

# Caibidil a Trí

## Cosc ar Dhíolachán Faoi “Glan-Phraghas ar an Sonrasc” – 1987 go dtí 2005

### 3.1 Réamhrá

Sa Chaibidil seo díreoimid ar an sainmhíniú atá le “costas” in Ordú 1987 de bhrí, go gcreidimid, go bhfuil sé ar cheann de na gnéithe is tábhachtaí den chosc atá i bhfeidhm i láthair na huaire.

Sa réamhrá a bhí ag an gCaibidil roimhe seo mhíníomar conas atá an sainmhíniú in Ordú 1987 bunaithe ar an gcoincheap “glan-phraghas ar an sonrasc”. D’fhéachamar freisin go sonrath ar conas a tharla sé sin agus cén fáth nach léiríú é an sainmhíniú ar fhíorchostas na n-earraí lena mbaineann.

### 3.2 Tuarascáil 1987 An Choimisiúin um Chleachtais Srianta

I mí Iúil 1986 d’iarr an tAire Tionscail & Tráchtála ar an CCS athbhreithniú a dhéanamh ar fheidhmiú Ordú 1981 “...*in the light of developments since the Order was made and with particular reference to the issue of below cost selling...*”<sup>1</sup>

Tugadh an Tuarascáil a bhí mar thoradh air, a rinne imscrúdú sonrath ar an gcleachtas a bheith ag díol faoi chostas, don Aire ar an 9 Eanáir 1987. Chinn an Coimisiún “...*after considering the intrinsic unfairness of the practice, and the effects which a prohibition on below cost selling might have, to recommend that selling below the net invoice price be prohibited by Order with no exceptions apart from products excluded from the scope of the Order.*”<sup>2</sup>

Ba é sin an chéad uair ag an gCoimisiún cosc ar dhíolachán faoi chostas a mholadh. Creidimid go bhfuil an oiread sin tábhachta bhunúsaigh ag baint le machnaimh an Choimisiúin ar an gceist i 1986/7 fiú amháin sa lá atá inniu go bhfuil téacs iomlán Chaibidil 4 Thuarascáil 1987 dá gcuid curtha isteach againn mar Aguisín a Sé den Tuarascáil seo.

Is léir go facthas go raibh an cosc ar fhógraíocht faoi chostas mí-éifeachtach agus go raibh sé sin ar cheann de na cúiseanna go ndearnadh an moladh. Bhí an cosc ar fhógraíocht tugtha isteach in Ordú 1973 agus neartaíodh é i 1981. Ansin i 1987 dúirt an CCS:

---

<sup>1</sup> Tuarascáil an CCS ar Athbhreithniú ar an Ordú um Chleachtais Srianta (Earraí Grósaera), 1981, Oifig an tSoláthair, Baile Átha Cliath, 1987 (Pl. 4678).

<sup>2</sup> Tuarascáil CCS 1987, Alt 4.56, Lth.55 (Féach Aguisín a Sé).

*“The prohibition on advertising below cost, in particular, has not diminished the extent or reduced the effectiveness of below cost selling. We believe, therefore, that, in order to eliminate the practice of below cost selling, which the Commission has always regarded as unfair, we must now recommend the prohibition of the practice by Order.”<sup>3</sup>*

In ainneoin na conclúide sin, áfach, dúirt an Coimisiún é féin: *“It does appear that the ban on below cost advertising was largely effective up to June 1985...”* agus thug siad aitheantas chomh maith do roinnt de na cúiseanna nach raibh éifeacht níos mó leis tar éis an ama seo. Ina measc sin go príomha dealraíonn sé go raibh rialú na hArdchúirte an bhliain sin a thug locht mór faoi deara le linn don chosc a bheith á dhréachtú.

Dar leis an gCúirt, ionas go mbeidh cion déanta níor leor é don fhógra praghas a liostáil a bhí faoi chostas, bheadh air a rá go sainiúil go raibh sé faoi chostas. De bhrí nach ndóigh go ndéanfadh aon fhógróir a leithéid d'éileamh, bheadh sé soiléir ón rialú go gcaithfí Ordú 1981 a leasú chun ionchúiseamh rathúil a éascú.

Taispeánann comhaid na Roinne Tionscail agus Tráchtála a bhí ann roimhe seo go raibh Ordú leasaithe ullmhaithe ag an Roinn chun rialú na hArdchúirte a ghlacadh san áireamh ach ní raibh an tOrdú sin dearbhaithe ag Acht Oireachtais ag an am a thug an CCS Tuarascáil 1987 chun críche.

In ainneoin go raibh an Roinn agus an tAire toilteanach tabhairt faoin easnamh sin a bhí ag baint leis an gcosc ar fhógraíocht faoi chostas, mhol an CCS cosc a thabhairt isteach ar dhíolachán faoi chostas.

Go deimhin, tá cosc san áireamh in Ordú 1987, a chuir moltaí Thuarascáil 1987 i bhfeidhm, agus atá i bhfeidhm go dtí an lá atá inniu ann, ar fhógraíocht faoi chostas agus ar dhíolachán faoi chostas. Agus tá an foráil isteach leis chomh maith a tugadh isteach don chéad uair i 1956 a chuireann ar chumas soláthróirí soláthairtí a shiarchoinneáil ó mhiondóltóir a dhíolann earraí faoin nglan-phraghas ar an sonrasc.

### **3.3 Conclúidí & Moltaí an Choimisiúin ar an Úsáid a Bhaintear as “Glan-Phraghas ar an Sonrasc”**

Cé gur mhol an CCS<sup>4</sup> cosc a thabhairt isteach ar dhíolachán faoi chostas, ní dhearna siad é sin gan choinníollacha nó gan drogall, go háirithe i ndáil leis an gceist a bhain le glan-phraghas ar an sonrasc.

---

<sup>3</sup> Tuarascáil 1987 an CCS, Alt 4.75, Lth.59 (Féach Aguisín 6)

<sup>4</sup> Ba iad comhaltai an CCS ag an am sin ná Myles O'Reilly, Cathaoirleach, Patrick Lyons agus Eamon Rohan.

I gcomhthéacs na díospóireachta reatha faoin Ordú amach anseo, bhí an méid a bhí le rá ag an CCS i 1987 maidir leis an gceist a bhain le glanphraghas ar an sonrasc ábharthach go maith.

Go deimhin tagann siad i dtreis leis an ábhar idir lámha chomh mór sin go gcreidimid go bhfuil sé riachtanach roinnt abairtí sonracha as Tuarascáil CCS a luadh mar seo a leanas:

*“A further issue to be considered is the definition of cost. The [1981] Order at present defines it as net invoice price. We show elsewhere in this report that this may not be the real cost. If a prohibition on selling below cost is to be made, it would seem that, ideally, cost should be the real purchase price...”*

*“...It would seem then that, if a prohibition on below cost selling were to be recommended, it should have the following characteristics –*

*...(iii) Net invoice price should be, ideally, the real purchase price by the retailer...”<sup>5</sup>*

*“We have already seen that the High Court in 1979, for the purposes of the prohibition on advertising below cost, established beyond doubt the meaning to be attached to net invoice price. However, the practice has developed, as we shall see later in this Report, of giving substantial discounts, rebates, allowances, long term allowances, fidelity bonuses and so on, in addition to the price list discounts. In general, while the invoice conforms to the price list it does not show all of the additional rebates. If this practice were to continue, a prohibition on selling below net invoice price would, as the 1980 Report feared would happen, be allowing the manufacturer to fix a price below which his products could not be sold but which was not the true cost. **This would be a form of resale price maintenance.** (Béim air sin.) It seems likely that competition will drive the invoice price down to the real price and if it does not do so, it would follow that the market is not as competitive as it appears. Acceptance of the definition of cost in the 1981 Order, because the High Court accepted it, and because it would likely to be the easiest way for the Examiner [of Restrictive Practices] to compare cost with the selling price, would seem to be the best approach if below cost selling were to be prohibited. This acceptance would not mean that there would be any valid reason, in our view, why all or almost all rebates, discounts, or allowances could not be shown on the invoice and this would seem to be one effect of a prohibition on below cost selling. In our view this would be beneficial.”<sup>6</sup>*

*“A desirable effect (of a prohibition on below cost selling)...might be to encourage the inclusion of all discounts and allowances on invoices.”<sup>7</sup>*

---

<sup>5</sup> Tuarascáil 1987 CCS, Alt 4.31, Lth. 43/44.

<sup>6</sup> Tuarascáil 1987 CCS, Alt 4.41, Lth.49.

<sup>7</sup> Tuarascáil 1987 CCS, Alt 4.48, Lth.52.

*“We recommend to suppliers and purchasers that all allowances, rebates, discounts and so on allowed to purchasers should be shown on the invoice and that, therefore, the invoice should show the true cost of the goods supplied. While we recommend this, and discuss it further in Chapter 5, we do not propose to make it mandatory by recommending an amendment to the Order.”<sup>8</sup>*

*“We have already recommended in Chapter 4 that below cost selling be prohibited on the basis that the prohibition would apply to selling below the net invoice price of the products. We would like to see the net invoice price representing the real cost of the products. This can be achieved by transferring all allowances, discounts or rebates to the invoice. We think this is good practice anyway and will simplify many operations for buyers and sellers. Because of the competition between multiples which appears to exist, we would expect that some multiples would want to sell some of their products at real cost or close to real cost. We hope that they will request that the net invoice price show the real cost to enable them to do so. We expect that these measures will, in time, increase transparency in the trade.”<sup>9</sup>*

*“The invoice does not, in many cases, reflect the real net price of the goods. In some cases, for example, suppliers pay ‘long term allowances’ which are not reflected in the invoice price. We accept that long term allowances might be useful to a supplier, if they are genuinely contingent on the achievement of certain sales targets by the retailer or wholesaler. However, we find this type of price reduction to be generally unsatisfactory for several reasons. As we are now proposing that retailers must not sell below the net invoice price we hope that competitive market forces will bring about a change and that the invoice will in future reflect the real net price of the goods.”<sup>10</sup>*

### **3.4 Athbhreithniú 1991 ar Ordú 1987**

Tháinig éifeacht leis an Ordú a thug éifeacht don chosc ar dhíolachán faoin nglan-phraghas ar an sonrasc, arna mholadh ag an CCS, ar an 11 Nollaig, 1987.

Ar an 2 Nollaig, 1988, beagnach bliain dhíreach ina dhiaidh sin, d'iarr an tAire Tionscail agus Tráchtála ar an gCoimisiún Cóir-Thrádála<sup>11</sup> athbhreithniú a dhéanamh ar Ordú 1987. Bhí sé sin ag teacht le moladh den chineál céanna a bhí i dTuarascáil 1987 an Choimisiúin.

---

<sup>8</sup> Tuarascáil 1987 CCS, Alt 4.62, Lth 56.

<sup>9</sup> Tuarascáil 1987 CCS, Alt 5.27, Lth 74.

<sup>10</sup> Tuarascáil 1987 CCS, Alt 9.10.

<sup>11</sup> Athainmníodh an Coimisiún um Chleachtais Srianata mar an Coimisiún Cóir-Thrádála de bhun Alt 5 den Acht um Chleachtais Srianata (Leasú) 1987.

Go deimhin, mar gheall ar bhrú oibre, ní dearnadh an t-athbhreithniú go dtí 1991 agus níor cuireadh an Tuarascáil ar an CCT ina dhiaidh sin isteach chuig an Aire go dtí an 2 Lúnasa, 1991.

### 3.5 Tuairim an Mhóraithe

Ba é tuairim an mhóraithe<sup>12</sup> a léirigh an CCT ina Thuarascáil ná gur srian tromchúiseach ar íomaíocht agus ar shaor-imirt ar fhórsaí an mhargaidh i ngach imthosca a bhí sa chosc ar dhíolachán faoi chostas agus gur chóir é a aisghairm.<sup>13</sup> Bhí siad seo a leanas i measc na gcúiseanna a tugadh:

*“A further issue of concern to the two members is that off-invoice discounts appear to be quite significant in some cases, and to have increased in magnitude since the introduction of the ban. The net invoice price now prescribes the minimum resale price. Off-invoice discounts are not taken into account and so the minimum resale prices of products are higher than they would be in the absence of a ban. This feature also restricts the scope for price competition. Of even more concern, the two members consider that there is evidence that some suppliers have used the legislation to operate a form of resale price maintenance. The Commission has always recognised that a ban on below cost selling would be tantamount to official resale price maintenance with the net invoice price as the minimum resale price. More perniciously, some suppliers appear to have excluded all discounts from the invoice and have shown only their desired resale price on the invoice. While they have paid substantial discounts (up to 25% and 30%) off the invoice, the ban has meant that nobody could sell at below the net invoice/desired retail price without infringing the Order, and that retailers were obliged to take high gross margins on these products, with the invoice and retail prices being the same, or virtually the same, in all outlets.*

*The two members regard this practice, which amounts to resale price maintenance and which could grow in extent, as being a serious abuse of the legislation.”<sup>14</sup>*

### 3.6 Tuairim an Mhionlaigh

Is ag an Uasal Myles O’Reilly, an tríú agus an t-aon chomhalta eile a bhí ar an gCoimisiún a bhí an tuairim Mhionlaigh. Ba é an tuairim a bhí aige ná gur chuir an cosc srian ar íomaíocht *“...only to the extent that the competition is harmful and has distorting and anti-competitive effects...”<sup>15</sup>* Tháinig sé ar an gconclúid gur bhain tomhaltóirí, grósaeirí agus soláthróirí buntáiste as an gcosc agus nach amháin gur chóir an cosc a choinneáil ach gur chóir é a

---

<sup>12</sup> Ba chomhlacht triúr daoine a bhí sa CCT. Ba leis an gCathaoirleach, An tUasal Patrick M Lyons, agus leis an Uasal Patrick Massey, comhalta den Choimisiún tuairim an Mhóraithe.

<sup>13</sup> Tuarascáil 1991 CCT, Alt 7.124, Lth.84.

<sup>14</sup> Tuarascáil 1991 CCT, Altanna 7.131 agus 7.132, Lth.87.

<sup>15</sup> Tuarascáil 1991 CCT, Alt 7.182, Lth. 101.

leathnú chomh maith. Mar sin féin, ghlac sé leis go raibh “..some difficulties with the ban as operated since 1987, notably with the use of net invoice price...”<sup>16</sup> D’aontaigh sé go raibh an ‘glan-phraghas ar an sonrasc’ “...an unsatisfactory substitution for ‘cost’.”<sup>17</sup>

Chuir an tUasal O’Reilly feoil ar a chuid réasúnaíochta le linn na tuarascála mionlaigh. Dúirt sé:

*“The 1987 Report stated that ‘it seems likely that competition will drive the invoice price down to the real price and if it does not do so, it would follow that the market is not as competitive as it appears.’ As has been stated, in most cases, discounts, rebates and other allowances were not transferred onto the invoice so that the Commission’s expectation was not realised. As will be seen, it is proposed to use ‘cost’ instead of ‘net invoice price’ as the point below which sales cannot take place, so overcoming this difficulty.”<sup>18</sup>*

Luaigh an tUasal O’Reilly, áit éigin eile ina thuarascáil mionlaigh:

*“Mr O’Reilly believes that the only satisfactory level for a prohibition on below cost selling should be the true or real cost of the goods, i.e. the price after taking into account all discounts or rebates related to those goods. This definition will make it more difficult for inspectors to satisfy themselves whether goods are being sold below cost or not. The proofs to be given in court will also be more complex. However, because of the disadvantages outlined above with the use of ‘net invoice price’ instead of ‘cost’ it is believed that the real definition should be cost.”<sup>19</sup>*

Agus i dtuairim bhunúsach ar an gceist, chríochnaigh an tUasal O’Reilly agus dúirt sé:

*“...the present definition of cost, i.e. net invoice price, cannot be permitted to continue. While (Mr. O’Reilly) believes that little damage has so far been suffered by consumers or by trade participants as a result of the present definition, nevertheless, the definition may lead to abuse by some sectors of the trade in the future.”<sup>20</sup>*

### **3.7 Comhaontú gur Sainmhíniú Míshásúil ar Chostas é “Glan-Phraghas ar an Sonrasc”**

Mar thoradh air sin, rud suntasach faoi Thuarascáil 1991 an CCT ná cé nach raibh an triúr Comhaltaí sa Choimisiún in ann teacht ar chomhaontú faoi cibé

<sup>16</sup> Tuarascáil 1991 CCT, Alt 7.149, Lth. 94

<sup>17</sup> Tuarascáil 1991 CCT, Alt 7.197, Lth. 105

<sup>18</sup> Tuarascáil 1991 CCT, Alt 7.166, Lth. 98

<sup>19</sup> Tuarascáil 1991 CCT, Alt 7.223, Lth.109

<sup>20</sup> Tuarascáil 1991 CCT, Alt 7.217, Lth.108

ar chóir an cosc ar dhíolachán faoi chostas a aisghairm nó nár chóir, d'aontaigh an triúr d'aonghuth go raibh an úsáid a baineadh as 'glan-phraghas ar an sonrasc' mar shainmhíniú ar chostas míshásúil agus gur dhóigh go ndéanfaí mí-úsáid ar an reachtaíocht dá bharr.

Ar an mbealach céanna, tá an tuairim i dTuarascáil 1991 go ndearna úsáid an téarma 'glan-phraghas ar an sonrasc' éascú ar chineál cothabháil praghsanna athdhíolta ag teacht leis an tuairim a léiríodh roimhe sin i dTuarascálacha 1987, 1980 agus 1972.

### **3.8 Breithniú ar Thuarascáil 1991 an CCT**

Agus imscrúdú á dhéanamh ar an gceist seo inniu, breis is 13 bliana déag i ndiaidh na heachtra, dealraíonn sé nár glacadh oiread is gníomh amháin, chun Ordú 1987 a leasú ná a aisghairm, tar éis Thuarascáil an CCT i 1991.

Fiú amháin dá ndéanfaí cinneadh glacadh le moladh an mhionlaigh agus an tOrdú a choinneáil, b'fhéidir go mbeifí ag súil go dtabharfaí roinnt breithnithe ar a laghad do thuairim an mhionlaigh is é sin nár chóir deis a thabhairt leanúint ag úsáid an téarma 'glan-phraghas ar an sonrasc'. Bhí sé sin amhlaidh go háirithe ag glacadh leis an teanga láidir a úsáideadh sa tuarascáil mionlaigh go bhféadfaí an reachtaíocht a mhí-úsáid mar thoradh ar úsáid an téarma.

Déanfaimid imscrúdú anois ar cad chuige nach ndearnadh aon athruithe don Ordú i bhfianaise Thuarascáil 1991.

### **3.9 Teacht sa mhullach ar Acht Iomaíochta 1991**

Tháinig Athbhreithniú 1991 agus an Tuarascáil ina dhiaidh sin ar fheidhmiú an Ordaithe um Earraí Grósaera ag an am céanna a bheag nó a mhór le teacht chun cinn Acht Iomaíochta 1991, a shínigh an tUachtarán ina dhlí i mí Iúil na bliana sin agus ar cuireadh tús leis ina dhiaidh sin trí Ordú ón Aire Tionscail & Tráchtála ar an 24 Meán Fómhair, 1991.

Chuir Alt 5 den Acht cosc ar ghealltanas sa Stát ó thaobh mí-úsáid a dhéanamh ar sheasamh láidir trí "*directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions.*" Facthas é sin mar rud a chuirfeadh cosc ar phraghsáil chreicthe – ceann de na príomhchúiseanna gur tugadh isteach cosc ar dhíolachán faoi chostas.

Is beag amhras atá ann ach go raibh tionchar ag an tuairim "*...the anti-competitive aspects of below cost selling would be covered by the Competition Act...*"<sup>21</sup> ar mholadh an mhóraithe a bhí i bhfabhar aisghairm a dhéanamh ar an Ordú.

---

<sup>21</sup> Tuarascáil 1991 CCT, Alt 7.147, Lth. 93

Go deimhin, chreid an móramh laistigh den CCT go bhféadfadh Ordú comhthreomhar an tAcht a dhéanamh lag fiú amháin.<sup>22</sup>

Tá imscrúdú déanta againn ar chomhaid na Roinne Tionscail & Tráchtála ón tréimhse agus is léir go raibh an Roinn i bhfábhair glacadh le moladh móramh an CCT go ndéanfaí aisghairm ar an gcosc ar dhíolachán faoi chostas de bhrí go dtiocfadh an tAcht lomaíochta in áit príomhfhórlacha an Ordaithe.

### **3.10 An Cinneadh Chun an tOrdú a Choinneáil Faoi Athbhreithniú**

Tá taifead sna comhaid, áfach, gur shocraigh an tAire, ar an 9 Nollaig, 1991, nach ndéanfaid sé cinneadh an tOrdú a aisghairm, ach go gcoinneodh sé súil ar an gcás.

Taifeadadh an cinneadh sna téarmaí seo a leanas:

*“In view of the fact that the Competition Act has only recently come into force and in order to give interested parties an opportunity to study the Report, the Minister has decided to keep the question of retention of the ...Order...under review.”<sup>23</sup>*

Deimhníodh tuairim an Aire maidir leis an gceist go luath an bhliain ina dhiaidh sin:

*“The new legislation (i.e. the Competition Act)...has a much wider scope than the Restrictive Practices legislation (i.e. the Groceries Order) and there is therefore no cause to retain legislation parallel to the Competition Act indefinitely.”<sup>24</sup>*

Níl aon amhras faoi, bunaithe ar léitheoireacht ar na comhaid, go raibh sé ar intinn ag an Aire go luath i 1992 go ndéanfaí aisghairm bhunúsach ar an Ordú um Earraí Grósaera. Leis sin chaithfí glacadh le moladh an mhóramh i dTuarascáil 1991.

Agus dealraíonn sé, a bheag nó a mhór, gurb é sin an chúis nár breithníodh in aon chor an foráil maidir le glan-phraghas ar an sonrasc a leasú san Ordú mar a bhí molta go láidir ag Tuarascáil 1991 an mhionlaigh.

**Níor facthas gurbh fhiú Ordú a bhí le haisghairm ar aon nós a leasú ar an gcéad dul síos.**

Mar thoradh air sin, coinníodh an úsáid a baineadh as ‘glan-phraghas ar an sonrasc’ mar shainmhíniú ar chostas in ainneoin tuairim aonghutha an

<sup>22</sup> Tuarascáil 1991 CCT, Alt 7.148, Lth.93

<sup>23</sup> Nuachteisiúint arna eisiúint ag Seirbhísí Eolais an Rialtais thar ceann na Roinne Tionscail & Tráchtála ar an 13 Nollaig 1991 – féach Aguisín a Seacht.

<sup>24</sup> Retail News Directory 1992, Réamhfhocal le Desmond O’Malley, T.D., An tAire Tionscail & Tráchtála – féach Aguisín a hOcht



Choimisiúin Cóir-Thrádála go raibh sé míshásúil agus go bhféadfaí mí-úsáid a bhaint as an reachtaíocht mar thoradh air.

### 3.11 Athbhreithniú Rannach 1993

Tar éis an pointe sin, bhí roinnt athbhreithnithe neamhfoirmiúla ar fheidhmiú an Ordaithe i bhfeidhm go himmheánach sa Roinn Fiontar, Trádála & Fostaíochta. I mBealtaine, 1993, scríobh Rannóg Polasaí Iomaíochta na Roinne:

*“The Department takes the view that the Order should be revoked. It contains rigid rules, such as the ban on below cost selling, which are inappropriate to present circumstances and deals with some issues such as credit terms which should either be left purely to the market place or regulated across sectors and not confined to the grocery trade. As long as the Grocery (sic) Order exists those engaged in the grocery trade will rely on the enforcement powers of the Director (of Consumer Affairs) rather than action under the Competition Act as was intended to be the case. The rigid structure of the Groceries Order can produce some absurd results. For example, since the reference point for cost is the net invoice price as shown by the supplier, the supplier can artificially influence upwards the retail price by, for example, excluding discounts or other benefits actually received by the retailer. Such retail (sic) price maintenance flies in the face of accepted norm of competition...In effect the grocery trade is operating under a set of competition rules different to those that operate elsewhere in the economy.”*

Tugadh le fios go himmheánach laistigh den Roinn cad a bhí i gceist ag an Aire a dhéanamh go bunúsach sa chás seo, agus tugadh le fios go poiblí é sin freisin agus mar sin bheadh a fhios ag gach páirtí leasmhar nach bhféachadh ar an Ordú mar rud a sheasfadh go fadthéarmach.

Dá bharr, thar na tréimhse sin, rinne leasa gnó, miondíola agus táirgeora, daoine ar fad a raibh feachtas ar bun acu chun an tOrdú a choinneáil, stocaireacht fhorleathan ar an Aire agus ar an Roinn.

I Meán Fómhair, 1993, dúirt an Stiúrthóir Gnóthaí Tomhaltóirí leis an Roinn go raibh sé i bhfabhar fáil réidh leis an Ordú “ag am éigin/at some stage” faoi réir ag cumhachtaí a bronnadh air chun forálacha ábhartha an Achta Iomaíochta a fhorfheidhmiú.

Lean an Roinn ag tabhairt tacaíochta don chás chun an tOrdú a aisghairm ach ag deireadh mhí Dheireadh Fómhair, 1993, léirigh siad inní faoin gcaoi ar chaill Dunnes scair den mhargadh agus gur bhuaigh Quinnsworth é agus dúirt siad: *“In the light of recent difficulties within the Dunne’s management structure the volatility of the market share has to be a cause of some concern.....It would not be useful to add to the uncertainty in the retail grocery*

*trade at this time.*” Mhol an Roinn go gcoinneofaí an tOrdú ar feadh tréimhse dhá mhí dhéag.

Ar an 31 Nollaig, 1993, d’fhógair an tAire Fiontar & Fostaíochta, ag gníomhú ar an moladh a rinne a Roinn féin, go raibh socrú déanta aige an tOrdú a choinneáil ar feadh dhá mhí dhéag breise agus dúirt sé i ndáil le haon chinneadh a ghlacfaí ar an Ordú amach anseo “..will be taken in the context of the overall review of the Competition Act...”

### 3.12 Athbhreithniú Rannach 1995

Bhí an Roinn Fiontar, Trádála & Fostaíochta fós den tuairim go raibh an tOrdú frith-iomaíoch agus bhí siad i bhfábhar aisghairm iomlán a dhéanamh air.

Mar sin féin, i Feabhra 1995, d’fhógair an tAire Fiontar & Fostaíochta, Richard Bruton, go raibh socrú déanta aige an tOrdú a choinneáil le haghaidh tréimhse dhá bhliain ar an mbunús go raibh easnaimh ag baint leis an Acht Iomaíochta a bhí i bhfeidhm ag an am sa mhéid nár thug sé aon chumhachtaí forfheidhmithe don Údarás Iomaíochta agus nár chuir sé aon phíonóis ar fáil i gcás mí-úsáide.

Dúirt an tAire go raibh sé ar intinn aige an tAcht a leasú chun déileáil leis na heasnaimh sin agus dúirt sé:

*“When this legislation is on the statute books and in operation, I will then consider revoking the Groceries Order...I am convinced that the Groceries Order is not the best instrument for dealing with competition in this sector in the long-term...I am also concerned that there is some evidence that the Groceries Order may be inhibiting desirable price competition to the disadvantage of the consumer.”<sup>25</sup>*

### 3.13 An Grúpa Athbhreithnithe Cónaisc agus Iomaíochta

Rinneadh inachtú ar Acht Iomaíochta (Leasú), 1996 i mí Iúil na bliana sin agus thug sé isteach na hathruithe a gheall an tAire go háirithe maidir le cionta frith-iomaíochta a fhorfheidhmiú, agus maidir le píonóis ina leith sin.

I Meán Fómhair 1996, bhunaigh an tAire an Grúpa Athbhreithnithe Cónaisc agus Iomaíochta (CMRG) faoi Chathaoirleacht Michael Collins S.C. D’éiligh a gcuid téarmaí tagartha orthu athbhreithniú agus moltaí a dhéanamh ar, *inter alia*, “The effectiveness of competition regulation and associated regulations.”

---

<sup>25</sup> Nuachtéisíúint arna eisiúint ag an Roinn Fiontar, Trádála & Fostaíochta ar an 28 Feabhra, 1995 (Féach Aguisín a Naoi).

Is é an tuiscint a bhain an Grúpa as sin gur thagair sé go háirithe don Ordú um Earraí Grósaera.<sup>26</sup> Go deimhin, de réir comhaid na tréimhse, d'iarr an tAire go sainiúil ar an nGrúpa féachaint ar an Ordú. Bhíothas ag súil le tuarascáil ón nGrúpa le linn 1997 ach, ní bhfuarthas í, i ndáiríre, go dtí Márta 2000.

D'fhoilsigh an Grúpa plépháipéar ar an ábhar a bhain leis an Ordú um Earraí Grósaera i mí na Nollag, 1999 agus d'fháiltigh siad roimh aighneachtaí ar an gceist. Ina dTuarascáil dheiridh rinne siad imscrúdú ar fheidhmiú an Ordaithe go sonrach, go háirithe an cosc ar dhíolachán faoin nglan-phraghas ar an sonrasc. Is beag argóinte a tháinig chun cinn nach raibh cloiste cheana féin níos mó ná uair amháin sna blianta ar fad ó 1956, an t-am ar bhreithnigh an Coimisiún Cóir-Thrádála a bhí ann ag an am an cheist i dtús báire.

San anailís dheiridh, dúirt an Grúpa go raibh siad *"...deeply divided on this issue."*<sup>27</sup>

Mar sin féin, mhol mórán an Ghrúpa Athbhreithnithe cúlghairm a dhéanamh ar an Ordú um Earraí Grósaera agus *"any legislation or regulation introduced in relation to the grocery trade should not include a ban on below cost selling."*<sup>28</sup>

Is faoin Tánaiste agus an tAire Fiontar, Trádála & Fostaíochta, Mary Harney, a bhí an moladh seo anois. Shocraigh sí, ar an tslí chéanna lena réamhtheachtaí, an tOrdú a choinneáil ach athbhreithniú a dhéanamh ar a fheidhmiú.

Dúirt an Tánaiste é seo nuair a d'fhógair sí a cinneadh

*"I have carefully considered all the arguments and I have consulted widely with interested parties on both sides of the debate.*

*I am interested in where the consumer's interest lies. However, the question is a finely balanced one. On the one hand the Competition Authority has sought the abolition of the ban on below cost selling while the Consumers' Association of Ireland favours retention of the ban. Furthermore, the Competition Commission in the UK has recently concluded, following an extensive enquiry into the retail sector in the UK, that continuous below cost selling is not in the public interest.*

*I have come to the view that it is not in the consumer's interest to remove the ban on below cost selling at the present time. I am*

<sup>26</sup> Tuarascáil an Ghrúpa Athbhreithnithe Cónaisc agus Iomaíochta (Oifig an tSoláthair, Baile Átha Cliath, Márta 2000. PN: 8487), Alt 1.6, Lth.7

<sup>27</sup> Alt 10.4.1, P.316. Áiríodh le comhaltacht an CMRG ionadaithe as IBEC (Messrs Owen Killian & Myles O'Reilly), ISME (An Dr Robert Berney), ICTU (An tUasal Paul Sweeney), The Bar Council, (An tUasal David Barniville BL), An Cumann Dlí (An tUasal Gerlad Fitzgerald), Cumann Tomhaltóirí na hÉireann (An tUasal Peter Dargan) chomh maith le hOifig an Ard-Aighne agus an Roinn Fiontar & Fostaíochta.

<sup>28</sup> Alt 10.4.17, Lth. 325

*particularly concerned that below cost selling could be used to eliminate competition in local markets.*

*Of course, the groceries sector is changing very rapidly and I will keep the position under review in the light of developments.”<sup>29</sup>*

Agus mar sin, d'fhan an tOrdú um Earraí Grósaera faoi athbhreithniú ina dhiaidh sin. Athbhreithniú b'fhéidir ab fhearr cur síos air mar athbhreithniú "leanúnach" riamh ó shin.

### **3.14 Ordú 1987 Nach Féidir a Leasú ach amháin le Reachtaíocht Phríomhúil**

Is é an phríomh-fhíric atá tagtha chun cinn sa tréimhse idir linn ná, ar chomhairle an Ard-Aighne, nach féidir Ordú 1987 a leasú ná a aisghairm ach amháin le reachtaíocht phríomhúil agus ní le Ordú Aireachta breise (féach Caibidil a Dó Dhéag).

### **3.15 Conclúid**

Ní cinneadh éasca a bhí sa chinneadh i 1987 an téarma glan-phraghas ar an sonrasc (agus a shainmhíniú) a choinneáil ó thaobh an Choimisiúin Cóir-Thrádála ná ó thaobh an Aire de agus ghlac an dá thaobh leis go dtabharfadh an tOrdú spreagadh don trádáil gach liúntas, lascaine agus lacáiste a chur ar an sonrasc.

Níor tharla sé sin i ndáiríre, agus bhí ar an gCoimisiún tuairim a ghlacadh d'aonghuth i 1991 go raibh an úsáid a baineadh as an téarma glan-phraghas ar an aineoinn an chinnidh an tOrdú a choinneáil, ní mór gur cúis imní a bheadh ann gur teip ó thaobh téarmaí an Ordaithe a leasú mar léiriú ar an tuairim sin ba ea é. sonrasc míshásúil.

In

De bhrí gur lean an trádáil ag úsáid lascaíní nach raibh le feiceáil ar an sonrasc sa tréimhse idir an dá linn ciallaíonn sé sin nár fheidhmigh an tOrdú sa bhealach arna shamhlú ag an gCoimisiún, ag an Aire agus ag an Oireachtas i 1987.

Sna himthosca sin, creidimid go bhféadfadh sé gur baineadh mí-úsáid as téarmaí an Ordaithe ó 1987.

---

<sup>29</sup> Nuachtseisiúint arna eisiúint ag an Roinn Fiontar, Trádála & Fostaíochta, 24 Deireadh Fómhair, 2000 (Féach Aguisín a Deich)