CONSUMER PROTECTION ACT 2007
(GROCERY GOODS UNDERTAKINGS)
REGULATIONS 2016
S.I. No. 35 OF 2016

Regulatory Impact Analysis
1. Introduction

The Programme for Government 2011\(^1\) contained a commitment to regulate certain practices in the grocery goods sector. The regulations being signed into law (the Consumer Protection Act 2007 (Grocery Goods Undertakings) Regulations 2016 (S.I. No. 35 of 2016) give effect to that commitment and are made under the powers given to the Minister for Jobs, Enterprise and Innovation by Section 63B of the Consumer Protection Act 2007 (as inserted by the Competition and Consumer Protection Act 2014\(^2\)) following a public consultation process.

The initial set of regulations will apply to commercial relationships between retailers/wholesalers and their direct suppliers so far as these relate to the sale or supply of food and drink products.

2. Background at Irish level

The issue of alleged unfair practices in the grocery goods sector is one which has been in existence for a number of years.

The Competition (Amendment) Act 2006 introduced provisions to prohibit certain activities in the grocery goods sector which prevent, restrict or distort competition. This Act makes certain practices illegal if they have an anti-competitive purpose or effect. These practices include compelling or coercing payment, or granting of allowance, for the advertising or display of grocery goods, or a retailer compelling or coercing payment for providing space for grocery goods within a new retail outlet, a newly expanded outlet, or an outlet under new ownership, within 60 days after the opening of the outlet. However, no prosecutions were taken under this Act, due, anecdotally, to the fear of suppliers to make formal complaints for fear of retribution from retailers (including possible delisting).

In autumn 2009, a public consultation process on the issue of exploring the possibility to introduce a Code of Practice for the grocery goods sector was undertaken under the guidance of independent facilitator, John Travers\(^3\). A wide range of views and opinions were expressed as part of that process, with efforts being made to see if all relevant parties in the sector might agree to the introduction of a voluntary Code of Practice. Ultimately this was unsuccessful, and to tackle the issue of such alleged unfair practices in the grocery goods sector, the Programme for Government 2011 included a commitment to regulate certain practices in the grocery goods sector.


In parallel with the above-cited process, a report was issued by the Joint Oireachtas Committee on Enterprise, Trade and Employment in 2010 on supplier-retailer relationships in the Irish grocery market\. This called, inter alia, for action on the issue of such relationships.

Many of the issues raised in the 2010 report also featured in the 2013 report on the grocery goods sector which was published by the Joint Oireachtas Committee on Agriculture, Food and the Marine\. In this report, the Joint Oireachtas Committee made 13 recommendations which sought to rebalance the commercial relationships between the large multiple grocery retailers and their direct suppliers. The Committee concluded that there was a need for a statutory code predominantly because it would be more effective than a voluntary code. The Committee observed that a statutory code with fewer provisions with legal sanctions would be more beneficial than a voluntary code with more provisions, predominantly because the statutory code would be enforceable by law. The report noted initially there may well be an administrative and cost burden associated with the implementation of a statutory code of conduct but it was convinced that the long term benefits would far outweigh the initial short term costs. The Committee indicated that it firmly believed that rules based regulation was necessary as opposed to principles based regulation. It stressed that what was required was a new enforceable code that would work in harmony with EU law but they believed that the EU voluntary code would not be sufficient to address current imbalances: in that context, it encouraged efforts at EU level to create a statutory code of conduct ensuring a fair distribution of profits between the producer, processor, distributor and retailer. The Committee urged the Government to bring forward the Competition and Consumer Bill which was to introduce a statutory code of conduct for the grocery goods sector.

In March 2014, the Competition and Consumer Protection Bill 2014 was published which contained enabling provisions for the Minister for Jobs, Enterprise and Innovation to introduce regulations to regulate certain practices in the grocery goods sector. This Bill was signed into law in July 2014 and came into force on 31 October 2014.

In December 2014, the Minister issued a set of draft regulations for public consultation and 21 submissions were received by the end of March 2015 from interested stakeholders. The regulations now being introduced follow consideration of the results of that public consultation process.

--


3. **Developments at international level**

Three specific instances of developments at international level have been examined: these were in the UK, at EU level and, most recently, in Australia. Details of their main characteristics are set out at Appendix I.

4. **Main features of the Irish regulations being introduced.**

The Irish regulations set out a range of legal requirements that will apply to commercial relationships between retailers/wholesalers and their direct suppliers in so far as these relate to the sale or supply of food and drink products. In this context, only retailers and wholesalers with an annual turnover of over €50 million will be covered by the regulations.

All the formal compliance requirements in the regulations fall on these retailers and wholesalers. As the regulations are aimed at assisting the “weaker” party (viz. the suppliers), the latter have no compliance requirements under the regulations. However, it should be recalled that there will be regulatory requirements and burdens on all parties to the relationships, including suppliers.

Public enforcement will be carried out by the Competition and Consumer Protection Commission (CCPC) while private action is also possible.

The legal requirements in the regulations contain, *inter alia*, provisions relating to:

- Contracts having to be in written format;
- Variations only being allowed with agreement of all parties;
- Payment terms and conditions;
- Shelf-space allocation;
- Forecasts;
- Promotions;
- Marketing costs;
- Advertising; and
- Tying to third parties.

On the issue of formal compliance requirements for relevant retailers and wholesalers, the regulations contain, *inter alia*, provisions relating to:

- Submission of an annual compliance report;
- Designation and training of staff; and
- Maintenance of records.

5. **Cost/Benefit analysis**

In view of the Government’s commitment to regulate certain practices in the grocery goods sector, identification and quantification of alternative options will not be pursued in this RIA. Instead, the focus will be on analysing the possible costs, benefits and outcomes which are likely to emerge from the implementation of the Government’s declared policy commitment only.
Costs

As part of the public consultation process, stakeholders were invited to supply an estimate of the likely cost in meeting the regulatory and compliance provisions of the proposed Regulations (as circulated in the consultation process) e.g. in terms of the provision of training, maintenance of records, compliance reports, legal advice, responding to disputes, responding to enforcement audits, etc. The response to this was patchy with no suppliers providing any information.

Overall, costs are considered to fall into three broad categories:

- Costs associated with meeting the specific requirements of the regulations (e.g. ensuring all contracts are written, etc.);
- Costs associated with the formal compliance provisions of the regulations;
- Indirect costs to other stakeholders (e.g. consumers).

(a) Costs associated with meeting the specific requirements of the regulations (e.g. ensuring all contracts are written, etc.).

All parties to the commercial relationships will incur additional costs to varying degrees. For retailers and wholesalers, these will be determined by the number and size of suppliers they deal directly with, the range of products they buy and resell, their internal purchasing systems, the geographical origin of their supplies, the number of outlets concerned, etc. For example, a retailer with a small product range and/or a small number of suppliers will probably have lower additional costs than another retailer with a very large range of products and a very large pool of suppliers in the context of agreeing written contracts (including associated legal costs). Equally, every supplier will incur some additional expense in having, for example, to incur legal costs associated with written contracts. Adaptation to the new regulatory requirements will arguably be at its most costly in the initial phase as new forms of contracts, etc. are drawn-up and familiarity with the new regulatory regime becomes embedded in the sector.

(b) Costs associated with the formal compliance provisions of the regulations.

As the regulations only provide for formal compliance requirements for retailers and wholesalers, and not for suppliers, the costs will only fall on the former two categories. Once again, these will vary according to a number of issues including the number of personnel required to be trained, whether additional staff need to be employed to meet the requirements, possible storage issues relating to maintenance of records, sophistication of their IT systems, etc. A retailer with a smaller number of outlets, which can allocate tasks onto existing staff, might expect lower compliance costs than a retailer with a large number of stores which requires additional staff to be employed. Those retailers who operate in both the UK and Ireland, and which are currently subject to the UK Grocery Sector Code of Practice (GSCOP) may benefit from the structures they already have in place for the latter, thereby reducing the additional cost associated with the analogous (but not identical) Irish situation. Many of the compliance costs would be front-ended where new staff, training and structures are being put in place with annual ongoing costs thereafter. Thus, initial feedback on costs may not be indicative of annual costs thereafter.
(c) **Indirect costs to other stakeholders (e.g. consumers)**

As the parties to the commercial relationships will incur additional costs, there may be subsequent indirect costs to other stakeholders. Retailers/wholesalers may pass on the additional costs either in the form of higher prices to consumers or lower prices paid to suppliers. As a result, consumers might amend their buying patterns and, depending on exchange rates, divert their purchasing to Northern Ireland. Suppliers might go out of business as a result or reduce the prices paid to producers.

In addition, retailers or wholesalers might switch their supply-chain to source their goods outside of the State as part of their international purchasing chain (with commensurate cost efficiencies) thereby by-passing Irish suppliers with possible ensuing job losses at the latter.

Finally, with the assignment of this additional enforcement function to the CCPC, extra resources have been requested to carry out this task: in the interim, while a decision is being considered on this request, an opportunity cost is being paid by the CCPC as it diverts existing resources to this function from other areas.

(d) **Quantification of costs**

As noted earlier, in December 2014, the Department invited stakeholders to furnish their views and suggestions on draft grocery goods regulations which were published by the Minister in December 2014. No suppliers submitted estimates and those submissions which did provide an estimate of the cost of compliance for their organisations produced a very wide possible range.

Those submissions indicated that such costs could run from hundreds of thousands of Euros to an estimate of over €10 million *per annum* for all retailers/wholesalers. Others who furnished an estimate of their compliance overheads did so solely on the basis that their information should be treated as strictly commercially sensitive and asked that the Department not disclose it to any third party or in any publication that the Department might prepare concerning the implementation of the regulations. Thus, there is a lack of meaningful data on which to make a meaningful objective calculation. However, even allowing for some subjectivity in the estimates supplied by the retail/wholesale side (which has traditionally opposed the introduction of any such measures), for the purposes of this exercise, this figure of €10 million *per annum* is taken on face value to represent the total annual cost for retailers/wholesalers.

On that basis, and if the total annual cost to retailers/wholesalers did amount to over €10 million, this is only 0.11% of the total value of the Irish grocery retail trade (based on research published by Bord Bia\(^6\) in 2014 which showed that the Irish grocery retail market was valued at over €8.9 billion). That research also showed that the average grocery-

\(^6\) **ROI Grocery Market Review – Data to 5\(^{th}\) January 2014** - Kantar WorldPanel
http://www.bordbia.ie/industry/events/SpeakerPresentations/2014/Pages/SmallBusinessOpenDay-Jan2014.aspx

spend per household stood at approximately €5,500 *per annum*: if the total costs were passed on to consumers, using the same percentage level, this would see consumer spend raise by €5.66 *per annum.*
However, there will also be some (albeit smaller) costs for suppliers in relation to the regulatory requirements in the regulations. No supplier submitted any indications of cost in the public consultation process. Thus, it is not clear what the quantum of any such costs might be (or even an indicative range thereof). If one assumes that, for retailers and wholesalers, that the estimated total costs are split 50:50 between regulatory and compliance costs, then the cost of the regulatory aspect would be a notional €5 million per annum.

For the purposes of this exercise, if one assumes that the regulatory costs to suppliers is the same as that for retailers/wholesalers, using this notional figure of €5 million would see an overall cost of €15 million per annum. Translating that into a percentage of the overall value of the retail grocery trade would see a 0.17% figure, which if applied to the average household spend, would result in an annual increase of €9.35.

In light of the lack of firm data for Ireland, it is also worth comparing the estimates of the cost to retailers in the UK with respect to their Grocery Supply Code of Practice (GSCOP) (see Appendix I for more detail).

According to Kantar WorldPanel data for 2015, the 10 UK supermarket retailers designated under the GSCOP control in excess of 95% of the UK’s supermarket trade which is reported to be worth in excess of £177 billion Sterling and which is directly supplied by well over 10,000 suppliers. Numerically, the value of the UK grocery goods sector is approximately 36 times the size of the Irish grocery goods sector (allowing for the prevailing rate of exchange between the £ Sterling and €). The estimated cost for the 10 retailers covered by the GSCOP was £1 million Sterling total initial costs, c. £1.7 million Sterling annual costs and £1.1 million Sterling levy from retailers to fund the Office of the Grocery Adjudicator. This gives a total of £3.8 million Sterling (c. €5.2 million at current exchange rates).

While it is accepted that costs associated with a Code of Practice and formal regulations are not necessarily directly comparable, a number of comments can be made. Many of the provisions in the Irish regulations are replicated in the GSCOP: thus some retailers operating in both jurisdictions will already have encountered some of the requirements already. Secondly, the UK grocery sector is much bigger than the Irish situation. Thus, it is difficult to explain the great difference between the sets of figures. Even if one uses only the supplied estimated retailer/wholesaler figure for Ireland of €10 million per annum, this is almost twice the overall cost for the UK retailers which have a much larger sector. It should also not be forgotten that the UK figure includes the levy on retailers each year, a situation which does not occur in Ireland.

The recent introduction of a code in Australia also cited some illustrative estimates of compliance costs (see Appendix I for more detail). These place costs at a relatively low average level with an initial start-up compliance cost for business of c. $61,500 AUS and an annual cost of c. $1,500 AUS per business (a total of $63,000 AUS or c. €39,900 per business in the first year of the code). Once again, even allowing for the fact that the Australian situation refers to a code and not regulations, the difference in quantum for costs is quite striking.

Thus, while it may be that the estimates supplied to the Department in relation to the domestic Irish market are somewhat high, for the purposes of this exercise, they are taken at face value as being the upper limit that one could reasonably expect to see. In reality, they may turn out to be lower than this upper range.
Benefits

These regulations will deliver on the commitment in the Programme for Government to regulate certain practices in the grocery goods sector, aimed at tackling alleged unfair practices in the commercial relationships in that sector. The regulation of certain practices in the grocery goods sector is intended to achieve a balance between the various players in the grocery goods sector, taking into account the interests of all stakeholders in the grocery goods sector including the interests of the consumer and the need to ensure that there is no impediment to the passing on of lower prices to consumers.

Should these regulations result in the termination of such alleged practices, then the main outcomes include the following:

- introduction of greater balance in the commercial relationships between retailers/wholesalers and their direct suppliers in the grocery goods sector;
- offer greater certainty and continuity when direct suppliers to retailers/wholesalers are making investment and production decisions;
- removal of unilateral demands for payments from suppliers and more timely payments to those suppliers;
- any retailer/wholesaler will not be able to gain unfair competitive advantage over another retailer/wholesaler by treating its suppliers in a commercially less favourable way than its competitors;
- greater openness and transparency in the way grocery goods contracts are negotiated and agreed in future;
- an effective enforcement mechanism through which allegations of unfair practices can be made by a supplier.

Many of the above outcomes depend on individual circumstances and there has been no information supplied by suppliers as to their perceived monetary benefits from the introduction of the regulations.

Summary

The costs and benefits associated with the introduction of these regulations is summarised in a tabular format at Appendix II.

6. Review

The effect and impact of the regulations on specified undertakings in the grocery goods sector will be kept under review by the Department of Jobs, Enterprise and Innovation as well as their extension to other classes of grocery goods and other prescribed undertakings in the grocery goods sector in the light of practical experiences with the operation of the initial set of regulations.
7. **Performance Indicators**

The high level outputs and outcomes which are likely to emerge from the implementation of the regulations will act as performance indicators. They are as follows:

i. Greater transparency in the operation of the grocery goods sector.

ii. Greater legal certainty and clarity for direct suppliers when they need to make investment and production decisions necessitated by the execution of their obligations in their grocery goods contracts.

8. **Impact of the decision to introduce the regulations.**

*National competitiveness*

Any increase in costs to consumers that might result from the introduction of the regulations would be expected to produce some inflationary pressures, which would not be in the interests of national competitiveness. However, Section 63B (1) (b) of the Act of 2007 as inserted by the Competition and Consumer Protection Act 2014 prompts the Minister’s consideration of the interests of consumers of grocery goods, in particular in relation to quality, value for money and access to choice. Finally, such regulation might also make the sourcing of goods from outside of the State more cost effective for retailers/wholesalers, thereby impacting on Irish-based suppliers with knock-on effects for their viability, competitiveness and employment creation potential.

*Socially excluded or Vulnerable Groups*

Given the expected additional compliance burden resulting from the introduction of any regulation of certain practices in the grocery goods sector, increased prices for consumers may result in retailers and wholesalers trying to recoup the costs incurred by them in meeting increased regulatory or compliance requirements. If consumer purchasing power in the State is reduced, it is likely to have a greater impact on Socially Excluded or Vulnerable Groups than other groups in society. However, if the introduction of regulation of certain practices in the grocery goods sector results in higher prices for producers and suppliers of food and drink products, then some elements of those Vulnerable groups (such as farmers/growers) may benefit from increased income at the expense of other consumers.

*Environment*

The regulations are not expected to have any positive or negative impacts on the environment.

*Significant Policy changes in an economic market/ impact on consumers and competition*

The introduction of regulations to regulate certain practices in the grocery goods sector will see the State setting out terms for inclusion in contracts between retailers/wholesalers and
their suppliers. This will have an impact on the way in which business in the grocery goods sector is conducted in the State. It will also have implications for all elements of the chain, from producer to consumer, details of which are set out in other headings in this section (viz. National Competitiveness, Socially Excluded or Vulnerable Groups, Compliance Burden, Rights of Citizens, North-South & East-West Relations).

Rights of Citizens

Given the expected additional regulatory and compliance burden resulting from the introduction of regulation of certain practices in the grocery goods sector, increased prices for consumers may result in order for retailers and wholesalers to pay for the costs of increased compliance requirements. Thus the purchasing power of the consumer in the State may be reduced somewhat.

Compliance Burden

The regulation of certain practices in the grocery goods sector is expected to result in extra regulatory and compliance burden for retailers and wholesalers in the grocery goods sector and their direct suppliers. While it is not possible to monetise exactly the projected costs of an increase in the compliance burden, an indicative Cost/Benefit analysis is furnished earlier in this document on the possible level of costs that will have to be addressed with the entry into force of the regulations.

North-South and East-West relations

As noted earlier, the purchasing power of the consumer in the State may be reduced somewhat on account of possible price rises to offset increased compliance costs for retailers/wholesalers and their direct suppliers. This may encourage some consumers to seek greater value in the market including shopping more in Northern Ireland when currency fluctuations encourage the flow of trade in that direction.
Appendix I

Developments at international level.

UK

The UK authorities established the Office of Grocery Code Adjudicator (GCA) in 2013 to oversee operation of the Grocery Supply Code of Practice (GSCOP) which was introduced by the UK Government in 2010. The Adjudicator operates on a part time basis and is supported by a handful of staff as a business unit within the Department of Business, Innovation and Skills (BIS). The UK Code applies to 10 designated large grocery goods retailers who operate in Great Britain. Four of the 10 designated supermarket chains currently have grocery goods operations in the Republic of Ireland (Tesco UK; Aldi Store UK; Lidl UK and Marks & Spencer’s UK).

The rationale for the creation of the GCA followed an investigation by the Competition Commission (CC) into the groceries sector in 2008. The Competition Commission found that while the sector was broadly competitive, large retailers were transferring excessive risk and unexpected costs to their direct suppliers. It considered that such practices could discourage suppliers from investing in quality and innovation; small business could fail and ultimately, there could be potential disadvantage to consumers. In addition to its oversight role for the GSCOP, the Adjudicator also conducts mediation and arbitration sessions concerning commercial disputes between designated retailers and their suppliers who complain of unfair treatment at the hands of the former. The Code also brought with it an obligation on the designated retailers to appoint a code compliance officer for each of their organisations and self-report possible breaches of the Code to the GCA.

In preparation for the establishment of Adjudicator’s office, the UK authorities published an Impact Assessment in 2011. In it, BIS stated that the CC estimated the upfront costs to retailers of establishing the GSCOP to be approximately £1 million Sterling, which comprised training and legal costs, as well as redrafting terms and conditions of grocery goods contracts. This estimate was based on data supplied by the Office of Fair Trading (OFT) who commissioned audits of the (previous) Supermarket Code of Practice (SCOP) and costs reported by Tesco and Asda of introducing the existing SCOP. The Impact Assessment states that the ongoing annual cost associated with compliance with the GSCOP was estimated by the CC to be approximately £168,000 Sterling per retailer. This cost included the following provisions: regular training; code compliance management time; internal audit compliance; external legal advice; answering queries and responding to disputes from named complainants (the latter of which is estimated to account for approximately £0.7 million Sterling of the ongoing cumulative cost for the 10 designated retailers under the UK GSCOP. Aggregated across these 10 retailers, the total ongoing cost for operating the GSCOP by the 10 designated retailers was estimated at approximately £1.7 million Sterling per annum. Research carried out by this Department in the course of this RIA exercise into the actual level of costs incurred by the 10 designated retailers since the GCA was established proved incomplete as these retailers do not break out their individual compliance costs and overheads for the GSCOP within their annual accounts.

The Adjudicator’s office is funded by a levy on the designated retailers. This takes two forms: (i) a general levy on the 10 designated supermarkets; and (ii) recovery of costs of arbitration undertaken, and of those investigations where one or more retailers are found to
have breached the GSCOP. In the financial year 2015/2016, the Secretary of State for BIS approved the levy for the GCA at £1.1 million Sterling, as compared with £800,000 Sterling for 2014/2015.

This levy is miniscule as a proportion of the retailers’ annual turnover and it is applied to their gross annual turnover in the UK. Even averaging the total levy income across the 10 designated retailers, their annual liability for the levy would amount to approximately £110,000 Sterling. UK retailers remain publicly tight lipped about how much their individual contribution to the Adjudicator is under the levy and how much internal costs they incur through putting in place Code compliance regimens, dedicated staffing and training/re-training programmes to keep their organisation up to speed with the changing culture for compliance with the Code. Needless to say, none of the 10 retailers break out these compliance costs in their annual accounts for their UK operations.

EU

At EU level, the role of the various players in the food industry and the interaction between them has also been the subject of discussion and concern at European level. Specifically, on foot of the spike in food prices in 2007/2008, the European Commission set up a task force to examine the functioning of the European food supply chain. The Commission, in a communication issued in December 2008, set out a roadmap for a pro-active monitoring of the food supply chain and for a vigorous and coherent enforcement of competition rules on food markets by the EU Commission and National Competition Authorities. Since the issuing of its communication, the Commission has been engaged in an intensive dialogue with the various stakeholders in the food sector and also with the National Competition Authorities of Member States.

In a Commission Staff Working Document issued on 28th October 2009, the EU Commission set out its conclusions following on from this dialogue. The document considered a number of issues in relation to practices in the European food supply chain, including retail-driven practices, supplier-driven practices and other practices linked to unfair trade. The document noted that in the area of “unequal bargaining power”, a number of Member States (e.g. Austria, Belgium, France, Portugal, Slovakia) had promulgated unfair trading practices laws aimed at subduing the behaviour of the “powerful contracting party” and that a number of others (e.g. Czech Republic, Hungary, Lithuania, Portugal, Romania, Slovakia, Spain, UK) had adopted or envisaged adopting codes of practice establishing a set of rules in the transactions between large retailers and their suppliers. The document further noted that in the absence of proven contractual harm, it is not the aim of European competition rules to interfere in the bargain struck between contractual parties and that considerations related to fairness concepts should be tackled, if necessary, by national and possibly EU regulators on the basis of social interests, innovation and competitiveness of the EU food supply chain on world markets.

Arising from the communication, the Commission established a High Level Forum for a Better Functioning Food Supply Chain to examine further fair/unfair practices along the food supply chain. The Forum, which is a multi-stakeholder body, has come forward with a number of initiatives to address particular issues in the supply chain (the “Supply Chain Initiative”). In this regard, the Forum agreed a set of principles which should apply to all contractual relations between stakeholders in the supply chain without undermining competition in business relations. However, not all stakeholders agreed to participate in a
voluntary code based on these principles and work will now continue in the matter. Nonetheless, some stakeholders have agreed to participate in a voluntary arrangement based on the aforementioned principles since 2013.

As a parallel official response to the above, the EU Commission adopted a Green Paper on Unfair Commercial Trading Practices in the Business to Business (B2B) food and non-food supply chain in Europe: this is one of the 11 specific actions set out in the EU Commission’s communication “Setting up a European retail action plan” which is aimed at addressing the needs of the retail sector. The communication and the Green Paper were both published on 31 January 2013.

The Green Paper is concerned with the problems posed by unfair trading practices in B2B relationships along the food and non-food supply chain, including the lack of efficient enforcement of existing national rules and the resulting impact on the Single Market. The Green Paper makes an initial assessment of the aforementioned problems and sets out details of types of unfair trading practices which may have the effect of transferring costs and risks to weaker parties in B2B relationships thus reducing the capacity of those parties to invest and innovate. At the macro level, the Green Paper argues that the existence of Unfair Trading Practices (UTPs) may have a negative effect on cross-border trade and hinder the proper functioning of the Single Market. The UTPs listed in the Green Paper have been based on the principles and examples of fair and unfair practices in vertical relations in the food supply chain as highlighted by the High Level Forum for a Better Functioning Food Supply Chain and by work carried out by the European Commission in the B2B food and non-food supply chains.

The public consultation launched by the Green Paper was intended to allow the Commission to gather evidence on the effect of UTPs on the European economy. To that end, the Paper posed a series of questions to assess the magnitude of UTPs and to examine the effectiveness of national self-regulatory and legislative frameworks in addressing the problems of UTPs and whether action should be taken at EU level in this area. The Commission has advised that following analysis of the responses to the Green Paper, it will announce the next steps it intends to take by way of follow up, if any.

The EU Commission published its communication on UTPs in July 2014 and concluded that it will monitor and assess the progress made by evaluating (i) the actual impact of the Supply Chain Initiative and its national platforms and (ii) the enforcement mechanisms set up by Member States to increase all parties’ trust and confidence in the proper functioning of a sustainable food supply chain.

The EU Commission did not foresee regulatory action at EU level and it did not prescribe a single solution to address the issue of UTPs, but rather encouraged stakeholders and Member States to tackle UTPs in an appropriate and proportionate manner, taking into account national circumstances and best practice. A number of surveys show that UTPs occur relatively frequently, at least in some parts of the supply chain. An EU wide survey undertaken on behalf of industry organisations in 2011 among suppliers in the food chain highlighted that 96% of the respondents said they had already been subject to at least one form of UTP. Of those that said they had suffered some form of UTP, 83% of respondents reported that UTPs had increased their costs while 77% stated that UTPs reduced their revenues.

The communication recommends that by supplementing the Supply Chain Initiative with independent enforcement measures, in those Member States where such measures do not currently exist, would increase the effectiveness of the initiative and would appear to remove
the main reason for which certain stakeholder groups have not joined the framework of the Supply Chain Initiative.

As a means of finding an effective way forward to address the issues of UTPs in the food supply chain, the Commission recommended the following actions:

a) All undertakings and relevant organisations in the food supply chain encouraged to sign up to a voluntary initiative addressing UTPs (such as the Supply Chain Initiative) to show their commitment and build trust in the food supply chain.

b) Member States are encouraged to examine whether their current national regulatory framework is appropriate to address UTPs, taking into account best practice in other Member States.

c) Member States should encourage undertakings on their territory to join voluntary codes of conduct, both at national and EU level.

d) The Commission invites Member States to assess the effectiveness and credibility of their available mechanisms for the enforcement of rules against UTPs.

e) The Commission will continue to support the coordination between Member States by facilitating the exchange of information between the national enforcement mechanisms and,

f) In developing and applying enforcement measures, Member States should act proportionally, bearing in mind any impact for stakeholder and consumer welfare.

The Commission has undertaken to present a report to the Council of Ministers and the European Parliament at the end of 2015/early 2016. In light of this report, the Commission will decide whether further action should be taken at EU level to address UTPs in the Business to Business Food Supply Chain.

Australia

Earlier in 2015, the Australian authorities enacted legislation for the Food and Grocery sector under the Competition and Consumer Act 2010. The legal instrument titled “Competition and Consumer (Industry Codes – Food and Grocery) Regulations 2015” is intended to improve standards of business conduct in the food and grocery sector. The Regulations were issued in response to concerns raised in public debate in recent years about the conduct of retailers, particularly supermarkets, towards their suppliers and has arisen out of an industry led response to these concerns. In this sense, the code aims to regulate commercial relations between retailers and wholesalers, on the one hand, and their direct suppliers, on the other hand, to the extent that they are not regulated by other codes. This code binds a corporation, be they a supermarket retailer or wholesaler, to the terms of the code once they have agreed to be so bound and notified their agreement to this in writing to the Australian Competition and Consumer Commission (ACCC). The draft Code was brought forward on a self-regulatory basis by several of the large supermarket retailers (the Big 5) in Australia in a bid to tackle the poor perception of how the sector is believed to deal with small producers and suppliers, many of whom rely exclusively to make their living on the large supermarkets. Large supermarkets have the right to voluntarily ‘opt in’ to the Code and the option to ‘opt out’ again following a specified procedure, should they chose to do so.

The explanatory statement published in conjunction with the code, states that there is an estimated total average annual regulatory cost for all businesses associated with compliance with the prescribed code of $20,000 (AUS). This is the cost estimated to be borne by grocery retailers and wholesalers who are expected to agree to be bound by the code. Industry proponents have flagged that regulatory costs may need to be revisited in the mid-term as
they get a clearer idea of implementation requirements. This is likely to result in an increased compliance cost burden, which will require further update in consultation with the Office of Best Practice Regulation (Australia). Over the longer term, they state that it is considered that the estimated cost would be outweighed by the broader benefits deriving to the grocery sector from the improvement in standards of conduct if the code achieves its purpose.

To date, the five biggest grocery retailers in Australia have ‘opted in’ to the code. The Business Cost Calculator contained in the explanatory statement sets out the initial start-up cost of compliance per business affected at $61,384.67 (AUS). The ongoing compliance costs per year are estimated at $1,444.00 (AUS) per business. The Code will be monitored and enforced by the Australian Competition and Consumer Commission.
Options considered:

Option 1: Implement commitment in the “Programme for Government” to provide for such regulations.

Preferred Option: Option 1

<table>
<thead>
<tr>
<th>COSTS</th>
<th>BENEFITS</th>
<th>IMPACTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Additional implementation costs for both retailers/wholesalers and suppliers, and compliance costs for retailers/wholesalers in the grocery goods sector (<em>estimated at over €10 million per annum for retailers and wholesalers based on supplied figures</em>)</td>
<td>Balance in the relationship between the various players in the grocery goods sector</td>
<td>Greater transparency in the operations of the grocery goods sector</td>
</tr>
<tr>
<td>2. Possible increase in costs to consumers, which would impact particularly on socially excluded groups by reducing their purchasing power</td>
<td>Possible higher prices for primary producers (including some vulnerable groups like small farmers)</td>
<td>Possible small inflationary impact of higher prices for consumers, thereby impacting on national competitiveness</td>
</tr>
<tr>
<td>3. Possible job losses due to switching to non-Irish suppliers</td>
<td>Greater certainty for suppliers when making investment decisions</td>
<td>Possible higher prices in the State with the possible result in consumers doing more shopping in Northern Ireland</td>
</tr>
<tr>
<td>4. Additional resources for enforcing the regulations</td>
<td>More timely payments for suppliers</td>
<td>Retailers possibly sourcing more supplies from outside the State</td>
</tr>
</tbody>
</table>