



**Irish Bread Bakers Association**

**Submission to Department of Jobs, Enterprise & Innovation**

**Grocery Regulations Consultation**

**February 2015**

## **Introduction & General Comments**

The Irish Bread Bakers Association (IBBA) is an association within Ibec and welcomes the Government's commitment to introduce and enforce statutory regulations in the grocery sector. These regulations are essential to redress the power imbalance between retailers and suppliers. This will ensure that retailers' commercial success is purely dependent on meeting consumer demand efficiently. This will benefit all stakeholders operating in the domestic grocery sector including the consumer.

## **Application of Regulations**

IBBA welcomes the Government's commitment to apply regulations to retailers only. IBBA strongly believes that regulations on unfair trading practices should only apply to retailers. The abuse of buying power is now accepted by all stakeholders as commonplace and problematic across EU markets including the UK.

*There is no corresponding evidence necessitating regulation of large supplier's relationships with retailers. As such, IBBA believes that none of the draft regulations as outlined are applicable to their relationships with small retailers.*

## **Implementation**

These regulations should take effect immediately after this consultation process. Many food companies have ceased trading, downgraded investment and reduced headcount during the past decade due, in part, to retailer buying power. No more than 30 days should be allowed for retailers to become compliant with the regulations. However, all contracts in existence from the date of the regulations being brought into existence by the Minister should be covered.

## **Enforcement**

IBBA's view is that strong enforcement by the Competition and Consumer Protection Commission (CCPC) of these regulations is key to their success. The CCPC must be adequately resourced immediately to enable them to proactively investigate compliance amongst retailers in one of the

most complex sectors of the economy. The CCPC must be equipped to drive awareness of the new compliance regime across the sector and to carry out proactive investigations of Relevant Grocery Goods Undertakings. In addition, the CCPC must be empowered power to publicise, through annual report, public statements and stakeholder engagement compliance rates and contraventions amongst designated Grocery Goods Undertakings.

### **Fines and Penalties**

The schedule of penalties outlined in the Competition Protection Act 2007 is grossly inadequate when considered in relation to the turnover threshold of €50million of Relevant Grocery Goods Undertakings. A fine/penalty schedule comparable to that in the UK should be adopted. Recently, the Grocery Sector Adjudicator secured the power to fine non-compliant retailers up to 1% of turnover for contraventions of the GSCOP. Similar levels of penalties should be put in place in the Irish context to ensure regulation acts as a deterrent.

### **Delisting & Imposition of fines**

Delisting and the threat of delisting are often used by retailers as a method of compelling suppliers to accept arbitrary and unfair demands. In terms of enforcement, delisting should raise a red flag in terms of addressing an abuse of buying power. A specific regulation banning arbitrary delisting and setting out an agreed and fair delisting procedure should be incorporated into these regulations. The CCPC should monitor the effectiveness of internal appeals process within relevant Grocery Goods Undertakings for companies that are delisted. These processes should be driven by retailer's internal compliance officers who are obliged to notify delisting to local senior management.

In addition, the practice of retailers imposing charges or invoice deductions on suppliers should be banned in these regulations. These are often placed on suppliers on an arbitrary basis negatively affecting supplier's cashflow and placing business under threat. The imposition of these by retailers should again act as a red flag for the CCPC in relation to enforcement of regulations.

## **Specific Responses to additional related questions**

*☐ The Act provides that Guidelines may also be issued in respect of any regulations brought into force: suggestions as to what might be included in any such Guidelines would be appreciated (in relation to the draft Regulations);*

Supplementary guidelines should be provided to relevant Grocery Goods Undertakings and all suppliers. These should outline in specific details the sorts of practices that contravene regulations. In addition, the CCPC should regularly update these guidelines as it executes its enforcement duties.

For example, guidelines should clarify the following:

Draft Regulation 12 (1): provides that if a retailer asks its supplier to ‘significantly’ change the terms of supply or delivery, the retailer must give the supplier reasonable notice. Guidelines should clarify what ‘significantly’ means relative to particular relationships between relevant Grocery Goods Undertakings and suppliers.

These guidelines should also recognise that particular products in the bread category have unique characteristics, such as short-lifespans for fresh products. These factors should be taken into account when determining what ‘significant’ and ‘reasonable time frames’ means under particular regulations.

The guidelines should also outline how a complaint can be made to the CCPC and the procedures once a complaint is made.

*☐ In relation to household cleaning products and toiletries (which the Act also foresees may be covered by regulations), which specific provisions in the draft Regulations (covering food and drink) should be included in any separate regulations covering such products?*

N/A

*☐ In relation to large suppliers which supply smaller retailers (viz. those with an annual turnover of less than €50 million), which specific provisions in the draft Regulations (covering food and drink) should be included in any separate regulations covering such situations?*

IBBA's position is that the Code should be applicable to retailers ONLY and that it should not apply to suppliers. Imposing these regulations on suppliers is not substantiated by an adequate, well-tested body of evidence of clearly identified harm to competition or other stakeholders in grocery sector. Issues pertaining to the supplier/small retailer relationship, if they even occur, would not be materially affected by these regulations. So placing these regulations on suppliers will only increase cost and negate the benefit of reducing abuses of buying power.

Ireland would be the only country to penalise the victims of retailer buying power ie suppliers through regulation. This would also set us at odds with our key trading partner; the UK where many Irish companies supply UK retailers governed by the Grocery Sector Code of Practice. Regulatory harmonisation is desirable from an efficient markets and business practice standardisation perspectives.

### **Specific Comments on draft Regulations**

Overall, these regulations are reasonably balanced. Certain areas need to be addressed as there is still too little protection for suppliers. IBBA appreciates that regulations (Part 2, 4-22) are general with a view to allowing Competition and Consumer Protection Commission flexibility to new types of unfair practices that will arise in future.

IBBA endorses and supports FDII's comments on the draft regulations as set out in its response to this consultation process.

IBBA again states that none of the regulations outlined above are relevant to supplier's relationships with smaller retailers. As such, IBBA do not believe suppliers should incur compliance costs in relation to these regulations.