

Foreword

Background

The Groceries Order was first introduced in 1956 and there have been seven additional or amending Orders made in the intervening 49 years. The Orders applied rules and regulations to the operation of the grocery trade in Ireland with the intention of ensuring fair trading conditions. The most recent Order, the Restrictive Practices (Groceries) Order, 1987, introduced the ban on below cost selling.

The 1987 Order, and the ban on below cost selling in particular, has been a cause of controversy since its introduction. In 1991, barely four years after it came in to force, the Restrictive Practices Commission recommended that the Order be repealed. That recommendation was never acted upon. The Order has been the subject of periodic reviews ever since but remains in force and has never been amended.

The text of the 1987 Order can be found at Appendix One to this Report.

Consumer Strategy Group

The Consumer Strategy Group was established by the Minister for Enterprise, Trade & Employment in March 2004 to advise and make recommendations for the development of a national consumer policy.

The Group reported to the Minister in March 2005. The Report dealt with the issue of the Groceries Order and the issue of below cost selling and recommended that the Order be revoked in its entirety.

The Group highlighted in particular the fact that although the widespread perception of the Order is that it bans below cost selling, the Order as promulgated in 1987 actually prohibits retailers from selling goods at a price that is less than the net invoice price at which they bought them. The key difference between below cost and below invoice price relates to the practice of off-invoice discounts which the Group contends is widespread in the grocery trade and which can be very significant in terms of the real cost of a product. The Group contends that by preventing retailers from passing on the discounts they receive from suppliers, the Order has the effect of placing upward pressure on grocery prices.

The Group also contends that aside from the “below net invoice price” provisions, legislative and marketplace developments since 1987 have made many of the other provisions of the Order inoperable. The Group, whilst calling for the total abolition of the Order, does reflect in its Report that arguments can be made for both its abolition and retention and the Group has listed both sets of arguments in detail in its Report.

Public Consultation Process

The Government at its meeting on 3 May 2005 considered the Report of the Consumer Strategy Group and, in regard to the Groceries Order, agreed with the proposal of the Minister for Enterprise, Trade & Employment to engage in a public consultation process before making any decision in regard to the future of the Order.

The public consultation was announced on 19 May and submissions were invited from interested parties before 5pm on 31 July 2005.

A copy of the advertisement that was placed in the national press in this regard is at Appendix Two.

Submissions Received and Methodology

All submissions received are listed at Appendix Three to this Report.

We received 561 formal submissions as part of the public consultation process before the deadline expired on 31 July. This includes a small number of submissions received after that time but which were clearly postmarked July. It also includes representations received from members of the Oireachtas – either on their own behalf or on behalf of others. Many such submissions were received more than once but we have endeavoured to eliminate any double counting from the final total.

398 Submissions received advocated retention of the Order in its current form.

153 submissions advocated removal of the Order, 7 suggested amendments and 3 raised other issues.

The vast bulk of submissions (246 in total – 44% of all submissions received) were from symbol/independent traders and all argued for retention. 123 other submissions were received from trade representatives including wholesalers, suppliers, producer interests and one multiple retailer.

180 submissions were received from members of the public. Most of these supported repeal of the Order.

We received 3 submissions from the legal representatives of unspecified producer interests who wished to remain anonymous.

The Public Consultation Process was a written process. Therefore we have not conducted any interviews with individual parties. In a small number of cases, we sought oral clarification from individuals and organisations making

submissions to be sure that we properly understood the arguments being made. We also participated in meetings with a small number of organisations before the finalisation of this Report. These meetings were held at the request of the parties concerned.

The Report that Follows

The Report that follows is based upon the evaluation and assessment made by the Department of Enterprise, Trade & Employment of all submissions received. It is also based upon our own research and examination of the issues involved.

In the course of a Report of this kind it is not possible to refer to each individual submission and our approach has been to assess the overall merits of the arguments made. However, all submissions have been read and evaluated and the views of all parties taken into account.

This process resulted from the Report of the Consumer Strategy Group, *“Make Consumers Count.”* While we have borne the contents of that Report in mind at all times, we have not attached any particular weight to its findings. We acknowledge that a number of submissions received were critical of the Report and its findings.

We feel obliged to draw attention to the submission received from the Competition Authority. The Authority is a statutory body operating under the aegis of this Department. Under Section 30 (1) (c) of the Competition Act, 2002 the Authority has the following function:

“To advise the Government, Ministers of the Government and Ministers of State concerning the implications for competition in markets for goods and services of proposals for legislation (including any instruments to be made under any enactment);”

The Authority’s submission contains advice to the Minister in regard to the issue at hand in fulfilment of this statutory remit. In the circumstances, our view is that the submission should stand part of this Report. A copy of the submission is attached at Appendix Four.

Structure of the Report

The Report is divided into five parts as follows:

Part One: Foreword and Executive Summary

Part Two Background to the Groceries Orders

Part Three Impact of the 1987 Order

Part Four Conclusions & Recommendations

Part Five Appendices

Acknowledgements

The Department of Enterprise, Trade & Employment wishes to thank all those who have made submissions in this matter.

We wish to thank in particular Patrick Paul Walsh, Dean of the Faculty of Social and Human Sciences at Trinity College, Dublin for his help and assistance in evaluating and assessing the submissions received.

We would like to thank AC Nielsen who have supplied important statistical data on the structure of the grocery trade in Ireland. A special word of thanks also to staff of the Countryside Agency in the UK who were extremely patient in helping us interpret the data from their Rural Services Survey.

We also wish to thank all those who gave us permission to quote relevant source material.

The content, views, conclusions and recommendations set out in this Report are solely those of the Competition and Consumer Policy Section of the Department of Enterprise, Trade & Employment and of no other party.