

RESTRICTIVE PRACTICES (GROCERIES) ORDER, 1987.

I, ALBERT REYNOLDS, Minister for Industry and Commerce, having considered the report of the Restrictive Practices Commission being a special review under section 10 of the Restrictive Practices Act, 1972 (No. 11 of 1972) of the operation of the Restrictive Practices (Groceries) Order, 1981, in exercise of the powers conferred on me by section 8 of the said Act, hereby order as follows:

1. This Order may be cited as the Restrictive Practices (Groceries) Order, 1987.

2. (1) In this Order—

"authorised officer" means a person authorised in writing by the Examiner for the purposes of Section 15 of the Restrictive Practices Act, 1972.

"best list price", in relation to grocery goods, means the lowest price of the goods which having regard to the statement which for the time being stands prepared and maintained by the relevant supplier in accordance with the requirements of Article 13 of this Order (no account being taken of any supplementary term, or of any allowance or discount which is not calculated by reference to the purchase concerned), may be obtained by a purchaser taking the maximum advantage of the terms and conditions specified in the said statement;

"date of minimum durability" in relation to grocery goods shall be the date marked on the goods, preceded by the words 'best before' or 'best before end' (being a date until which the grocery goods retain their specific properties when properly stored);

"discount" and "markup" include, respectively, a discount or markup however expressed;

"the Examiner" means the Examiner of Restrictive Practices;

"grocery goods" means grocery goods for human consumption (excluding fresh fruit, fresh vegetables, fresh and frozen meat, fresh fish and frozen fish which has undergone no processing other than freezing with or without the addition of preservatives) and intoxicating liquors not for consumption on the premises and such household necessaries (other than foodstuffs) as are ordinarily sold in grocery shops, and includes grocery goods designated as "own label", "generic" or other similar description;

"like goods" means similar goods which do not differ one from another as regards their nature, grade, brand, quantity per pack or packaging;

"retailer" means any person who resells grocery goods to the public;

"supplementary term" means any term or condition providing for a rebate or discount in relation to the amount payable in respect of the sale of any grocery goods by a supplier to a wholesaler or retailer or an allowance by a supplier to a wholesaler or retailer, in consideration of—

- (a) the making of purchases by the wholesaler or retailer from the supplier of those goods over a specified period of time, whether or not in excess of specified quantities, or
- (b) the promotion of sales of those goods by means of special arrangements carried out for a limited period by or on behalf of the wholesaler or retailer, or
- (c) any other arrangement relating to price not indicated in the terms and conditions published under Article 13 of this Order;

"seasonal goods" means Christmas cakes, Easter eggs and Halloween bracks;

"supplier" means a manufacturer or importer of grocery goods for sale to wholesalers or retailers and includes any person who processes, blends, cans, packs or otherwise prepares grocery goods for sale to wholesalers or retailers and also includes any person who acts as the sole distributor of such goods to wholesalers or retailers;

"wholesaler" means any person who purchases from a supplier grocery goods for resale to retailers.

(2) For the purposes of this Order the net invoice price of grocery goods supplied by a supplier or a wholesaler to a retailer or by a supplier to a wholesaler shall be calculated having regard to an invoice relating to the delivery of like goods by the supplier or wholesaler to the warehouse or retail store concerned which is of the same date with the sale of goods or with the relevant advertisement, and, in case there is not in existence such an invoice, then such net invoice price shall be calculated having regard to the invoice which relates to such a delivery and which is that issued most recently prior to the sale of goods or the advertisement's publication, and such price shall be calculated net of any allowance or refund that is allowable on the return of the goods' container, and no account shall be taken of discounts, rebates or other deductions which are not entered on the invoice in cash terms as deductions from the sum due to the supplier or wholesaler.

3. (1) Subject to paragraphs (2), (3) and (4) of this Article, a supplier or wholesaler shall not require or induce or attempt to require or induce any person (whether directly or indirectly, by withholding supplies from that other person or otherwise discriminating against him or by threatening to do so, or by any other threat or by any agreement, promise or any other means) to resell or offer for resale grocery goods—

- (a) at a fixed price specified by the supplier or wholesaler or established by agreement or otherwise, or
- (b) at a price not less than a fixed or minimum price specified by the supplier or wholesaler or established by agreement or otherwise, or
- (c) at a fixed markup or a fixed discount specified by the supplier or wholesaler or established by agreement or otherwise, or
- (d) at a markup not less than a fixed or minimum markup specified by the supplier or wholesaler or established by

agreement or otherwise, or

(e) at a discount not greater than a fixed or maximum discount specified by the supplier or wholesaler or established by agreement or otherwise.

(2) Subject to paragraph (3) of this Article, nothing in paragraph (1) of this Article shall be construed as preventing a supplier—

(a) from advertising, or otherwise specifying, resale prices for any grocery goods: provided such prices are maximum prices, or

(b) from withholding grocery goods from a wholesaler or retailer who—

(i) has sold or offered for sale, grocery goods supplied by the supplier—

(I) at a price that exceeded the maximum resale price specified by the supplier, or

(II) at a price (not being a maximum price fixed for the time being by an order under the Prices Acts, 1958 to 1972) that is less than the net invoice price of the goods (including value added tax) payable to the supplier, and

(ii) fails to give to the supplier an acceptable undertaking to discontinue so selling, or offering for sale, such grocery goods.

(3) Where the grocery goods are sold by a retailer more than four weeks after the date on which a price list provided by a supplier for like goods has been altered and no delivery of like goods accompanied by an invoice has been made to the retailer concerned since the date of the alteration, then, in relation to the goods, paragraph (2) (b) (i) (II) of this Article shall be construed and have effect as if "best list price" were substituted for "net invoice price".

(4) A supplier may request a wholesaler to withhold supplies of grocery goods supplied by him from a retailer in any circumstances in which, under this Order, the supplier would be entitled to withhold supplies from the retailer and, if the wholesaler fails or refuses to comply with the request, the supplier may withhold supplies of such goods from that wholesaler.

4. Where a supplier indicates or recommends a resale price of grocery goods such price shall not be binding on any person as a minimum resale price.

5. Save as hereinafter provided, there shall not be any arrangements, agreements or understandings between two or more persons, each of them being a supplier, a wholesaler or a retailer, which has or is likely to have the effect of ensuring that goods will be resold or offered for resale—

(a) at a fixed price or at a price not less than a specified minimum price, or

(b) at a fixed markup or at a markup not less than a specified minimum markup, or

(c) at a fixed discount or at a discount not greater than a

specified maximum discount, or

(d) on any other basis which involves eliminating or limiting competition in price between suppliers or between wholesalers or between retailers.

6. There shall not be any agreement, arrangement or understanding (whether induced by threat, promise or otherwise) between two or more suppliers or between two or more wholesalers as to the prices at which they will supply grocery goods to other persons or as to the discount to be allowed or the markup to be applied in respect of such goods.

7. A supplier or wholesaler shall not withhold grocery goods from any person or discriminate against any person as to the terms on which such goods are supplied, because that person is or is not a member of a trade association or is not approved of by a trade association or because that person's name appears or does not appear on any list prepared, maintained, published or issued by a trade association or because representations that supplies should be withheld from such person or be made available to him only on specified terms have been made by or on behalf of any trade association.

8. (1) No trade association or other combination of persons shall, as respects grocery goods, coerce or induce or attempt to coerce or induce a supplier or wholesaler to withhold supplies from any wholesaler or retailer or discriminate against any wholesaler or retailer as to the terms on which goods may be supplied to them.

(2) Paragraph (1) of this Article shall not be construed as preventing a trade association from notifying a supplier of any circumstances that, in the belief of the association, would, under this Order, entitle the supplier to withhold goods from a wholesaler or retailer.

9. No supplier, wholesaler or retailer shall be a party to any agreement, arrangement or understanding (whether induced by threat, promise or otherwise) which has or is likely to have the effect of limiting or restricting entry to trade in any grocery goods.

10. No person or combination of persons shall prepare, maintain, publish or issue any lists, or do any other act, designed—

(a) to secure a boycott of any person in relation to grocery goods because—

(i) if such person is a supplier or a wholesaler, of the prices charged by him for such goods or the other terms or conditions on which such goods are supplied by him, or

(ii) if such person is a retailer, of the prices charged by him, or

(b) to affect adversely the terms of supply of such goods to any person because that person has refused to do any act which he is prohibited from doing by this Order.

11. (1) Subject to the paragraphs (2), (3), (4), (5) and (6) of this Article, a retailer shall not sell grocery goods (other than grocery goods whose date of minimum durability has expired) at a price that (after the deduction of the cost to the retailer of any discount or other benefit given by him on the sale of the goods), is less

than whichever of the following is applicable—

(a) in case charges in respect of carriage, insurance or other costs not included in the relevant invoice have to be paid by the retailer to the supplier or any other person to obtain the delivery of the goods to his premises, the amount obtained when the said charges or costs are added to the net invoice price of the goods (including value added tax), or

(b) in any other case, the net invoice price of the goods (including value added tax).

(2) Where a sale is effected to a purchaser of two or more items at a price which is less than the amount which he would have to pay to the retailer concerned if the items were bought from him singly, then, for the purposes of paragraph (1) of this Article, the price of each item shall be the amount obtained by dividing the amount paid by the number of items.

(3) Where a sale is effected more than four weeks after the date on which a supplier's list price for like goods has been altered and no delivery of like goods accompanied by an invoice has been made to the retailer concerned since the date of the said alteration, then paragraph (1) of this Article shall, in relation to the sale, be construed and have effect as if "best list price" were substituted for "net invoice price" in both places where it occurs.

(4) The selling at a price which is a maximum price fixed for the time being by an Order under the Prices Acts, 1958 to 1972, shall not be regarded as contravening paragraph (1) of this Article.

(5) Where goods are invoiced in a foreign currency, then, for the purposes of this Article, the equivalent in Irish currency shall be calculated at the exchange rate quoted by the Central Bank as the official exchange rate for the Irish pound on the date of the relevant invoice or, if no official rates are declared on that date, at the latest previous mid-closing exchange rate.

(6) For the purposes of this Article, the net value added tax to be included in the net invoice price (including value added tax) of grocery goods shall be the value added tax in respect of the goods payable by the retailer and in the case of grocery goods invoiced in a foreign currency, for the purposes of this Order the value added tax in respect of the goods shall be that payable on the equivalent amount in Irish currency calculated in accordance with paragraph (5) of this Article.

12. (1) Subject to the paragraphs (2), (3), (4), (5), (6) and (7) of this Article, a retailer, or any wholesaler or other person acting on behalf of a retailer, shall not publish or display, or cause to be published or displayed, an advertisement for the sale of grocery goods at a price that (after the deduction of the cost to the retailer of any discount or other benefit given by him on a sale of any of the goods) is less than whichever of the following is applicable:

(a) in case charges in respect of carriage, insurance or other costs not included in the relevant invoice have to be paid by the retailer to the supplier or any other person to obtain the delivery of the goods to his premises, the amount obtained when the said charges or costs are added to the net invoice

price of the goods (including value added tax), or

(b) in any other case, the net invoice price of the goods (including value added tax).

(2) Paragraph (1) of this Article shall apply in relation to an advertisement whether or not it contains an indication of the price of the goods to which it relates and whether or not it contains an indication that the price of the goods to which it relates is below either:

(i) the amount obtained when the charges or costs referred to in subparagraph (a) of paragraph (1) of this Article are added to the net invoice price of the goods (including value added tax) or

(ii) the net invoice price of the goods (including value added tax).

(3) Where an advertisement makes an offer pursuant to which a purchaser may purchase two or more items at a price which is less than the amount which he would have to pay to the retailer concerned if the items were bought from him individually then for the purposes of paragraph (1) of this Article, the price of each item shall be the amount obtained by dividing the price specified in the offer by the number of items.

(4) Where an advertisement for the retail sale of grocery goods is published or displayed more than four weeks after the date on which a supplier's list price for like goods has been altered and no delivery of like goods accompanied by an invoice has been made to the retailer concerned since the date of the alteration, then paragraph (1) of this Article shall, in relation to the advertisement, be construed and have effect as if "best list price" were substituted for "net invoice price" in both places where it occurs.

(5) The advertising of a price which is a maximum price fixed for the time being by an Order under the Prices Acts, 1958 to 1972, shall not be regarded as contravening paragraph (1) of this Article.

(6) Nothing in this Article shall be construed as imposing any criminal liability on—

(a) Radio Telefís Éireann or any person participating in any sound or television broadcast,

(b) the proprietor, publisher, or editor or seller of any newspaper, magazine or other periodical, by reason only of the publication in such a broadcast or periodical of an advertisement in contravention of this Article.

(7) (a) In this Article "advertisement" includes any catalogue, price list, notice, circular, photograph, film, sound broadcast, television broadcast or personal canvas.

(b) Where goods are invoiced in a foreign currency, then, for the purposes of this Article, the equivalent in Irish currency shall be calculated at the exchange rate quoted by the Central Bank as the official exchange rate on the date of the relevant invoice or, if no official rates are declared on that date, at the latest previous mid-closing exchange rate.

(c) For the purposes of this Article, the net value added tax

to be included in the net invoice price (including value added tax) of grocery goods shall be the value added tax in respect of the goods payable by the retailer and in the case of grocery goods invoiced in a foreign currency, for the purposes of this Order the value added tax in respect of the goods shall be that payable on the equivalent amount in Irish currency calculated in accordance with sub-paragraph (b) of this paragraph.

13. (1) (a) A supplier shall prepare and maintain a statement in writing prescribing the terms and conditions upon and subject to which he sells grocery goods (including supplementary terms, if any, and, if he grants credit in respect of the purchase price of any grocery goods the terms and conditions of such grant), and the supplier shall effect a sale of grocery goods of any kind to wholesalers or retailers upon and subject to those terms and conditions (in so far as they apply in relation to that sale of that kind of goods).

(b) Where a statement under this Article in relation to supplementary terms contains a general indication of the nature and extent of those terms, the statement shall be deemed, in so far as those terms are concerned, to comply with the provisions of this Article.

(c) Sub-paragraph (a) of this paragraph does not apply to the sale of goods that have been processed, blended, canned, packed or otherwise prepared in accordance with the specification and requirements of the purchaser, and, for the purposes of resale, are not given the name or a brand name of the purchaser.

(2) The terms and conditions aforesaid may make provision for discounts or rebates of different amounts on the price of goods sold on the basis of—

(a) the different functions in relation to the sale and distribution of the goods performed by purchasers of the goods,

(b) the quantity or value of the goods,

(c) other objective criteria which are designed to promote efficiency in supply or distribution and which are necessary in the legitimate interests of the supplier's business.

(3) The terms and conditions aforesaid—

(a) shall not discriminate unfairly against purchasers and, having regard to the legitimate interests of the supplier's business, shall take reasonable account of the economies of supply and distribution to different purchasers,

(b) shall not provide for any variation in the rates of discounts or rebates to any persons by reference to sales of goods to those persons by other suppliers, whether the other suppliers are members of any trade association or not, and

(c) shall not be such as unfairly or unjustly to prevent a person from commencing business as a wholesaler or retailer.

(4) Where the terms and conditions referred to in paragraph (1) of this Article include supplementary terms relating to the

promotion of sales in the manner specified in the definition of "supplementary term" in Article 2 of this Order, the supplementary terms may be made available to different wholesalers and retailers at different times within a period which is of reasonable duration having regard to all the circumstances.

14. (1) A supplier shall, if so requested by the Examiner, furnish to the Examiner, within 14 days of the receipt of the request, a copy of the statement prepared by him pursuant to Article 13 of this Order together with any amendments thereof.

(2) A supplier shall furnish to the Examiner such information as the Examiner may from time to time request in relation to the supply of goods of a kind referred to in Article 13 (1) (b) and (c) of this Order.

(3) Any retail grocer with more than five grocery outlets, and any wholesaler, if so requested by the Examiner, shall furnish to the Examiner a statement of supplementary terms negotiated with the suppliers during each month by the seventh day of the following month.

(4) Each supplier shall maintain a register of supplementary terms and such register shall be made available to the Examiner, if the Examiner so requests.

(5) A supplier shall, if requested by any person carrying on or proposing to carry on business as a wholesaler or retailer, furnish to such person, within fourteen days after the date of the making of the request, a copy of the statement which at the date of the request stands prepared and maintained by him in accordance with the requirements of Article 13 of this Order together with any amendments thereof.

15. If the Examiner is satisfied that the operation by a supplier of the terms and conditions contained in the statement prepared by him pursuant to Article 13 of this Order constitutes unfair discrimination in favour of or against any wholesaler or retailer or any section of the grocery trade comprising the business carried on by wholesalers and retailers, the supplier shall, at the request of the Examiner, make such amendments of the terms and conditions aforesaid as may be specified by the Examiner being amendments calculated to eliminate the alleged unfair discrimination.

16. (1) (a) A wholesaler or retailer shall not, whether by the use of threats or inducements or otherwise, cause a supplier to sell grocery goods to him on and subject to terms and conditions other than those contained or referred to in the statement prepared by the supplier pursuant to the requirements of Article 13 of this Order.

(b) A wholesaler or retailer who purchases goods from a supplier shall comply with any terms or conditions as to credit in relation to the purchase contained in the statement prepared by the supplier pursuant to Article 13 of this Order.

(c) Where a person is charged with an offence in relation to a failure to comply with sub-paragraph (b) of this paragraph, it shall be a defence for him to prove that the

failure was due to his inability to pay for the goods purchased in accordance with the relevant terms or conditions as to credit.

(2) Nothing in this Article shall be construed as prohibiting a wholesaler or retailer from requesting a supplier to amend, vary or delete any of the terms or conditions contained or referred to in the statement prepared by the supplier pursuant to the requirements of Article 13 of this Order.

17. (1) Subject to paragraph (2) of this Article, a supplier, wholesaler or retailer who purchases grocery goods outside the State and imports them into the State for sale shall, within 14 days after such importation, furnish to the Examiner a statement containing the terms and conditions upon and subject to which the goods were purchased and imported.

(2) It shall not be necessary for a supplier, wholesaler or retailer to furnish a statement to the Examiner under this Article in relation to goods purchased outside the State and imported into the State for sale if the goods are of the same kind as other goods in respect of which such a statement has been furnished to the Examiner by the wholesaler or retailer and the terms and conditions on which the first-mentioned goods were purchased and imported are the same as those contained in the statement furnished as aforesaid.

18. (1) A supplier shall not make any payment or allowance to a person who is a wholesaler or retailer, or give a reduction of or discount on the price of grocery goods sold to that person by him or give to that person any other benefit, in consideration of—

(a) the carrying out by that person of advertising of the goods aforesaid,

(b) the making available of selling space or additional selling space—

(i) on the opening of a new retail outlet;

(ii) on the extension of an existing outlet;

(iii) after the change of ownership of an existing outlet.

(2) A retailer or wholesaler shall not receive from a supplier any payment or allowance, or reduction of or discount on the prices of grocery goods, or any other benefit in consideration of any of the matters referred to in paragraph (1) of this Article.

19. When an authorised officer acting in the course of his duties visits the premises of any retailer or wholesaler and finds therein (or receives later from the retailer or wholesaler) any invoices, documents or other records purporting to indicate, or appearing to indicate, the net invoice price of any goods, then, in any proceedings under this Order against that retailer or wholesaler, these invoices, documents or other records or anything shown to be a true copy of or extract from such invoices, documents or records shall, unless the contrary is shown, be sufficient evidence as to the net invoice price of the relevant goods.

20. Articles 11 and 12 of this Order shall not apply to seasonal goods.

21. The Restrictive Practices (Groceries) Order, 1981 is hereby revoked.


GIVEN under my Official Seal this 25th day of May, 1987.

ALBERT REYNOLDS,

Minister for Industry and Commerce.

EXPLANATORY NOTE.

The effect of this Order is to prohibit the selling, or advertising for sale, of grocery goods (including alcoholic beverages), below cost price. The provisions in relation to the withholding of supply of grocery goods are outlined and the payment or receipt of 'Hello Money' is prohibited. The Order requires to be confirmed by an Act of the Oireachtas before it will have the force of law.

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