High-level analysis of the Irish Grocery Retail Sector

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Coimisiún um Iomaíocht agus Cosaint Tomhaltóirí
Competition and Consumer Protection Commission

Contents

1. Introduction[1]

The Competition and Consumer Protection Commission ('the CCPC') is the statutory body responsible for promoting compliance with, and enforcing, competition and consumer protection law in Ireland.

Our vision is for open and competitive markets where consumers are protected and businesses actively compete. Our role and functions include the enforcement of competition law; consumer protection law and product safety regulations, as well as encouraging business compliance. We provide information to consumers about their rights, personal finance and product safety, through a consumer helpline, a dedicated section of our website, public awareness campaigns and through our various financial education initiatives. We also have a statutory role in contributing to policy development.

Our prioritisation principles help us to achieve our mission and to be transparent in where we focus our work and resources. They are:

- Level of economic and/or physical harm
- Likely impact of the CCPC's action
- Strategic significance
- Risks, resources and costs

All decisions to act will be underpinned by information and evidence gathered as a result of market intelligence, contacts to our consumer helpline, research, investigation and international good practice. Information is then evaluated and processed to identify the source and size of the problem, in particular the level of consumer harm.

The purpose of this analysis is to outline the CCPC's observations on competition in the grocery retail sector in Ireland in response to questions put to us by the Minister for Enterprise, Trade and Employment on prices being charged by major grocery retailers in Ireland and whether these prices are excessive. The current high-levels of inflation in the grocery retail sector and resulting price increases have significantly impacted consumers, particularly those on low incomes. The strong public concern over this has included suggestions reported in the media[2] that the grocery sector is engaged in some level of "price gouging" or "greedflation". These terms are not defined in law but are generally understood as a situation where a trader charges prices at a level that is considered unreasonable or

[1] Note: Additional information along with specific example references are included as footnotes (number format). All general citations included as endnotes (Roman numeral format).

[2] For example, https://www.irishtimes.com/politics/2023/05/08/reports-of-price-gouging-to-be-presented-to-supermarket-industry/

unethical. "Price gouging" is often used to refer to situations where a trader makes very high profits as a result of a crisis or disaster situation and "greedflation" is used where a trader is accused of using a general increase in inflation to significantly increase its profit margins.

Generally, traders in Ireland are free to set and change their prices for goods and services and charging high prices is not, of itself, generally a breach of competition or consumer protection law. In a competitive market, traders who attempt to significantly increase their profit margin through price increases are likely to lose market share because consumers will switch to competitors. However, not all markets display strong competition and there may be situations where traders in some markets have significant market power – whereby they have the ability to increase prices and profits without significant concerns that competitors will react and they will lose market share. It is the role of the CCPC to promote competition in markets and this includes analysing markets to review the level of competition and taking appropriate enforcement action where there is evidence of a breach of competition law.

In response to the questions posed, the CCPC provides the following observations on competition in the grocery retail sector and an overview of how our statutory functions related to the grocery goods sector. In response to concerns raised in relation to recent higher grocery prices, the CCPC considers it appropriate to set out our current observations based on international experience in response to the Minister for Trade, Enterprise and Employment. This analysis has been done in a short period using publicly available information and should be interpreted as high-level analysis.

2. High-level analysis of competition in the grocery retail sector in Ireland

Groceries are an essential purchase as well as a significant expense for most households.[3] The grocery retail sector is made up of a variety of retailers catering to diverse consumer needs through a mix of supermarkets, convenience stores and specialist food stores. Five major operators of nationwide supermarket chains are prominent in the sector: Dunnes Stores[4]; Tesco[5]; SuperValu[6]; Lidl[7] and Aldi[8] (referred to as 'major grocery retailers' throughout this analysis). Therefore, we have focused our analysis on these retailers as they cover approximately 91% of the market.[i] However, we note that

[3] In Q1 2023, €3 billion was spent at supermarkets and grocery stores in Ireland (Kantar 2023)
[4] Trading as Dunnes Stores Unlimited Company
[5] Trading as Tesco Ireland Limited
[6] Trading as Super Valu Supermarkets Limited
[7] Trading as Lidl Ireland Gmbh
[8] Trading as Aldi Stores (Ireland) Limited

there are differences between Lidl/Aldi and the other major grocery retailers and they do not operate homogenously.[9]

Market analysis is a valuable instrument for competition authorities to examine whether there are market failure issues in a sector, outside of the context of a merger review or antitrust investigation.[10] These analyses can range from being short assessments of the market to more formal market studies involving multiple rounds of stakeholder engagement and in-depth quantitative analysis. In relation to this high-level analysis of the grocery retail sector, prepared in the context of the concerns outlined above, the CCPC has:

(i) analysed market concentration and reviewed market development over time (i.e., entry, exit and expansion);

(ii) analysed trends in national and international food prices;

(iii) examined publicly available data relating to the profit margins of major grocery retailers; and,

(iv) considered issues relating to transparency and market interventions.

The below provides a high-level analysis of the grocery retail sector in Ireland.[11]

Concentration

In order to consider whether there might be fundamental competition issues within a particular sector the CCPC considers a number of indicators. One of these is to look at market concentration which provides a snapshot of market structure. Where a market is highly concentrated[12] with few players competing against each other, this might be an indication that price competition is not strong and traders may have the power to increase prices without the fear that competitors will react and take significant customer share away from them.

[9] See for example CCPC Tesco/Joyce merger determination, https://www.ccpc.ie/business/wp-content/uploads/sites/3/2021/12/2022.08.27-M.21.071-Tesco-Joyces-DET-Non-confidential.pdf

[10] This market analysis by definition applies a different framework to that undertaken in a merger or anti-trust case and nothing in this analysis should be construed as creating any precedent for such work. Any references to “market” in this analysis should also be understood accordingly and are without prejudice to any views the CCPC may take as to relevant market definition in the grocery sector in Ireland in any future merger or anti-trust case.

[11] The CCPC’s predecessor, the Competition Authority, published an in-depth analysis of the grocery sector in Ireland in 2008 which examined: (i) the structure and operation of grocery retailing and wholesaling in Ireland; (ii) price trends in the grocery sector over the period 2001-2007; and (iii) the retail planning system in Ireland.

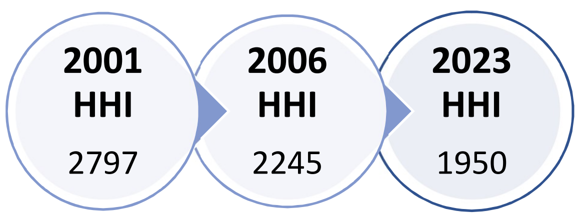
[12] A concentrated market is one with a small number of leading firms with a large combined market share, and an unconcentrated market is one with a large number of firms with a small combined market share

While competition in the grocery retail sector typically takes place at the local level[13], operational decisions such as pricing are generally uniform and apply nationally. Therefore, national market share is one appropriate framework for considering the level of concentration within a sector.

The Herfindahl-Hirschman Index (HHI)[14] is a measure of the competitiveness of an industry in terms of the market concentration of its participants. Higher values of the index indicate higher market concentration and possibly higher market power as well as decreased competitiveness.[15] A market with an HHI of less than 1,500 is considered a competitive marketplace, an HHI of 1,500 to 2,500 is moderately concentrated, and an HHI of 2,500 or greater is highly concentrated.

The national market shares of the major grocery retailers, as reported by Kantar in May 2023, are as follows: Dunnes Stores (23.2%); Tesco (22.4%); SuperValu (20.7%); Lidl (13.3%); and, Aldi (12.1%). This data only became available from 2014 and is based on data collected from consumer surveys. A more useful measure of market shares available to us for understanding the significant change in competition since 2001 (with the entry of Aldi and Lidl) is the number of retail stores nationally.

Figure 1: Market Concentration HHI[16] (calculations based on no. of retail units)[17]



As seen in figure 1, the HHI in 2001 was 2797 indicating that the market was highly concentrated with the sector comprising a small number of players, with Tesco, Dunnes Stores, and Superquinn[18] being

[13] See previous CCPC merger determinations. For example: https://www.ccpc.ie/business/wp-content/uploads/sites/3/2021/12/2022.08.27-M.21.071-Tesco-Joyces-DET-Non-confidential.pdf
[14] HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. It is primarily used to evaluate and understand how mergers will affect their associated markets.
[15] Kantar's grocery market share data is derived from its Worldpanel research covering the grocery purchasing habits of a number of demographically representative households in Ireland. M&S supermarkets in addition to convenience stores (e.g. Mace) are captured under 'other outlets' market share.
[16] For more detail see, https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/CCPC-Merger-Guidelines-1.pdf
[17] It is important to note that the HHI figures calculated for 2023 are likely to be lower than reported given that one of the main operators, SuperValu, operates a franchise model and as such not all stores are owned and run by SuperValu.
[18] Purchased by Musgrave's (owner of SuperValu) in 2011.

the main supermarket operators. As of 2023, the HHI has decreased to 1950 indicating that the market is moderately concentrated.

The CCPC acknowledges that competition for food products takes place at a local level. Information relating to market share at this level is not publicly available. However, one driver of the reduced concentration figures at national level has been the entry and expansion of Lidl and Aldi into the market (discussed in detail below). Both retailers operate across the country and have opened 326 stores since their entry in 2000. Therefore, it is likely that concentration levels in many local markets have also reduced in recent years.

Based on this indicator, the data suggests that the level of competition in the grocery sector is likely to have increased in recent years. However, it is important to note that measurement of competition is not straightforward as the intensity of competition is not always directly observable. As noted by the Organisation for Economic Cooperation and Development (OECD), "there is no consensus over the best measure to infer the intensity of competition. Individually, each of the measures provides only a limited amount of information, but together they can provide useful information to get a fuller understanding of the trends in competition."[ii]

Entry and Expansion

Another important indicator in a market analysis is the level of entry and expansion. A trader who enters/expands in a market will generally compete on price but also non-price aspects and any change in these variables will contribute to a store attracting or losing customers (and as such margins will be higher or lower).[19] Where entry/expansion is a credible threat, traders will be under pressure to manage and innovate to provide quality, competitively priced goods. Therefore, evidence that entry/expansion has occurred and may occur in future indicates that market power may be constrained. Conversely, evidence that barriers to entry and expansion exist may raise concerns that there exists market power. Reducing such barriers, where possible, can often lead to significant improvements in competition and by extension consumer welfare.

The entry (and subsequent expansion) of discount retailers Aldi and Lidl into the market in 1999 and 2000 respectively has brought an additional competitive dynamic to the market. Over the years, Lidl and Aldi have steadily increased their market share, challenging the established players.[20] Although

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[19] Noted by the UK Competition Authority in its grocery market investigation. See, https://www.gov.uk/cma-cases/groceries-market-investigation-cc

[20] See Kantar data showing Aldi and Lidl market share increasing by 2.6% and 4.9% respectively between 2014 and 2023 (https://www.kantarworldpanel.com/ie/grocery-market-share/ireland/snapshot/02.02.14/)

no other major grocery retailer has entered the Irish market since 2001, all other existing major retail operators expanded their operations in recent years. Since 2001, Aldi and Lidl have opened an additional 146 and 143 stores, respectively.[21]

One of the benefits of new entry to a market is the ability to bring new business models and innovation. Both Lidl and Aldi provide slightly different approaches from the other major grocery retailers with smaller stores, a narrower range of products and a greater focus on private label products at low prices. The increase in their market share suggests that this has been an attractive combination for some consumers.

On the other hand, it is noteworthy that other European traders in the grocery retail sector, including some active in Great Britain and Northern Ireland have not entered the Irish market. In addition, the CCPC has previously identified the issue of planning as a potential barrier to entry[iii] and in the past has made a number of recommendations relating to reforming planning guidelines.[22] The CCPC is aware that the planning system can potentially be used by major grocery retailers to object to new supermarkets and this may have the effect of acting as a barrier to entry – particularly in certain local areas.

The evidence we have observed suggests that the barriers to entry and expansion are generally not a deterrent at the national level given the experience of Aldi and Lidl. However, the planning system may continue to act as a barrier to new development which may risk limiting competition in certain local areas.

Competitive Dynamics

Grocery retailers in Ireland and internationally compete on several factors to attract consumers, including:

- Price: The importance of price competition is reflected in the focus of advertising on price and comparisons[23] with other stores (e.g., price match promises). Price competition in the context of the current cost of living crisis is of increasing importance as consumers are becoming more price conscious and adapting their spending behaviour.[iv]

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[21] Based on CCPC calculations of available data.

[22] The majority of these recommendations (discussed in greater detail in section 5) were addressed in changes made to the retail planning guidelines in 2012. The recommendation relating to undertaking research on third party rights of appeal does not appear to have been advanced by Government to date.

[23] The practice of comparative advertising is particularly prevalent in the grocery retail sector where retailers can compare the price of similar products to a competitor. This type of advertising is primarily governed by the 2007 Regulations which implement the provisions of Directive 2006/114/EC concerning Misleading and Comparative Advertising.

- Promotions and Loyalty Programmes: Given the importance of price competition, some of the major grocery retailers compete on offering lower prices for members of the loyalty programme. In addition, grocery retailers generally offer promotions such as vouchers (e.g., spend €50 and get €10 off) or in-store deals 'buy-one, get one half price'.
- Product Offering and Choice: Consumers tend to engage in multiple types of shopping trips (i.e., main shop, secondary shop and top-up shop) and can switch between stores for this purpose.[v] Store size is a key factor in a major grocery retailers' ability to compete for a household's main weekly shop. Large retail stores generally sell a wider range of products providing consumers with more choice. In addition, these stores can also compete on providing a wider range of non-food products (e.g. clothing; homeware, electronics).
- Own-brand: The growth of own brand or private label products in supermarkets has had a significant influence on competition within the industry. The market share associated with own label brands grew by 151% between 2006 and 2023.[vi] In Q1 2023, own label sales grew by 15.6% while brands grew by 8%. Value own label "had the strongest growth, up 33.4% with shoppers spending €18m more on these ranges. Brands hold 47.5% of the market with own label holding 46.9%".[vii] By expanding their own brand offerings (particularly with the addition of more premium items which are considered higher quality than the 'value' items), major grocery retailers' own-brands have become stronger competitors to local, national and international brands.
- Convenience: Grocery retailers generally aim to establish stores in convenient locations in a wider catchment area. Stores can compete on a number of factors such as parking and opening hours.[24]
- Online Services: In recent years, and particularly during the Covid-19 pandemic, online shopping for grocery items has grown.[25] Almost 1 in 5 Irish households now purchase groceries online.[viii] Although in-store shopping remains the most popular method of shopping, the growth of online sales suggests that major grocery retailers can compete over longer distances.

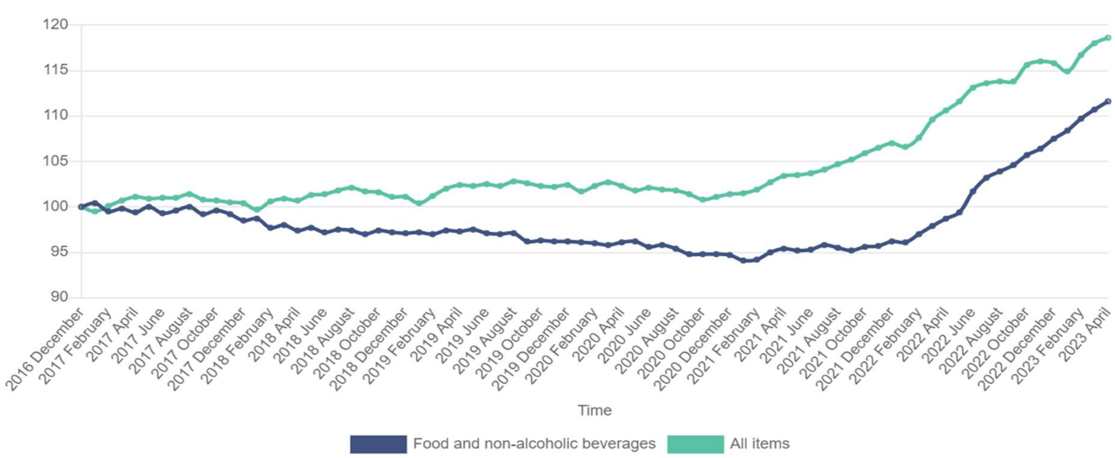
[24] A 2022 market study on the New Zealand grocery sector noted that price and convenience were the two key considerations that inform choice of grocery store for consumers.
[25] In the 12 months to January 2023, online sales had increased by 5.6% with consumer spending an additional €8.5 million in online channels (Kantar 2023)

3. Food Price Inflation: Ireland and Internationally

In considering public commentary[26] suggesting that inflation is being used as a cover for margin increases in the sector, it is important to consider the evidence from published inflation data. In particular, if the major grocery retailers retain sufficient market power to allow them to increase prices substantially above a competitive level, one potential indicator might be price increases above the international average. Many food commodity prices are internationally traded and so the price is set on an international basis. For example, approximately 90% of dairy[ix] and beef[x] output is exported from Ireland resulting in the price paid for these products being heavily influenced by world-wide supply and demand conditions. As such, international comparisons offer some important insights.

The Consumer Price Index (CPI), which measures overall change in prices of goods and services, rose by 7.25% in the 12 months to April 2023. Non-food related grocery items such as hygiene, hair and cosmetic products increased by 15%, 10.3% and 8.3% respectively in the same period. Inflation associated with 'food and non-alcoholic beverages' increased by 13.1%, reflecting a rise in prices across a range of products such as sugar (+38.9%), frozen fish (+29.9%), fresh whole milk (+24.1%), butter (+18.9%), and eggs (+18.3%) compared with April 2022.[xi] Essential non-food grocery items (i.e., hygiene products) are categorised in various ways internationally making comparisons difficult; as such this section focuses on prices related to food items.

Figure 2: Consumer Price Index 2017-2023



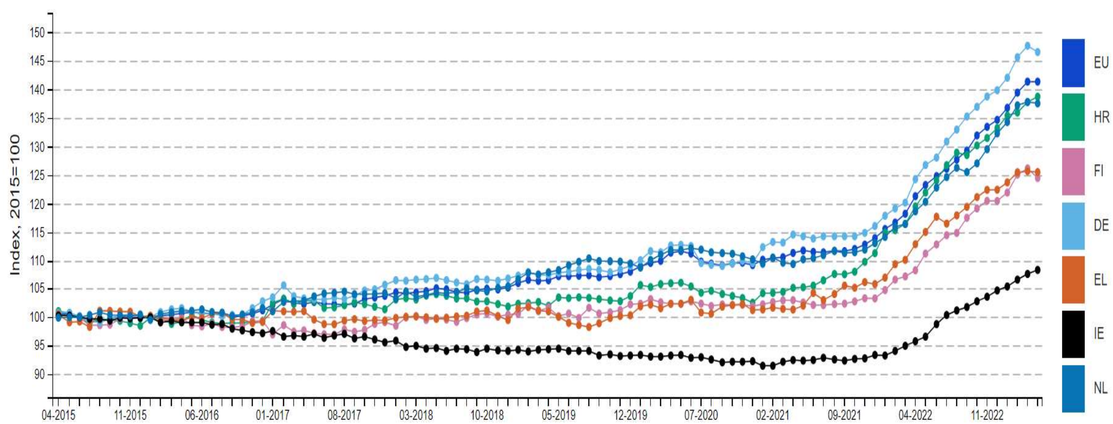
Source: CSO

[26] For example, see https://labour.ie/news/2023/06/08/time-for-transparency-in-supermarket-profits-and-pricing/

In an international context, Irish consumers have historically experienced relatively high grocery prices[xii] due in part to a number of structural factors (e.g., remote geographic location results in higher than average costs for Irish importers; population size means less economies of scale can be achieved; higher costs associated with construction, legal services, insurance). Irish prices relating to 'food and non-alcoholic beverages' were 19% above the EU27 average (3rd most expensive in 2021).[xiii] This is somewhat associated with (and offset by) Ireland having the 3rd highest average annual adjusted full-time salary across the EU (€50,300).[xiv] Ireland also reported the lowest level of household expenditure on food and non-alcoholic beverages (as a % of total consumption) in the EU in 2021.[xv]

Ireland has also experienced the lowest level of food inflation in the EU since 2015[xvi] (see figure 3 which shows the EU average and a sample of countries)[27]. Furthermore, monthly data for the period 2022-23 does not show Ireland as having notably high price inflation compared to other EU countries.

Figure 3: Harmonised Index of Consumer Prices 2017-2023: Food and non-alcoholic beverages



Source: Eurostat

Overall, the data indicates that food inflation is lower in Ireland than elsewhere in Europe. While this is due to a number of factors, the greater choice enjoyed by Irish consumers since the arrival of the discounters (Aldi and Lidl) has led to more competition and it is likely that this has assisted somewhat in curbing food inflation.

[27] Reference year is 2015 due to Eurostat indexing. Data prior to 2015 indicates that the gap between Irish and Average EU food inflation rates began to widen post-2008.

4. Profitability

Profit margins can provide useful evidence in a market analysis and especially when considered against international comparators in the same or very similar markets. It is important to emphasise that profit margins can differ from industry to industry for a range of reasons. Traders who have different business models with different risk profiles will have different profit levels. Indeed, traders within the same market might have very different profit levels generally and they can also vary from year to year and product to product. Therefore, in a market analysis it is useful to look at profit margins over a period of time and make comparisons on a like for like basis where possible.

Profitability in the supermarket sector can vary depending on multiple factors such as competition, operational efficiency, and pricing strategies. The grocery sector is generally seen as a low margin, high volume industry, with margins typically ranging from 1-4%.[28] Not all of the major grocery retailers publish revenue/profit data for their Irish operations (i.e., Dunnes Stores does not publish accounts; Tesco combines Irish data with UK; Lidl combines Irish data with European data).[29] Aldi was required to publish its 2020 profits for Ireland in 2021 following the end of the Brexit transition period as its head office is registered outside the EU in the UK. Aldi reported a pre-tax profit margin of 3.6% in 2020[30] and this declined to 2% in 2021.[xvii] Musgrave, the owner of SuperValu, reported a pre-tax profit margin of 2.1% and 2.4% in 2020 and 2021, respectively.[31] These reported margins are low in comparison to margins reported by some producers.[32] For example, Unilever[xviii] and Kerry Group[xix] reported pre-tax profit margins of 16.3% and 11.9%, respectively in 2021.[33] For comparison, we have considered indicative pre-tax profit margins in other sectors for 2021/22 using industry or individual company data showing: Pharmacy 44%[xx]; Banking; 32%[xxi]; Manufacturing (e.g., packaging) 18%.[xxii] As noted above, direct comparison relating to these profit figures should not be made given they relate to a single year and reflect significantly different business models and risk profiles in each market.

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[28] Generally cited as 1-3% (see: https://smallbusiness.chron.com/profit-margin-supermarket-22467.html) however some individual country sources vary slightly, see Norway (3-5%): https://www.eurocommerce.eu/app/uploads/2023/05/State-of-grocery-2023_Low-res.pdf. See also (https://www.eurocommerce.eu/app/uploads/2023/05/State-of-grocery-2023_Low-res.pdf) which reports average profit margin of 12 European grocery retailers as being 3% in 2022.

[29] Analysis of profit margins in retail grocery is scarce as many large retail supermarkets both in Ireland and internationally are privately owned. There are no requirements on publicly listed groups such as Tesco to provide a detailed breakdown of profit margins by product category. However, these traders do give guidance to investors on their trading outlook.

[30] Aldi UK operating margin in 2020 and 2021 was 2.1% and 0.4% respectively. In 2021, Tesco UK reported operating margin of 5%. See here: https://www.ft.com/content/ae04e816-917a-4723-8fee-6f70ebfaefc3

[31] Also includes other operations owned by Musgraves (e.g., Centra, Daybreak, Mace) in addition to wholesale activities which account for 42% of sales. It should also be noted that SuperValu operates a franchise model.

[32] It is worth noting that this period coincides with increases in sales as a result of the Covid-19 pandemic. Although sale increase following the first lockdown in March 2020, profits declined over the period due to rising costs.

[33] Irish dairy farm income is reported to be up by 50% on the 2021 level bringing the average dairy farm income figure to €148,000.[33]

Final audited accounts for 2022 operations for the major grocery retailers will not be available until Q4 2023, however several retailers have reported poorer trading conditions in 2022[xxiii].

In relation to profit margins on specific products, these can often be difficult to calculate and compare across retailers due to incomplete information relating to fees, minimum purchasing requirements and recommended selling prices associated with different business models, along with promotions applied across retailers (and in certain cases stores[34]). In addition, retailers can sometimes have less flexibility around pricing/profit margins of branded products and in some circumstances face pressure by producers to increase prices[35] as has been the case internationally.[36]

5. Transparency

Factors affecting grocery retail prices

The journey of a food product from production to retail involves various stages, including processing, packaging, transportation, and distribution. Each step adds value and incurs costs. Even if the input prices decrease, other costs within the supply chain may remain constant or fluctuate differently, which can offset the potential savings from lower input prices.

Various factors have contributed to rising food prices internationally since 2022. Fluctuations in commodity prices[37], such as grains and meat, have played a significant role, driven by factors such as supply chain disruptions due to the war in Ukraine, Brexit, and extreme weather events. Energy is an essential input in the agricultural and food production sectors. Significant increases in energy prices[38], particularly oil prices, have impacted the cost of transportation and production processes. Higher energy costs can increase overall production and distribution expenses, which can be passed on to consumers through higher food prices. As previously noted by the Central Bank of Ireland (CBI), Ireland's geographically remote location results in Irish importers paying relatively high transport costs in common with other remote euro area Member States like Cyprus, Greece and Finland.[xxiv]

[34] This was noted in the Tesco/Joyce merger determination in 2021.

[35] Resale price maintenance (RPM) involves an agreement between a supplier and a reseller, usually a retailer, preventing the reseller from setting its own prices for goods or services. The agreement requires the reseller to sell the goods or services at, or above, a specified price or margin, which is usually decided by the supplier. RPM is usually unlawful and a breach of Section 4 of the Competition Act 2002, as amended. However, suppliers are free to recommend prices at which resellers may resell products. This is known as a recommended resale price (RRP).

[36] See for example, Inflation: Manufacturers want to further increase food prices in supermarkets (handelsblatt.com)

[37] Commodity prices are the prices at which raw materials or basic foodstuffs are bought and sold.

[38] Traders have a portfolio of energy purchasing methods methods and developments related to the war in Ukraine and Covid-19 mean that energy costs to manufacturing firms are unlikely to come down to previous levels in the medium term.

As previously noted, many food commodity prices are internationally traded and so the price is set on an international basis. To a significant extent, the prices Irish consumers pay will likely follow these international trends.

Other important factors impacting retail prices are existing inventory, in addition to the long-term contracts used by producers and retailers to buy and sell. If retailers have already purchased inputs at higher prices, they may not be able to immediately pass on the cost savings from lower input prices to consumers. Contracts with suppliers may also have fixed pricing arrangements for a specified period, limiting the flexibility to adjust prices in response to changing input costs. This was the case (and to the benefit of consumers) at the onset of the inflationary period when growth in inflation for 'food and non-alcoholic' beverages lagged behind growth in general inflation largely driven by rising energy prices. For example, in the 12 months to May 2022 the CPI rose by 7.8%, with '*food and non-alcoholic beverages'* increasing by 4.4% and *'transport'* and '*Housing, Water, Electricity, Gas & Other Fuels'* by 16.5% and 20.9% respectively in the same time frame. The same is now true in reverse as international commodity prices fell by 14% in Q1 2023[xxv] and retail prices continued to rise in this period. There will usually be a lag in time before these reductions are reflected in retail prices for the reasons outlined above.

Food retail prices in supermarkets are further influenced by factors beyond input costs, including operational expenses (e.g., rent, utilities, labour), marketing and promotional activities, product differentiation, and profit goals. In general retailers consider these factors alongside input prices when setting their pricing strategies, which can influence the final retail prices.

To understand how inflation affects grocery prices, not only do we need to understand how commodity, fuel and labour affect a major grocery retailer directly but also how these affect all the players along the supply chain. This type of detailed analysis would take significant resource over a period of time and is the type of work a sectoral regulator might undertake on an ongoing basis.

The CCPC notes price development along the food supply chain including buyer power and margins is part of the role for the new An Rialálaí Agraibhia (RA) focusing on the promotion of fairness and transparency. RA will have two functions in this regard: a price and market analysis and reporting function, and a regulatory enforcement function concerning the enforcement of prohibited unfair trading practices.[xxvi]

Price Monitoring

Several countries have introduced formalised and detailed transparency measures in the food supply chain in an effort to enhance price transparency with a view to giving greater clarity of margins at retail level to better inform government and support the activities of relevant regulators. The Unfair Trading Practices Directive includes transparency measures for the food supply chain and is now in force across Europe. Its aim is to protect primary producers, e.g., farmers, from being subject to unfair conditions from large buyers, e.g., supermarkets.

In a similar manner to other international competition authorities, the CCPC does not have a role in relation to price monitoring. We have provided a brief overview below based on international experience relating to the pros and cons associated with price observatories.

A research paper by the EU Commission titled *"Monitoring of Prices and Margins in EU Food Supply Chains"* [xxvii] published in 2019 found that:

- There are currently a large number of price monitoring approaches used internationally however there is no uniformity of approach and monitoring is used for many purposes.
- Price margins or costs and profits of the many intermediaries along food supply chains are currently barely monitored and the legal basis to gather information from private operators is uncertain.
- A harmonisation of the current monitoring approaches across the EU and its Member States is very desirable.

While a number of EU member states including Germany, Netherlands and Belgium collect pricing data for public dissemination, only two-member states, France and Spain, collect and publish information on prices and margins along the food supply chain. Price monitoring internationally is generally done by the relevant government department in collaboration with the national statistics office. This is the case in France where the *Observatoire de la formation des Prix et des marges des produit alimentaires* ('the Observatory') [xxviii] was created by law in 2010 under the French Ministry of Agriculture and Ministry of Economy with the objective of measuring and explaining the differences observed in the value accruing to each stage in the supply chain.

The European Commission made a number of observations about the potential effects of further price monitoring and estimating margins in the food supply chain beyond what is currently collected.[xxix] Some of the key pros and cons highlighted include:

Pros of price observatories include:

- availability of accurate information can reduce information asymmetries in a market and allows market participants and consumers to make informed decisions about consumption and production.
- contributes to a better understanding of price formation between stakeholders at all stages of the food supply chain, thus building trust between industry participants.
- act as an effective tool to detect suspicious pricing activity such as resale price maintenance ('RPM') where suppliers fix the price that downstream suppliers can charge or other forms of price manipulation which cannot be justified in a properly functioning market.

Cons of price observatories include:

- If transparency facilitates explicit or implicit collusion among the best-informed operators more information could lead to less competition.[39]
- The parties who are best placed with most resources are likely to benefit most from increased transparency and those with relatively little could actually be worse off.
- Information is costly to collect and keep up to date.
- In most cases only price levels or indices are reported, without much context or explanation of market conditions. This opens the door to misinterpretation.
- Production costs of many processed foods which involve more complex production processes are difficult to quantify at unit level.

The benefits of more transparency in the food supply chain are not clear-cut and, as outlined above, there are potential downsides associated with greater transparency. There are conditions under which more transparency of transactions may lead to unintended consequences, for example, transparency on prices and margins can incentivise collusion and concentration. In addition, the degree to which this data can be used to inform enforcement action is questionable given the complexity concerning the identification of 'appropriate' profit margins across markets. Therefore, if there is a desire for increased price transparency, particularly at the intermediate levels of the supply chain, its impact on competitiveness and efficiency needs to be very carefully assessed, and the costs of establishing and

[39] For example, the French NCA issued guidance to all food operators warning them that the sharing of information on prices and margins could be a breach of competition law and the use of public information from the Observatory should not be used for anti-competitive purposes.

monitoring prices and margins on an ongoing basis against any consumer benefits of such activity should be carefully considered.

Interventions in the grocery retail sector

As previously noted, the issue of higher grocery prices is not unique to Ireland. Many countries, especially those closer to the conflict in Ukraine, are experiencing considerably higher food price inflation than Ireland. Governments in some countries, such as Hungary, have intervened by implementing price controls (i.e., price caps).[40] However, it is not clear that this intervention has been effective for consumers and plans are already being implemented to phase out these caps due to 'market disturbances'.[xxx]

In other countries, the interventions have been subject to intense lobbying and have produced quite complicated mechanisms where large retailers have a key role in deciding what products should be included, e.g., Greece[xxxi] and France[xxxii]. The CCPC is not aware of any evidence that these mechanisms have yielded significant consumer benefit.

Where there has been time to review price interventions, the results have not been beneficial for consumers. The historical experience in France of below cost selling found that the Government market intervention weakened competition between retailers and drove up retail prices in general.[xxxiii] Similarly the OECD[xxxiv] found that such laws reduce competition by protecting inefficient competitors.

The CCPC has significant reservations in relation to any proposed implementation of price caps in Ireland. In our view the introduction of price caps in the grocery retail sector would present a significant risk to the Irish economy and consumers as it would harm competition and could lead to supply shortages if retailers could not source these products at below the price cap. The prices of other products not covered by the price cap could be raised to cover the loss of margin on capped products. Choice and quality could also be adversely affected if the prices of certain products were capped as suppliers have no incentive to invest in new products or innovate existing ones.

Alternative interventions, e.g., voluntary basket of goods caps, raise similar concerns. For example:

- Who would decide what was in the basket of goods?
- Would the goods from two different grocery retailers be comparable?

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[40] Price controls are when minimum or maximum prices (a cap) are set by the Government, or a regulator, rather than by businesses. Where there is a price cap, businesses are obliged to sell the specific goods or services at or below the capped price, otherwise they will be breaking the law.

- What would stop grocery retailers raising profit margins on goods not in the basket?
- If input prices for items in the basket fall, would supermarkets be incentivised to maintain a price rather than reduce it? and would the price cap become a *de facto* fixed price?
- Given grocery retailers tend to have low margins on staple goods [41]already, is this the right focus?

Addressing inflation across the Eurozone is normally considered a matter for the European Central Bank (supported by national central banks). The primary objective of the ECB's monetary policy is to maintain price stability. In this pursuit, the ECB aims to maintain inflation rates below, but close to, 2% over the medium term. As part of its remit in this area the Central Bank of Ireland (CBI) conducts "economic analysis to identify short to medium-term risks to price stability, and a monetary analysis to assess the medium to long-term trends in inflation".[xxxv] In April 2023, the Governor of the CBI noted that:

> *"To the extent that profits and labour costs are a key driver of domestic price pressures, which in turn determine underlying inflation, I will be closely monitoring developments in both areas. The current economic narrative in the March projections is for a slowing of growth in wages and profit margins over the next three years. If this turns out not to be the case – for example, if we end up in a situation where staggered price and wage-setters engage in back-and-forth attempts to fully offset real income declines (i.e., a wage-price spiral) – it would call for a stronger monetary policy response in order to mitigate against the risk of this even more persistent inflation".*[xxxvi]

The development of an open economy where traders have the freedom to set their own prices and compete against one another has served the Irish economy and consumers well. This is true for many sectors including the grocery retail sector. The CCPC has previously made recommendations to government to reverse or modify historical interventions in the market. In particular, the expansion of existing retailer operations was supported by a number of changes to the *Retail Planning Guidelines* in 2012, some of which were recommended by the CCPC's predecessor (the Competition Authority) in its in-depth analysis of the market in 2007.[xxxvii] These included:

- the adjustment of caps on size of grocery retail spaces to encourage expansion and entry.

[41] A recent study in the UK noted that retailers accounted for the following profit margins components across a sample of products: Cheese 480g (1% of 3%); Sliced Loaf 800g (1% of 4%); Apple 1kg (1% of 3%). See here: https://www.sustainweb.org/reports/dec22-unpicking-food-prices/

- ending the discrimination against discount stores where they faced a much lower cap on size than other major grocery retailers.
- removing the emphasis of past projections on floorspace requirements and instead assessing individual applications on merit.
- including an assessment of competition in health checks of local development plans.
- limiting market power of established retailers by reducing the level of importance placed on trade diversions when considering retail impact assessment.

These changes have been successful in supporting the expansion of new entrants in the market, which brought new business models into Ireland and triggered competitive reaction from incumbents. As a result, consumers have benefited from more choice and competition on price.

In the absence of evidence suggesting anti-competitive practices, it appears that the best form of intervention is to address any remaining barriers to entry and allow new players to bring consumers new choices, including more competitive prices and better quality products and services. Strong competition enforcement is also important in order to remedy potentially harmful mergers and deter potential anti-competitive practices in the sector. In addition, strong consumer protection measures are a key element of a well functioning market so that consumers have full and accurate information in making purchasing decisions. The CCPC has not identified evidence where direct price intervention has led to consumer benefits and does not consider that price interventions are called for in the case of the grocery retail sector.

6. Role of the CCPC

Price Displays and Consumer Protection

Price transparency is critical to the proper functioning of a competitive market. When consumers have access to accurate and clear information, they can compare prices across sellers and choose the best option for their situation (including switching provider). This empowers consumers to make choices based on their individual needs and promotes a more competitive marketplace. In addition, price transparency can help prevent price discrimination, where sellers charge different prices to consumers based on demographics or purchasing history. Consumer protection law on unfair and misleading commercial practices, as well as regulations relating to the correct display of prices, including price reductions, in addition to the display of unit prices for certain items, ensure that consumers are provided with accurate information to make decisions.

The CCPC has a role in relation to enforcing the relevant law on pricing and price display, through a number of legal instruments including the Consumer Protection Act 2007, the Consumer Rights Act 2022 and the European Communities (Requirements to Indicate Product Prices) Regulations 2002[42].[43] Irish consumer protection laws on pricing oblige traders to clearly display prices to consumers before they make a transaction. If a trader charges a price for a product which is higher than the displayed price, this may constitute a misleading commercial practice. The regulations introduced in 2022 aim to end the practice of raising selling prices immediately prior to a sale in order to advertise misleadingly large discounts. Any business advertising a discount is now required to display the previous price which must be the lowest price applied in the previous 30 days.

Compliance, Investigation and Enforcement

The CCPC is responsible for monitoring and enforcing compliance with the above consumer protection legislation. In addition to conducting instore inspections and carrying out compliance monitoring activities, the CCPC is committed to encouraging compliance with the relevant statutory provisions. This includes engagement letters addressed to traders and the publication of materials containing practical guidance as to how those provisions may be complied with. In line with our prioritisation principles, the CCPC also takes enforcement action when the legislation is not complied with, publishing the details periodically in its Consumer Protection List.

In the context of the CCPC's statutory functions in competition, our investigation and enforcement functions are set out under section 10 of the Competition and Consumer Protection Act 2014 (the 2014 Act). Of specific relevance, the CCPC can:

- Investigate anti-competitive agreements between two or more businesses, e.g., suspected cartels (involving price-fixing, market sharing or restricting outputs), price signalling or sharing commercially sensitive information.
- Investigate abuses of dominance, including excessive pricing by a dominant trader.
- Prohibit or remedy mergers that are likely to result in a substantial lessening of competition.

The CCPC is empowered to investigate and, if appropriate, take either criminal or civil enforcement action. Under the Competition (Amendment) Act 2022 (which is expected to be commenced very

[42] As amended by S.I. 597/2022 - European Union (Requirements to Indicate Product Prices) (Amendment) Regulations 2022

[43] S.I. 597 of 2022 Requirements to Indicate Product Prices (Amendment) Regulations which amended the European Communities (Requirements to Indicate Product Prices) Regulation 2002 (S.I. 639 of 2002).

soon) the CCPC will have the power to impose administrative financial sanctions for breaches of Irish and EU competition law. The CCPC has the power to carry out an investigation, either on its own initiative or in response to a complaint, where there is a suspicion of illegal activity and welcomes any information that could assist with enquiries. Cartel behaviour is a criminal offence in Ireland and can occur in any market. The high-level analysis carried out in this paper in the context as outlined above bears no relevance to the likelihood of cartel behaviour and it is not appropriate for the CCPC to comment publicly on sectors where it may be conducting competition enforcement action including a criminal investigation.

Generally, traders in Ireland are free to set and change their prices for goods and services. In rare situations there may be circumstances where one trader, established as being in a dominant position, is considered to have breached competition law by charging excessive prices. These are very specific scenarios and cases of this type are rare across Europe. The prohibition against abuse of a dominant position is contained in Section 5 of the 2002 Act and Article 102 of the Treaty on the Functioning of the European Union (TFEU)[44]. In cases of abuse of dominance, it is necessary to establish two elements: (i) that the undertaking has a dominant position; and (ii) that the undertaking is behaving in a way that is abusing that dominant position. 'Excessive pricing' is generally a form of exploitative abuse of a dominant position.[45] Section 5(2)(a) of the 2002 Act and Article 102(2)(a) TFEU relate to "*directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions*". The CCPC has not seen any indications, to date, to suggest that abuse of dominance through excessive pricing is occurring in the grocery retail market.

Research, Market Studies and Policy Recommendations

Under section 10(3) of the 2014 Act the CCPC can conduct research, studies and analysis relating to competition and consumer protection issues. It can also make recommendations to the Minister on any proposals for legislative change or any other policy matters concerning consumer protection or competition. Under section 10(4) of the 2014 Act, the Minister can request the CCPC to carry out a study or analysis of any issue relating to consumer protection and welfare, or any practice or method of competition affecting the supply and distribution of goods or the provision of services or any other matter relating to competition. Traditionally, the CCPC has made policy recommendations as a result of its research. However, these recommendations do not confer any obligations on stakeholders to

[44] The wording of Section 5 largely reflects that contained in Article 102 save that Article 102 applies where there is an effect on trade in the EU.

[45] It is also possible for excessive prices to be charged with the purpose of excluding a rival from a market. In this regard see the Notice on application of the competition rules to access agreements in the telecommunications sector: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31998Y0822%2801%29

implement them, meaning that in the past some CCPC recommendations have not been implemented (e.g. in 2018 the CCPC study into the Operation of the Household Waste Collection Market included a recommendation to establish a sectoral regulator[46]).

Overall CCPC powers

The CCPC has strong powers, further strengthened by the Competition (Amendment) Act 2022 (which is expected to be commenced very soon) and the Consumer Rights Act 2022. The CCPC uses these powers in a proportionate manner, according to the principles of fair procedures and in line with our prioritisation principles. Given our limited resources we consider the likely impact of the CCPC's action and apply these powers in areas where we believe they will have the most impact. The CCPC has systems in place to screen and assess complaints, as well as take action where our own market intelligence indicates potential breaches of competition and/or consumer protection law.

While the CCPC has not received a large number of complaints in relation to excessive prices in the grocery retail sector, it is apparent that consumers have been affected. In reviewing how best to address these concerns and given the economic and social importance of the grocery retail sector the CCPC has considered two options – (i) in-depth market study and (ii) competition profile. If an in-depth market study was to be conducted, given the complexities of the issues, the CCPC estimates it would take approximately 18 months or more to complete and require extensive resources, including the redeployment of staff away from other activities which the CCPC believes to be of significant benefit to consumers. Our high-level analysis has not identified significant evidence of market dysfunction that might benefit from urgent remedies.

The CCPC plans to begin a series of competition profiles on a variety of sectors of the Irish economy, subject to resources, in the short to medium term. This work will, over time build towards a greater overall understanding of how competition is functioning in our economy. A competition profile is a less intensive review of a market but would include interviews with market players, consumer surveys and a review of market figures including profit figures. It is intended to include the grocery retail sector as one of the potential sectors for evaluation in this work in a timeframe that would enable the inclusion of the retailers 2023 audited accounts.

7. Conclusion

In summary:

- The CCPC has carried out a high-level analysis of competition in the grocery retail sector in the context of recent price inflation and the suggestions of price gouging outlined above. The CCPC considers that:
    - When considering the market shares of the major grocery retailers, concentration in the market has reduced in recent years with significant gains in market share by some players;
    - There has generally been significant entry and expansion in the sector across the State and this has resulted in consumers generally having more choice across the country. Observations from the CCPC's previous merger determinations suggests that barriers to entry are not insurmountable at a national level. However, there may still be barriers in some local areas;
    - There is evidence that competition has improved in recent years on the basis of price, quality, location and service. Price comparisons, including basket comparisons, are an important element of advertising and consumers have the ability to switch easily between competitors;
    - Food prices in Ireland remain high when compared internationally. However, over recent years food inflation in Ireland has been the lowest in the EU;
    - Downward and upward changes in input prices do not appear to be immediately reflected in retail prices. The recent fall in some commodity and input prices may take time to pass through to consumers due in part to the lag effect in supplier/retailer contracts;
    - The data available on profit margins is limited and no public data from full audited accounts is available on 2023 margins. The figures that are available (relating to previous years trading and in some cases preliminary results for 2022/23) do not suggest that margins are notably high when compared with similar traders internationally or compared to different sectors although any conclusions on margins should be treated with caution.
- Taking all the above into account, the CCPC has seen no indication to suggest market failure in the grocery retail sector. Indeed, there is good evidence that some elements of competition in the sector have improved in recent years and brought significant consumer benefits.

- The CCPC has not seen any indications to suggest that “excessive pricing” is occurring in the grocery retail sector as a result of an abuse of dominance.
- Cartel behaviour can occur in any market. The CCPC has no comment to make on possible cartel investigations and this analysis is not relevant in that context.
- The CCPC has used its merger review powers to ensure that potentially anti-competitive mergers in the grocery sector are effectively remedied.
- From a consumer point of view, transparency plays an important role in ensuring that consumers have sufficient and accurate information before making a purchase. The CCPC enforces consumer protection laws in relation to price display, including unit pricing and welcomes the recent regulations around price indications.
- There are up to 40,000[47] products in a grocery store and understanding the detailed pricing and cost interactions along the various supply chains is a complex task that would likely require a well-resourced sectoral regulator. The CCPC notes that An Rialálaí Agraibhia will be the regulator for the promotion of fairness and transparency in the agri-food supply chain. However, developments to increase transparency along grocery supply chains typically have less direct impact on consumers and have often been linked to protecting primary producers, e.g., UTP Directive.
- Inflation can cause significant harm to consumers, especially those on low incomes, and that is why central banks have been provided with significant tools and tasked with maintaining price stability. The CCPC has identified a number of price interventions that have been taken internationally in relation to the grocery retail sector. We have not seen any evidence that price interventions have benefitted consumers. Price interventions carry significant risk of unintended consequences and may actually harm consumers.
- Conversely, interventions to open up markets and allow competition to flourish have a long track record of benefiting consumers. The situation whereby Ireland has the lowest food inflation rate in the EU did not come about as a result of price interventions. It is notable that this period of increased competition in the Irish grocery retail sector coincides with steps taken to change planning rules to reduce barriers to entry into the market.
- The CCPC recognises that the grocery sector is a critical one for the Irish economy and consumers and that recent price increases have caused real distress for consumers. As part of our work we will continue to monitor this sector.

[47] 40,000 in total, with an average of 25,000 related to food and beverages. See UK estimates here: https://apps.fas.usda.gov/newgainapi/api/report/downloadreportbyfilename?filename=UK%20Supermarket%20Chain%20Profiles%202016_London_United%20Kingdom_12-13-2016.pdf

- While the CCPC continues to keep its need for additional powers under review we consider that we have appropriate powers to carry out our work in this area, including the power to obtain information from traders.
- We plan to focus our work on sectors where there is some evidence of potential market failures or significant barriers to entry and where, based on our prioritisation principles, we believe the work is of significant benefit to consumers. Based on the evidence considered for this analysis, the grocery retail sector is not currently a priority for an in-depth market study, which entails redeployment of resources and approximately 18 months or more to complete. However, given its importance as a sector and subject to resources, we would intend to include it in our work by developing a high-level competition profile, which would include interviews with market players, consumer surveys and a review of market figures including 2023 profit figures after audited accounts are available.
- The CCPC has in the past examined and set out its concerns in relation to consumer and competition in certain sectors and markets – these include legal services, retail banking and the waste sector. In carrying out our role to promote competition and protect the welfare of consumers the CCPC will continue its work to identify and address areas where markets can work better for businesses and consumers.

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