IFA Submission to

the review of the Report of the previous Joint Committee on Agriculture Food and the Marine of the 31st Dáil`/24th Seanad on the Grocery Goods Sector '*Increasing equity and transparency in producer-processor-retailer relationships'*

IFA also represents Fresh Milk Producers (FMP) and West Cork Milk Producers and this submission represents their views

January 2017

Introduction and Overview
The Irish Farmers' Association (IFA) is the main representative body for farmers in Ireland. IFA welcomes the invitation to submit to the Joint Oireachtas Committee on Agriculture, Food and the Marine on the review of the Report of the 31st Dáil / 24th Seanad on the Grocery Goods Sector '*Increasing equity and transparency in producer-processor-retailer relationships'*

Imbalance of power in the Food Supply Chain
Both in Ireland and at EU level, it is widely recognised and accepted that there is a major imbalance of power in the food supply chain between retailers as price setters at the top of the chain and primary producers as price takers at the bottom.

This imbalance of power in the food supply chain has resulted in a situation where farmers are sometimes compelled to accept unreasonable conditions and prices that do not cover their costs or provide an economic return.

In 2013, IFA welcomed the contents of the Report[1] carried out by the then Joint Oireachtas Committee on Agriculture, Food and the Marine. This report outlined the Committee's '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 Report went on to say that the Committee also 'considers that in many respects primary producers are not getting fair treatment in the food supply chain, nor a fair price for their goods'.

The Report identified as key recommendations - the need for statutory legislation, not a voluntary code, should be implemented; that an independent ombudsman to oversee the enforcement of legislation should be appointed and that there should be legislation to force the retail multiples and large processors to publish their profits.

The report also made specific reference to the liquid milk market and recommended that Government would encourage an all-Ireland market for this sector.

There continues to be two issues which pose a major challenge in the fresh sectors, that we now wish to highlight.

a. Below Cost Selling / Promotions
The Report also referenced Below Cost selling. This remains a major issue. The commodities most frequently squeezed by the 'below cost selling' actions of dominant retailers are liquid milk, potatoes, fruit and vegetables.

[1] Report on the Grocery Goods Sector '*Increasing equity and transparency in producer-processor-retailer relationships'* - Houses of the Oireachtas – Joint Committee on Agriculture, Food and the Marine

- The liquid Milk market is valued at €530m at retail level, of which 75% is sourced from Republic of Ireland farmers. Liquid milk producers are contracted to produce a set amount of milk daily, to ensure that fresh, locally produced milk is consistently available for consumers on supermarket shelves. In recent years, co-ops have failed, under pressure from retailers, to return winter producer prices which allow them cover their significantly higher production costs.
- Below cost selling is the main threat to the sustainability of Irish Horticulture. The retail fresh produce market in Ireland is worth €1.2bn with vegetables accounting for €500m, Fruit €550m and Potatoes €150m.
- While promotions have always been a part of retail sales, the practice of below cost sales has brought a new and potentially terminal threat to the sector.
- Vegetable growers cannot continue in an environment where their produce is constantly being used by retailers as 'loss leaders' and being offered to consumers for way below the cost of production. An example of this is the 'Super Six' weekly promotion in Aldi at which six different fruit and vegetables are sold between 39c and 49c. Similar promotions are replicated in the other multiple retailers. For the average grower, the cost of producing carrots is 55c/kg, swedes 53c/unit and cabbage 52c/unit.
- Often the timing of the promotions takes no account of available supply. At these times, sales volumes can increase to a multiple of normal demand and in many cases growers cannot meet the orders and sales are lost to imported produce.
- Such promotions also greatly affect the sales for other competing fresh products (i.e. broccoli and cauliflower), whose highly perishable nature means they cannot be held over until the promotion finishes. This distorts the market for everyone, regardless of whether your product is on promotion or not.
- Below cost selling has led to a reduction in the critical mass of certain product lines e.g. we now only have one major grower in both the iceberg lettuce and spring onion lines.
- Below cost selling has resulted in a drop in the farm gate price of some Irish grown fresh produce lines of 10 to 20% over the past four years. This is directly linked to below cost of production promotions by the retailers.
- Below cost selling contributes to food waste and puts smaller players in the market out of business.

b. Retail Supply Tenders for Private Label Milk

1-year retail tenders for private label milk supplies have been adopted by many of our main retailers, and we would argue these constitute unfair trading practices.

These tenders, see all the co-ops pitted against each other every twelve months, and promote a downward wholesale price spiral. This activity has given rise to some extreme supply swings in 2016 – one co-op losing the bulk of their contract with a major retailer to another, then proceeding to undercut that co-op and another to supply other retailers.

The trend has been damaging for some time: for a number of years now, it has had a serious negative impact on the ability of liquid milk producer groups, represented by IFA, to negotiate with their c-ops for winter remunerations that go some way towards covering costs.

It takes up to three years for a farmer to gear up to supply winter milk: breeding decisions as to when an animal is to be put in calf, which determines when they will calve, and therefore when they will start producing fresh milk, are taken that far ahead.

The inadequate remuneration of recent years is therefore feeding into an early trend of exit of fresh milk producers from winter milk production, in favour of the opportunities of producing more milk in spring, more cheaply, for export now that milk quotas are no longer a consideration. Hence, while overall dairy calf births are growing rapidly, autumn calf births in liquid milk herds fell by 16% in 2015, and another 12% in 2016 – farmers are voting with their feet.

At a time when retailers try to impress consumers in local communities with their commitment to local suppliers, 1-year retail tenders are the very opposite of sound commercial relationships, and create major up-stream contractual and price implications which farmers suffer the most from.

Wild swings in supply arrangements between dairies and retailers are invisible to consumers, but incredibly disruptive on the market place, and very damaging to farmers. They undermine the very basis for their supply contracts with their dairy, to say nothing about eroding the up-stream margins on which fair and sustainable remuneration of farmers for their additional winter costs rely.

IFA proposes that these 1-year retail tenders should be prohibited, and replaced with minimum 3-year negotiated sourcing contracts.

Retail Supply Tenders for Fresh Produce

Some retailers use annual tenders for fresh produce procurement similar to that for milk. In fact, one retailer asks suppliers to tender on a weekly basis for its Irish strawberry supply. This practice is unacceptable and IFA believes this is an unfair trading practice.

The remainder of this submission deals with the four key areas which the Report focused on, highlighting the issues of most importance to primary producers

1. The Impact of the Consumer and Competition Act 2014 and S.I. No. 35/2016 – Consumer Protection Act 2007 (Grocery Goods Undertakings) Regulations 2016

The Competition and Consumer Protection Act 2014 is a first attempt by Government to improve the functioning of the food supply chain. IFA has always maintained that this legislation does not go far enough and that the new Grocery Regulations will be judged by suppliers and farmers on their effectiveness in rebalancing power in the food supply chain.

While the legislation fails to address a number of issues necessary to restore equity to the food supply chain and curb the dominance of the retail multiples, the biggest of these issues is the failure by Government to prohibit ‘below cost selling’ in the legislation and to appoint an Independent Ombudsman to oversee and implement the regulations.

It is critical that the new Competition and Consumer Protection Commission (CCPC) takes a proactive role in ensuring full compliance by retailers with their obligations under the new Regulations.

The CCPC will need to demonstrate its willingness to take on board complaints made by suppliers and primary producers in confidence, and initiate its own investigations into retail behaviour.

The CCPC must set the tone for rigorous implementation of the Regulations by issuing contravention notices and naming and shaming retailers found in breach of the Regulations, as well as taking legal proceedings when necessary.

The CCPC has an important role in monitoring the compliance of retailers and wholesalers with the legislation, including all the requirements for retailers/wholesalers in staff training, annual compliance reporting and maintaining of records.

The statutory legislation provides for written contracts between retailers or wholesaler and suppliers, which must give greater certainty to producers on their term and conditions.

IFA accepts that the implementation of this legislation is at an early stage, but to date the CCPC are invisible to the primary producer. IFA awaits the publication of the first report from the CCPC at the end of March 2017, which will report on activity from 1 April to 31 December 2016.

IFA believes that the Government needs to strengthen the regulations:

- so that primary producers get a fair share of the retail price, and
- to provide for an Independent Retail Ombudsman to oversee the enforcement of the new Grocery Regulations. (In the UK, the Grocery Supply Code of Practice is overseen by the Groceries Code Adjudicator Christine Tacon and is paid for by a levy on the retailers)

2. Pricing and impact on primary and secondary suppliers

The price received by primary producers is published, while the consumer price for final products is also available. However, there is an absence of reliable and robust data on the prices that are paid for food products within the supply chain.

Price discovery and transparency is a key requirement to improve the overall functioning of a market, and improving the overall cooperation and understanding between stakeholders in the supply chain.

The absence of a wholesale price reporting system for food produce, particularly in the meat sector, is undermining the competitive functioning of the food supply chain.

In its submission to *FoodWise 2025,* IFA proposed that legislation was required to provide robust, reliable and anonymous data on the prices being received for food products throughout the supply chain, and that the model that should be adopted and enforced is similar to that operating within the US.

Under the USDA Livestock Mandatory Reporting Act of 1999, beef processors are required to electronically file summary information twice a day on all transactions involving live cattle purchases and beef sales, which are then published by the USDA. As well as beef, this system also applies to pork and lamb and their products at various stages in the marketing chain. According to the USDA the price reporting tells producers, processors and others what they need to know about pricing, production and livestock products, improves USDA price reporting services and encourages competition in the marketplace. The US experience shows that by legislating for price reporting, the programme was capturing accurate data on 90% of sales as opposed to reaching about 50% of sales, with inaccuracies under a voluntary code. There have been various changes to the legislation since 2002, but because it was introduced on a statutory basis initially, the price reporting system continues to operate successfully and transparently.

Agricultural Markets Task Force Report (AMTF)[2]
IFA has welcomed the AMTF report which contains important recommendations on increased price transparency and independent enforcement to strengthen farmers' position in the food chain. The Task Force has provided advice and expertise on the functioning of agricultural markets and farmers' position in the food supply chain.

EU Commissioner Phil Hogan's commitment to prioritise the implementation of the report must now be supported by Member States, as it is critical that these recommendations are introduced without delay and actively enforced to rebalance power in the food chain in favour of farmers.

The report recognises the need for independent enforcement of retail regulation which supports IFA's demand for an Independent Retail Ombudsman. This is necessary to assure suppliers that complaints will be investigated and abuses prosecuted

It is critical that these recommendations are introduced without delay and actively enforced to rebalance power in the food chain in favour of farmers

The EU Commission must introduce mandatory and timely price reporting for meat, dairy, fruit and vegetables to provide reliable data on prices and margins outside the farmgate through to consumer level. These do not exist now and need to happen.

To enable suppliers to overcome the fear factor, they must have confidence that complaints will be investigated, regulations will be complied with and that there will be significant penalties where abuses exist.

Transparency on profits
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 across the supply chain.

The prices and margins received by farmers across the EU are published in detail. By contrast, there has been very little transparency on margins required of larger businesses in the food supply chain, resulting in an imbalance of information and bargaining power between the different groups.

IFA welcomes the European Commission's proposals to increase transparency rules for multinationals on taxation, turnover and profit and strongly urges the Irish government and MEPs to support their passage through the European Council and the European Parliament.

The EU Commission proposals are that any multinational company, European or not, active in the EU single market, with a turnover of €750m will have to comply with the proposed additional transparency rules. A multinational company operating in the Irish market will have the same reporting requirements as one operating in any other EU Member State.
The information to be disclosed on a country-by country basis, includes:

- The nature of the activities
- The number of employees

[2] Agricultural Markets Task Force was set up in January 2016 as a European Commission expert group by Phil Hogan, Commissioner for Agricultural and Rural Development

- The total net turnover made, including with third parties as well as between companies within a group
- The profit made before tax
- The amount of income tax due in the country and the amount of tax actually paid during that year; and
- Accumulated earnings.

The transparency that will arise from the publication of this information will expose market failures that may exist in individual Member States. For example, the generation of supernormal profits by subsidiaries of the same company in one Member State rather than another may indicate a lack of competition in that market, and the potential for anti-competitive practices.

The financial disclosure requirements will provide other undertakings in the supply chain – e.g. suppliers in the grocery chain – with accurate information on which to base negotiations. It will also provide consumers with information on the breakdown of the final retail price.

3. Support for local produce

IFA continuously monitors retail outlets to ensure that the highest quality standard of Irish produce, when in season, is avail to the consumers. IFA supports the recommendation in the report that the retail multiples continue to work closely with local food producers.

4. Labelling

Beef Labelling
Under EU beef labelling legislation, retailers are required to provide full transparency to consumers and show the following labelling details – where (country) an animal was born / where an animal was fattened and where an animal was slaughtered

In the UK, retailers have adopted an approach of insisting that they will only stock beef that has single country status (i.e. born / fattened / slaughtered in one country), either UK or Ireland.

Whereas, on continental Europe retailers freely stock product that is born in one country and fattened and slaughtered in another country, with all this information on the label.

In summary, the approach of meat processors and UK retailers in this area is working against the ethos of the EU Single Market, which in turn is reducing competition and impeding the traditional live export trade, particularly with Northern Ireland. These labelling restrictions must be addressed and resolved.

Wholesale and Foodservices Sector labelling
Continued monitoring of the wholesale and foodservices sector to ensure correct labelling of pigmeat and poultry products on the Irish market is critical.

Use of Irish sounding brand names
The use of Irish sounding names / brands / brand substitutes by retailers when the product is not necessarily produced in ROI can be very misleading to consumers.