



# **IFA Submission on the Grocery Regulations Consultation**

February 2015

## Introduction

IFA has lobbied for many years on the need for regulation of the retail sector, a rebalancing of power in the food supply chain and greater transparency on prices and margins for all actors in the supply chain.

While recognising that the Competition and Consumer Protection Act 2014 is a first attempt by Government to improve the functioning of the food supply chain, IFA believes that the legislation does not go far enough.

The legislation does not address a number of issues that IFA has identified as necessary to restore equity to the food supply chain and curb the dominance of the retail multiples.

These issues are:

- failure to include a prohibition on **below cost selling** in the legislation;
- no limits on the use of **Own-Brands** by retailers;
- no provision for '**Retention of Title**' for goods delivered until such time they are paid for;
- no provision for large retailer multiples to disclose **profits**; and
- failure to address the erosion of production prices resulting from the use of **tendering** rather than contract negotiation for the supply of certain produce.

IFA believes that the Government needs to tackle these issues through further legislation and regulation.

Notwithstanding these concerns, IFA believes that the 2014 legislation will be judged on the effectiveness of implementation of the Regulations, which must result in a rebalancing of power in the food supply chain. It is critical that the Competition and Consumer Protection Commission take a proactive role in initiating investigations, ensuring compliance with and penalising breaches of the Regulations

The following outlines IFA's position on the draft regulations which will be set out in the *Consumer Protection Act 2007 (Section 63B) (Regulation of Aspects of the Commercial Relationships between Suppliers and Relevant Grocery Goods Undertakings) Regulations 2015*.

## IFA Position on Draft Regulations

### 1. Commencement Date

IFA understands that the Minister for Enterprise, Jobs and Innovation intends to introduce these regulations in 2015. Following many years of seeking regulation of the retail sector, IFA supports an early introduction of the Regulations.

IFA believes therefore that the Regulations should apply to all contracts, within 30 days of the Regulations being introduced.

### 2. Payment for purchase of goods – Regulation 10

IFA does not believe that a supplier should be required to make a payment to a retailer in order to have their goods sold in a retail outlet. This is an indirect method of reducing the price paid to the supplier.

In particular, IFA believes that the requirement for a supplier to make a payment where their product has been listed in fewer than 25% of stores of a particular retailer should be removed.

This Regulation could be abused by retailers and potentially require a supplier to make a payment to a retailer over a number of years. If a retailer has decided to stock a product in multiple stores, it is assumed that they have taken this decision on a commercial basis in anticipation of increased sales. It is therefore unreasonable to expect that a supplier should make a payment for an increased volume being stocked, displayed or listed.

### **3. Payment terms and conditions – Regulation 11**

IFA strongly supports the provision for payment for goods within 30 days and do not believe that there should be provision in a contract to extend this period.

Delays in payments to small suppliers exert huge pressure on the day to day operations of the business and in some cases can undermine the overall viability of the enterprise.

IFA members have experienced situations whereby payment by a larger purchaser has been delayed for more than six months. In the event where the purchaser has gone out of business during this time period, it has been almost impossible to recover the monies owed.

By providing scope for the extension of payment days beyond 30 days within the contract, the proposed regulation gives an unfair negotiating position to the purchaser.

### **4. Variation of supply or delivery arrangements – Regulation 12**

IFA believes that this Regulation is additional to Regulation 6 and that any variation of supplier arrangements should be in the initial contract (as per Regulation 6). IFA proposes that this Regulation is removed.

### **5. Promotions – Regulation 13**

IFA believes that if a contract provides for promotion then that contract should specify the proportion of the cost of the promotion between the supplier and the retailer and the frequency at which promotions can take place.

### **6. Customer Complaints – Regulation 19**

IFA does not accept that a retailer should be entitled to pass back the costs of resolving a customer complaint. Once a product has been accepted by the retailer, a customer complaint cannot be attributable to some fault of the supplier.

IFA believes that the proposed Regulations on Shrinkage (Regulation 18) and Wastage (Regulation 17) already deal with these issues adequately.

### **7. Payment for wastage – Regulation 17 and Payment for shrinkage – Regulation 18**

There should be no scope in a contract for payment by a supplier for wastage, shrinkage or product weight specifications once a product has been accepted by the Quality Control of any retailer.

## **8. IFA Support for Specific Regulations**

IFA is supportive of the following proposed Regulations (see below) as we believe they will strengthen the negotiating position of suppliers and increase transparency in the commercial transactions between retailers and suppliers.

- Grocery goods contracts to be in writing – Regulation 5
- Unilateral variation, etc. of grocery goods contract – Regulation 6
- Goods or services from third party – Regulation 7
- Non-performance due to factors beyond reasonable control of party to contract - Regulation 8
- Forecasts of supply of grocery goods – Regulation 9
- Payment for Marketing Costs – Regulation 14
- Payment for shelf space – Regulation 15
- Payment for advertising, etc. – Regulation 16

## **9. Delisting of products**

IFA believes that a separate Regulation must be provided that deals with delisting of products. Delisting procedures must be included in a contract or otherwise prohibited.

## **Other Comments**

### **1. Garden plants and garden plant bulbs**

Following on from the consultation with stakeholders on the need for Regulations to be introduced for the category of grocery goods 'garden plants and garden plant bulbs', IFA believes that all the proposed draft Regulations applying to food and drink should also apply to this category of grocery, with the same comments and observations as already outlined.

While some of the proposed Regulations e.g. Shrinkage (Regulation 18) may not be particularly relevant, IFA believes that the application of these Regulations should be left open to the parties within this category, as they are effected by the same issues as other suppliers within the food and drinks sector.

### **2. Guidelines (in respect of Regulations brought into force)**

IFA believes the Minister in issuing guidelines must propose reasonable limits on the extent on which any contract can contain provisions for product discounting, in-store promotion and the allocation of prominent shelf-space to own-brands, as these can all disadvantage producers.

### **3. Guidelines - unilateral variation in contracts**

IFA believes that there should be guidelines issued to set out the reasons under which variation, termination or renewal of a grocery goods contract can reasonably occur (Regulation 6).

### **4. Guidelines – delisting of products**

IFA believes that there should be guidelines issued to set out the reasons under which delisting of products can take place.