

PART ONE – Summary

Foreword	ix
Executive Summary	xiii

PART TWO - History

Chapter One:	Evolution of the Groceries Order.....	3
1.1	The Beginning – The 1956 and 1958 Orders.....	3
1.2	The 1973 Orders.....	4
1.3	The First 1978 Order.....	4
1.4	The Second 1978 Order.....	5
1.5	The 1981 Order.....	5
1.6	The 1987 Order.....	6
1.7	1987 – 2005	6
1.8	Prosecutions Under the 1987 Order.....	8
Chapter Two:	The Case for a Ban on Below Cost Selling – 1956 to 1987.....	9
2.1	Introduction	9
2.2	Resale Price Maintenance	10
2.3	Submissions to the 1956 Enquiry	11
2.4	Conclusion and Recommendation of the 1956 Enquiry	13
2.5	The 1966 Enquiry.....	15
2.6	Conclusions & Recommendations of the 1966 Enquiry	15
2.7	The 1970 Enquiry & the 1972 Fair Trade Commission Report.....	16
2.8	Conclusions and Recommendations of the 1972 Report	17
2.9	The 1975 Enquiry and the First 1978 Order	18
2.10	1978 Informal Report of the Restrictive Practices Commission	19
2.11	Recommendation for use of “Net Invoice Price” as Definition of Cost.....	19
2.12	The Second 1978 Order.....	20
2.13	The 1979 Court Case	20
2.14	Court Ruling on Meaning of “Net Invoice Price”	21
2.15	The 1980 Report & The 1981 Order.....	21
Chapter Three:	Ban on Selling Below “Net Invoice Price – 1987 to 2005.....	25
3.1	Introduction	25
3.2	The 1987 Report of the Restrictive Practice Commission.....	25
3.3	Commissions Conclusions & Recommendations on Use of “Net Invoice Price”	26
3.4	The 1991 Review of the 1987 Order.....	28
3.5	The Majority View.....	29
3.6	The Minority View.....	29
3.7	Consensus that “Net Invoice Price” is Unsatisfactory Definition of Cost ..	30
3.8	Consideration of 1991 Report.....	31
3.9	Likely Overlap with 1991 Competition Act	31
3.10	Decision to Keep Order Under Review	32
3.11	1993 Departmental Review	32
3.12	1995 Departmental Review	34
3.13	The Competition & Mergers Review Group	34

3.14	The 1987 Order Can Only be Amended by Primary Legislation	36
3.15	Conclusion	36
Chapter Four:	Terms & Conditions of Supply	37
4.1	Introduction	37
4.2	Standard Terms and Conditions.....	37
4.3	Supplementary Terms	38
4.4	The 1975 Enquiry.....	39
4.5	The 1981 Order.....	40
4.6	The 1987 Review of the 1981 Order.....	40
4.7	The 1991 Report	42
4.8	Conclusion	43
PART THREE – Impact of the 1987 Order		
Chapter Five:	Structure of the Irish Grocery Trade.....	47
5.1	Introduction	47
5.2	Comparison with the UK.....	47
5.3	Market Share Trends in Ireland	49
5.4	Store Number Trends.....	51
5.5	Regional Variations	53
5.6	Convenience Retailing in the UK.....	56
5.7	Conclusions	60
Chapter Six:	Off-Invoice Discounting.....	63
6.1	Introduction	63
6.2	How Off-invoice Discounts Operate.....	63
6.3	Extent of Off-invoice Discounts	64
6.4	Impact of Off-invoice Discounts on Retail Margins	67
6.5	Do Consumers Benefit from Off-invoice Discounts?	70
6.6	Resale Price Maintenance	72
6.7	Impact on Competition	77
6.8	Impact of Repealing the Prohibition on Selling Below Net Invoice Price	79
6.9	Role of the Director of Consumer Affairs	80
6.10	Views of the Director of Corporate Enforcement.....	83
6.11	Views of the Chambers of Commerce of Ireland	85
6.12	Likely Impact of Prohibiting Supplementary Terms.....	85
6.13	The Views of Other Parties	86
6.14	Conclusions	88
Chapter Seven:	Predatory Pricing	91
7.1	Introduction	91
7.2	Submissions on Predatory Pricing.....	91
7.3	What is Predatory Pricing?	92
7.4	Below Cost Selling	93
7.5	International Approach	94
7.6	Dominance.....	96
7.7	Other Characteristics of Predatory Pricing.....	98
7.8	H. Williams	99

7.9	Responding to the Threat of Predatory Pricing	102
7.10	Pricing Strategies that Are Not Predatory	104
7.11	Promotional Pricing	104
7.12	Loss-Leading and Cross Subsidy of Product Prices	106
7.13	UK Competition Commission Report on the Grocery Trade	109
7.14	Conclusions	110
Chapter Eight:	Impact on Prices & Inflation	115
8.1	Introduction	115
8.2	Product Coverage	115
8.3	Inflation	116
8.4	Who to Believe?	118
8.5	Food Prices in Ireland	130
8.6	Conclusion	132
Chapter Nine:	Regulations in Other Jurisdictions	135
9.1	Introduction	135
9.2	Position in the EU 15 Member States (pre access)	136
	Austria	
	Belgium	
	Denmark	
	Finland	
	France	
	Germany	
	Greece	
	Ireland	
	Italy	
	Luxembourg	
	The Netherlands	
	Portugal	
	Spain	
	Sweden	
	United Kingdom	
9.3	Other Countries	144
9.4	Conclusions	145
Chapter Ten:	Ghost Town Britain	151
10.1	Introduction	151
10.2	Background	152
10.3	Definition of Rural	153
10.4	1997 Report by the Rural Development Commission	154
10.5	2000 Survey of the Countryside Agency	155
10.6	Other Findings	156
10.7	Ghost Town Britain I	156
10.8	Ghost Town Britain II	157
10.9	Clone Town Britain	158
10.10	Northern Ireland	159
10.11	Other Submissions	161
10.12	Conclusion	162

Chapter Eleven: Societal Impact.....	163
11.1 Introduction	163
11.2 Background.....	163
11.3 Arguments.....	163
11.4 Response to Arguments.....	164
11.5 UK Experience	166
11.6 Alcohol in Society.....	167
Chapter Twelve: Legal Status of the Order	169
12.1 Introduction	169
12.2 Background.....	169
12.3 Repeal the Order?.....	170
12.4 Amend the Order?.....	170
12.5 Retain the Order?.....	171
12.6 Implications of Current Status	171
12.7 Recent High Court Decision	171
12.8 Other Issues Arising	173
12.9 Conclusion	174
Chapter Thirteen: Conclusions & Recommendations on Below Cost selling	177
13.1 Introduction	177
13.2 Preventing Persistent Below Cost selling	177
13.3 Recommendations	178
Chapter Fourteen: Other Provisions of the Groceries Order.....	181
14.1 Introduction	181
14.2 The Arguments	181
14.3 The Competition Act 2002	182
14.4 Resale Price Maintenance & Power to Withhold Supplies	182
14.5 Price Fixing Arrangements	183
14.6 Unfair Discrimination	183
14.7 Statement of Terms & Conditions.....	184
14.8 Credit Terms	184
14.9 Imported Goods	184
14.10 Advertising Allowances and “hello money”	184
14.11 Proposed Amendments to the Competition Act 2002	185
14.12 Conclusion	185

PART FOUR – Conclusions and Recommendations

Chapter Fifteen: Summary of Conclusions and Recommendations	189
15.1 Net Invoice Price	189
15.2 Off-invoice Discounting	189
15.3 Resale Price Maintenance	190
15.4 Impact of Removing the Order	191
15.5 Impact of Only Preventing Off-invoice Discounts.....	191
15.6 Structure of the Grocery Trade	192
15.7 Predatory Pricing.....	192

15.8	H. Williams	193
15.9	Impact on Prices and Inflation	194
15.10	Regulations in Other Jurisdictions	194
15.11	Ghost Town Britain.....	195
15.12	Impact on Society.....	195
15.13	Legal Status of the Order	195
15.14	Prevention of Below Cost Selling	196
15.15	Recommendations	196

PART FIVE – Appendices

1. Text of Restrictive Practices (Groceries) Order, 1987.
2. Advertisement inviting submissions on the future of the Groceries Order.
3. Alphabetical list of submissions received.
4. Submission by the Competition Authority.
5. Note by the Restrictive Practices Commission entitled ‘Situation in the Grocery Trade’.
6. Chapter 4 ('Below Cost Selling') of the 1987 Fair Trade Commission Report.
7. Departmental press release of 13th December 1991 announcing 1991 Report.
8. Foreword to 1992 Retail News Directory by Des O' Malley, TD'
9. Press release by Minister Richard Bruton TD of 28th February 1995, announcing retention of Groceries Order for two years.
10. Press release by An Tánaiste of 24th October 2000 announcing retention of Groceries Order.
11. Maps showing locations of Tesco, Dunnes Stores, Supervalu and Centra outlets.
12. Recommendations of High Level Interdepartmental Committee on implementation of recommendations of the Consumer Strategy Group.
13. Sections 4 and 5 of 2002 Competition Act.

LIST OF TABLES

- Table 1 Market Share – Ireland & the UK**
- Table 2 Market Share 1990**
- Table 3 Food Turnover 1997 - 2002**
- Table 4 Store Numbers 1966 – 2002**
- Table 5 Store Types 1994 - 2002**
- Table 6 Regional Variations in Store Numbers**
- Table 7 Convenience Chain Acquisitions in UK**
- Table 8 Index on Food & Drinks Consumed at Home 1987- 2005**
- Table 9 Trends in Prices of Food & Drinks Consumed at Home**
- Table 10 Food price Inflation 1987 – 2005**
- Table 11 Food Inflation v Other Retail**
- Table 12 Comparative Inflation 2001 – 2005**
- Table 13 Comparative Inflation 2001 – 2005**
- Table 14 EU Food v EU General Inflation 1996 – 2005**
- Table 15 Food Price Inflation 1987 – 2005**
- Table 16 Irish Food Inflation v UK Food Inflation 1996 – 2005**
- Table 15 Irish Clothing Inflation v UK Clothing Inflation 1996 - 2005**
- Table 18 EU Food Inflation 1996 – 2005**
- Table 19 Summary of Below Cost Selling Laws in EU 15**