

Joint Oireachtas Committee; Agriculture, Food and the Marine

Meeting on: Pre-Legislative Scrutiny of the General Scheme of the Agricultural and Food Supply Chain Bill 2022

6 July, 2022

Opening Statement

Good afternoon, Chair and members of the Committee.

First let me introduce myself and my colleagues. My name is Brian McHugh, I am a Member of the Competition and Consumer Protection Commission. I am joined today by Seán Murphy, Director of the CCPC's Consumer Protection Division, and Síona Ryan, Director of our Policy and International Division.

My colleagues and I are glad to have the opportunity to brief the Committee on the CCPC's recent submission on the General Scheme of the Agricultural and Food Supply Chain Bill 2022 and to share the CCPC's views on the proposed role and functions of the Office for Fairness and Transparency in the Agri-food Supply Chain. Based on our experience as an enforcement agency we will share our observations on the proposed approach to complaints, to prohibitions, and to enforcement of the unfair trading practices.

The CCPC welcomes the establishment of the Office and believes that the Bill, as proposed in the General Scheme, would enable the effective implementation of the Unfair Trading Practices Directive, and of some of the measures of the now revoked Grocery Goods Regulations. The CCPC welcomes that a key function of the Office will be to make available analysis of information on price and market data in the agricultural and food supply chain in Ireland, and that the Office will report and advise the Minister based on its analysis and research. This will enable the new Office to track market trends as they develop, and identify issues arising in the agri-food sector, including any presence of systemic UTPs with wider impacts throughout the supply chain. In turn, this will strengthen the Office's ability to support and advise the Minister and make recommendations in relation to any legislative or policy change it considers necessary based on that evidence. This will allow for a more comprehensive picture of the supply chain than is currently available.

The CCPC also welcomes the emphasis placed on the importance of the Office engaging with stakeholders, and its empowerment to cooperate and consult with suppliers and buyers of agricultural and food products and other relevant stakeholders. This will not only assist the Office in the execution of its functions, but also encourage suppliers to come forward and engage with the Office, on a confidential basis if required, where UTPs are alleged.

It will also be important for the new Office to establish relationships with farmers, primary producers and buyers to facilitate effective communication channels where issues of concern, including complaints, can be brought to the attention of the new Office.

It will be important that suppliers can have confidence they will not face repercussions if they were to make a complaint, it will also be essential to ensure that robust confidentiality measures will be put in place. For this reason, the CCPC recommends that the provisions relating to confidentiality for complaints should be strengthened. The CCPC also suggests that similar provisions to the UK Groceries Code regarding confidentiality, as set out in that Act, should be considered. In particular, the Groceries Code sets out that the Groceries Code Adjudicator may not make an unauthorised disclosure of information that it thinks might cause someone to believe that a particular person has complained about a large retailer failing to comply with the Code. The CCPC welcomes the provisions of the Bill which allow flexibility for the Minister to maintain or introduce national rules designed to combat unfair trading practices that are not currently within the scope of the Directive. The approach also allows for the Minister to consider the reintroduction of the Grocery Goods Regulations' obligations on grocery businesses.

It is important that any such Regulations be appropriate and evidence based. In this context, the CCPC very much welcomes the provisions set out in Head 43 of the General Scheme, where the Office is mandated to review the Regulations made under the Bill and assist in the preparation of relevant draft legislation. The CCPC also welcomes the provision under which the Office will consult relevant persons before submitting proposals to the Minister or any other Minister of the Government.

The CCPC notes that the UTP Directive's list of prohibited unfair trading practices are separated in two different categories commonly referred to as a 'grey list' and a 'black list'. The 'black list' sets out the UTPs which are prohibited in any circumstance, and the 'grey list' sets out the UTPs which are prohibited unless they have been previously agreed in clear and unambiguous terms in the supply agreement or in a subsequent agreement between the supplier and the buyer. It will be important for any Regulations to clearly communicate the type of prohibition applicable to provide certainty to suppliers and buyers.

Having an adequate and robust enforcement framework will be key to the effectiveness of the Office and the Bill's success for a number of reasons. In the first instance there may be a significant imbalance between the parties concerned in terms of bargaining power, expertise, resources and information, therefore regulatory intervention will be necessary and appropriate. The enforcement model must be capable of deterring traders from engaging in the prohibited practices concerned and the CCPC suggests that the Office has a suite of interventions available to it which will address breaches at different times and with different effects.

The CCPC notes that, under Head 50, a prosecution for an offence under the Bill may be brought at any time within 2 years after the date of the alleged commission of the offence. The CCPC recommends that this time limit be extended to 3 years to cater for a potential delay on the part of the complainant, or their representatives, to bring a complaint to the Office in the first instance. Furthermore, the time limit should also allow for the Office to conduct its investigations, especially given the potential complexity of some of the supply channels or trading environments which might be involved.

In conclusion, the CCPC welcomes the content of the General Scheme which will provide a basis on which relationships in the agri-food supply chain can be strengthened and poor practices can be dealt with effectively.