



**ICMSA**

**Submission to the**

**Department of Business,**

**Enterprise and Innovation**

**On the Draft**

**EU Directive**

**On Unfair Trading Practice**

**In Business to Business**

**Relationships in the Food Chain**

**June 2018**

## **Call for views in response to draft EU Directive on Unfair Trading Practice in Business to Business Relationships in the Food Chain**

### **Introduction**

A properly functioning food supply chain in the EU is central to ensuring that EU farmers receive a fair share of the final consumer price and an income comparable with other sectors. Farmers have consistently lost out – due to the concentration of market power upstream and downstream (in term of inputs) and an unequal bargaining position among the various parties along the food supply chain. With the continuing growth and concentration of firms at the farm input stage, food processing and food retailing, the pendulum has swung even more to the detriment of farmers in recent times.

Overall, agricultural margins and incomes will not grow from the current low levels due to higher input costs and increasing price and production risks. In addition, the relatively weak position of farmers in the food chain invariably means that they bear a disproportionate share of the risks within the chain. The key to improving margins for farmers is to bring about a proper functioning EU food supply chain both at processing and at retailing levels. There is quite considerable agreement, right across the political spectrum, in virtually every Member State, that the EU food market is not operating efficiently or fairly and that farmers and consumers both lose out. The commissioning of a detailed economic and statistical examination and report on the level and trends in the margins enjoyed by the EU food retailing sector particularly in the case of multiple retailing firms is essential.

Price volatility within Agricultural Markets is expected to remain significant due to a series of factors, among which are: - uncertainties over energy markets, increased extreme weather events due to climate change, the financialisation of commodity markets and the use of market abuses which add to the natural instability of agricultural markets. The proper functioning of the whole food chain in the EU is central to the favourable development of the market income of EU farmers. Indeed, it may not be an exaggeration to say that farmers are now bound by unfavourable contractual terms on the purchase of farm inputs and sale of farm produce. Addressing competition in the food sector is not an easy task and is likely to be an ongoing concern particularly due to the

likelihood of increased volatility in world agricultural markets and increased emphasis on food security. Effective action to bring about the proper functioning of the EU Food market requires this action at European level and it is therefore welcome to see draft legislation to address some but not all of the issues.

### **Unfair Trading Practices**

ICMSA particularly welcome the acknowledgement in the draft Directive that when occurring, “UTPs can put operators’ profits and margins under pressure, which can result in a misallocation of resources and even drive otherwise viable and competitive players out of business”. ICMSA supports this logical conclusion that EU level measures are required. Clearly, Ireland has a major interest in the proper and transparent functioning of EU agri-food markets and ICMSA believes this is a step forward.

The Commission’s proposals to tackle unfair trading practices is a step in the right direction to ensure fair market prices for farmers and address the current power imbalances in favour of the more concentrated food retail and processing sectors. In recent times there has been initiatives in the attempt to improve the position of farmers in the food market. EU initiatives such as the legislation allowing for group price negotiation by farmers under producer organisations are positive. These latest proposals in the draft document follow a long consultation period whereby ICMSA would have submitted our views on the incumbent rules.

Regulatory issues can only be effectively addressed at EU level given that many, if not most, of the major food retailing and processing companies operate in more than one Member State. No individual Member State can effectively address this problem by national legislation or regulations therefore, EU regulation is required.

Specifically, on the Directive objective for UTP’s, the EU Commission in its Communication, July 2014, on tackling unfair trading practices in the business to business food supply chain stated that the increased concentration and vertical integration of market participants across EU have led to structural changes in the food supply chain. The EU Commission rightly concludes that while differences in bargaining power are common and legitimate commercial relationships, it is the

abuse of such differences that lead to UTPs. The four practices as outlined in Article 3 of the draft text should lead to more equity in the supply chain if implemented correctly. ICMSA would ask that there are ongoing audits and investigations to determine that these practices would not still take place after the enactment of such laws. If needed, changes to the legislation must be made and the necessary resources to enforce these regulations must be in place.

An UTP that has gained much notoriety within agricultural sectors is the use of products such as milk or vegetables as “loss leaders” for retailers to gain market share. This practice must be outlawed and legislated as it strikes at the core of agricultural products and the viability of family farms. These products and others that are regularly on “special offer” lead to consumers believing that the “offer” is normal and conditions consumers in to expecting these products at on-going low unsustainable prices.

The EU should note and consider the draft French legislation called the field-to-fork review which is a response to the fact that farmers bear the brunt of price wars between retailers. Under the legislation, the French government will be allowed to raise the threshold below which retailers cannot sell food products. The increase in the resale below cost threshold caters for the inclusion of additional costs such as retailer logistics and staff. The bill also empowers the government to curb promotional offers. Retailers will not be allowed to discount products by more than 34 percent of their value and sell more than 25 percent of a product’s volume in a promotional offer. The French government are also implementing measures to reverse the process of determining prices by taking farmers’ production costs as the starting point for prices paid to farmers. The EU if serious about sustainable farming should follow the French example on this matter and protect the European model of Agriculture from abuse in the Food supply chain.

ICMSA feel that the proposals outlined in this document must be implemented with a view to improving overall market information in food production. The draft Directive must broaden its remit to include more market transparency, monitoring and ensure that these objectives are being measured and satisfied. Effective monitoring of the food sector to ensure proper functioning and competition requires detailed data and information including the direct monitoring and publication of margins of large food companies and particular production lines.

The High-Level Forum for a Better Functioning Food Supply Chain, established in 2010, has issued several reports which have contributed significantly to the issues of business to business trading practices and food price monitoring and other aspects of the food supply chain. It stressed that the Forum should stimulate further progress on the food price monitoring tool (FPMT) and the establishment of more national price observatories. What farmers now require is the implementation of measures to address margins in the food supply chain. The quantification of the profit margins in the farm inputs sector, the food processing and the food retailing sector is the key to getting real and permanent progress on this important matter at European level.

Regarding the food retailing sector, there should be specific EU legislation making it mandatory on food retailing firms that exceed certain thresholds to supply information and data on the profit margins they obtain on specific food items in each of the Member States they operate. This obligation should apply to large scale food retailers where the scale of the activity is above certain thresholds.

Greater transparency would prevent the abuse of the undoubtedly dominant position currently enjoyed by the large retailers. The resulting benefits would not alone accrue to the consumers and farmer producers, but the transparency measures would also protect food processors and all other food retailers operating in the European Union from UTPs regardless of their scale of operation.