagasc, which I believe would be well able to come up with the cost of production. That will vary. We currently see substantial inflation in the cost of production for feed, fuel and fertiliser for all sectors. That has impacted more on some sectors than others. I sat in front of numerous retailers earlier in the year. There were issues with contracts and so on. Everybody was looking at what could be done to keep primary producers in production. We made that point too. Things will change due to weather events, substantial inflation and the Russian war in Ukraine, which has had a huge impact on all sectors. Flexibility is needed. We need a facilitator that can establish, if the cost of production is going up, that a retailer cannot be allowed to procure for below the cost of production. That is critically important.

Mr. Damian McDonald: We have not got legal advice. There was legislation on the Statute Book before to deal with below-cost selling. There is minimum price legislation for alcohol. There is precedent for the Oireachtas to have views and make laws or regulations about pricing. There are other examples of it. As the president outlined, there is a valid question about whether this body could assess the cost of production. It could agree what standing costings are. It would not necessarily need to set up a group of people to establish the cost of production. Teagasc exists and there could be a validation process for its data. I do not think it would be that difficulty. We are trying to be constructive. The Minister and other Deputies have said that they are against a ban on below-cost selling. We understand that some points could be made about how consumers are struggling.

Deputy Matt Carthy: To be fair to the Minister, if I recall correctly, he said that he did not believe there was any evidence to suggest the groceries order delivered on its stated objective. Has the IFA, as a farm organisation, noticed a deterioration in price levels since the order was lifted?

Mr. John Enright: I will answer the first question regarding who the regulations would apply to. I think it would apply to the big five, on a market share basis. I understand France has legislation relating to the cost of production issue, which would be worth looking at. The groceries order was abolished in 2006. We can look at the developments in our liquid milk sector since then. It is a good example of what has gone wrong. Farmers are told almost daily that they need to be more sustainable. At the same time, people telling us to be more sustainable will not support us by having a ban on below-cost selling. There is a huge contradiction. If people want farmers to be more sustainable, they have to support them. Telling farmers to be more sustainable then allowing products to be sold below cost is ridiculous. If legislation was in place to ban below-cost selling, although it would not solve the problem, it would certainly

help.

Mr. Tim Cullinan: The Deputy asked about the ban on below-cost selling. In the past ten years, the price of food has fallen by 9%. That is telling in itself. We have all been dealing with inflation, but the price of food has been going down for the past ten or 11 years. That is clear and was demonstrated in the Jim Power report too. That answers the question by itself.

Deputy Joe Flaherty: I have a question for Mr. McCormack and Mr. Enright first. The two-year Statute of Limitations is too short. The witnesses are working in a dynamic, fast-changing sector. There are multiple crises, such as Covid, the Beast from the East, and so on in any one year which can affect the sector. Why do the witnesses think that two years is too short?

Mr. John Enright: Two years seems like a long time but if a business is under pressure and certain things happen, people have priorities at particular times. If an issue arises among members who we deal on various issues, since this is new legislation, they may not be aware of legislation. They might meet us at a meeting or the ploughing championships. We would then make them aware of the legislation. Other provisions have a six-year period, which we believe is more than reasonable. This is new legislation. People do their best at businesses. They may not be aware of the legislation. While two years might seem like a long period, we think it is fairly short. Six years would be more than fair.

Deputy Joe Flaherty: In fairness, the farming sector is well represented. I would be shocked if any ICMSA members do not know of this, thanks to the witnesses' efforts.

Mr. John Enright: I accept the Deputy's point. We regularly meet members. Their business is farming, not dealing with Departments. They may not be up to speed with this. They would meet me, Mr. McCormack or other officers, then realise that there are options for them. Their business is farming and sometimes they are not aware of legislation outside the farm.

Deputy Joe Flaherty: We need this to be effective. There is no point bringing in a historical case that has to be investigated and may not have been meritorious, whereas if the case is honed, it can be looked at later. The two years are there for that reason. It deals with a matter within a window of opportunity for the new office to chase it.

Mr. John Enright: I accept the Deputy's point. If I am aware of the legislation, I may have made my complaint within two years, but I can guarantee the Deputy will find circumstances in which people are outside the two years with a very relevant case. It would be unfair of us to restrict them. If I am aware of the legislation, I will do it within the two years.

Deputy Joe Flaherty: I know the IFA has the best of intentions, but the additional UTPs are probably aspirational to some extent. One would not see a situation in which there would be a ban on below-cost procurement and a ban on below-cost selling. The two of them could not sit together at the same time, realistically.

Mr. Robert Malone: I do not see why they could not.

Deputy Joe Flaherty: Would that not put a considerable burden on the consumer? That could be double jeopardy if we were to go with both of them.

Mr. Robert Malone: Historically, the groceries order did not cover all produce. Certain produce with a limited shelf life and that had to be moved were excluded, such as fresh fruit. Spain has introduced a ban on below-cost selling of certain foods. It is not beyond possible to

do so. We are conscious that the consumer will be stretched and we have to bring the consumer with us on this. Since 28 April, however, no big retailer will be caught out on a black UTP. All retailers have officers dedicated to this. They have engaged with the enforcing authority, which is under the auspices of the Department of Agriculture, Food and the Marine. They will not be caught out on one of the ten black UTPs. What we have called the six grey UTPs that should be considered to be made black because those are the ones that somebody lower down the food chain will feel under pressure to agree to. We could make those six grey UTPs black, which would level the playing field much more and be of considerable help to provide power back down the food chain.

Deputy Matt Carthy: Is that the agreed position of both organisations? It stands in direct contradiction of what the Minister indicated, which was that many farmers wanted to see the option of being able to continue with the grey list.

Mr. Robert Malone: If a black UTP is imposed as part of the legislation, everyone has to go with it. People with the power will row in and will not be caught offside. There is a big change since 28 April in payment terms and conditions and credit terms for suppliers. Retailers had to do so because they knew there was an enforcement authority there. If it is in legislation that one cannot ask a supplier to pay for promotions or marketing, that is it. That is what is being focused on and it will have to be taken into consideration in the food chain. It will be passed it back. If somebody's business is dependent on a contract to supply a certain wholesaler or retailer, the person will not jeopardise his or her whole business by saying he or she wishes the UTP to be black. It does not do what it is meant to do.

Deputy Matt Carthy: Does the ICMSA share that view?

Mr. John Enright: I will come back to the Deputy on that point. Most of our members are dairy or beef farmers and they are supplying milk co-ops and supermarkets directly.

Deputy Joe Flaherty: The IFA representatives mentioned what has happened in Spain and minimum alcohol pricing. Is it fair to say that the IFA's primary concern about procurement costs, without disrespect to dairy or beef producers, is horticulture?

Mr. Robert Malone: The primary concern is horticulture, pigs and poultry this year. Two years ago, it was beef. It is not one sector; it is across all the sectors.

Deputy Joe Flaherty: Would horticulture, to be palatable to the consumer, be the sector the witnesses could bat for?

Mr. Robert Malone: The sector is on life support at present. We have to be conscious that if we do not produce it here, we will import produce from somewhere that is probably less sustainable and not as environmentally friendly. We can ensure many standards here in our growing season. If we do not fulfil what we can produce in our growing season, it is a failure on our behalf and on the part of the legislation in that it does not support the growers and the sector to do so. Horticulture is fundamental this year, but it could be one of the other sectors, such as milk or beef in the future. I would not exclude one sector over another. It is horticulture this year, but it will be other sectors.

Deputy Joe Flaherty: Would it not be better to go with horticulture? Maybe, over time, it could evolve into other sectors. An appetite could be found for the horticulture sector, whereas it would be very unpalatable across sectors.

Mr. Robert Malone: I take the point. In his comments at Bloom a couple of months ago, the president called out our fresh vegetable and fruit growers. It is a problem. Included in our submission is the use of logos and Irish flags by certain retailers in particular. One sees all their fresh produce with Irish banners on them. I know it might depend on the season, but there is no Irish produce underneath the banners. That should not be allowed.

Mr. Pat McCormack: To be fair, we will see as many liquid milk producers exit, if they are not looked after and protected, as we will anybody else. They are very vulnerable at present, given the costs.

Mr. Tim Cullinan: This is about the food chain and protection. If something is not done in a number of sectors, those sectors will not be there. Considerable money is being spent as we speak. Currently, Bord Bia is doing promotion on its quality assurance logo across all sectors. If we do not deal with this properly, the consumer will not be able to pick up an Irish cabbage, packet of rashers or even a pint of milk. The timelines are critically important. When will this happen? The Minister said he would bring this to the floor of the Dáil before the summer recess. We are here now. It is not there.

(Interruptions).

Mr. Tim Cullinan: This is very serious. We have been talking about this for years. We have done fair trading practices. The Minister agreed that he needed-----

Chairman: This committee did not delay it.

Mr. Tim Cullinan: I am not saying it did, but there are issues with the Bill. We have put proposals forward for what we wish to have included in the Bill, but we need an indication of when it will happen. I am very concerned that this will slip away again and we could be here talking about this on the same date 12 months from now. That is not good enough.

Chairman: We will finish the session because we have to go to the Dáil for a vote. Both organisations have made good suggestions and observations on the Bill. They have also given detailed scrutiny of the proposed Bill. When the Minister was before the committee, it was his priority to get this into legislation as quickly as possible. This is our third meeting in a row on the issue. It will definitely not be delayed here. If he wants us to have another session on the issue during the recess, that will be done. We will proceed with the Bill as quickly as possible. I thank the witnesses for attending.

Sitting suspended at 6.58 p.m. and resumed at 7.33 p.m.

Chairman: Before we begin I must bring to everyone's attention that witnesses giving evidence from within the parliamentary precincts are protected by absolute privilege in respect of the evidence they give to the committee. This means that witnesses have full defence in any defamation action for anything said at a committee meeting. However, witnesses are expected not to abuse this privilege and may be directed by the Chair to cease giving evidence on an issue. Witnesses should follow the direction of the Chair in this regard and are reminded of the long-standing parliamentary practice to the effect that, as is reasonable, no adverse commentary should be made against an identifiable third person or entity. Witnesses who are giving evidence from a location outside the parliamentary precincts are asked to note they may not benefit from the same level of immunity from legal proceedings as witnesses giving evidence from within the parliamentary precincts and may consider it appropriate to take legal advice on this

matter. Privilege against defamation does not apply to the publication by witnesses, outside the proceedings held by the committee, of any matter arising from the proceedings.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against any person outside the Houses or an official, either by name or in such a way as to make him or her identifiable. Parliamentary privilege is considered to apply to utterances of members participating online in this committee meeting when their participation is from within the parliamentary precincts. There can be no assurance in relation to participation online from outside the parliamentary precincts and members should be mindful of this when they are contributing.

The committee will hear from Mr. Vincent Roddy, president; Mr. Micheál McDonnell, vice president; and Ms Sharon Cosgrove, national secretary of the Irish Natura and Hill Farmers' Association, INHFA, all of whom join us remotely. We are joined in the committee room by Mr. John Keane, national president, and Mr. Liam Hanrahan, chair of the national agricultural affairs committee, Macra na Feirme. I welcome all the witnesses to this session.

I call Mr. McDonnell to make his opening statement.

Mr. Micheál McDonnell: I thank the Chairman. I am making this statement on behalf of Mr. Vincent Roddy who had Covid last week. I am taking his place in making this submission on behalf of INHFA on the general scheme of the Bill.

We welcome the opportunity to make this submission on an issue of major importance to farmers and the consumer. Unfortunately, in making this, farmers and the consumer have over time seen their influence diminished in favour 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, and 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 does not seem to apply to our farmers and food producers. While someone stacking shelves in a supermarket is guaranteed a minimum payment, the same supermarket will wilfully 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 who remain in the industry the ever-increasing demands placed on farmers are clearly a factor in farm accidents and fatalities on farms.

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

I turn to outline 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 agrifood supply chain. This we fully 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. It should allow for a fair profit margin for food producers. Once we

have an ongoing price index for the cost of producing all foods 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 includes the size and shape of certain vegetables, the colour of eggs, and so on. 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, which is a huge issue. We are aware that food production uses significant resources such as land, water, energy and fertiliser. Food waste, which equates to approximately 1 million tonnes of food annually in Ireland, is also a waste of these natural and valuable resources.

In recognising that since 2016 supermarkets are banned from demanding payment from suppliers for promotions and shelf space we need to ensure adequate resources for the Competition and Consumer Protection Commission, CCPC, to ensure the laws around this are being enforced. Giving the new office for fairness and transparency in the agrifood chain control over this is another option that should be considered. We also need a national and European awareness campaign explaining the important role of food production and the need to respect and acknowledge food producers' basic right to a fair price that reflects their costs and their work. Any such campaign should include our schools and all education centres. It should also focus on food waste, the quality of our food products, and why some foods such as organics cost more. Will this still be the case in the next CAP when we are going to increase organics by three times, from 2% up to 7%, or are we going to have a realistic market for this produce? That is another huge issue we are going to see. It is vital that we have farmers' representation on this committee so we can get a real voice for the issues debated. After all, it is farmers' income that is at stake.

The establishment of the new office to regulate and control fairness in the food chain is a positive step. 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*. We feel that this should 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, our proposals, through the awareness campaign, can enhance the role and perception of farmers and other food producers who perform the most basic but essential role for all of society.

Chairman: I thank Mr. McDonnell and invite Mr. Keane to make his opening statement.

Mr. John Keane: I thank the Chairman for the opportunity to address the committee on the Bill. I am accompanied by Mr. Liam Hanrahan, chairperson of the national agricultural affairs committee.

The Bill reflects the commitment in the programme for Government and EU policies that seek to improve market transparency in the agricultural and food supply chain, and most important, to improve the position of farmers, fisheries and smaller food producers in the agricultural and food supply chain.

The members of Macra na Feirme have consistently highlighted the need for a redistribution of power within the food supply chain. Given the fragmented nature of farm families and their distribution across the country, along with the enterprise variation that exists, all levers of the UTP regulations and further are needed to ensure that the balance of power is evenly distributed across all actors in the supply chain. There have been concerns consistently among farmers

about price fluctuations in some markets along with the requirements of certain farm produce demanded by the consumer. However, at times of constrained supply, certain requirements are no longer a barrier for entry to the market.

Macra na Feirme wishes to highlight that farmers remain in the weakest position within the food supply chain. With five larger retailers controlling in the region of 90% of the domestic market share, it is clear that the individual farmer's position is clearly vulnerable and weak. This is particularly evident in the beef sector where, for example, the average suckler farm consists of in the region of 20 breeding suckler cows.

Macra na Feirme welcomes the establishment of the office of fairness and transparency for the enforcement of the UTP regulations. We have reservations that the new body has not been given a sufficient suite of powers commensurate with the responsibility to ensure fairness and transparency. In its recent submission, Macra na Feirme highlighted the need to ensure that powers of investigation into activities of a criminal nature, under the auspices of an ombudsman, be conferred on the new body. At recent sittings of this committee, different perspectives on the Bill were put forward that were in direct contradiction of conferring investigative powers on the new body. Macra na Feirme requests clarity on the powers of investigation for the new office, which may ultimately lead to prosecution.

Macra na Feirme notes that head 45 states: "The Chief executive may appoint in writing such persons or classes of persons as he or she considers appropriate to be authorised officers for the exercise of all or any of the functions conferred on an authorised officer under this Bill, as specified in the appointment." Let us compare with section 129 of the Data Protection Act, which states, "The Commission may appoint such and so many members of its staff, and such and so many other suitably qualified persons, as it considers appropriate to be authorised officers for the purposes of this Act." When a comparison is drawn, it is clear that a difference exists between the perceived internal capacity of the new office versus those offices established in other areas of enforcement. Macra na Feirme raises this issue in its submission in the context of the food ombudsman and seeks further clarity about the designation of an "authorised officer" and the origin or potential origin of such an officer.

Macra na Feirme welcomes the role that the new office plans to execute concerning price and market analysis. However, concerns remain that to establish the exact breakdown of value from producer to end consumer is not clearly laid out as a function of the new office. Transparency is largely evident at the point of sale from the primary producer to the processor in most supply chains. There is a degree of transparency at the point of sale to the end user, which is the consumer. There is a section in the supply chain that pertains to the main large actors where the price breakdown is unknown. Macra na Feirme highlights the recent Grant Thornton report, which was commissioned by the now decommissioned beef task force, in which it found that the actors within the supply chain, between primary producers and end users, were in some circumstances difficult to ascertain and garner information from. Leaving the provision of information within the supply chain as a voluntary contribution to the office on behalf of large actors within the supply chain will do little to achieve the objective of the new office, as stated earlier. Macra na Feirme would like the addition of powers that allow for the new office to examine and determine the exact breakdown of price, and value, within the agricultural food supply chain at all levels.

Macra na Feirme wishes to raise concerns over the definition of "commercially sensitive information", which has been an area of focus at recent sittings of this committee. The exact nature of this information is unknown in the context of its relative importance in determining

price breakdown within the food supply chain. In its current form, this Bill has no mention of access to commercially sensitive information or what the new office interprets as commercially sensitive. It is essential for transparency and fairness that this matter be clarified and ascertained, and also to ascertain the willingness of retailers to engage in providing such information. It is in that context that Macra na Feirme has reservations about the willingness to share such information and engage on the basis of exchanges between this committee and the retail sector's representatives at a recent sitting. Macra na Feirme calls on this committee to ascertain the willingness to engage and determine if a recommendation to add an amendment in this area is necessary to the Bill.

Following on from its submission on the general functions of the office, Macra na Feirme wishes to highlight the need to ensure that a ban on below-cost selling is an additional enforcement power attributed to the new office. Below-cost selling was banned as part of the Restrictive Practices (Groceries) Order 1987, which prevented retailers from using food as a loss leader in their businesses. In 2006, the ban was removed by the then Minister for Trade, Enterprise and Employment, Deputy Micheál Martin. The position of the primary producer has only been weakened as a result of this ban. Macra na Feirme acknowledges the recent rise in the cost of food production but highlight that the proportionate share of the farmers' increase remains unknown and remains negligible when compared with the rising input price at farm level.

Macra na Feirme seeks the introduction of a ban on below-cost selling as a priority for the new office. Macra na Feirme would like an exercise carried out regularly to ascertain the costs of production using various farm systems in each sector. Once this information is established and updated then the financial requirements to meet the definition of "farm economic viability" needs to be added to ascertain the fair price for agricultural produce at the point of sale from the primary producer to the processor, factory or retailer. This is not something that is unique as when this issue is examined it is clear that the Spanish Government has passed legislation to ban the selling of certain goods at levels below the cost of production.

Macra na Feirme would like a strengthening of the confidentiality measures in the Bill. This is in particular reference to ensure the protection of primary producers and suppliers who come forward with complaints of suspected breaches of the UTP legislation.

Macra na Feirme echoes the comments made by the CCPC at the committee on the confidential nature of complaints. We consider this as a matter of high importance as ensuring confidence in the office from the start is paramount and ensures that the resources available to weaker actors in the supply chain are made available and protected.

Macra na Feirme seeks an extension to the period outlined in the Bill for investigation and prosecution of any breach according to the UTP legislation. The current proposal outlines is a two-year period post any potential offence be brought to the attention of the new office and investigated. We request that this be extended to three years on a permanent basis and call for a potential short-term extension to four years to allow for a bedding-in period for both the new body and that actors in the food supply chain can familiarise themselves with the remit of the new office. This request is reinforced by the fact that the new office will establish a database of information which may take some time, as outlined at this committee.

Macra na Feirme believes that it is hugely important that the new office be furnished with information relevant to its remit from any and all existing public bodies. This will facilitate smoother establishment and faster progress towards effective running. Has preparatory work been conducted between the bodies responsible for the establishment of the new office and the

relevant statutory bodies? The CCPC would be of particular note concerning this matter given its recent investigation into the beef sector and its experience in the area. An effective handover by the CCPC and relevant bodies and Departments will be necessary for an effective transition.

Macra na Feirme seeks clarification concerning this Bill regarding the relationship between competition law, the offices responsible for its monitoring and the implementation and the new office of fairness and transparency. Uncertainty pertains to reporting and monitoring of activities such as cartel behaviour in the agricultural sector. In the event that cartel activity exhibits characteristics that fall foul of UTP legislation, and competition law, primary producers need certainty as to the relevant authority that will pursue any potential investigation or, in the event of both, the requirements that must be fulfilled for an investigation to be commenced.

Macra na Feirme requests an indicative funding amount, and the potential workforce scale and size for the initial start-up phase of the new office. The CCPC had a budget in the region of €13 million in 2019 that rose to €18 million in 2021 and has a workforce in the region of 100. It is paramount that the new office be furnished with the financial, knowledge and skills resources it needs to discharge its function fully while establishing the relevant datasets and information that will be required. A budget of €4 million was announced in budget 2022 for the establishment of the new office. Macra na Feirme requests clarity on the use of this funding allocation to date and also on the €1 million that was announced in budget 2021.

Macra na Feirme also requests clarity on definitions in the Bill, particularly pertaining to evidence required for an investigation, criteria for an investigation and the requirements of a search warrant. The basis of this request is to provide clarity for primary producers in respect of the information needed by the office to pursue an investigation or further. The issue was raised at the committee with the CCPC and there remains ambiguity as to the requirements of the above. On communications, knowledge of the new office among primary producers is in the region of 50% and the knowledge of UTPs is in the region of 14%. Significant work will be needed to communicate the role, function and remit of the new office to the primary producers and to all actors in the supply chain.

Macra na Feirme welcomes the establishment of the new office of fairness and transparency. It does however have reservations that the remit of the new office does not extend far enough. Ensuring that the power in the agricultural food supply chain is rebalanced is the direct ambition of the UTP legislation along with being a priority of the CAP, where it is set out as a strategic objective. Macra na Feirme would like to see constant engagement by the new office with representatives of the farming sector as well as constant review of the implementation of the UTP legislation and the potential for additions to the legislation. Finally, I thank the Chairman and the committee for their ongoing engagement with us on all issues relevant to rural youth in Ireland.

Deputy Matt Carthy: I thank our guests from the INHFA and Macra na Feirme for their engagement on this issue. Both organisations have a long track record of seeking UTP enforcement and a body that can ensure fairness within the market chain for fresh food product. Macra has long called for a national food ombudsman. The INHFA might have argued that a regulator is necessary. We are getting close to the end of the pre-legislative scrutiny aspect of our work. Based on what the witnesses have seen in the heads of the Bill, is this close to what they were looking for? Do they have confidence that the Bill as currently envisaged will have the capacity to change the market conditions in which farmers operate?

Mr. John Keane: I thank the Deputy for the question. The legislation underpinning the

ombudsman requirement in Ireland is the Ombudsman Act 1980. There are some main functions of the ombudsman that we assumed would be attributed to the new office, given that the Bill went to public consultation as a food ombudsman Bill. We engaged in good faith with the submission process under the impression the Bill was establishing a food ombudsman. We took as given that the office would have some key functions, if it were an ombudsman's office, which would allow it greater investigatory powers, including the right to investigate in respect of negligence and carelessness and in respect of "contrary to fair and sound administration". Given some of the complaints from our members, we would have assumed these powers would be part of the core work of this office.

It now looks like the functions of the ombudsman will not be attributed to it and it will be simply the office of fairness and transparency. I would highlight that this is a different framework from what was put out to public consultation. It is like the Galway footballer shooting for the goalposts, the goalposts being moved and then Hawkeye saying the submission is still relevant. We are disappointed an ombudsman is not to be given the authority to do that and will not have enforcement powers under the UTP. We do not believe the legislation goes far enough.

We have clarity on the price received at the point of purchase from the primary producer. We have clarity at the other end in respect of the price to the consumer. The ambition is that we would have the powers to see what goes on in the middle among the actors of the food supply chain. On investigating and comparing what goes on across the EU, we have one of those frameworks in milk supply. The Ornu purchase price index, PPI, feeds back information to farmers on a monthly basis as to the return of the product on the PPI. A number of months ago it was 46.9 cent per litre. The average payment price for milk received at co-operative level was 45.8 cent per litre. We have this tool that highlights this. The question is whether the availability of that tool is delivering a higher price for farmers. We suggest it is not. We would much rather see enforcement than reliance on embarrassment. Our understanding of the Bill is that it still does not provide the powers to investigate the price breakdown within the food supply chain. Applied to a simple, short food supply chain, as I understand was mentioned by other farm organisations in previous contributions, such short supply chains exist in the horticulture sector. There is a primary producer and a retailer. We have seen the diminution in the number of horticulture suppliers in the country over past years. It does not take a whole lot to examine that food supply chain to see where the power breakdown is.

The committee and the Deputy asked questions of the Minister and the CCPC in respect of investigative powers. I think Deputy Carthy raised questions about the 160-odd complaints that came in about behaviour in the beef sector a number of years ago. There was no investigation pursuant to those behaviours. We still have no idea what the criteria are for investigation. The CCPC outlined to the committee that its understanding of the Bill was that the new authority will not have the powers to conduct criminal investigations. The Minister in his previous statement to the committee the week before said it did. There has not been any clarity on that since. We are requesting clarity as to whether it will have that power.

Mr. Vincent Roddy: It is good to get the opportunity to engage. To come in on the back of what Mr. Keane said, there are concerns regarding the ability to investigate. Maybe it is not great to say that when the Bill is through and we have that up and running, we will be in a position to see how true or untrue it is. It is definitely going to be a concern. There is also concern about the board, which may have been mentioned earlier. There is a very small board. The question of who is going to sit on it will be an issue as will its specific role. I think someone referred earlier to the size of the board as regards the quorum of 50%, which would be high

enough normally but when there are only six board members it is a problem. We will have to wait and see.

As Deputy Carthy said, the INHFA has been looking for a regulator for a good while. Macra referred to an ombudsman. We welcome that there is a move in the right direction. There is an acknowledgement that something has to happen in this regard. However, time will tell and maybe that is not a great place to be. I am not sure what level of review is provided for to make changes if required. Can that be done directly by a Minister or does it have to happen through legislation and debate in the Houses of the Oireachtas?

Deputy Matt Carthy: On the make-up of the board, I want to ask both organisations if they have a view as to what changes should be made to it as currently proposed. There has been a great deal of discussion in that regard. We discussed the so-called grey list of frowned-upon activities, as opposed to the black list of prohibited activities, with witnesses in our earlier session. The IFA representative was very firmly of the view that the grey list activities should also be blacklisted. I note in the Macra submission an indication that we should go beyond that. What is the view of the witnesses on whether those grey lists should be black lists and whether any other specific practices could be prohibited in primary legislation?

Chairman: I will let Mr. Roddy answer first this time and then go to Mr. Keane.

Mr. Vincent Roddy: On the make-up of the board, six is a small number. We need a good lot more. The farmer representative bodies should be on that. We need to ensure we have enough critical expertise on that board as well to ensure it can deliver where it needs to deliver.

On the grey list, I concur with the IFA. There are actions there that are definitely dubious and floating through and need to be tackled. When you go into some supermarkets you see Irish flags and things like that to imply the product is Irish. That kind of activity must be ruled out, especially if it is not an Irish product. There are a number of factors there that should be included on that black list as well.

Mr. John Keane: On the board, we understand there were also questions to the Minister at this committee regarding the make-up of the board. Our understanding from his interpretation is it must go through the public procurement process or public appointments process. We have reservations about how we ensure two primary producers, as a representative sample of primary producers, will be on the board if they are to go through the public appointments procedure. The chair of the board should have the necessary knowledge and skill set relating to food production in Ireland so that he or she has an overview of what happens on the ground. I am aware he or she can read into the brief and I am sure whoever is appointed will be of a suitable standard but ensuring he or she has a background appreciation for what is happening in the food supply chain will be critical.

I refer also to some contributions at the committee a number of weeks ago on representation from some other sectors, such as the retail sector. It begs the question of somebody speeding down the M50 at 180 mph and going into a Road Safety Authority board meeting to determine what the sanction should be on a motorist, so I question whether the relevance of that is something that, through the public procurement process, which I am not familiar with it, could pertain within it. The primary producers' representation of two is crucially important. On the figure of six, we request that be enlarged as a representative sample of the primary producer sector as well. A quorum of three is 50%. We would like the quorum to be half plus one in terms of voting powers and being a representative sample of the board.

The Deputy asked what can be added and what can be changed. We have long called for the six grey UTPs to be included as black UTPs. On the six UTPs relating to contract negotiations and so forth, we can look at the primary producers who may find themselves in the position to negotiate those contracts. We have experience in the spring just gone by of smaller horticultural or beef producers who had limited bargaining power when it comes to securing a contract, so why would we not be using all the powers we have at our disposal to ensure the playing field they are negotiating contracts on is balanced out as much as appropriate?

On what is missing, we mentioned in our opening statement and submission the issue of below-cost selling. There is a larger question around the viability of the farm sector as well, moving into the future, and the provision of opportunity for young farmers. Should we allow the sale of produce in the domestic market at below the cost of production that would meet the viability definition of farm incomes based on the national farm survey? How that pertains is the basic viability of a farm at minimum wage is €19,616 per annum plus a 5% return on capital investment on machinery and livestock. That is the definition Teagasc has put forward as “farm viability”. I am not sure whether we would be happy with minimum wage but it is definitely a start.

Deputy Matt Carthy: I have no more questions. I again thank both organisations. As part of the committee’s engagement, the input from the farm organisations has been incredibly helpful. In my time on this committee and at all the hearings we have had, we have not had a more informed contribution than the submission, opening statement and responses we have received from Macra. I sincerely hope those, along with the other inputs from the farm organisations, are seriously considered by the Minister in the next steps on this legislation.

Chairman: I concur with those comments. Deputy Martin Browne is next.

Deputy Martin Browne: I welcome the lads and want to be associated with the remarks Deputy Carthy just made as well. Returning to the board itself, the two organisations who appeared in our first session felt six is too small and a quorum of three is not on either. The Minister was also talking about getting approval from the Oireachtas for a nominee as chair. Have the witnesses an opinion on that? Are they in agreement with the two previous organisations that six is too small for such an important board?

Mr. John Keane: I thank the Deputy for the question. On the figure of six, we would like that increased. If it was in the low double digits, such as ten, it would be a more representative sample. If there is to be an increase, which we would welcome, it is important the percentage share of primary producers is also reflected in the make-up of that board. In the draft Bill we have seen we have two of five. If we are going to ten plus the chair it becomes four of ten, so the same representative sample of primary producers present on the board is still needed. On the procurement process, as I said in reply to Deputy Carthy, I am not intimately familiar with it. I understand it is a different process and there are interviews and so forth. I was listening in to the contribution of the Minister about some of the recommendations of the committee that would have to go before the Houses of the Oireachtas. In terms of the powers that be, whether it is this committee or the Dáil itself that ascertains the most appropriate method to get the right person in the position, our ask is that the skill set of the person who becomes chair be the most important factor. He or she must have the knowledge of the sector, the supply chain and the pressures primary producers are under as well as the relevant skill set to do it.

Deputy Martin Browne: His or her insight is what Macra is most worried about, whether it is the bodies or the Minister who appoints.

Mr. John Keane: The right person for the position, yes.

Deputy Martin Browne: The right person.

Mr. John Keane: Yes, because we understand from reading the Bill the chair is to report back regularly to the Minister. There were contributions from the Chairman about adding in the line that the chair and chief executive would report directly back to this committee. Having that inserted into the Bill will be quite important as well.

Deputy Martin Browne: Yes.

Chairman: Does Mr. Roddy wish to add something?

Mr. Vincent Roddy: Coming to the chair first, I assume his or her independence would be taken for granted and that he or she would operate in an independent manner. It comes back then, as Mr. Keane said, to his or her competence, which is critical. The chair must understand the role, what is required there and where the pitfalls are. He or she must also understand there may be times when people are trying to take advantage. That is critical.

On the board, as was said, six is a low number. Mr. Keane mentioned ten and we would say ten or maybe 12, like the apostles. Again, it is critical that farming groups and primary producers are included at that level. One would be looking at five or six on that basis. Six is definitely low. I understand the board cannot be increased to 30 to 40 people because then it just becomes impractical but I do not have problem with doubling the board up to 12, which is what we are saying. That would give us something to work with. It will also given an opportunity, if there is a need, to have some committees on the side as working groups.

Deputy Martin Browne: I refer to heading 8, relating to the general functions and role of the office. Macra na Feirme stated that it wishes to put the focus on farmers, fishers, small businesses and food businesses, whose natural position on the food chain is weaker. What importance does the organisation attach to that? What pitfalls does it foresee?

Mr. John Keane: I thank the Deputy. I might ask Mr. Hanrahan to also comment on this issue. It is addressed in our submission but, as regards some of the headline pieces in respect of the general functions, the first general function refers to the encouragement of the adoption of practices by large companies. We would like that wording, and any other relevant wording in the general functions in respect of encouragement, promotion and so forth, to be changed to enforcement. Encouragement is all fine and well but, in terms of regulatory and legislative requirements, there is a need for stronger terminology relating to enforcement and prevention that ensures the office has as much power as possible in that regard. Point number 3, for example, refers to encouraging compliance. Market actors are either compliant or they are not. Encouraging compliance is all fine and well but we need to ensure there is compliance with this. We understand that in recent months large-scale retailers have had time to engage with the temporary office that has been set up. As there have been no investigations or fines so far, we assume the functions have been carried out and they have been compliant with the UTP legislation. Ensuring compliance is crucial. I will ask Mr. Hanrahan to speak to the importance of the Bill in terms of getting the enforcement right.

Deputy Martin Browne: Before Mr. Hanrahan comes in, Macra na Feirme believes the wording as it stands is not a great deterrent.

Mr. John Keane: We can encourage people to do different bits and pieces, but that does not

mean they will do it. Encouraging children to join a GAA club or not drink too much when they go out at the weekend is all fine and well but enforcement in a legislative framework needs to involve enforcement and prevention. One is either on the right side of it or the wrong side of it.

Mr. Liam Hanrahan: From our perspective as representatives of young farmers, the importance of this issue cannot be overstated. It is preventing young farmers from entering any farming sector. From a sectoral representation point of view, two people on a board is probably not enough but, from a viability point of view, the importance of this cannot be overstated. It is preventing young farmers entering our industry. In addition, it is preventing those who enter the industry from improving, becoming more efficient and implementing technologies that allow the farming industry to become more environmentally sustainable. The importance of this new board or office being effective in what it does cannot be overstated.

Deputy Martin Browne: During a previous meeting on this, I raised with the Minister the issue of the €500,000 limit. I made the point that the limit might not be enough when it comes to larger companies, in light of the profits they are making. Is there agreement on the best way to go about this? I did not get to ask that question of the representatives of the IFA and ICMSA so I am asking it of Macra na Feirme and the INHFA now. Should there be a higher sanctions or should it be based on a company's market position? I hope there is an agreement across the four organisations but I did not get to put the question earlier as we had to leave the meeting to attend a vote.

Mr. Vincent Roddy: It is a fair point in respect of the €500,000 limit. It will depend on the company. For some companies, €500,000 is not a lot of money. Our view is that it has to hurt and there have to be sanctions in place. Mr. Keane referred to encouragement and enforcement. This definitely has to be enforceable. The hit has to be hard enough to ensure companies do not step outside the requirements. As the Deputy stated, it is also a question for the other organisations. Consideration should be given to it being a percentage of a company's turnover. It may be that the percentage would depend on the seriousness of breach.

Mr. John Keane: I thank the Deputy for the question. In terms of falling foul of the legislation and some of the suggested fines, it is on a scale from compliance to summary notice and up as far as prosecution and penalty and so forth. They are on a scale from €250 to €1,000 and so forth. At the lower end, there is a fine of €250 for falling foul of the legislation. For a large actor within the food supply chain, I do not think anyone present will agree that is a fair reflection in terms of the scale of large producers as compared with smaller producers. That is where to start. At the lower end of the scale, it is up to a maximum of €1,000. That is far too weak.

In terms of the larger enforcement piece - I will come to enforcement momentarily - I echo the remarks of Mr. Roddy in respect of the figure of €500,000 and a percentage share of the overall turnover or profitability of the company. There is precedent for that in the context of breaches of the GDPR legislation, which can lead to a fine of up to 4% of a company's turnover or profitability. It is in that region. For a large company, 4% is a significant figure and that would be a deterrent to partaking in unfair trading activity. The sanctions are not stringent enough in terms of deterrence.

The issue of enforcement is referred to in our summary as well. We welcomed how strong the committee was on it in its questioning in respect of the CCPC. Farmers and individual primary producers have no clarity right now as to what are the requirements or criteria for an investigation to be started under competition law. Several years ago, there were a lot of complaints to the CCPC in respect of certain activity in the beef sector. That was not pursued and

some of those items are up there. Is responsibility being put on the primary producer to garner the evidence for an investigation to even begin or are there powers within the Bill for this authority to commence investigation on suspicion of a breach? The representatives of the CCPC who appeared before the committee referred to the severity of starting an investigation and the severity of the potential consequences, such as a sentence of ten years' imprisonment and so forth, as being a deterrent but the mere outcome of an investigation should not be a deterrent to the investigation being commenced. That point did not make sense. From our side of things, it is critical to make clear the criteria for starting an investigation so that farmers and primary producers can ascertain or have a barometer of the evidence that is needed for an investigation to start.

Deputy Martin Browne: I put the issue of costs and margins to the representatives of Retail Ireland who appeared last week. They said there may be an issue in the context of company law with making profit margins publicly available. The Minister stated that the key role is to examine and shine a light on the supply chain, as well as to assess where the market is at and check back on that. As Mr. Keane stated, competition law is a matter for the CCPC. The committee has been told that the investigations will be able to uncover any details needed to prove suspected wrongdoing. Are the witnesses satisfied that will be the case? The INHFA has stated that all input costs for farmers and other primary producers, including fixed costs and insurance, need to be taken into account. That is a question for both organisations.

Mr. Vincent Roddy: We stated in our submission that there is a need to establish what the cost will be because one can then determine if there are below-cost sales. Obviously, it will have to be basic on some levels because it would not be possible to determine the cost of every item each month. We can get a fairly good handle on that, however.

I cannot say whether it will comply with company law. Time will tell in that regard. The CCPC may be able to shed light on that. It does fit into that area. I want to double-check that before coming back with a response. I would rather not comment without knowing the full facts about that.

Mr. John Keane: I thank the Deputy for his question. As for competition law and whether we are happy with the CCPC's role to date, the lack of clarity that surrounds the investigation, as I said, is our biggest bugbear because we have no idea what the criteria are to meet that. We understand from contributions made at meetings of the committee that the CCPC has prosecuted people for behaviour within different supply chains and sectors, so there is precedent there and the CCPC has the powers and the authority to investigate. The gap is not only what the criteria for the CCPC are but also, as referred to in our submission, what the roles of both authorities will be and what the link between them will be. For example, a primary producer comes forward with evidence of activity within the food supply chain that it suspects may not be fair. It may fit under the UTP regulations. I am not sure I even understand that, and we have put a lot of work into it. From the point of view of the primary producers, they are going to one office to report and so forth and they find out in six months, a year or 18 months that the report is not relevant and that they have to go to a different authority. It needs to be ensured both authorities or statutory bodies report to one another and speak to one another. To make the requirements for investigations publicly available would be hugely beneficial to primary producers and the farm organisations and representatives in understanding what those requirements are.

Will the Deputy repeat his second question?

Deputy Martin Browne: Is Macra na Feirme satisfied, from what the committee has been

told, that the investigators will be able to uncover any details necessary?

Mr. John Keane: As for the contributions that have been at meetings of the committee, we have made two separate contributions on that exact point. The Minister and his officials, when they were before the committee, affirmed that the investigative powers would be conferred on the CCPC. The CCPC had a different interpretation of the Bill. We are not legal experts so we have sought clarity as to whether the CCPC has such investigative powers. The authorised officer is referred to in our submission. It is written in the draft Bill - I cannot remember under which head - that the chief executive has the power to appoint an authorised officer to carry out an investigation. By way of comparison, the data protection law enacted in 2018 states that the chief executive officer has the authority to appoint an authorised officer from among his or her staff or a person or persons from wider afield. We note, however, that this draft Bill does not contain a reference to staff. What will the skill set within the staff complement be? Will they have the required skill set? Is there provision for them to have the required skill set for forensic audits? Some potential investigations may involve IT software. Will there be the skill set for forensic investigation of IT software? An authorised officer with that sort of skill set will be needed within this new office of fairness and transparency if it is to carry out these investigations. It is not clear from the draft Bill whether or not that skill set will be contained within the new office.

There are a lot of questions. I am sure the committee will continue to work on this, but we have those reservations as to whether the skill set will be there to appoint an authorised officer. Because that is not directly stated within the draft Bill, is there a silent intention within the draft Bill that this be the case?

Deputy Martin Browne: That is all I have. I thank the representatives of two organisations again for coming before the committee.

Chairman: As Deputy Carthy said, and Deputy Martin Browne and I concur, we got exceptionally good briefings from the four farming organisations before us this evening. They have raised a lot of questions about the draft Bill and its effectiveness. I thank all the organisations for that.

The next public meeting of the committee will take place on Wednesday, 20 July 2022, at 12 noon, when the committee will discuss the calculation of methane emissions and sectoral emissions ceilings. I ask members to note that the Joint Committee on Agriculture, Food and the Marine and the Joint Committee on Environment and Climate Action will hold a private joint meeting at 10 a.m. on the same date to discuss the joint committee's draft report.

The joint committee adjourned at 8.25 p.m. until 12 noon on Wednesday, 20 July 2022.