

consumers in the economy
 vigorous competition drives productivity growth, innovation and value for all
 innovation
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productivity
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 and value for all consumers
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Submission to the Department of Environment, Heritage and Local Government

Review of the Retail Planning Guidelines – Issues Paper

S/10/002

July 2010

Questionnaire to Inform Review of the Retail Planning Guidelines

Q.1 In general, do you think that the retail planning guidelines have struck the right balance in accommodating new retail development that is projected to be required in a way which is efficient, equitable and sustainable?

Yes No

If no, why not?

The Competition Authority released a Report in July 2008 examining *The Retail Planning System as Applied to the Grocery Sector: 2001- 2007*. The Report found that the planning system, through a variety of mechanisms, makes it difficult for new retailers to enter the Irish grocery sector and for existing retailers to expand.

The Competition Authority recognises that the Government, Planning Authorities and Planners are faced with the difficult task of balancing a variety of social, economic and environmental objectives.

The Authority found however that the current system places insufficient emphasis on the role that increased competition can play in ensuring that consumers get the best possible value for money, and recommend that this emphasis be incorporated into the guidelines and planning decisions.

Despite the growth in the number and size of grocery retail outlets in Ireland since 2001, the Report found that the retail planning guidelines act as a barrier to competition in grocery retailing in three ways:

1. Restrictions on the size of a grocery retail outlet. There are limits on the size of grocery retail outlets. Stores can not be more than 3,500 m² in size in the Greater Dublin Area, and 3,000 m² in size outside GDA, while so called discount grocery stores can be no larger than 1,500m².
2. Restrictions on where a grocery retail outlet can locate. There is a presumption in the planning system against out of town development. This tends to force retailers to open new stores in smaller more expensive central locations. Additionally retailers may not open new stores if by doing this adversely affects existing retailers. This undermines competition in a fundamental way.
3. Finally there is a large amount of uncertainty regarding the planning process. The system is set up so that retailers are able to frustrate their competitor's attempts at entry. This can raise the cost and delay the arrival of a new retail outlet thus denying consumers all over the country the benefits of competing grocery retailers in their local area.

The Report concluded that these barriers have influenced the type of grocery retailers that trade in Ireland, where they locate, what they offer consumers and the prices that consumers pay.

Q.2 Should the retail floorspace caps be retained?

a) for convenience goods (see para. 75)?

Yes No

Yes, but changed to:

If not, why not?

A blanket restriction on floor space is a disproportionate restriction on competition. It inhibits the scale and extent of expansion by existing retailers and prevents the entry of new ones.

Large floorspace requirements are typically associated with high turnover, low margin grocery retailing. The effect of the retail caps is therefore to deter the entry of the most price aggressive grocery retailers. The Competition Authority recommended in “*The Retail Planning System as Applied to the Grocery Sector: 2001- 2007*” Report that the retail caps be removed and that decisions on the extent of development are left to local authorities to make.

The availability of larger sized outlets in some areas would give consumers the ability to exercise choice over a wider range of products at more competitive prices. The present limits thus protect existing retailers at the expense of Irish consumers. Limiting floorspace means that Irish consumers experience less choice. The extent of product range that a retailer can carry is restricted, and thus the extent of inter-brand competition and innovation is limited. A greater scarcity of shelving space implies a more limited product range and fewer opportunities for new products to successfully launch.

The impact of the retail caps is evident by the fact that Ireland does not have any *large scale* low cost grocery retailers, as exist in other European Countries where prices are lower than in Ireland e.g. Carrefour or Asda. The planning system as it currently stands would require this type of retailer to considerably change their business model before they could obtain planning permission and enter the market. A retailer such as Carrefour could only enter the Irish market with a scaled down version of their typical hypermarkets. This immediately would reduce their competitive impact and the retail offering they normally supply their customer base with in other European countries.

In the UK, local authorities can set out specific floorspace thresholds in the Local Development Plan for the scale of new development likely to be appropriate in a centre.

b) for retail warehouses (see paras. 82 and 84d)?

Yes No

Yes, but changed to:

sq m

If no, why not?

A blanket restriction on floor space is a disproportionate restriction on competition. It inhibits the scale and extent of expansion by existing retailers and prevents the entry of new ones.

Q.3 The sequential approach (see paras. 58 – 63) aims to protect the vitality of city and town centres. Do you think that this approach should be:

a) retained? Yes No

b) modified? Yes If so, in what way?

The sequential approach seeks to focus grocery retail developments in town centres, and to this end puts in place a number of requirements that must be met before out-of-centre development can take place. The Competition Authority cannot comment on the merits or otherwise of this policy given that it is part of broader planning system objectives regarding social inclusion, economic growth, regeneration etc. If planning authorities believe that this is the best approach to meet these objections, we can only highlight how this approach could be modified to facilitate greater competition, while retaining its essential objectives.

The “sequential approach” to planning means that the preferred location for new retail development, where practicable and viable, is within a town centre. Where it is not possible to provide the form and scale of retail development that is required on a site within the town centre, then consideration can be given to a site on the edge of the town centre so as to encourage the possibility of one journey serving several purposes. Only where it can be demonstrated that there is no town centre or edge-of-centre sites which are suitable, viable or available should alternative out-of-centre sites be considered. The sequential approach raises the possibility that retailers reduce the scale of their outlets to fit into available town centre sites and as such, this requirement acts as a barrier to entry.

The sequential approach to retailing also considerably raises the cost of entry into the Irish retail market given that town centre sites are expensive to develop.

Some retail formats can adapt easier than others to changes in their outlet size, and as such can establish themselves in smaller town centre locations without any radical changes to their business model. However for retailers whose business model is based on high turnover, low margins which require large floor spaces this transition is not as easy. As previously discussed, Ireland does not have any *large scale* low cost grocery retailers partly because of the existence of retail caps, and also because of the lack of large retail spaces zoned for town centres. Some retail formats are incompatible with the sequential approach policy. To set up in a sequentially preferable site would lead them to alter their core business model and have a detrimental impact on their offering to consumers.

It is therefore important that the sequential test be modified to allow a store’s format be an acceptable reason for obtaining permission for a sequentially less preferable site.

Q.4 Has the application of the guidelines discriminated against discount grocery retailers such as Aldi and Lidl in terms of floorspace and / or site location?

Yes No

If yes, in what way?

Discount food stores are described in the Retail Planning Guidelines as *“being single level, self service stores normally of between 1,000m² and 1,500m² of gross floorspace, selling limited range of goods at competitive prices and often with adjacent car parking”*.

While there is no specific mention of a cap on the size of discount food stores, from the Authority’s analysis of planning application refusals it appears that planning authorities interpret the Retail Planning Guidelines to mean that discount food stores can have a gross floorspace of no greater than 1,500m².

The differential treatment of discount outlets appears to hinge on the pricing strategy associated with these retailers and is therefore particularly harmful to price competition. Limiting more price-aggressive competitors in the extent of retail capacity that they may offer is anti-competitive. Indeed, given that the business model of discount retailers typically involves low margins and relatively high turnover, the restriction on floorspace likely inhibits the effectiveness of the business model. While this may not have been the intention of the Retail Planning Guidelines, the evidence suggests that this is in fact the case in practice.

Ireland currently has two discount food stores – Lidl and Aldi. While their business model may not require floorspace of over 1,500m², there are certainly other discounters operating in Europe that would require larger floor spaces. The definition of discounters in the Retail Planning Guidelines currently discourages these types of large scale discounters from entering the Irish market.

Discount stores can greatly extend the choice and range of convenience retailing in an area, and should be considered to be in the same land use class as any other superstore or supermarket.

Q.5 Should the quantitative method for estimating future retail capacity needs continue to be used, given the drawbacks such as the lack of certain key data? If yes, what safeguards would you suggest?

Yes with modifications No

If yes, what safeguards would you suggest?

Local authorities must identify optimum locations for new retail development in their development plans. In order to identify suitable sites, planners need some indication of the expected demand for floorspace, and so some assessment of future floorspace requirement must take place. The Competition Authority has concerns however that this assessment may act as a barrier to entry. An assessment by a local authority of likely additional floorspace required within their administrative area could be seen as determining how many entrants will be admitted to the retail trade in a particular area.

The process of planning for future retail development is an onerous one for local authorities. Local authorities are in effect required to anticipate changes in consumer preferences and economic fortunes as well as the relative efficiency of different types of retail in terms of floorspace usage. Given the difficulties associated with carrying out this type of exercise in a reliable and consistent (across local authorities) fashion, it must necessarily be the case that whatever estimates are arrived at, are only indicative at best. The principal concern from a competition perspective is that local authorities place too great a weight on the floorspace requirement.

In our report "*The Retail Planning System as Applied to the Grocery Sector : 2001- 2007*" the Competition Authority recommended that little weight should be put on estimates as presented in local authority development plans. Only minimal account of projections on floorspace requirements, as contained in development plans should be taken when local authorities are assessing planning applications. Rather, individual applications should be assessed on their merits.

Q.6 Has there been over-emphasis placed by some planning authorities on the impact of proposed new or expanded shopping centres on existing outlets?

Yes No

If yes, how could this be counteracted?

When making planning applications, retailers are required to produce retail impact assessments. The core of this retail impact assessment is an estimate of retail diversion. That is, how much trade will be diverted from existing centres by the proposed new retail development. If new entry will result in a significant decrease in the turnover of incumbents in the retail centre, and thus have a negative impact on the vitality and viability of the town entry will not be permitted. The requirement that planning applicants demonstrate that not 'too much' trade is diverted from incumbent retailers is a barrier to entry which may block entry entirely or limit the scale of entry.

Normal competition would suggest that a new retail development would naturally impact on existing stores. Retailers expect to compete with each other for customers and to vie for market share. By only granting entry that will not have an adverse effect on existing retailers, local authorities could possibly halt the development of competition within a local market, and negatively impact on consumer welfare in the town centre.

The Competition Authority expressed concerns in our Report "*The Retail Planning System as Applied to the Grocery Sector : 2001- 2007*" that there may be over-emphasis placed by some planning authorities on the impact of proposed new development and made a recommendation that the Retail Planning Guidelines be amended so as to reduce this emphasis. Out of 54 applications refused by a local authority the retail impact assessment was raised as an issue in almost 40% of cases, and was also raised as an issue in 48% of cases refused by An Bord Plenála. A common theme running through these decisions concerned disagreements over the estimates of the quantum of retail impact, often arising from differences in the assumptions made by applicants and appellants.

The Authority has suggested to the Department of Environment, Heritage and Local Government that the current methodology of assessing the impact of proposed new development be amended so that other factors can be considered apart from retail diversion. For instance, the retail impact assessment could be an opportunity for retailers to show how their entry will:

- Affect employment;
- Promote the economic regeneration of the area;
- Increase competition within the area- and will thereby attract further consumers to the area;
- Respond to consumer demand for its retail offering.

The retail impact assessment should change its focus from one that concentrates solely on what new entry “takes away”, to an assessment which also enables retailers to express how their entry will increase the attractiveness of the town.

Q. 7 Should edge-of-centre and out-of-town retail outlets be required to charge for on-site parking?

Yes No

If yes, how should the revenue be used (e.g. to cross-subsidise public transport)?

Car parking charges exist in town centres for a number of reasons including reducing congestion or combating environmental degradation in urban areas. If edge-of-centre and out-of-town retail outlets are required to charge for on-site parking the reasons for this must be equally valid.

The Competition Authority is aware that some retailers in town centres argue that parking charges should be introduced in out-of-town locations to create a more “level playing field” which would counter the disincentive to shopping in town centres. Consumers will decide whether to shop in the town centre or in out of town locations based on a number of different factors – range of goods, value, convenience etc. For those shopping by car, availability and cost of parking will be one factor among many. Given that there is no “level playing field”, in other aspects, the reason for singling out parking is questionable. There are of course many sites in town centre areas that do not have parking charges, and so again the logic of requiring all out-of-town retail outlets to charge for on-site parking is not very clear.

Edge-of-centre and out-of-town retail outlets may be required to charge for on-site parking as a way of supporting the sequential approach to retail planning. However many retailers selling bulky goods, require extensive areas of showroom space that cannot be accommodated in the town centre. Likewise consumers buying these bulky goods have no choice but to collect these goods by car. Penalising consumers with parking charges, in support of a planning policy that provides no other alternative as to where they can purchase bulky goods is again questionable.

While many of the issues surrounding parking charges lie outside the scope of competition policy, the Authority recommends that the requirement to charge for parking in any location is assessed on a case by case basis. Retailers in out-of-town, edge-of-centre developments, likely already factor in the cost of providing free parking in their development and ongoing maintenance cost – these costs may be quite considerable. However, where the development does not contribute to traffic congestion, it is not clear why shoppers should be required to pay a separate, extra charge. Other retail outlets in out-of town, edge-of-town centres may contribute to congestion and traffic delays in an area. In this case the requirement to recoup the costs involved (either through a flat-rate contribution or through individual parking charges) may be more reasonable. A retail planning policy which requires all out-of-town, edge-of-centre retail outlets to charge for parking will not account for these factors, and thus the most efficient and fair approach would be to decide on a case by case basis.

Q.8 Should the range of goods permitted to be sold in retail parks be more tightly controlled?

Yes No

If yes, in what way?

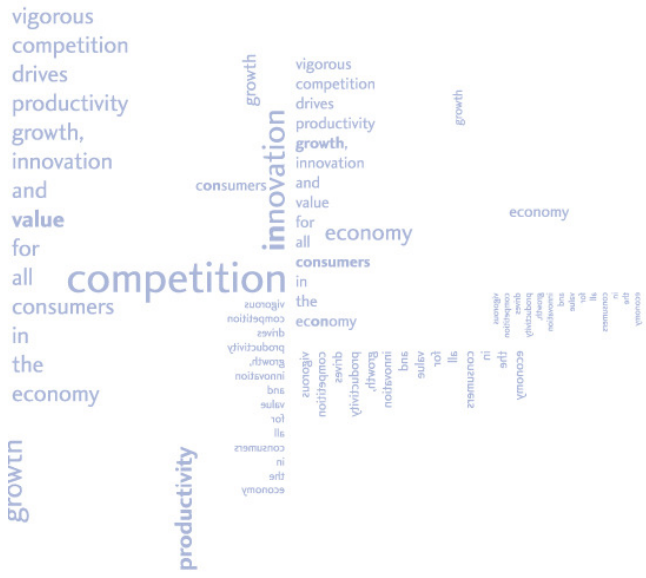
This issue is part of a broader planning policy objective and lies outside the scope of competition policy.

Any other comments or suggestions you wish to make?

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