

Redacted



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01<sup>st</sup> June 2018

**RE: Call for views in response to Draft EU Directive on Unfair Trading Practices in Business to Business Relationships in the Food Supply Chain (COM (2018) 173 Final – 2018/0082 (COD))**

Dear Mr. Grace,

In response to your letter dated 25<sup>th</sup> April 2018, we wish to communicate in response to the new proposed legislation. We are available to clarify any of the points raised should you wish to discuss in further detail.

Applegreen is a fuel and food forecourt retailer with operations in the Republic of Ireland, Northern Ireland, Britain and the USA. As of 31 December 2017, the business operated 342 forecourt sites and employed 4,900 people across these jurisdictions.

Applegreen support the general objective of the proposed legislation, in that it seeks to ensure that all trading relationships are conducted in good faith and in a fair, open transparent manner. We are committed to long term stable relationships with suppliers, whether grocery or food, which deliver sustainable benefit to both parties. Following the introduction of the Grocery Regulations in 2016, Applegreen have begun to extend similar contract principles into the Food Service side of the business. Our primary concern is with avoiding an unnecessary or onerous compliance regime, that while difficult to quantify, will likely result in increased costs which Applegreen would be unable to absorb leading to the recovery of these costs through increased retail prices.

The following summarises our general concerns regarding the proposed regulations:

1. For clarity we believe it would be beneficial to set out specific requirements of the act rather than requiring readers to cross reference separate directives from the Commission.

Directors:  
D. Kitchen  
R.C. Etchingham  
J. Barrett  
P. Lynch  
H. Millar  
M. Southgate  
B. Geraghty

2. We would suggest that the enterprise definition, as proposed by as part of this legislation, Annex to Commission Recommendation 2003/361/EC is not appropriate in this instance. Across all jurisdictions Applegreen reported a turnover of €1,428.1 million in 2017. Of this c. 80.2% originated from fuel, c. 12.5% originated from shop / retail activities, leaving only €103.7 million (c. 7.3%) from food / food service.

3.

4. In relation to our own brand food offering, 'The Bakewell', the vast majority of sourcing occurs independently within each jurisdiction, with the exception of Northern Ireland which is sourced in conjunction with the Republic of Ireland. This method allows Applegreen to better accommodate local tastes and preferences. As a result, Applegreen is not in a position to "leverage" its scale against suppliers.

5. As outlined above, we currently have contracts with most of our food service suppliers, irrespective of their size. Many of our food service suppliers serve both food service and grocery, therefore do we have to have separate contracts now in place?

6. It is important that a provision is made for a transition period after enactment to enable buyers and suppliers to put in place the necessary processes and frameworks to ensure compliance and to exit any existing agreements.

7. It is our experience following the introduction of the Grocery Regulations that we have opted to scale back relationships with local suppliers at a site level due to the level of compliance required. This has potentially negatively impacted local suppliers, an unintended consequence of the regulations. We would be concerned that any additional compliance sought in respect of food suppliers, may have a similar adverse impact on food suppliers.

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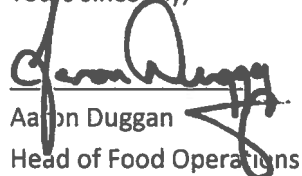
In addition to the general comments, please see below a response to the specific trading practices that are proposed to be banned:

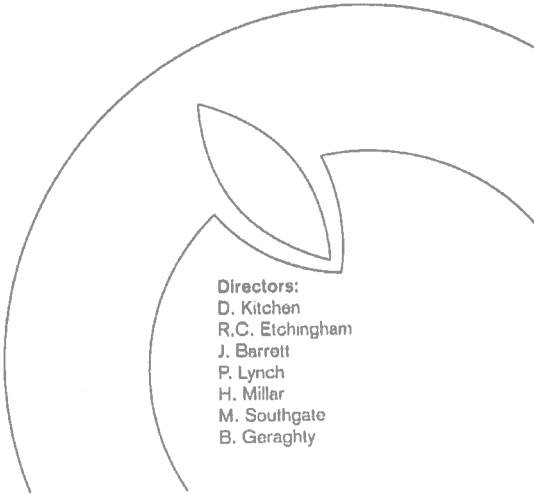
- I Paying a supplier later than 30 days for perishable food products or later than 30 days after the date of delivery of such goods.
  - i. We have no objection to this provision.
- II A buyer cancels orders for perishable food products at such short notice that it is not possible to expect the supplier to sell such goods elsewhere.
  - i. We agree with the overall principle, however for certainty and clarity a definition of short notice may need to be included.
  - ii. While we agree with the overall principle, there is a lack of reciprocity of obligations on the buyer and supplier. It does occur on occasion that the supplier may fail to deliver agreed volumes, leading to significant impact on the offering to consumers.
- III A buyer unilaterally and retrospectively changes the terms of the supply agreement concerning the frequency, timing, or volume of the supply or delivery, the quality standards or the prices of food products.
  - i. Further clarity is required in this regard. The nature of the business demands changes in respect of consumer demand.
  - ii. There is a lack of reciprocity of obligations on the buyer and supplier.
- IV A supplier pays for the wastage of food products which occurs on the buyer's premises but where the supplier is not negligent in causing such wastage.
  - i. This proposal is very restrictive. While we do not envisage a long term agreement requiring suppliers to be responsible for wastage, suppliers often want to introduce new products and are willing to cover short term wastage in order to alleviate commercial concerns held by the buyer. If this was to be enacted, buyers will likely become very conservative towards suppliers.

Please note that the any highlighted text is commercially sensitive / confidential (due to the fact that it may reference our financial position, market position or business strategy) or is private. Please ensure these are redacted in any publication.

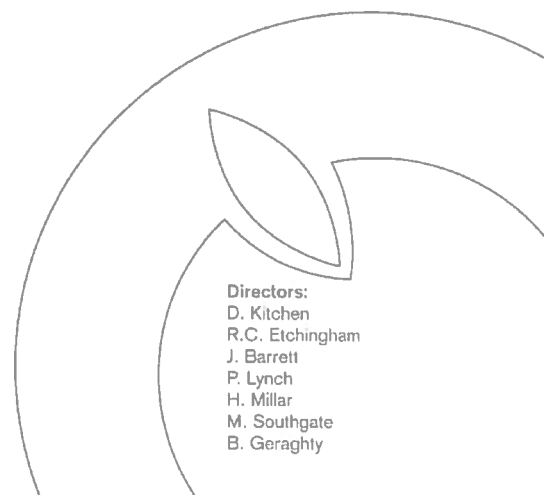
I trust that our submission will be of some benefit to you and wish to thank you for the opportunity to put forward our input. Please do not hesitate to contact me if you require any further information or clarification on the above point and we would welcome further discussion.

Yours sincerely,

  
Aaron Duggan  
Head of Food Operations



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