

Submission by BWG Foods to the Department of Jobs, Enterprise & Innovation on the Consumer Protection Act 2007 (Grocery Goods Undertakings) Regulations 2016

February 2016

Introduction

BWG operates 1,350 SPAR, EUROSPAR, SPAR Express, MACE, Londis and XL symbol stores across Ireland and Britain, as well as a chain of 22 Value Centre cash-and-carry outlets. It had a turnover of approximately €1.2 billion in 2015 and employs over 1,000 staff directly, and 20,000 people in its stores, including owner-run franchise outlets. BWG is a member of the SPAR South Africa Group, whose shares are quoted on the Johannesburg Stock Exchange under the SPAR Group name.

1. General observations on the Regulations

BWG has a number of general observations on the Regulations and some specific comments which highlight practical problems on particular provisions, which are set out below:

a. Timeline for application of the new Regulations

The timeline for application of the Regulations (April 30th 2016) presents enormous challenges to any company in preparing for and implementing the Regulations. There appears to be no acknowledgement of the significant volume of work associated with the implementation of the regulations, specifically:

- i. a clear requirement to establish extensive back office systems to ensure compliance
- ii. the need for considerable training to ensure universal awareness of the obligations

This responsibility falls almost entirely on the retail / wholesale community, and the timescales for doing so (to be complete by the end of April 2016) are overly ambitious and unrealistic.

It is the view of BWG that such a short notice period is unworkable and needs to be extended to ensure that all parties have the required time to ensure full adherence to the Regulations.

b. Definition of Grocery Goods

In previous consultation, BWG has consistently argued that the current definition of grocery goods is both insufficient and too vague, in that it applies only to specified categories of food and drink sold for human consumption; it does not cover “other classes of grocery products” and specifically excludes toiletries and household cleaning products.

It is the view of BWG that significant categories of goods should not be excluded from the Regulations, particularly when some of the largest suppliers in the household area also trade across other grocery (food) categories and would therefore be bound by the Regulations in these areas.

It is the opinion of BWG that the Regulations should cover all categories of goods sold and that the definition should be broadened to remove exceptions such as the household category.

Furthermore, the Regulations have been prepared to deal with the relationships between suppliers and large retailers / wholesalers. It is the view of BWG that little consideration has been given to the potential impact of the Regulations on the grocery wholesale channel, where there are a number of larger customers, serviced by wholesalers, which would fall within the current thresholds.

Under the definition of the grocery goods undertaking as outlined in the Regulations, retail customers with a turnover which exceeds the €50 million threshold will be required to report upon their relationship with suppliers, and specifically in this case, the symbol group operator.

As a consequence, BWG believes that this area requires significant further consideration and amendment. It is the opinion of BWG that the Regulations should not apply to grocery goods contracts between wholesalers and retail customers, and that such trading relationships should be excluded from the scope of the application of the Regulations.

c. Supplier Obligations

BWG has always supported the concept of fair relations in the supply chain, but it is our opinion that the new Regulations retain a singular focus and burden on retailers and due consideration should be given to the obligations of suppliers.

Given the size and scale of many of the multinational suppliers which operate in the grocery sector, BWG believes that a reciprocal obligation on suppliers is required and that suppliers should have the same obligations imposed on them in their dealings with retailers / wholesalers. These obligations should include complying with the terms of their agreements including in the areas of price, promotional activity, payment terms and other normal trading practices.

Given that any issues which arise under the Regulations are likely to be bi-lateral contractual disputes where there are two versions of the same event, suppliers should also be subject to the same record maintenance requirements as proposed under these Regulations. This would lead to a speedier and more effective resolution of any potential dispute or issues.

d. Overly Restrictive Regulations

There is an enormous range in the size and scale of the suppliers to BWG, which vary from multinational operations with turnover in excess of €100 million to small, cottage industries producing artisan products supplied to a small number of local stores.

The resources and skills available to these suppliers varies enormously, and the requirement that the terms of business arrangements between BWG and each of these suppliers is captured within a formal contract is extremely onerous; the introduction of the Regulations would potentially have a significant impact upon these small suppliers and their ability to maintain and grow their business.

The expectation that each of the suppliers will have the capacity to cope with the new Regulations is misguided; the bureaucratic impact of the Regulations should not be underestimated, and the associated supplier costs would be a huge burden on the small supplier sector in particular.

It is the view of BWG that further consideration be given to excluding or providing an 'opt-out' facility for those small suppliers where the administrative burden of compliance would simply be too great.

BWG is available to elaborate further on any of the observations contained within this submission.