



Houses of the
Oireachtas
Tithe an
Oireachtais

TITHE AN OIREACHTAIS

An Comchoiste um Thalmhaíocht, Bia agus Muir

Tuarascáil maidir le hEarnáil na nEarraí Grósaeireachta

***‘An cothromas agus an trédhearcacht sna caidrimh idir táirgeoirí,
próiseálaithe agus miondíoltóirí a mhéadú’***

HOUSES OF THE OIREACHTAS

Joint Committee on Agriculture, Food and the Marine

Report on the Grocery Goods Sector

***‘Increasing equity and transparency in producer-processor-retailer
relationships’***



TITHE AN OIREACHTAIS

An Comchoiste um Thalmhaíocht, Bia agus Muir

Tuarascáil maidir le hEarnáil na nEarraí Grósaeireachta

***‘An cothromas agus an trédhearcacht sna caidrimh idir táirgeoirí,
próiseálaithe agus miondíoltóirí a mhéadú’***

HOUSES OF THE OIREACHTAS

Joint Committee on Agriculture, Food and the Marine

Report on the Grocery Goods Sector

***‘Increasing equity and transparency in producer-processor-retailer
relationships’***

Chairman's Foreword



This report entitled *The Grocery Goods Sector: 'Increasing equity and transparency in producer-processor-retailer relationships'* provides a review of the supplier-retailer relationships in the food supply chain together with an overview of the most important and critical issues facing the sustainability of the Irish food sector.

There are many areas where the Joint Committee is concerned about the viability of the Irish food sector. To ensure the viability of the Irish food sector, we must take appropriate measures and precautions and learn from past mistakes.

It is also imperative that the primary producers, who are being squeezed out of the market, must be protected. Farming and the food industry make an enormous ongoing contribution to the Irish economy and rural society. It is essential to do everything in our power to ensure an equitable food supply chain for all stakeholders.

The main issues identified within the report are as follows:

- The advantages and disadvantages of a proposed statutory code of conduct for the grocery goods sector;
- The importance of the EU voluntary code of conduct;
- Pricing and impact on primary and secondary suppliers;
- Transparency and access to information on Multiples' profit margins and turnover;
- Below cost selling and 'additional fees';
- Support for local produce;
- Sustainability and viability of the Irish food sector; and
- Strengthening of labelling rules.

The Joint Committee is making 13 key recommendations which it is hoped will be fully considered by the Departments of Agriculture, Food and the Marine and of Jobs, Enterprise and Innovation.

The evidence and contributions provided by the witnesses and the Members have shaped this report and provide a valuable insight into the dynamics of the supplier-processor-retailer relationships in the grocery food sector in Ireland. I would like to record my thanks to all the groups who took part in the stakeholder engagement. It is regrettable that Dunnes Stores did not take up our invitation to participate.

I would also like to express my appreciation to the Members of the Joint Committee who engaged with stakeholders over several months and for their commitment to this project and to the Committee Secretariat for their ongoing assistance.

I commend this Report to both Houses of the Oireachtas.

A handwritten signature in blue ink, which appears to read "Andrew Doyle".

Andrew Doyle TD
Chairman

Membership of the Joint Committee

Deputies: Tom Barry (FG)
Pat Deering (FG) [Vice-Chairman]
Andrew Doyle (FG) [Chairman]
Martin Ferris (SF)
Martin Heydon (FG)
Willie Penrose (LAB)
Michael McNamara (LAB)
Éamon Ó Cuív (FF)
Thomas Pringle (IND)

Senators: Michael Comiskey (FG)
Paschal Mooney (FF)
Mary Ann O'Brien (IND)
Brian Ó Domhnaill (FF)
Susan O'Keeffe (LAB)
Pat O'Neill (FG)

Contents

Chairman’s Foreword	1
Membership of the Joint Committee	3
Contents	5
Introduction	7
Background.....	7
Contextual Background – some statistics.....	8
Code of Conduct.....	9
Arguments in favour of a statutory Code of Conduct	10
Arguments against a statutory Code of Conduct	10
In favour of an EU code.....	12
Introduction of a Food Adjudicator in the UK.....	13
Listing, Promotional, and other Fees.....	14
Content of the Code of Conduct.....	14
Pricing and impact on primary and secondary suppliers	15
Support for local produce	17
Labelling	18
Conclusions and Recommendations	19
Code of Conduct	19
Pricing	20
Local Produce.....	22
Labelling.....	22
Appendix 1 - Terms of Reference	24
Appendix 2 – References: Links to Transcripts of Debates and relevant websites	26

Introduction

The Joint Committee (hereinafter referred to as the “Committee”) held a total of seven days’ hearings from March 2013 through to July 2013 to engage with relevant stakeholders in the grocery goods sector in Ireland to review the retailer/supplier relationship in the food supply chain. Presentations were made by representatives from RGDATA, Retail Ireland, Musgrave Group, Tesco, ALDI, LIDL, Food and Drink Industry Ireland (FDII), the Irish Farmers’ Association (IFA), Fresh Milk Producers of Ireland, West Cork Liquid Milk Producers, National Milk Agency, the Competition Authority and the National Consumer Agency.

The aim of this Report is to outline the facts and arguments presented to the Committee during the hearings and to present findings and key recommendations. In so doing, we are aiming to emphasize the importance of protecting the interest of the consumer, the processor and the primary producer at all stages of the food supply chain.

Background

A draft Irish statutory code was published by the Minister for Jobs, Enterprise and Innovation in 2011. It has four governing principles. They are:

- Consumer interest;
- Fair dealing;
- Strong supplier base; and
- Competitive retail sector.

It is hoped that the aforementioned hearings and this report will feed into the Minister’s deliberations on the proposed Consumer and Competition Bill. In so doing, the report focuses on four key areas; namely -

1. The proposed code of conduct in the grocery goods sector;
2. Pricing and impact on primary and secondary suppliers;
3. Support for local produce; and
4. Labelling.

Contextual Background – some statistics

Since 2008, over 50,000 people have lost their jobs in the Irish retail sector. Despite this, retail is still the largest employer in the State with over 250,000 people working in the sector. 86% of Irish retail businesses have fewer than ten employees and 86% are Irish owned.¹ Retail is a vital component of the Irish economy. The estimated total worth of the Irish food grocery market was €7.1 billion in 2011.

Eurostat (the statistical office of the European Union) has produced statistics on consumer price levels in the EU which examine goods and services. In general, it has shown that price levels for consumer goods and services are 17-18% higher in Ireland than the EU average. Although the large retailers argue that the Irish market is competitive, the Committee queried, why are Irish prices 18% above the food average for the EU 27; 12% above the EU 15; and 4% above the average for the UK?

Although prices are currently 18% above the EU average, the situation was significantly worse in the five years preceding. In 2008, Ireland was 38% above the average for the EU 27 and 62% above that for the UK. Just two years ago, it was 34% above the EU average. One of the main reasons for this was major resistance by consumers to own-brand products and a major adherence to established brands.² The National Consumer Agency pointed out to the Committee that there was a something of a stigma attached to retailers such as ALDI and LIDL when they first entered the market.³ However, over the past two years food prices in Ireland have dropped to the current rate of 18% above the European average as the stigma associated with own-brand products slowly evaporates and consumers search for value. Whilst the reduction in the price differential is certainly satisfactory, the Committee is concerned that the price differential between Ireland and the EU is still too high.

The 2010 Report of the Joint Oireachtas Committee on Enterprise, Trade and Employment Report on Supplier-Retailer relationships in the Irish Grocery Market⁴ focussed on the relationships between suppliers and retailers within the grocery trade in Ireland. The Report found that the high price Irish consumers are paying can partly be attributed to inefficiencies within the supply chain but is mainly caused by retailers retaining profit margins three times greater in Ireland than elsewhere. Whilst the Committee accepts the higher cost of doing business in Ireland, it cannot accept that the price differential should be higher than the

¹ Discussion with RGDATA and Retail Ireland, 5 March 2013, Transcript, page 18

² Discussion with representatives from the Competition Authority and National Consumer Agency, 16 July 2013, Transcript page 14

³ Discussion with representatives from the Competition Authority and National Consumer Agency, 16 July 2013, Transcript page 16

⁴ <http://www.oireachtas.ie/viewdoc.asp?DocID=14611>

difference in the cost of business. More transparency with regard to profits made by multiples, through legislation, would shed light on the actual cost of doing business in Ireland. This would in turn show whether the higher prices in Ireland can be justified.

In Ireland 80% of the retail grocery trade is controlled by three players – Tesco, Musgraves and Dunnes. Across Europe however, this is not unusual. In some of the Baltic States, two players have 80% of the market share. In Sweden three retailers also have 80% market share and in Denmark, three retailers possess 90% of the market.

Owing predominantly to its responsibility for agriculture and food, the Committee has serious concerns about primary producers in the food chain. The Committee is of the view that it is extremely important to have sustainable agriculture which is profitable. As such, it is vital that farmers obtain a fair price for what they produce.

Code of Conduct

The proposed Consumer and Competition Bill, is likely to have a code of conduct for the groceries sector. The Travers Process (named after the report of Mr John Travers on the possibilities of agreement on a Code of Conduct in the sector) prepared a draft statutory code of conduct.

The 2010 Report by the Joint Committee on Enterprise, Trade and Employment on Supplier-Retailer relationships in the Irish Grocery Market⁵ identified serious irregularities in the market and urged Government to act to eliminate these irregularities through the introduction of a statutory code of conduct.

Throughout the hearings conducted by the Committee, the witnesses were asked whether or not there was a need for a statutory or a voluntary code of conduct, or indeed a code of conduct at all. The Committee has considered in depth the arguments for and against the introduction of a statutory code of conduct in the grocery goods sector.

⁵ <http://www.oireachtas.ie/viewdoc.asp?DocID=14611>

Arguments in favour of a statutory Code of Conduct

The Director General of RGDATA⁶, in her submission to the Committee stated that RGDATA was fully supportive of a statutory code of conduct in the grocery goods sector and noted that *“there was no legal or practical reason why a code should not be introduced to specifically govern relations between international retailers and Irish-based suppliers with regard to the supply of grocery goods for sale in Irish Market.”*⁷ It was argued that the need for a code of conduct is due to the unbalanced relationship between suppliers and the large multiples. The Director General continued *“.....there is a need for some independent, enforceable code around which sustainable, respectful and commercial relations can be built. In a sector where the largest players impose unreasonable and unfair terms on suppliers, all too often the suppliers seek to recoup the losses or cost of promotions by changing the terms of those least able to resist change.....Many of our smaller members are paying the cost for some of the ways the larger players in the market operate.”*⁸

Both the FDII and the IFA also strongly support the introduction of a statutory code of conduct. The President of the IFA stated, *“The IFA supports statutory legislation to address the imbalance of power in the supermarket-supplier-producer relationship and to deliver more equity in the food supply chain for the primary producer. The IFA believes that all stakeholders in the food supply chain should be covered by the code...”*⁹

In relation to the imbalance in the trading relationship, for the majority of companies in the domestic market, an individual customer may often account for 20% to 25% of their business. Furthermore, Ireland has a consolidated market with a high level of concentration among a small number of retailers. Reference was made to the fact that if a significant portion of a suppliers business is concentrated on one individual retailer, that supplier will naturally be more reluctant to bring a complaint against that retailer for fear of their product being delisted, an act which would have a significant negative impact on their business.

Arguments against a statutory Code of Conduct

Retail Ireland, in their submission to the Committee, argued strongly against a statutory code of

⁶ RGDATA is the representative body for the independent retail grocery sector. Collectively their members own and operate more than 4,000 shops.

⁷ Discussion with RGDATA and Retail Ireland, 5 March 2013, Transcript page 4

⁸ Ibid

⁹ Discussion with IFA, 23 April 2013, Transcript page 13

conduct and referred to the ESRI's publication in 2009, "How to do a lot of harm by trying to do a little good". They referenced the following sentence from the report by Mr. Paul Gorecki: *"The Code is likely to lead to a rise in prices for suppliers with no mechanisms or tests for considerations of consumer harm to be taken into account."*¹⁰ Retail Ireland submitted that a national code would not benefit consumers or farmers and that the only organisations that would benefit from a national code would be those suppliers and processors in the middle of the supply chain.

The Managing Director of Lidl Ireland, outlined some of the specific costs that would arise from the implementation of a statutory code. *"A new code will necessitate our reviewing everything from a legal perspective, looking at the wording in existing contracts and changing that where necessary to reflect the exact detail of the code. It will require specific filing obligations and audit compliance over and above what we engage in currently. There will be operating costs. I am sure specific training needs will arise as a result of the implementation of such a code. Those are real costs which will result in extra red tape or perhaps a significant shift in the way we currently engage in compliance. There will be set-up costs over time. These may be less significant in terms of their effect on our operating overheads as a business but we are cognisant that there would be a cost, perhaps without the intended benefit."*¹¹

Further arguments against a code, made by representatives of the retailers, were the high compliance costs which would include:

- legal advice on compliance with the code;
- appointment of a compliance officer;
- buyer training;
- maintaining and supply of records as required under the code; and
- costs arising from responding to queries from any enforcement body.

As well as the administrative and cost burden associated with a code, some of the witnesses were concerned about *"....whether a code of practice....will work and achieve what is envisaged in the context of people who believe they have been mistreated in coming forward and availing of the process."*¹² It was further noted that the code of conduct, already in place in the UK incurred

¹⁰ Discussion with Retail Ireland, 5th March 2013, Transcript, page 19-20

¹¹ Mr. Kenneth McGrath, Discussion with LIDL, 9 May 2013, Transcript page 11

¹² Mr. Donal Mackay, Discussion with ALDI, 18 April 2013, Transcript page 9

significantly higher costs there.¹³ Some of the retailers noted that they had their own code of conduct in place and this was sufficient without the need for regulatory national codes.

The Group Buying Director of ALDI Ireland, stated, “...ALDI is not an enthusiastic supporter of the introduction of such a code of practice....We firmly believe we have a fair and efficient operating system in place.....and that we should not be punished for the indiscretions of others...”¹⁴

However, the Managing Director of Aldi, when pressed by Committee Members, stated that “The introduction of a food adjudicator in the United Kingdom is still in its early stages. Aldi considers this approach to be unproven, although it does not oppose the measure. We would not be opposed to the introduction of a similar body here and would comply with any measure introduced. We are not concerned about what would be introduced, whether voluntary or statutory. Our concern is to ensure that whatever is introduced works.”¹⁵

In favour of an EU code

Whilst the suppliers were unanimous in their rejection of the need for a statutory code of conduct, there was greater enthusiasm for a voluntary code. In this regard, the proposed EU voluntary code was recommended by the retailers as the course that should be followed.

Retail Ireland noted that the principles of the European code, in summary, are ¹⁶:

- all agreements should be in writing;
- unilateral change to contract terms shall not take place unless such a possibility has been agreed to in advance;
- all agreements should be complied with;
- information should be exchanged in strict compliance with competition law;
- all contracting parties in the supply chain should bear their own appropriate entrepreneurial risk; and
- there shall be no application of threats in order to obtain an unjustified advantage or transfer an unjustified cost.

¹³ Ibid, page 11

¹⁴ Discussion with ALDI, 18 April 2013, Transcript, page 5

¹⁵ Discussion with ALDI, 18 April 2013, Transcript, page 7

¹⁶ Discussion with RGDATA and Retail Ireland, 5 March 2013, page 20

Retail Ireland also noted that a European voluntary code is better than a national code because it would not put any Irish supplier or retailer at a disadvantage against their European counterparts.

Some of the multiples opined that a voluntary code is a better solution and are supportive of a European code. It was also noted in discussions to the Committee that one of the unintended consequences of the code of conduct could be making sources in the United Kingdom and abroad more appealing.¹⁷ It was argued in this regard that an EU-wide solution must be found because the supplier-retailer problems are not stopping at national borders.¹⁸ There is a belief among retailers that the proposed statutory code will put suppliers at a competitive disadvantage in comparison to their competitors in Europe. Furthermore, it was submitted that the *“EU code that is on the way...avoids some of the red tape and the administration costs that are likely to accompany the proposed national code.”*¹⁹ Outlining the European Code, the Chief Executive of Tesco Ireland noted that the European voluntary code is a, *“...very robust code..[that]...has been in development for approximately two to three years. It is based on principles rather than on anecdote, which certainly makes it more sustainable and justifiable.”*²⁰

Introduction of a Food Adjudicator in the UK

A voluntary code was brought in in the UK in 2010. In 2012, the GSCOP (Grocery Sector Code of Practice) was put in place on a statutory basis. In recent months an Ombudsman has been introduced. The British authorities calculated that the cost of running the Office of the Ombudsman at £5million. That equated to 1p on people’s weekly shop.²¹

The IFA and the National Milk Agency are strongly in favour of an Arbitrator or Ombudsman similar to that already in place in the UK, to be introduced in Ireland. The National Milk Agency noted that, *“...The appointment of a groceries code adjudicator in the United Kingdom will, undoubtedly, improve the relationship between the major retailers and their direct suppliers.”*²²

¹⁷ Edel Clancy, Director of Corporate Affairs, Musgrave Group, Discussion with Musgrave Group, 26 March 2013, Transcript page 3

¹⁸ Ibid page 13

¹⁹ Mr. Tony Kohane, Chief Executive, Tesco, Discussion with Tesco, 26 March 2013 Transcript page 19

²⁰ Ibid page 27

²¹ Discussion with representative from Food and Drink Industry Ireland, 23 April 2013, Transcript page 10

²² Discussion with National Milk Agency, 21 May 2013, Transcript page 5

Listing, Promotional, and other Fees

The Chairperson of the Competition Authority referred to the Competition (Amendment) Act 2006 which was passed to address the imbalance in bargaining power between large retailers and producers stating that *“The 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. This Act was passed in 2006. Our experience in the seven years since then has been that we have received few substantive complaints, basically for the reasons discussed substantially by the Committee. Smaller producers may be unwilling to complain to the authority or to take court action, which they are entitled to do, for fear of retribution which could mean delisting. Larger producers suffer less of a power imbalance and they can negotiate on a more equal footing with retailers and are less likely to need the protection offered under the Act”*²³

Each of the multiples denied the existence of what is commonly known as “hello money”. The Chief Executive of Tesco, vehemently denied the existence of the practice, *“If the Deputy is referring to hello money, it is illegal. If anybody in Tesco is doing something illegal, people are free to go to the Garda or Competition Authority, use our confidential line or come to me. We will not stand over anything that is illegal.”*²⁴

However, the President of the IFA commented that *“Several representatives from the horticultural sector have approached us but they will not make a complaint...I have met people....who have told me they were asked to make a substantial contribution at Christmas. However, were one to ask them to make a complaint, they would not do it because they know they would get delisted...They are intimidated by the sheer power of the retailers because to get delisted....is a considerable knock to one’s business.”*²⁵

Content of the Code of Conduct

RGDATA noted that there were five objectives that should be adhered to for the introduction of a code of conduct in the grocery sector. The regulatory system should:

²³ Discussion with Competition Authority , 16 July 2013, Transcript, page 3

²⁴ Discussion with Tesco, 26 March 2013, Transcript page 33

²⁵ Discussion with IFA, 23 April 2013, Transcript, page 19

- be effective, responsive and respected;
- attack practices that should be illegal and that distort the competitive landscape for retailing food in Ireland;
- ensure an indigenous Irish supply base is maintained and encouraged;
- facilitate retailers that are independent of the multiple chains to compete on a fair and equal basis with larger retailer competitors; and
- prevent discriminatory practices by brand holders that are large monopoly or duopoly suppliers and that prevent independent retailers from getting foods on competitive terms for their customers.

Pricing and impact on primary and secondary suppliers

It is very difficult to ascertain who is getting what out of the final consumer price for food in Ireland. RGDATA pointed out to the Committee that there are efforts being made in America to establish how much each stakeholder is getting from the final price for food. If this information were available it would provide a much clearer picture as to questions relating to fair price.²⁶

Committee Members raised the issue of the price of milk in different shops. The Committee considers that the price variation on milk depending on location, size and competitive nature of shops is quite high. Questions were also raised about the price differential between the UK and Ireland. In relation to North-South pricing, however, the Sales Director of the Musgrave Group, commented that *“It is something we monitor daily. At present, we do not see any trends of shoppers going across the Border.”*²⁷

Food prices in Ireland are currently 18% above the European average. There has however been a decrease from two years ago when they were approximately 34% above the European average. The main reason cited for the above average cost of food prices was the cost base in the Irish economy. Wage levels in Ireland are running at approximately 15% to 17% above those in the UK and Northern Ireland, which has a direct impact because they are Ireland’s most immediate competitive markets. Furthermore, wage levels are well above the European average. Input costs also include labour, commercial rents, insurance and utilities, which were all cited to

²⁶ Discussion with RGDATA, 5th March, Transcript Page 7

²⁷ Discussion with Musgrave Group 26 March 2013, Transcript page 8

be higher in Ireland than elsewhere in Europe. All these pressures lead to a higher price for a basket of goods in Ireland than in many other European countries.

Although it was stated by representatives of the multiples that energy and input costs are higher in Ireland, contributing to higher costs. The Committee noted that Northern Ireland's Energy Regulator produced a report stating that the cost of energy for manufacturers is in fact higher in Northern Ireland than it is in the South.²⁸

To get a clearer picture and a comprehensive overview on whether or not costs are actually higher in Ireland, the Chief Executive Officer of National Consumer Agency, considered that the argument pushed forward by the multiples that costs are higher in Ireland, should lead them to disclose that information. She stated that, *"On the question of whether retailers should be forced to display their profits, we believe that, on balance, it would be better if they were forced to do so. That may require legislative change. Where retailers advance the argument that the cost of doing business here is higher and that is the reason they have higher prices, it is in that context that they should give that information...."*²⁹

In its presentation to the Committee, RGDATA raised concerns that significant price pressure is put on primary and secondary suppliers by large multiples. RGDATA submitted that to combat the "veil of secrecy" surrounding multiples' profits, turnover and revenue, the multiples should be made reveal their profits and turnover in Ireland.

In the present economic climate, the consumer is predominantly concerned with value and as a direct result retailers are putting massive downward pressure on suppliers. The Committee considered whether own brand products give retailers too much power. The President of the IFA stated that, *"essentially, own-brand products give the retailers greater power.....They make it way too easy for the retailer to substitute."*³⁰ He continued *"One of the reasons that liquid milk is under so much pressure is that retailers have allowed so much of a differentiation between the own-brand and branded products. That is a strategic move by retailers, so effectively the percentage of own-brand is increasing all the time. The margin left for a processor to pay back the farmer is being diminished."*³¹ Furthermore, the National Milk Agency³², stated that "Own-

²⁸ http://www.uregni.gov.uk/uploads/publications/Electricity_Pricing_Paper_website_-_March_2013.pdf

²⁹ Discussion with the National Consumer Agency, 16 July 2013 Transcript page 17

³⁰ Discussion with IFA, 23 April 2013, Transcript page 21

³¹ Ibid

³² The National Milk Agency was established under the Milk (Regulation of Supply) Act 1994 to regulate the supply of milk for liquid consumption throughout the State.

*label products put increased market power into the hands of the multiple retailers. These commercial policies increase the market power of retailers, undermine processors' brands, which have great consumer loyalty due to their provenance, and impact adversely on the returns to producers and processors.*³³

In terms of price, it was noted that the production costs for liquid milk are ever increasing and the price the primary producers are receiving is not moving in tandem. The Committee was informed that between 1995 and 2011, the percentage that goes to the producer has fallen from 43% to 32%, with the figure dipping below 30% in 2009 and 2010. Furthermore, between 1995 and 2011, the price of milk increased from 77 cent per litre to 111 cent per litre but in the same period the price received by the producer decreased from 32.8 cent to 32.5 cent. The National Milk Agency, stated that *"On the question about the future of the all year round milk supply model, the position is that it is vulnerable and at a tipping point...."*³⁴

The Committee also considered the issue of a minimum pricing order for alcohol. The witnesses generally stated that they would support the introduction of minimum pricing if that was a final decision by the Government.

Support for local produce

In today's economic environment it is quite clear that the main prerogative of the Irish consumer is value. Consumers are buying less, budgeting better, switching providers and changing brands. The Sales Director of Musgraves' Group noted that *..."Consumers are so strapped for cash in today's environment and they are watching everything they spend. They are spending very little, and often.....They [consumers] are concerned about buying Irish, buying local and buying from their local communities, but value must be at the heart of everything that is provided for them because they are so strapped."*³⁵

There are many examples of how the multiples are working with local Irish producers and working within the community. The link between the Musgrave Group and the GAA, and with the Tidy Towns are two very good examples of this. It was put to the Committee that the consumer not only wants value but also locally produced goods. It would then appear to be in the best interest of the multiples to work close within the community.

³³ Discussion with Fresh Milk Producers, 21 May 2013, Transcript page 23

³⁴ Ibid, page 25

³⁵ Discussion with Musgrave Group and Tesco, 26 March 2013, Transcript page 8

Labelling

European legislation, specifically a regulation on the provision of food information for consumers, is being implemented and large aspects of the regulations will take effect from December 2014. The Commission is considering extending the country of origin labelling regulations which currently apply to beef to other meat products such as poultry. The horsemeat issue has brought the issue of food labelling sharply into focus and it is widely agreed and that what happened in that case is wholly unacceptable.

There is broad consensus from retailers and suppliers alike that further developments with regard to labelling are necessary. Customers should be clear about where the products they are purchasing originate from. The Sales Director of Musgraves Group noted that *“We would fully support further developments in labelling and we also support the EU position on substantial transformation. We believe that our customers should be crystal clear where their products come from. We support that 100%.”*³⁶

Labelling rules need to be strengthened. Colours used are often the same (green representing Ireland is prominent) which may lead to misinterpretation over where a product comes from.

Furthermore, the provision of correct and informative labelling to ensure that customers can make informed decisions is of paramount importance to consumers.

³⁶ Discussion with Musgrave Group, 26 March 2013, Transcript *page 14*

Conclusions and Recommendations

Having considered all of the stakeholders views expressed in detailed discussions at seven separate Committee meetings, the Committee has agreed the following recommendations which it believes could, if implemented, positively contribute to some of the problems in the grocery goods sector.

Code of Conduct

The Committee notes that initially there may well be an administrative and cost burden associated with the implementation of a statutory code of conduct but is convinced that the long term benefits far outweigh the initial short term costs. The Committee considers that there is a need for a statutory code, predominantly because it will have more teeth than a voluntary code. The Committee observed that a statutory code with fewer provisions with legal sanction is more beneficial than a voluntary code with more provisions, predominantly because the statutory code is enforceable by law.

To ensure equity across the board, the Committee considers that all the stakeholders in the food supply chain should be covered by the code. The Committee also considers that any code should apply to suppliers and retailers. It should work both ways.

The Committee firmly believes that rules based regulation is necessary as opposed to principles based regulation. The Committee considers that a code of conduct that prevents below-cost selling and predatory pricing practices is also necessary.

Furthermore, the Committee considers that there should be an independent supermarket Ombudsman to oversee the code of conduct.

The Committee considers that what is required is a new enforceable code that will work in harmony with EU law. If a new code is enforced without working in tandem with the EU, there is a danger that Ireland could lose its competitive advantage and that is something that cannot be afforded to happen. The Committee further considers that when the legislation for the statutory code is being prepared, it ensures that it does not distort trade at European level. This would run contrary to everything that is trying to be achieved.

The Committee considers that the EU voluntary code will not be sufficient to address current imbalances and encourages 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 considers that a statutory code of conduct will address certain inequities in the food supply chain which are putting serious income pressure on primary producers. The legislation will redress the imbalance of power in the supermarket-supplier-producer relationship. The Committee considers that the code of conduct must be designed in such a way which will ensure that all stakeholders in the food supply chain will have adequate margins. This is especially important in the fresh milk supply chain where primary producers are under severe pressure and are increasingly priced out of the market. The Committee urges the Government to publish the Consumer and Competition Bill which is to introduce a statutory code of conduct for the grocery goods sector. The Committee considers that primary producers are being put under severe income pressures and some processors are in danger of being forced out of business.

Recommendation 1: The Committee recommends that a statutory code of conduct in the groceries goods sector be implemented without delay.

Recommendation 2: The Committee further recommends that it would be hugely beneficial if there was an independent supermarket Ombudsman to represent the consumer, primary producer or any other third party and oversee the application of the statutory code of conduct.

Recommendation 3: The Committee recommends that all multiple suppliers or retailers in the State maintain a statement in writing detailing the terms and conditions upon which they purchase from or supply grocery goods to each grocery undertaking in the State.

Recommendation 4: In relation to the argument that a statutory code would impose undue legal obligations on owners of small to medium-size businesses, the Committee considers that there should be a mechanism for a legal support agency for small and medium size enterprises that do not have the resources for huge contractual documents.

Recommendation 5: The Committee recommends that adequate resources be committed to ensure the implementation and compliance with all current and future legislation.

Pricing

There are serious concerns that the current imbalance of power between suppliers and retailers is unsustainable in the long term and that the family farm structure and primary producers are being squeezed out of the market. The Committee has serious concerns regarding the hidden costs arising from additional fees and market support initiatives. These are practices that should

not be tolerated. The Committee also considers that heavy penalties should be introduced on a statutory basis for those found to be engaging in illegal practices.

The Committee considers that in many respects primary producers are not getting fair treatment in the food supply chain, nor a fair price for their goods. To ensure the sustainability and the viability of the Irish food sector, it is imperative that the primary producers receive a fair price for their goods and liquid milk is an example of where the primary producers are not receiving a fair price. The Committee considers that the large multiples and wholesalers would appear to be exerting pressure on processors of all foodstuffs who are then cutting corners in order to make a reasonable profit. An example of this is the fact that before the horsemeat scandal broke, burgers were being processed for 8 cent each. The Committee considers this wholly unreasonable and that it is high time that these practices were stopped.

The Committee has serious concerns about the use of own-brand products. On the one hand there can be little doubt that their use has helped to drive the price of goods down, especially in the very recent past, as consumers have grown accustomed to what are, largely, goods of relative high quality. However, the dark side is that own brand products are allowing retailers to bully suppliers by threatening to move suppliers, an act which is very easy for them. This puts serious pressure on suppliers and drives downward of the supply price leading to a larger profit margin for the retailer. The Committee considers that own-brand products give too much power to the retailer and make it too easy for them to substitute.

The Committee considers that the statements and statistics quoted in this report adequately sum up the problems facing liquid milk producers. The Committee is of the opinion that there are fundamental problems with the pricing structure that need to be immediately addressed. The Committee has serious concerns that, if these problems persist and are not adequately addressed, consumers will be left without winter milk in the long term. In relation to a minimum pricing order for alcohol, the Committee considers that it should be examined whether a ban on the promotion of the sale of alcohol based on price would be feasible. The Committee is of the opinion that this would deal with much of the problem concerning below cost selling of alcohol.

Recommendation 6: The Committee considers that there is an urgent need for greater transparency with regard to information published by large retailers. The Committee recommends that legislation should be introduced to force the publication of profits and turnovers of the large multiples and large processors operating in this country.

Recommendation 7: The Committee recommends that a minimum pricing order on the sale of alcohol should be introduced. The Committee further recommends that the use of staples, such as milk, as loss leaders or its sale below cost should be prohibited under the new proposed code of conduct.

Recommendation 8: The Committee considers that the price observatory systems currently in place in France, Spain and Belgium should be closely monitored to assess their contribution to equitable pricing structures.

Recommendation 9. An all-Ireland market for contracted winter milk should be encouraged through discussions between the Departments of Agriculture North and South to ensure continuity of supply of fresh liquid milk on an All-Ireland basis in the interest of consumers and producers.

Local Produce

The Committee considers that there is strong support for local produce from Irish retailers, including the large multiples. It is strongly encouraging that multiples are working hard to foster a community spirit and the Committee encourages these practices to continue. The Committee is acutely aware of the enormous contribution that farming and the food industry makes to the Irish economy and rural society. It is an export-driven industry, with the volume of exports growing to €9billion last year. Farming, the food sector, and related service industries maintain an estimated 300,000 jobs in the economy and contribute to economic activity in every parish and town in Ireland.³⁷

Recommendation 10: The Committee recommends that the Multiples continue to work closely within their communities and to ensure that a strong link with local produce is maintained.

Recommendation 11: In light of the proposed CAP reform, regarding producer groups, any obstacles that prevent these groups from negotiating in an organised way should be removed.

Labelling

The Committee considers that there are four elements to labelling:-

³⁷ Mr. John Bryan, IFA President, Discussion with Irish Farmers' Association, 23 April 2013, Transcript page 12

1. Branding;
2. All ingredients over a certain volume should be displayed on a label in an understandable way;
3. There should be a requirement to show the processor's name on the label; and
4. Inclusion of energy and calorie values.

The Committee considers that loopholes in the labelling legislation that are misleading consumers must be closed. Lessons must be learned from the horsemeat scandal and precautions put in place to ensure that there is not a repeat. The Committee considers that what consumers want more than anything is to know that the food they buy is what is specified on the label, and if it is said to be from a local supplier, that is the case. There needs to be reassurance that the food produced and processed by an Irish processor has a 'fair-trade' label attached to it covering all of the people involved in the food chain. The Committee has serious concerns about the confusion for consumers between goods marked "Produce of Ireland" and "Produced in Ireland". Many consumers may not be aware that there is a hugely significant distinction to be made between these two very similar brandings. The former means that the product is born, reared, processed, packed and supplied in Ireland. The latter means that it may just have been packaged in Ireland. A salient example is Siúcra. Ireland does not produce any of its own sugar, yet consumers would be forgiven for thinking Siúcra sugar was actually processed in Ireland.

The Committee considers there should be barcodes attached to each product that would display precisely where a product comes from and precisely what is in it. This way, people can use their smartphone to ascertain, quite easily, what exactly is in a certain product.

Additionally, the Committee believes that it is important to ensure that all labelling requirements, including source of origin, should apply to all products sold in the European Union, regardless of country of origin.

Recommendation 12: The Committee recognises the importance of detailed, clear and concise labelling to assist the consumer to make informed choices. The Committee recommends that tighter rules for labelling be put in place as a matter of priority and, that in all cases of 'own brand products', there must be a prominent display detailing the processor code and country of origin of the product.

Recommendation 13: Labelling requirements should be applied equally across the food and drinks industry.

Appendix 1 - Terms of Reference

a. Functions of the Committee – derived from Standing Orders [DSO 82A; SSO 70A]

- (1) The Select Committee shall consider and report to the Dáil on—
 - (a) such aspects of the expenditure, administration and policy of the relevant Government Department or Departments and associated public bodies as the Committee may select, and
 - (b) European Union matters within the remit of the relevant Department or Departments.
- (2) The Select Committee may be joined with a Select Committee appointed by Seanad Éireann to form a Joint Committee for the purposes of the functions set out below, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.
- (3) Without prejudice to the generality of paragraph (1), the Select Committee shall consider, in respect of the relevant Department or Departments, such—
 - (a) Bills,
 - (b) proposals contained in any motion, including any motion within the meaning of Standing Order 164,
 - (c) Estimates for Public Services, and
 - (d) other matters as shall be referred to the Select Committee by the Dáil, and
 - (e) Annual Output Statements, and
 - (f) such Value for Money and Policy Reviews as the Select Committee may select.
- (4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies, and report thereon to both Houses of the Oireachtas:
 - (a) matters of policy for which the Minister is officially responsible,
 - (b) public affairs administered by the Department,
 - (c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,
 - (d) Government policy in respect of bodies under the aegis of the Department,
 - (e) policy issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,
 - (f) the general scheme or draft heads of any Bill published by the Minister,
 - (g) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,
 - (h) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,
 - (i) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in paragraph (4)(d) and (e) and the overall operational results, statements of strategy and corporate plans of such bodies, and
 - (j) such other matters as may be referred to it by the Dáil and/or Seanad from time to time.
- (5) Without prejudice to the generality of paragraph (1), the Joint Committee shall consider, in respect of the relevant Department or Departments—
 - (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 105, including the compliance of such acts with the principle of subsidiarity,

- (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
 - (c) non-legislative documents published by any EU institution in relation to EU policy matters, and
 - (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.
- (6) A sub-Committee stands established in respect of each Department within the remit of the Select Committee to consider the matters outlined in paragraph (3), and the following arrangements apply to such sub-Committees:
- (a) the matters outlined in paragraph (3) which require referral to the Select Committee by the Dáil may be referred directly to such sub-Committees, and
 - (b) each such sub-Committee has the powers defined in Standing Order 83(1) and (2) and may report directly to the Dáil, including by way of Message under Standing Order 87.
- (7) The Chairman of the Joint Committee, who shall be a member of Dáil Éireann, shall also be the Chairman of the Select Committee and of any sub-Committee or Committees standing established in respect of the Select Committee.
- (8) The following may attend meetings of the Select or Joint Committee, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
- (a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
 - (b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (c) at the invitation of the Committee, other Members of the European Parliament.

b. Scope and Context of Activities of Committees (as derived from Standing Orders [DSO 82; SSO 70])

- (1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders.
- (2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.
- (3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 26. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.
- (4) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Dáil Standing Order 163 and/or the Comptroller and Auditor General (Amendment) Act 1993.
- (5) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
 - (a) a member of the Government or a Minister of State, or
 - (b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhairle / Cathaoirleach whose decision shall be final.

Appendix 2 – References: Links to Transcripts of Debates and relevant websites

- [5 March 2013](#) – Discussion with representatives from RGDATA and Retail Ireland
- [26 March 2013](#) – Discussion with representatives from the Musgrave Group and Tesco
- [18 April 2013](#) – Discussion with representatives from ALDI
- [23 April 2013](#) – Discussion with representatives from the Food and Drink Industry Ireland (FDII) and the Irish Farmers' Association (IFA).
- [9 May 2013](#) – Discussion with representatives from LIDL
- [21 May 2013](#) – Discussion with representatives from Fresh Milk Producers of Ireland, West Cork Liquid Milk Producers Group and the National Milk Agency
- [16 July 2013](#) – Discussion with representatives from the Competition Authority and the National Consumer Agency

<http://www.oireachtas.ie/viewdoc.asp?DocID=14611>

[http://www.bing.com/search?q=http%3A%2F%2Fwww.uregni.gov.uk%2Fuplaads%2Fpublications%2FElectricity Pricing Paper&src=IE-SearchBox&FORM=IE8SRC](http://www.bing.com/search?q=http%3A%2F%2Fwww.uregni.gov.uk%2Fuplaads%2Fpublications%2FElectricity+Pricing+Paper&src=IE-SearchBox&FORM=IE8SRC)