



**SUBMISSION TO THE COMPETITION  
AUTHORITY**

**BY**

**FOOD AND DRINK INDUSTRY IRELAND**

**“Competition in Retail related  
Import/Distribution Sector”**

## **INTRODUCTION**

The Food and Drink Industry in Ireland (FDII) welcomes the opportunity to provide a submission to the Competition Authority (CA) as part of their consultation on “Competition in Retail related Import/Distribution Sector.”

At the outset, it’s important to state that the Competition Authority’s should investigate and highlight the gross and unfair demands placed on suppliers by certain retailers in the retail sector. These demands are above and beyond normal contractual negotiated terms, are often arbitrary and are often not translated into reduced prices for the consumer.

These demands fundamentally threaten the Irish supply base, a key part of the food and drinks sector that supports over 230,000 jobs in the economy. Over 2200 jobs in the sector have been lost since January. Industry estimates predict that job losses could surpass 10,000 easily within 2009.

We are disappointed that the Tánaiste’s reference to the European Commission’s call for consumer protection agencies to monitor potentially unfair commercial practices in the food sector do not appear strongly in the CA’s terms of reference for this inquiry.

The 2006 Amendments to the Competition Act 2000 are inadequate vis-à-vis the retail sector. To be dominant a company must command at least 35% of market share. The top three retailers have a combined market share in excess of 70% but none approaches the dominance threshold on their own. However the buying power of retailers means that they are able to wield through near-dominance, results in unfair commercial practices and a dysfunctional market.

For some suppliers, a large retailer can constitute 30% of their business. This gives retailers huge buying power. This power is supplemented by the ability of larger retailers to bypass suppliers and source goods directly from other countries or to delist their products.

Our view is that these practices will significantly curtail job creation and growth in the sector. Left unchecked they will distort competition in the retail market as suppliers and retailers will be unable to compete. It will hollow out the Irish food supply chain at the cost of thousands of jobs and negatively affect the choice, convenience and cost of food to the Irish consumer. In other words, tacit acceptance of this practice by the Irish Government will cost jobs and essentially enable parties in a position near-dominance to achieve dominance.

Lower prices for the Irish consumer can be achieved with all stakeholders in the food supply chain sharing the reduction of costs. However, suppliers are financing the price reductions of larger retailers by acceding to their financial demands.

In other words, they are fueling larger retailers’ near dominance to the detriment of suppliers and, indeed, smaller retailers. This will fundamentally alter the social fabric of Irish society in the next decade.

As such, competition legislation based on the current interpretation of dominance at 35% of market share isn't effective and fails to prevent unfair practices in the market. The EU has called on national consumer protection associations to re-examine the definition of "dominance" when applied to grocery retailers and the way they apply their near-dominant positions in commercial arrangements.

There is an urgent need for legislation to address unfair demands above and beyond contractual arrangements that arise from near-dominant retail buying power.

The first part of this framework is to provide protection for suppliers who are subject to unfair demands but who cannot speak out because of their commercial dependence.

### **The Cost of Retail Operations in Ireland and its relation to price**

The recent Forfás report into the cost of retail in Ireland that forms the basis of the current investigation is flawed. It has been used by certain parties to point the finger of blame for price differentials solely at grocery retail suppliers, despite the fact the major price differentials in the market are in other sectors.

The scope of the report is very narrow and only covers operating costs. As a result, statements are made about other aspects of costs without any analysis being undertaken. Policy formulation in this critical area of the economy cannot be reliant on such a narrowly focused report.

The report highlights the cost of buying goods is the single biggest cost incurred. The statement that the cost of these goods is significantly higher than those faced by retailers in the UK and Northern Ireland is taken not just as a fact but also as a challenge that needs to be addressed. At no stage does the report attempt to determine whether this is true and if so, analyse what are the contributing factors.

Operating costs for retailers are reported as including transport and distribution (1 – 18%) but in grocery retail that is a cost borne, either directly by the supplier or in the case of centralised distribution, passed back to the supplier.

Transport and distribution is defined as consisting of fuel, labour and the cost of landing a 40' container ex Rotterdam in a variety of cities. It does not reflect the logistics profile of the grocery retail sector in Ireland – a costly system providing a high frequency / high quality service to a low population density country across a poor road network.

The cost of goods for resale is estimated at 75-80% and is defined as including margin (see Page 5). This is the estimate from retailers – is it correct? Interestingly there is no analysis on self-reported claims around retailer margin in the report.

Serious issue has to be taken with Conclusion/Policy Recommendation 5.1 on three grounds:

It calls for direct importation from source countries rather than indirectly through the UK. Perhaps this over-simplistic recommendation is aimed at non-food products as most food sourced from the UK originates there. From a food perspective a recommendation on direct importation is an attack on the existing supply chain, will clearly benefit any retailers with significant buying power in the UK to the detriment of all others and will undermine high value jobs in the wider supply chain here (in food supply companies, distributors, logistics companies, ad agencies, broadcasting etc.)

It highlights a lack of competition in the import / distribution and retail sectors but only calls for a review of competition in import / distribution – not in retail.

It shows a lack of understanding of how import/distribution works in the grocery sector - country offices for some brands, agencies held by domestic manufacturing companies, agencies held by domestic distribution companies and direct importation by retailers of some private label products.

### **The Food and Drink Industry in Ireland is of Vital Economic Importance**

The food and drink industry is of central importance to the Irish economy, both in terms of production and consumption. The industry has an output approaching €20 billion. More than half of this is consumed at home as part of the biggest expenditure item in household budgets. Some key facts:

Almost 50,000 people are directly employed in the food and drink sector with a further 60,000 employed indirectly in all regions of the country. The industry also uses 90% of the output of Ireland's 110,000 farmers.

The relative importance of the food and drink sector to Ireland is greater than almost all other EU countries with the highest gross value added per employee in the EU and one of the highest turnovers per capita.

The regional spread of the industry is unparalleled and it accounts for 90% of the output of the agricultural sector. The extent to which it is embedded in the Irish economy is demonstrated by the fact that it accounts for €8.3bn or almost half of the goods and services sourced in Ireland by the manufacturing sector

### **Vital Home Market Malfunctioning**

The home market is the most important for the food and drink industry constituting the sole market for many smaller companies.

The industry supplies a customer base that is highly concentrated leading to an imbalance of power between supplier and retailer. The trading relationships in the grocery sector are almost completely unregulated – a situation almost unique in

Europe. The imbalance in size between supplier and their customers gives the latter huge buying power.

This has led to unsustainable pressure on suppliers by retailers. If this continues, it threatens the indigenous supply base and will have serious knock-on effects in terms of price, choice and competition. It will lead to an inability to service more remote parts of the country. It will harm the viable but delicate fabric of smaller retailers, job losses in manufacturing sales and marketing across the country and the destruction of Irish brands and loss of export potential.

The narrow focus of competition law is insufficient against these broad socio-economic concerns. Legislation is required providing a framework for a balanced relationship between the suppliers and grocery retailer and wholesalers.

### **Retail Concentration – The Reality**

The top three retailers control 70% of the Irish grocery market. Thus a single multiple retailer deciding not to stock a product can lead to a supplier and/or brand losing over 20% of its sales volume. Not being listed with any one of the top three retailers undermines the feasibility of suppliers overall business. Delisting by a major retailer effectively constitutes commercial suicide.

Even global businesses operating here achieve a lower value of turnover in Ireland than any of the three major retailers in the Irish market.

Other than Scandinavia, Ireland has the highest level of retail concentration in the EU. Retail concentration amongst the top three is 64% in Great Britain (TNS 2008) and an even lower level in Northern Ireland.

### **The Effects of Buyer Power on Suppliers**

Power in the market and in particular, buying power, increasingly rests with retailers and in the increasingly concentrated food service sector. This is bolstered by the ability to de-list and source products from overseas. Suppliers are not able to recover cost increases through price increases. Being forced to fund what used to be retailer activities such as distribution and promotion as well as funding price discounting compounds suppliers' difficulties.

A number of route to market costs are now largely controlled by the retailer but still funded and/or paid for by suppliers directly or indirectly. These were traditionally a function of the supplier's role for example distribution and merchandising.

Food suppliers are struggling to meet the increasingly difficult demands of retailers above and beyond normal contractual negotiations on price. These include funding retailers' marketing initiatives and promotions. In essence, retailers are forcing food companies to fund their dominance in the market. This may force many companies out of business and, ultimately, reduce consumer choice and competition in the market.

Suppliers are compelled to meet retailers' demands due to their relative dominance in the market with a small number each accounting for over 20% of a supplier's revenue.

There is increasing sourcing of products and brands from outside the Republic bypassing Irish suppliers and manufacturers. This practice, left unchecked, could effectively cripple this important indigenous industry that supports over 230,000 jobs in the economy as part of the agri-food sector.

### **Other Countries efforts to address retailer power**

Trading relationships in the grocery sector are regulated in a number of other EU member states, including France<sup>1</sup>, Belgium, Germany<sup>2</sup>, Greece, Italy and Spain, with various forms of legislation in force to ensure that a degree of balance between supplier and customer exists.

In September 2008, the UK Competition Commission (CC) published a consultation on a new grocery trade code of practice (GSCOP). UK retailers must sign an undertaking for fair trade with suppliers following adverse finding in its recent investigation of the UK groceries market. The proposed new code is a widening of an existing Code of Practice, which was introduced in the UK market in 2000.

### **The European Parliament and the European Commission**

On 18 February 2008, a written declaration signed by 439 MEPs called on the Commission to investigate the effect on small businesses, suppliers and workers.

The written declaration signed by 439 MEPs says:

EU retailing is increasingly dominated by a small number of supermarket chains. Supermarkets are fast-becoming "gatekeepers" - controlling farmers' and other suppliers' only real access to EU consumers, There is evidence from across the EU that big supermarkets are abusing their buying power to force down prices paid to suppliers. Such buying power impacts negatively on working conditions and environment.

The declaration also sets out what MEPs want:

That the Commission's competition watchdog investigates the effects of concentration on small businesses, suppliers, workers and shoppers.

An assessment of potential abuse of buying power

---

<sup>1</sup> In France, below-cost selling by grocery retailers, in most cases, continues to be prohibited. Suppliers are required to supply goods at the same price to any grocery retailer or to be able to justify any discriminatory practice (e.g. in terms of sales volumes or specific marketing services).

<sup>2</sup> In Germany, the Bundeskartellamt (BKA) has conducted a number of investigations into the exploitation of buyer power by grocery retailers under German Competition Law (GWB). In several cases, proceedings were closed after retailers agreed to stop pressuring their suppliers to pass on to them certain refunds granted to their suppliers by other firms.

They also want measures to protect consumers, workers, producers - including the possibility of legislation

The European Commission published a Communication on Food Prices – December 2008. Two items in the Communication are pertinent to today's proceedings:

*“practices which distort the relationship between suppliers and retailers should be discouraged. This is for example the case for late payments, unjustified or excessive fees paid by suppliers for services provided by retailers or tempting consumers with misleading offers. In this context, the introduction of codes of conduct would be welcome as an expression of retailers' social responsibility and national codes of conduct should be reviewed.”*

Moreover, it called for

*“Better regulation and ensuring a vigorous and coherent enforcement of competition and consumer protection rules...as this could help rebalance the bargaining power in the food supply chain.”*

### **Solutions**

FDII requests that the necessary steps to ensure responsible trading in the food sector are taken by all stakeholders in the food supply chain. Across Europe, national legislation ensures that food industry suppliers are not dominated and overwhelmed by massive retailers.

Ireland requires an effective legal framework to ensure:

Fair trading practices between grocery retailers and their suppliers exist  
An ombudsman to investigate complaints of irregular or abuse of power  
Suppliers are not forced to pay for advertising, display of goods or 'hello money' unless there is a clear benefit to both parties

Without these remedies, the structure, employment capacity and profitability of Ireland's €20 billion food and drink sector is in grave danger.

In conclusion, current orthodoxies need to be overturned and replaced by a new vision for Ireland that encompasses the agricultural, food processing, distribution and grocery sectors, recognising the jobs they support.