

Submission by RGDATA to Business Regulation Forum

1. Introduction

RGDATA is the representative organisation for the independent retail grocery trade in Ireland. With in excess of 4,000 members, RGDATA members currently hold over 40% of the market share in the retail grocery sector. Members operate from a variety of different formats ranging from full service supermarkets to convenience stores. In many instances our members are associated with symbol groups such as Spar, Supervalu, Centra and Mace. In other cases members trade under their own name, but regardless of whether the retailer is a member of a symbol group or otherwise, they share the core feature that they own and operate their own businesses.

This independence can manifest itself in making key decisions about buying preferences from particular suppliers or wholesalers, or alternatively in switching their allegiance between symbol groups.

Our members' sector is also one that is labour intensive, with few even small sized shops employing less than 10 people. As a sector, the independent retail grocers of Ireland employ in excess of 50,000 people.

In terms of the products stocked and sold at shops, there are many of the main staple items that form part of a consumers grocery basket, including fresh and frozen foodstuffs, dry goods, household necessities, intoxicating liquors and an increasing range of non grocery products. In addition there is an increasing feature of "food to go" with most of our members now having some form of deli / hot food counter.

It is a sector that is driven by a need to constantly innovate and compete. It is also a sector that is rooted deeply in local communities, with a close association with the particular areas within which the members operate.

In this submission RGDATA will identify a number of areas where either current or existing regulations are having disproportionate impacts on our members. The perception of how the RGDATA membership view regulation is best summarised by a comment from one retailer who said that one of the reasons he wanted to be a grocer was because of the interaction with people on the shop floor. However, increasing regulatory burdens has meant that they are spending more time in the office than the shop floor.

There are a number of general comments in relation to regulatory intervention in the market which RGDATA believes this group should address in the context of its work. These will be summarised as follows:

2. Inconsistent Application of Regulations

At present independent retailers must deal with a host of regulations and regulatory authorities on issues as diverse as waste management, employment rights, hygiene and cleanliness and liquor licensing. Across all of these areas, a common concern expressed by our members is the inconsistent application of the same set of regulations by regulatory authorities. This is perhaps best manifested in the whole area of hygiene, where different environmental health officers have an entirely different approach to the enforcement of hygiene standards and regulations as they apply to retail grocery stores. This can mean that a practice or procedure that is acceptable to one environmental health officer is entirely unacceptable to another health officer. This is a cause of considerable confusion, concern and ultimately expense to independent retailers in

circumstances where the practices that they adopt are in line with “a best practice”.

3. Disproportionate Regulatory Intervention

There are also circumstances, particularly at wholesale level in the trade, where regulatory intervention in the market is disproportionate to any supposed benefit deriving to the public. For example, the Irish Medicines Board carries out inspections of wholesalers in relation to the storage of analgesics (anadin / paracetamol, etc). In many instances the requirements that the Irish Medicines Board is stipulating for the storage of these common analgesics seems entirely unnecessary and over the top. There are unusual regulatory requirements outlined concerning the temperature of storage, the facilities required for storage and related practices that are entirely unnecessary and disproportionate to the level of care and control required for stocking and sale to retailers of common and harmless analgesics.

In other circumstances concerning the sale of analgesics by retailers to members of the public, there are regulations stipulated that ostensibly exist for public safety reasons. These regulations, again enforced by the Irish Medicines Board, limit the pack sizes that grocery retailers can sell of specific analgesics, with a view to preventing accidental or intentional overdosing on these analgesics. RGDATA has long contended that this regulation is excessive and fails to recognise the lax controls that exist in many pharmacies for the supply and sale of analgesics. It also ignores the folly that one can simply go from shop to shop, or pharmacy to pharmacy collecting packets of analgesics for the purposes of any intentional harm and all the regulations succeed in doing is limiting the choice available to consumers without any clear and obvious public benefit.

4. Unnecessary Regulation

There are a number of instances that RGDATA is aware where regulations have been introduced or are proposed, which will have the effect of increasing the regulatory burden on retailers in circumstances where the justification for the additional burden has not been clearly shown.

One significant example is the proposal by the Minister for Justice, Equality & Law Reform, Micheal McDowell TD, to compel all retailers seeking a wine licence, to make a court application to secure this licence. At present any retailer wishing to sell wine, and most sell a limited range of wine, need only apply to the Revenue Commissioner's for a certificate to entitle them to sell wine. Clearly if a retailer wishes to sell beer or spirits in addition to wine, they must go through a complex procedure to acquire a full "off licence" for their premises. However for the bulk of retailers they are happy just to carry a number of bottles of wine for customers, which increases customer choice, adds to competition and provides a service to consumers.

The proposals by the Minister to oblige retailers with "wine only" licences to seek court permission for granting such a licence does seem disproportionate to any public benefit that might accrue, given the nature of the products that are sold under wine licences. It is an additional burden involving significant legal costs and delay that has not been shown to deliver any defined benefit for the public.

5. Complex Regulation

There are a number of regulations affecting retailers that are complex, both in terms of the nature of the requirements that they must meet, but also the scale and level of regulatory intervention across particular areas.

One area where retailers encounter difficulties is the whole area of employment law. In circumstances where you have a labour intensive business and a myriad of other requirements to meet in terms of hygiene, tax, consumer law, security and other concerns, keeping abreast in changes to employment legislation, whether in terms of maternity leave, paternity leave, working hours, or the employment of people under 18, presents enormous difficulties for smaller retailers. They do not have the monitoring systems or supports to enable them to keep abreast of the significant changes in employment law, which of themselves carry additional cost implications.

Given the impact of these changes for retailers and the consequences of making mistakes, there is an urgent need for a system to be adopted which advises employers, particularly in small and medium sized enterprises, at a central level of significant changes in employment laws and practices. This should be done in an easy, accessible and understandable manner.

6. Bureaucratic Procedures

There are also some circumstances where statutory agencies adopt procedures that are far too bureaucratic which prevent RGDATA members from availing of services that these organisations were set up to provide. A key example relates to FAS, where the procedures established for the accreditation of training courses are both cumbersome, time consuming and ultimately unproductive. For example, in order for a course run by RGDATA to secure FAS funding, which is a key element in terms of making it affordable for members, one requirement from FAS is that the course should be at least three days long. This ignores that in many instances, it's possible to provide retailers with training on particular topics in much less than three days and secondly that it is often difficult for retailers to

leave their shops for an extended period in circumstances where they are so hands on.

RGDATA believes that much can be done in training over one day and that this is a reasonable period to expect retailers to be away from their businesses to learn more about the core areas of operations.

In this instance legislation is not required to deliver regulatory reform – merely a more enlightened approach by a state entity that recognises the needs and requirements of the customers that they serve.

7. Additional Regulatory Burdens

RGDATA believes that it is important that in the context of any new regulatory proposals that could affect a retailer, or any other business person, that the impact of those regulations is very carefully assessed under regulatory impact assessments to determine the necessity for the regulation, its proportionality and its effectiveness.

There is one proposed regulation of concern to RGDATA at present which is being advanced by the Department of Environment, Heritage & Local Government. In that instance the Department is proposing to change a “de minimus” threshold which currently exempts large numbers of smaller retailers from an obligation to become members of Repak.

At present many retailers spend considerable sums of money on segregating waste for back door collection. In this context they are playing a significant role in helping to reduce waste and assist recycling. However the Department is considering a request by Repak to introduce new regulations to remove the de minimus threshold, so that all retailers will be obliged to become members of

Repak. This will involve retailers incurring an additional cost and administrative burden, which will not be directly linked to any benefit, or take any recognition of the absence of any role they play in the generation of waste. In many other EU member states retailers “as producers of last resort” are exempt from regulations because they have no control or influence over the packaging materials used by suppliers for products sold in their shops.

We believe that a regulatory impact assessment of these draft regulations will be an acid test of the Government’s commitment to reduce the regulatory burden on the small business sector that we represent.

8. Regulation stifling enterprise and initiative

Many independent retail grocers provide the first route to market for local food suppliers in their area – this is significant in the context of the centralised buying operations of many of the larger multiple groups, which can exclude smaller suppliers who cannot supply to scale. Regrettably many new food safety initiatives are seriously limiting the flexibility for local retailers to support local businesses by imposing ridiculously strict obligations and criteria on suppliers. There is undoubtedly scope for some of the existing measures to be relaxed in circumstances where they are either disproportionate or misjudged. It would be a shame if thousands of artisan producers were deprived of an opportunity to sell their goods to local markets because of unnecessarily severe regulatory restrictions.

9. Welcome Initiatives

RGDATA welcomes the recent decision by the Minister for Trade & Commerce, Michael Ahern TD, to increase the audit exemption level. This will reduce the

regulatory burden of the significant compliance cost on retailers represented by RGDATA and is both to be welcomed and applauded.

RGDATA also welcomes the recent announcement by the Minister for Enterprise, Trade & Employment that he is considering measures to reduce regulation in the economy and in particular notes the experience in the Netherlands where the Dutch Government focused on the reduction of the regulatory burden on businesses and consumers by a defined percentage over a specified period.

In this regard RGDATA believes that there should be a more co-ordinated and focused approach by regulatory authorities and the departments involved in the implementation of regulations, to see the extent to which regulatory intervention can be reduced and where regulations that duplicate or are unnecessarily complex can be removed.

RGDATA hopes that the output of the Business Regulation Forum will be to lead to the identification of tangible measures that can be taken across government departments and regulatory authorities to reduce the regulatory burden on businesses and help to secure the achievement of a competitive, dynamic and innovative economy.

RGDATA would be happy to expand on any aspect of this submission.

25th May 2006