



Lidl Ireland GmbH

Lidl Ireland GmbH, Great Connell Road, Newbridge, Co. Kildare

**Competition and Consumer Policy Section
Department of Jobs, Enterprise and Innovation
1 Earlsfort Centre
Lower Hatch Street
Dublin 2
D02PW01**

26 February, 2016

By Registered Post and email

Re: Consultation on Guidelines for Grocery Goods Regulations – Submission by Lidl Ireland GmbH

Dear Madam or Sir,

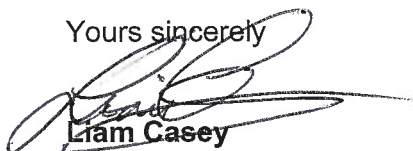
I refer to the matter above and the letter of Mr. Grace of 1st of February relating to same.

Lidl, as a quality food retailer dedicated to making the life of customers better, strive to deal with all our suppliers in a respectful and professional manner. Indeed, we view those who supply goods and services to Lidl as business partners. I therefore wish to thank you for the opportunity to put forward our input on the draft Guidelines.

Together with my colleagues I have reviewed the draft Guidelines and a number of points occur on which guidance for grocery undertakings would be appreciated. In this regard, please find enclosed our submissions in relation to the guidelines and related Appendices 1 and 2.

We trust that our submissions will be of some benefit to you and should you wish to discuss any aspect of our submissions please do not hesitate to contact us at compliance@lidl.ie

Yours sincerely



Liam Casey



Kurt Rosen

Commercial Director

Director of Administration

Lidl Ireland GmbH.
Registered Office:
Great Connell Road, Newbridge, Co. Kildare
Rep. Ireland.
VAT Reg. No.: IE9513674T
Company Reg. No.: 904141
Tel.: + 353(0) 45 440 400
Fax: + 353(0) 45 440 550
www.lidl.ie

Bank Details:
AIB p.l.c., Dublin. BIC: AIBKIE2D
IBAN: IE64AIBK93235308200054 (EUR)
AIB p.l.c., Dublin. BIC: AIBKIE2D
IBAN: GB50AIBK23859005959012 (GBP)
Dresdner Bank AG, Heilbronn. BIC: DRESDEFF620
IBAN DE44620800120701072200 (EUR)

CONSULTATIONS ON GUIDELINES FOR GROCERY GOODS REGULATIONS – SUBMISSION BY LIDL IRELAND GMBH

Lidl Ireland is pleased to comment the Consumer Protection Act 2007 (Grocery Goods Undertakings) Regulations 2016 Guidelines. In line with our Vision and Mission Statement, “One Business, One Vision” (attached as Appendix 1) we strive to deal with all our suppliers in a respectful and professional manner. Indeed, we view those who supply goods and services to Lidl as business partners and have a clear Code of Conduct which is published on Lidl’s website www.lidl.ie and is provided as attached Appendix 2.

In addition to the Code of Conduct which support both Lidl’s and our suppliers compliance with appropriate legislation we are members of the Supply Chain Initiative which assists in ensuring fair dealings with suppliers and operate a dedicated Competition Compliance Programme as well as related dedicated training initiatives.

We have based our below submission on the wording of the draft Guidelines and included our comments at each respective section thereof, as appropriate.

1. INTRODUCTION

General comment: According to the Department of Jobs, Enterprise and Innovation publication dated 1 February 2016, the purpose of the Consumer Protection Act 2007 (Grocery Goods Undertakings) Regulations 2016 S.I. No. 35 of 2016 Guidelines (hereinafter referred to as “the Guidelines”) is to enable users to have a clear idea about what is catered for in each regulation.

However, the majority of the Guidelines content consists of rephrasing the individual regulations (see guidance on regulations 1-6, 8-11, 13, 14, 18 and 19). In addition to our individual comments as set out below in relation to each section of the Guidelines, and taking into account the scope of potential sanctions for non-compliance (regulation 20), we therefore respectfully recommend reviewing the entirety of the Guidelines with a view to providing clear guidance on which exact requirements grocery undertakings will be expected to comply with and implement respectively. To this end, we also refer to our comments provided in our submission on the draft Groceries Regulation Consultation dated 26 February 2016.

1. The legal basis for these regulations is contained in the Competition and Consumer Protection Act 2014, which came into force on 31 October 2014. Part 6 of that Act (which inserted a new section into the Consumer Protection Act 2007) contains enabling provisions which gives the Minister for Jobs, Enterprise and Innovation the power to introduce regulations to regulate certain practices in the grocery goods sector. They do not cover any other issues.

2. The Regulations are divided into four parts as follows:

1. Preliminary Matters;
2. Contracts between Suppliers and Retailer or wholesaler;

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3. Compliance Requirements for Retailer or wholesalers;

4. Enforcement.

3. These Guidelines seek to provide information and guidance on the main provisions of the Regulations. As the operation of the Regulations will inevitably give rise to further practical issues, these Guidelines cannot be a final or definitive statement on the Regulations.

4. These Guidelines have been compiled without prejudice to other legal provisions covering contracts including the Declaration in respect of Vertical Agreements and Concerted Practices and, more generally, under Section 4 of the Competition Act 2002.

5. Further guidance may also be provided from time to time by the Competition and Consumer Protection Commission (CCPC) and parties affected by these Regulations are advised to refer to the CCPC's website (www.ccpc.ie) from time to time.

2. SCOPE OF THE REGULATIONS

1. These Regulations only apply to sales of food and drink as defined in Section 63A(a) of the Consumer Protection Act 2007 and do not apply to the other classes of grocery goods as defined in Section 63A(b), (c) and (d) of the 2007 Act. They do not currently apply to toiletries, household cleaning products or garden plants/bulbs.

We would suggest that an indication as to when any further guidelines may be introduced in relation to toiletries, household cleaning products or garden plants/bulbs would be of assistance to grocery undertakings and would therefore request such an indication.

2. The worldwide turnover threshold of €50 million applies to sales of food and drink products generated by retailer or wholesalers operating in the State. The threshold will not apply to non-grocery turnover generated by the retailer or wholesaler.

3. These Regulations only apply to direct suppliers who have a contractual relationship with a retailer or wholesaler and not to any other grocery goods undertakings as defined in Section 63A of the Consumer Protection Act 2007.

4. The Regulations shall apply to contracts entered into on or after 30 April 2016 as well as to contracts (which were entered into before that date) but which are renewed on or after that date.

As referred to earlier, we are confident that, in general, Lidl Ireland trading relationships already fulfil the criteria of the regulations, due to our governing company policy and principles in that we

communicate in a respectful and professional manner with our suppliers, the use of our Code of Conduct helps ensure that our suppliers are in compliance with legislation, our membership in the Supply Chain Initiative which is one of the means that we rely on in ensuring fair dealings with our suppliers and dedicated Competition Compliance Programme as well as related, dedicated training and documentation. In accordance with the aforementioned, we are at all times committed to fair commercial dealings with all our business partners, including our suppliers. At the same time, however, it is respectfully submitted that, in general, the period from February to end of April is a very short timeframe for the implementation by grocery undertakings of these regulations. This is due to the volume of relationships with which grocery undertakings are likely to be involved with and the resulting administrative burden they would be placed under in complying within such a short timeframe.

The foregoing being the case, and taking into account the potentially significant sanctions in case of non-compliance (Regulation 20), clarification as to whether enforcement measures will be taken straight away by the CCPC for infringements of the Regulations or whether a 'bedding in' period will be applied would be very beneficial. It is suggested that such a bedding in period would be a fair and equitable application and would assist in all grocery undertakings striving towards being compliant in the most efficient and effective manner possible.

5. Both parties should conduct their trading relationships in good faith and in a fair, open and transparent manner.

Due to the applied coherent and fair standards applying to our relations with business partners (see above comments on Section 2., subsection 4.), we are confident that we conduct our trading relationships consistently in good faith and in a fair, open and transparent manner, as required by above Regulation. Nonetheless, it is respectfully submitted that a measured standard regarding the expected standard of behaviour of grocery undertakings when carrying out their trading relationships should be stated in these guidelines so as to set the tone/spirit in the guidelines in which the individual obligations will be construed from the outset.

3. GUIDANCE ON SPECIFIC PARTS OF THE REGULATIONS

PART 1 – PRELIMINARY MATTERS

Interpretation

For the purposes of these Regulations, “*grocery goods*” means any food or drink that is intended to be sold for human consumption, including any substance or thing sold or represented for use as food or drink for human consumption, anything sold or represented for use as an additive, ingredient or processing aid in the preparation or production of food or drink for human consumption (and that is intended to be sold by a retailer as such an additive, ingredient or processing aid), and intoxicating liquors.

“*Grocery goods*” does not include food or drink served or supplied on the premises of a retailer or wholesaler in the course of providing catering, restaurant or take-away services or any similar hospitality services. Intoxicating liquors served or supplied for consumption on the premises of a retailer are not covered either.

PART 2 –CONTRACTS BETWEEN SUPPLIERS AND RETAILER OR WHOLESALERS

Regulation 4: Grocery goods contracts.

This Regulation requires retailer or wholesalers to have agreed written contracts with their suppliers.

Does this requirement (and these regulations in general) extend in respect of supply arrangements negotiated in another jurisdiction (for example by a group parent company or another group company) on behalf of the Irish grocery undertaking or do they apply to supply arrangements entered into in this jurisdiction only? Clarity around this point would be beneficial in the guidelines.

It is submitted that if the regulation were to be construed in a manner that would lead its jurisdiction to be extended to contracts which are concluded outside Ireland and subject to the contract law of other countries, that the regulation could be in danger of impairing contractual freedom and quite possibly also the freedom of other states to govern contractual relationships within their territories autonomously.

In this context:

- This Regulation does not prescribe which party should draw up a contract.
- This Regulation provides that both sides to the contract must sign and retain copies of the contract.
- This Regulation requires that clear understandable language is used in the contract.
- Both parties to the contract should have an opportunity to carefully scrutinise the terms and conditions of any contract drawn up before entering into an agreement.
- Parties should also consider the option of taking legal advice where they have any doubts exist concerning a contract or its contents.

Whilst our own practice is to ensure that we deal in an open and transparent manner with our suppliers as per Lidl's published Code of Conduct, we would respectfully submit as a general point that the guidelines should state that such contracts being signed and exchanged is contingent on supplier co-operation and that there is an expectation that suppliers will abide by the terms of the regulations so as to ensure that grocery undertakings can act in a compliant manner in this regard.

It is further submitted that, for the benefit of all grocery undertakings to which the Regulations apply, the word "scrutinise" should be amended to 'check carefully' so as to avoid any possibility for misunderstanding that can arise between the parties.

It is also suggested that what constitutes clear, understandable language would benefit from being defined as what may appear to be clear and understandable to one party to a contract may not necessarily be so to the other party.

Regulation 5: Variation, etc. of grocery goods contracts.

This Regulation prohibits a retailer or wholesaler from varying, terminating or renewing a contract with a supplier unless the contract expressly provides for such variation, termination or renewal or agreed circumstances when such variation, termination or renewal can occur. In addition, the contract must specify the period of written notice that must be given prior to any such variation, termination

or renewal. The period of such notice will be reasonable and have regards to all the circumstances of the contract, including:

It is respectfully submitted that a requirement for a renewal of a contract to be covered off in the originating written contract between purchaser/supplier is counter-productive in relation to the purchase/supply relationship. This could cause an unwarranted restriction on contractual freedom between suppliers and purchasers and it is respectfully submitted that the guidelines should set out their justifications for such a requirement for renewals of contract to be stated in the manner prescribed in the legislation.

Is there an over-arching minimum notice period envisaged or suggested in the regulations? We would suggest that clarity on this point in these guidelines would be beneficial, i.e. what is defined as being a 'reasonable' notice period, in order to allow grocery undertakings to be in compliance with the legal requirements.

It is suggested that the guidelines would benefit from the addition of a definition of the words 'significant variation' so as to ensure clarity in understanding this regulation.

- the duration of the contract;
- the frequency with which orders are placed by the retailer or wholesaler for the grocery goods concerned;
- the characteristics of the grocery goods concerned including the durability, seasonality and external factors affecting their production; and
- the value of any order relative to the annual turnover of the supplier in question.

The term "variation" includes variation in the frequency, timing or volume of the supply or delivery of the grocery goods.

Regulation 6: Goods or services from a third party.

This Regulation prohibits a retailer or wholesaler from compelling (either directly or indirectly) a supplier to obtain goods or services from a third party from whom the retailer or wholesaler receives payment for this arrangement. This prohibition does not apply where the supplier's source for those goods or services:

- fails to meet the reasonable quality standards laid down by that retailer or wholesaler for the supply of such goods or services; or
- charges more than is charged for the supply of an equivalent quality and quantity of goods or services by the third party proposed by the retailer or wholesaler.

Regulation 7: Non-performance due to factors beyond reasonable control of party to contract.

This Regulation deals with "force majeure" situations. While no single legal definition of "force majeure" exists, the Regulation provides that neither party to a contract should have any liability under or be deemed to be in breach of the contract as a result of any delays or failures in performance which result from circumstances beyond the party's reasonable control. This Regulation provides that the contract contains provisions setting out how the party affected by the specific circumstances should promptly notify the other party in writing what those circumstances are, when such

circumstances cause a delay or failure in performance and when they cease to do so. If the issue persists, the Regulations provide for the circumstances whereby the contract may be terminated.

It is respectfully submitted that clarification would be beneficial around the points as to (i) which instances should be considered a "force majeure" incident and (ii) what happens when parties cannot come to an agreement around what was beyond a particular party's reasonable control. As the guidelines point out, there is no legal definition of force majeure so that achieving agreement as to what qualifies as 'beyond reasonable control' could prove problematical. Will it be the case that parties can approach the CCPC where agreement cannot be reached between such parties in relation to the criterion for 'beyond reasonable control'?

Regulation 8: Forecast of supply of grocery goods.

This Regulation obliges a retailer or wholesaler, if requested to do so by a supplier, a forecast of the goods required by the retailer or wholesaler from the supplier: in preparing this forecast, the Regulation provides that the retailer or wholesaler must, at the request of the supplier:

- consult with the supplier as to the basis on which the forecast will be prepared;
- prepare the forecast in good faith and with due skill, care and diligence; and
- forward to the supplier a copy of the forecast together with confirmation in writing of the basis on which it has been prepared.

Regulation 9: Payment from a supplier.

This Regulation provides that a retailer or wholesaler shall not seek payment from a supplier as a condition of stocking, displaying or listing the supplier's grocery goods unless the payment is based on an objective and reasonable estimate of the cost of stocking, displaying or listing those grocery goods, including different considerations when dealing with an individual store or a multiple of stores in the retailer or wholesaler's chain of stores. If any such payment is requested by the retailer or wholesaler, then the retailer or wholesaler is obliged, if requested by the supplier, to provide the supplier with an estimate of the cost of stocking, displaying or listing the supplier's grocery goods and the basis for that estimate. This Regulation also provides that these provisions do not apply to promotions (which are covered in Regulation 11).

Regulation 10: Payment terms and conditions.

This Regulation provides that the retailer or wholesaler shall pay the supplier within 30 days of the receipt of the supplier's invoice or within 30 days of the date of delivery of the goods (whichever is the later) unless the parties make express provision for a different timeframe for payments in their grocery goods contract.

Parties are, of course, free to pay or receive payments for invoices in batches once this is incorporated into the contract once the provisions of the Regulation are respected. Where a query emerges on an invoice relating to an individual grocery good or a set of grocery goods, it is expected that other invoices that are not subject to such queries would be paid in accordance with these Regulations without awaiting resolution of the queries.

As a general point, it is respectfully submitted that clarity should be provided in the guidelines as to what extent set off will be permissible in relation to the discharging of invoices in relation to what is currently possible under Irish law.

This Regulation is subject to the provisions of the European Communities (Late Payment in Commercial Transactions) Regulations 2012 (S.I. No. 580 of 2012).

Regulation 11: Promotions.

This Regulation prohibits a retailer or wholesaler from compelling (either directly or indirectly) a supplier to make any payment in respect of the promotion of the supplier's grocery goods in the retailer's or wholesaler's premises. This prohibition does not apply where the agreed contract between the two parties makes express provision for such payments. The Regulations further provide that prior to a promotion the retailer or wholesaler must give written notice (provided for in the contract) to the supplier specifying certain features of the promotions as follows:

- the duration of the promotion;
- the frequency of the promotion;
- the quantity of grocery goods to be ordered for the promotion; and
- the basis for the aforementioned quantity.

If any such payment is requested by the retailer or wholesaler, then the retailer or wholesaler is obliged, if requested by the supplier, to provide the supplier with an estimate of the cost of the promotion and the basis for that estimate.

Regulation 12: Payment for marketing costs

This Regulation provides that a retailer or wholesaler shall not seek payment from a supplier for marketing costs. This prohibition does not apply where the agreed contract between the two parties:

- makes express provision for such payments;
- the payment is based on an objective and reasonable estimates of the marketing costs; and
- any payment sought is in accordance with the agreed contract.

If any such payment is requested by the retailer or wholesaler, then the retailer or wholesaler is obliged, if requested by the supplier, to provide the supplier with an estimate of marketing costs and the basis for that estimate. This Regulation also provides that these provisions do not apply to promotions (which are covered in Regulation 11).

For the purposes of this Regulation, marketing costs include costs relating to:

- visits by a retailer or wholesaler or their staff or representatives directly involved in the purchase of grocery goods to a supplier;
- artwork or packaging design;
- consumer or marketing research;
- marketing in relation to the opening or refurbishment of a retail or wholesale premises, and
- hospitality for the staff or representatives of a retailer or wholesaler.

Whilst the above examples do give some insight as to what is envisaged by marketing costs in the regulations, it is respectfully submitted that a more detailed explanation would be of assistance in the

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guidelines as to what such costs entail particularly as distinct to what is envisaged by payments for advertising goods which could be deemed as being confusingly similar in some circumstances.

Regulation 13: Payment for retention, increased allocation or better positioning of shelf space.

This Regulation prohibits a retailer or wholesaler from compelling (either directly or indirectly) a supplier to make any payment for the retention, increased allocation or better positioning of shelf space for the supplier's grocery goods. This prohibition does not apply where the agreed contract between the two parties:

- makes express provision for such payments; and
- any payment sought is in accordance with the agreed contract.

This Regulation also provides that these provisions do not apply to promotions (which are covered in Regulation 11).

Regulation 14: Payment for advertising or display of grocery goods.

This Regulation prohibits a retailer or wholesaler from compelling (either directly or indirectly) a supplier to make any payment for the advertising or display of grocery goods of the supplier in the retailer's or wholesaler's premises.

This Regulation also provides that these provisions do not apply to promotions (which are covered in Regulation 11).

Per the comment in relation to regulation 12 above, it is respectfully submitted that further clarification as to what constitutes payments for advertising (as distinct from marketing costs) would be beneficial here as at times the two categories could be deemed confusingly similar.

Regulation 15: Payment for wastage.

This Regulation provides that a retailer or wholesaler shall not seek payment from a supplier for wastage. This prohibition does not apply where:

- the agreed contract between the two parties makes express provision for such payments;
- the agreed contract makes express provision for an agreed average wastage cost;
- the grocery goods contract makes express provision for the circumstances, where wastage arises from the negligence or fault of the supplier, in which the supplier will be required to make a payment to cover wastage at the retailer's or wholesaler's premises;
- any payment sought is in accordance with the agreed contract; and

the payment is based on an objective and reasonable estimates of the costs of the wastage to the retailer or wholesaler.

If any such payment is requested by the retailer or wholesaler, then the retailer or wholesaler is obliged, if requested by the supplier, to provide the supplier with an estimate of the cost of the wastage and the basis for that estimate.

For the purpose of this Regulation, “wastage” is taken to refer to grocery goods that become unfit for sale after their delivery by a supplier to a retailer or wholesaler.

We would request clarification around the point that wastage refers to grocery goods that ‘become’ unfit for sale after their delivery by a supplier. Does the definition also encompass a grocery good that was unfit for sale prior to the delivery of same by the supplier but such unfitness only becomes apparent after the delivery of the good? Based on the wording (“after their delivery”, emphasis added) we understand that grocery goods unfit for sale prior to delivery would not be caught under the definition of wastage. However, clarity around this point would be beneficial in these guidelines it is submitted.

Regulation 16: Payment for shrinkage

This Regulation provides that a retailer shall not seek payment from a supplier for shrinkage. This prohibition does not apply where:

- the agreed contract between the two parties makes express provision for such payments;
- any payment sought is in accordance with the agreed contract; and
- the payment is based on an objective and reasonable estimate of the costs of the shrinkage to the retailer.

If any such payment is requested by the retailer, then the retailer is obliged, if requested by the supplier, to provide the supplier with an estimate of the cost of the shrinkage and the basis for that estimate.

For the purpose of this Regulation, “shrinkage” is taken to refer to losses that occur as a result of theft, loss or accounting error, after goods are delivered by a supplier to a retailer’s premises.

This Regulation only applies to retailers, given the definition of “*shrinkage*” in the Consumer Protection Act 2007.

PART 3 – COMPLIANCE REQUIREMENTS FOR RETAILER OR WHOLESALERS

Regulation 17: Designation and training of staff.

Due to our internal policies and codes of conduct training is a crucial part of our operations in ensuring that our employees are already educated in relation to compliance around competition law, B2B and many other topics, thereby ensuring our business is generally appropriately informed and trained (see also above comment on Section 2., subsection 4.). As a general point, however, it is noted that the guidance does not touch upon the expected scope and content of training (topics, how often to be repeated. It is respectfully submitted that, in accordance with our own training practice, a brief training at induction stage, followed by more in depth training, to be repeated within reasonable intervals (every two years) should suffice. Especially in the case of significant numbers of personnel, we further submit that, according to our own experience, and so as to avoid unreasonable administrative burdens on grocery undertakings, top down training is sufficient. However, clarity around this point would be beneficial in these guidelines it is submitted.

Similar considerations apply in relation to the expected standard and criteria to be met respectively with a view to the term “dissemination of information” in relation to the implementation of the Regulations.

This Regulation sets out the requirements that must be undertaken by a retailer or wholesaler in the area of designating and training staff to be responsible for complying with the Regulations and for the dissemination of information to other staff in relation to the implementation of the Regulations. It also obliges the retailer or wholesaler to nominate a suitably qualified person to liaise with the Competition and Consumer Protection 10

In relation to the nomination of a suitably qualified person to liaise with the CCPC, we wish to query to what extent that person could possibly be held personally liable under these regulations for an undertaking's non-compliance with the regulations where such an appointee is not a director of such an undertaking or is not the secretary of the company. We feel this section and the section relating to penalties would benefit from additional clarity in this regard.

Commission (CCPC) in relation to the Regulations. In this context, this suitable qualified person should be independent of the purchasing role within the retailer's or wholesaler's business (viz. not directly involved in purchasing). In that context, the person should preferably be someone who holds a more general compliance role within the business.

We refer to above comment and would like to further comment as follows. If an independent compliance function be held liable for non-compliance of other staff, this might send a chilling signal to compliance personnel in the entire Food Business Industry. In addition, given the provisions of regulation 20, it is respectfully submitted that a personal liability of staff supporting the business in their task of ensuring compliance with the groceries regulations would be counterproductive.

Engagement of a new additional staff member for this role is not required under the Regulation unless the retailer or wholesaler deems it appropriate for its own reasons. The retailer or wholesaler must inform the CCPC of the name, etc. of this person as soon as practicable after the nomination but no later than 3 months after the entry into force of the Regulations for the first such nominated person.

Regulation 18: Annual compliance report.

This Regulation obliges retailer or wholesalers to submit annual compliance reports to the CCPC by the end of March each year in a format and manner specified in advance by the CCPC. This report has to be signed by a director of the retailer or wholesaler or secretary to the retailer or wholesaler. The Regulation also sets out the specific information that must be included in the report.

We would respectfully submit that the timeframes around the reference times for the annual report require tightening. Whilst it is understood that the first reporting term runs from the 30th April 2016 to 31st December 2016 with the initial report to be delivered by March 2017, the annual reporting year to be followed thereafter is not defined, i.e. it is assumed that same will run from the 1st January 2017 and run until 31st December 2017 but this is not specified in the regulations. It is suggested that the guidelines would benefit from the addition of clarity around this point.

It is also submitted that a 3 month time frame is a very short turnaround for the compilation of what seems will be a very detailed report. Even though we are confident in our own business conduct, it is envisaged that excessive reporting obligations could cause a disproportionate administrative burden on grocery undertakings. It is suggested that keeping the report simple and limiting same to a straightforward statement or acknowledgement of compliance would suffice for the wider compliance with the terms of the regulations and indeed would probably better achieve the aim of encouraging compliance across the board on this point. A template report appended to the guidelines would be of great assistance in the future compilation of same. Due to our own recording practices in relation to

training, agreements and other documentation as governed by our own policies and procedures this is not a point that unduly concerns us.

We further submit that the guidelines would benefit from guidance on the specific expectations of the CCPC in relation to the individual topics to be covered by the annual compliance report (e.g. in relation to "details of the training of staff" etc.) It is also suggested that a simple declaration that staff have been trained would suffice for the purposes of the report rather than an in depth explanation of same.

Regulation 19: Maintenance of records.

This Regulation specifies the documents and records which a retailer or wholesaler must retain for a period of 6 years after the end of the financial year to which they relate.

While there is no legal obligation on suppliers to maintain such records, it would appear prudent for suppliers to maintain a similar suite of records in the event that disputes or concerns arise.

The term 'records of the board directors' is referenced in Regulation 19(g) and it is respectfully submitted that this is somewhat ambiguous and the guidelines would benefit from clarification around what is meant here i.e. do the regulation envisage a record of the names of who the directors are or a copy of the records held by the directors in relation to grocery goods arrangements?

PART 4 – ENFORCEMENT

Regulation 20: Penal provisions.

This Regulation sets out the provisions of the overall Regulations that will be treated as penal provisions for enforcement purposes. Breach of the cited provisions (including failure to comply with any contravention notice issued by the CCPC under the Consumer Protection Act 2007) may result in prosecution, either by summary or indictment with potential penalties as follows:

It is our understanding that contravention notices will issue to a grocery undertaking ahead of any prosecution being mounted due to a breach of the regulations (so as to ensure procedural fairness) and we feel that the guidelines would benefit from a confirmation in this regard. .

It is also queried as to whether section 77 of the Consumer Protection Act 2007 around liability for offences for bodies corporate applies to these regulations and if so to what extent the section applies. As previously queried, will the person appointed as a liaison to the CCPC be liable in their capacity for the omissions of the body corporate where such an appointee is not a director or secretary of the grocery undertaking. It is respectfully submitted that clarity around this point should be included in the guidelines.

(1) A person guilty of an offence is liable on summary conviction to the following fines and penalties:

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As a general point, it is respectfully submitted that the guidelines would benefit from a clarification as to when a matter will be prosecuted summarily or on indictment and also what criteria will be applied on deciding the level of penalty to be applied upon a verdict of guilty being applied.

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(a) on a first summary conviction for any such offence, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or both;

(b) on any subsequent summary conviction for the same offence to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both.

(2) If, after being convicted of an offence, the person referred to in *subsection (1)* continues to contravene the requirement or prohibition to which the offence relates, the person is guilty of a further offence on each day that the contravention continues and for each such offence is liable on summary conviction to a fine not exceeding €500.

(3) A person guilty of an offence is liable on conviction on indictment to the following fines and penalties:

(a) on a first conviction on indictment for any such offence, to a fine not exceeding €60,000 or imprisonment for a term not exceeding 18 months or both;

(b) on any subsequent conviction on indictment for the same offence to a fine not exceeding €100,000 or imprisonment for a term not exceeding 24 months or both.

The Act also provides anyone who is aggrieved by the failure of a retailer or wholesaler to comply with any regulations or with any compliance notice issued under the relevant Section of the Act, shall have the right of action for relief against that retailer or wholesaler in the Circuit Court (any such relief, including exemplary damages, not being in excess of the limits of the jurisdiction of the Circuit Court in an action founded on tort).

With a view to liability of grocery undertakings for individual misconduct it is respectfully submitted that implementation of a compliance function acting in accordance with Regulation 17 should be grounds to close an investigation against a grocery undertaking and/or not to impose sanctions on same. It is submitted that clarity around this point should be included in the guidelines.

It is also submitted, that whilst the penalties are set out in the guidelines, that it would be beneficial for same to be stated explicitly in the Regulations.

Finally, the Act also provides that, where a Court has made a final finding in a particular case under these Regulations, that finding is *res judicata* for the purpose of subsequent proceedings whether or not the parties to those subsequent proceedings are the same as the parties to the first mentioned proceedings. Private litigant, relying on this legal doctrine, will not be required to prove the contravention of the relevant provisions afresh in a follow-on action in respect of the same contravention. Rather he or she will be able to rely on that earlier finding for the purpose of an action for damages.

Whilst Lidl strives towards compliance in all instances through our code of conduct and internal practices and procedures, it is respectfully submitted as a general point that clarity would be beneficial in the guidelines on the point above. In our view it is obvious that any private litigant would have to prove actual damage suffered. It is submitted that guidance on this would be beneficial to all grocery undertakings. Similar considerations apply to the questions whether such damages should be limited to the level of fine originally imposed by a Court on the grocery undertaking or, at a minimum, will be subject to the levels of jurisdiction of the original penalising Court.

Lidl Ireland GmbH



Liam Casey

Commercial Director



Kurt Rosen

Director of Administration

ONE BUSINESS, ONE VISION

VISION

Our vision is to make life better by providing quality food at market leading value, ensuring customer satisfaction is at the heart of everything we do.

MISSION

Our mission is to deliver outstanding customer satisfaction.

We guarantee quality food through a rigorous product development and quality control process.

We ensure market leading value by constantly optimising our efficient processes.

We work with business partners in sustainable relationships, contributing positively to local communities.

We achieve long term success by investing in the recruitment, training and development of exceptional talent.

VALUES

Everything we do is underpinned by our Core Values.



CODE OF CONDUCT

When Dealing with Our Business Partners

- Our approach towards business partners is competitive and fair.
- We clearly define our performance expectations regarding the delivery of goods and services to avoid uncertainty and potential misunderstandings.
- We keep our promises and agreements and are a trustworthy partner. We expect the same from our business partners in return. Our word is our bond.
- We regularly monitor performance in line with expectations.
- We negotiate competitively with focus on price and performance and are willing to consider new business partners.
- We approach our business partners in a fair and co-operative manner and do not conduct ourselves in a conceited or arrogant manner.
- We communicate in a constructive and professional manner at all times.
- We expect our business partners to improve and optimise their products and services and support them in doing so.
- We are open to constructive ideas and objectively assess their potential to enhance our business.
- We do not accept any gifts or any similar form of incentive from our business partners.

