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**Submission to the Minister for Jobs, Enterprise and Innovation**

**on**

**Code of Practice for Designated Grocery Goods Undertakings (Draft)**

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August 2011

The Irish farming and food industry continues to be a major driving force in our economy. Ireland's agri-food industry is the largest Irish-owned productive sector, accounting for over 60% of exports from Irish-owned manufacturing. The sector is the back-bone of the rural and wider economy, supporting 300,000 jobs.

With a high Output Multiplier and low import content, and with the income generated by farmers spent locally, growth in agriculture has an impressive knock-on effect in the rest of the economy. Every €100 of Agricultural Output produces an additional €73 of output – creating a total of €9.25bn in the Irish economy in 2010.

*Food Harvest 2020*<sup>1</sup> has set targets for growth in the food industry, including farm-level output growth of €1.5bn and export growth of €12bn. Demand for food is projected to increase by 50% between now and 2030.

Irish farmers are proud to provide consumers with food produced in an environmentally sustainable way, to the highest quality, safety and animal welfare standards, and with the best traceability in the world. In addition, consumers are getting real value with the average household spend on food dropping from 30% in 1980 to 11% today.

However, as the key provider of our food, primary producers are not getting fair play in the food supply chain and their viability is being seriously challenged.

In 2010, average farm incomes were just €17,700, or just over 50% of the Average Industrial Wage. Since 2000, the cost of on-farm production has increased by over 37% despite major efficiencies at farm level. At the same time, the price paid to farmers has increased by only 14%.

In 2010, IFA published *Equity for Farmers in the Food Supply Chain*. This document, which was submitted to Government (copy enclosed), sets out the value of the Irish farming and food sector and the issues negatively impacting in the food supply chain that need to be addressed.

The retailer, processor, food suppliers and consumers are key stakeholders in the food supply chain, but so is the primary producer. Retailers, processors and food suppliers must provide real value to consumers, but they must also ensure that primary producers are treated fairly in the food supply chain.

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<sup>1</sup> Department of Agriculture, Fisheries and Food 2010

## **Effects of Retail Buying Power**

The actions of the retail multiples, in aggressively competing for market share, are undermining the price received by producers to the point where they are putting the viability of family farm food production in jeopardy.

Retailers have used their power over producers and suppliers to devise and implement a number of methods and actions, whereby they reduce producer margins, although not directly, by reducing the returns to their suppliers. Some examples of this are:

- Producers are compelled to pay ‘hello money’ to get their product on the shelf or to contribute to the opening of a new outlet.
- Retailers demand ‘pay to play’ money from suppliers in order to have their products re-listed on retailer shelves, or to keep them there.
- Producers and suppliers dealing directly with retailers in the fresh produce sector are subject to costs imposed by the retailer at will, including packaging and transport carrying costs (e.g. crate rental), which are compulsorily provided by the retailer.
- Retailers have used their buying power to impose Long Term Agreements (LTAs), which provide for the payment by suppliers of substantial off-invoice rebates at the end of a trading period.
- Retailers impose extended payment arrangement on suppliers with credit terms from 60 to 90 days. This has a direct negative effect on farm cashflow.
- Certain retailers operate a blind tendering system (e.g. for eggs) where established suppliers must re-tender for existing business when a contract term runs out. The result is that prices paid to producers are eroded as suppliers cut their prices in an effort to maintain shelf space.
- Processors and suppliers are compelled to carry the cost of product discounting campaigns by retailers, rapidly leading in turn to downward pressure on producer prices.
- Extensive advertising, in-store promotion and the allocation of prominent shelf-space to own-brands have significantly increased market control by retailers in particular segments. Retailers’ own brands have greatly damaged private brands built up over many years of substantial investment by farmers. In this way, ownbrands have directly undermined the capacity of primary producers to obtain a margin from the food supply chain.

## **The Food Supply Chain is Broken**

The food supply chain in Ireland, in our main export market the UK and in most of Europe is characterised by the concentration of buying power in the hands of a small number of retail groups with significant market share. Here in Ireland, over 70% of the retail grocery trade is controlled by three players – Tesco, Musgrave and Dunnes

## **Regulation of the Retail Sector**

The EU Commission is investigating the negative impact of retail buying power and has established an EU High Level Forum for a Better Functioning Food Supply Chain.

Legislation already exists in some EU countries (i.e. Germany) outlawing below cost selling.

The recent confirmation by Government that it will introduce a statutory Code of Practice is a positive move. This legislation is expected to be introduced in the next Dáil term and will be incorporated into the Consumer and Competition Bill.

## **Statutory Code of Practice**

All stakeholders in the food supply chain should be covered by the Code but specifically it must focus on targeting retailers to secure equity in the chain, right back to the primary producer. The Code must recognise the role of the primary producer in the chain and address the viability at every level of the food chain.

The Statutory Code of Practice must:

- address the imbalance of power in the supermarket/supplier/producer relationship that threatens the Irish food supply chain by placing unsustainable pressure on suppliers and in turn producers by retailers;
- enshrine the principle of fair trade in the grocery sector and provide a means for a more equitable share-out across the food chain of the consumer price;
- ensure that retailers have responsibility for ensuring that their pricing and purchasing decisions do not impact unfairly on primary producers;
- prevent below cost selling and predatory pricing practices;
- guarantee that contracts between retailers and suppliers do not include provisions to support retailer promotions / discounting;
- address the credit terms between suppliers and retailers and provide for no more than 21 days credit;
- include a provision for 'Retention of Title' and should be automatic until goods delivered are paid for in full by retailers;
- oblige retailers to report details of their profitability and turnover in this country;
- put penalties in place to guarantee that retailers comply with the Code;
- set a limit on the use of own brands by retailers;
- insist on proper labelling of produce, avoiding any confusion or misleading of consumers; and
- ensure retailers commit to sourcing Irish produce which can be audited and checked.

The main focus of the Code should be on the major retailers/supermarket chains operating within the Republic of Ireland. However, since a number of the Irish multiples are foreign owned, the provisions of the UK Code whereby suppliers from outside the State are also covered should be incorporated into the Irish code.

## **Independent Supermarket Ombudsman**

Along with a Statutory Code of Practice, the Government must legislate for an Independent Ombudsman office. This would have legal powers to demand information from retailers as part of their investigations and provide anonymity and confidentiality to suppliers who make complaints, to initiate investigations and have the powers to enforce penalties for non-compliance.

The Independent Ombudsman Office, being the authorised enforcement Body, must provide for farmer/producer representation on its governing Board.

The Independent Ombudsman must:

- investigate and adjudicate on the relationship between producers, suppliers and retailers;
- act in the public interest and in pursuance of the Code of Practice, ensuring farmers are not forced to produce below the cost of production;
- address the close dependency between retailer and supplier and its effect on the primary producer;
- have legal powers to secure information from retailers as part of their investigations;
- be adequately staffed and resourced to investigate retailers where there is the likelihood of a breach of the code; and
- make recommendations to improve the effectiveness of the Code of Practice in ensuring fair trade for farmers in the grocery goods sector.