



Presentation by Mr. Pat McCormack, President of ICMSA to the Joint Committee on Agriculture, Food and the Marine on Unfair Trading Practices on Tuesday, 16 October 2018 in Leinster House.

Mr. Chairperson, Members of the Committee, I would like to thank you for the invitation to address you here today and the opportunity to put our views forward in relation to Unfair Trading Practices and the implications for the Agri-Food sector.

Given the short time available, I intend to briefly refer to the issues that ICMSA believe need to be addressed and the main issues relating to UTP's

In April, the European Commission unveiled a draft directive which seeks to ban the most damaging unfair trading practices, namely late payments for perishable food products, last minute order cancellations, unilateral or retroactive changes to contracts and methods forcing the supplier to pay for wasted products.

ICMSA have always believed 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. In our opinion, farmers have consistently lost out – due to the concentration of market power 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, it has swung even more to the detriment of farmers in recent times.

The relatively weak position of farmers in the food chain invariably means that we 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, this means that farmers receive a return that covers their cost of production and leaves a reasonable level of income for the farmer.

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 proper functioning of the whole food chain in the EU is central to the favourable development of the market income of EU farmers. Addressing UTP's 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.

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. Indeed, ICMSA has recently submitted a submission focusing on Market Transparency which is a key ingredient to go with UTP's.

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. 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 and enforcement is required.

Specifically, on the Directive objective for UTP's, the EU Commission has stated in previous communications that 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 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 for 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 into expecting these products at ongoing low unsustainable prices.

ICMSA believes omitting below-cost-selling would be an error of such magnitude that it would effectively undermine the whole drive to reform and make more fair the supply-chain from farmer-producer to retailer. Objections raised by the Commission Competition's Directorate that classifying below-cost-selling as a UTP might work against legitimate promotional activities for new products was a clear case of mistaking an aspect of something for its essence: The essence of below-cost-selling is the subsidy it represents by the producer to the retailer.

It's a win-win for the retailers, they don't carry the loss for the below-cost food because they just drop their price back to the food producers and they gain on the increased footfall and higher sales on realistically priced items. The companies supplying into the corporate retailers in turns drop their prices back to their farmer-suppliers who can't drop their input costs and effectively end up subsidising the whole exercise.

Below-cost-selling is not just *an* Unfair Trading Practice, it's sheer abuse of dominant corporate retailer power and it is *the* Unfair Trading Practice”

Additionally, new laws relating to unfair trading practices in the food supply chain should not add an additional bureaucratic layer upon farmers. The EU and Ireland should note and consider the 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 the draft 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 implemented. 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.

ICMSA has some concerns in relation to some specific parts of the draft Directive and in this context, we feel it is right to outline for the Committee. ICMSA has concerns for farmers and their product purchasers that contract law may supersede this Directive and make some of the proposals null and void. For example, ICMSA has concerns over Article 3 and the payment within 30 days/one month. Our members feel that they are disadvantaged under this proposal and feel the time scale should be shortened to 20 days at a maximum

or that product purchasers should not be allowed to increase their payment intervals to 30 days. There are currently technologies in testing that could allow for produce to be paid in real time (everyday) and it would be important that this Directive does not impede such advances.

In relation to the QPS within the Beef industry, we believe that it is within these Articles to contest the use of a quality payment scheme when there is no difference in quality.

I thank you for your attention and would encourage all of you to get behind the elimination of UTP's and focus on further market transparency with a few to helping Irish farm families and the wider rural economy.