

A literature review of competition law as it relates to the beef sector

The Department of Agriculture, Food, and the Marine

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Executive summary

The Irish beef industry plays an important role in Ireland's overall export portfolio. There has been significant media attention recently surrounding ongoing discussions between beef farmers, processors and government representatives due to challenging market conditions.

In examining the existing and relevant legislation, there are distinct roles for key stakeholders within the beef supply chain and also for respective government ministers and national enforcement bodies.

The Competition and Consumer Protection Commission (CCPC) is the designated enforcement body for governing competition law in Ireland. An independent, statutory body, they work collaboratively with government departments, regulatory bodies, businesses and other international enforcement agencies. The CCPC have investigative powers relating to competition and consumer protection in Ireland. They are authorised to use a number of enforcement tools such as initiating civil proceedings including prohibition orders, issuing compliance notices, undertaking criminal investigations and proceedings, issuing fixed payment notices and publishing trader names.

The Competition Act of 2002, lays the fundamental basis for governing competition law in Ireland. It prohibits any act in which an undertaking abuses their dominant position within the supply-chain.

The Consumer Protection Act 2007 (Grocery Goods Undertakings) Regulations 2016 regulates the commercial relationship between suppliers and retailers / wholesalers within the food and beverages supply chain. It places a specific focus on establishing contracts between retailers, wholesalers and suppliers. It details the rights the supplier is entitled to but also outlines their obligations in fulfilling contracts in a manner that meets reasonable standards.

The European Union Directive 2019/633 on unfair trading practices is due to be transposed into Irish law in April 2021. It contains similar principles that are laid down in The Consumer Protection Act 2007 (Grocery Goods Undertakings Regulations) 2016. Similar to the Grocery Goods Undertakings regulation, the unfair trading practices directive aims to regulate relationships between sellers and buyers and protect any imbalances that exist in these commercial relationships. The unfair trading practices directive includes a greater number of smaller enterprises within its remit due to a lower turnover threshold. The remit of the enforcement agency and the role of the Minister for Business, Enterprise and Innovation along with the CCPC have not yet been determined.

Statutory Instrument (S.I.) 49 of 2016 sets out the necessary criteria for establishing a Producer Organisation (PO) in Ireland, which, is derived from European Union Regulation 1308/2013. In 2017, EU Regulation 2017/2393 was introduced and made amendments to EU Regulation 1308/2013, which included, amongst other items, the necessary criteria for establishing a PO in the EU and also the exemptions for PO's in relation to competition law. S.I. No. 49 of 2016 details the authorisations conferred onto the Minister for Agriculture which include recognising and refusing PO's and also for delegating the compliance to, and enforcement of, the legislation to the necessary bodies.

Similarly to the aforementioned legislation, there is specific legislation that governs the establishment, reporting and compliance that is associated with operating within a co-operative. Legislation governing co-operatives in Ireland dates back to 1893 under the 'Industrial and Provident Societies Act'. Both PO's and co-operative organisations provide a platform for producers to strengthen their bargaining power within the supply chain by forming as a single entity. While there are practical differences between the two, farmers seeking to avail of collaborative ways of working to increase their position within the supply chain, can benefit from organising themselves in either of these manners.



1. Introduction

1. Introduction

1.1 Overview of the Irish Beef Sector

In Ireland, the beef sector accounts for the largest category of Irish meat and livestock exports. Its size is reflective of the importance the beef sector has for Ireland's export and agri-food portfolio. The reputation of Irish beef worldwide is built around the quality of product, due to the grass-based system which Irish cattle are reared on for most of the year, and supported by stringent quality assurance schemes. Bord Bia's quality assurance schemes, along with the marketing programme of Origin Green, have helped to position Irish beef among the top ranks on the market.

The industry supports almost 100,000 farms, many of them spread across the midlands and west, in areas with little employment opportunities outside of agriculture

1.2 The Department of Agriculture, Food and the Marine

The Department of Agriculture, Food and the Marine (DAFM) is the oldest department in the State having been founded in 1900 following the enactment of the Agriculture and Technical Instruction (Ireland) Act 1899. The Department's mission is to *"lead the sustainable development of the agri-food, forestry and marine sector and to optimise its contribution to national economic development and the natural environment"*. The primary functions of the Department include:

- Policy advice and development on all areas of Departmental responsibility;
- Representation in international and national negotiations;
- Development and implementation of national and EU schemes in support of agriculture, food, fisheries, forestry and rural environment;
- Monitoring and controlling aspects of food safety;
- Control and audit of public expenditure under Departmental control;
- Regulation of the agriculture, fisheries, and food industries through national and EU legislation;
- Monitoring and controlling animal and plant health and animal welfare;
- Direct provision of support services to agriculture, fisheries, food and forestry; and
- Monitoring and direction of State Bodies engaged in the following areas:
 - research, training and advice;

- market development and promotion;
- industry regulation and development; and
- commercial activities.

The agri-food industry is at the core of Ireland's economic and social well-being. Bord Bia has reported that Irish edible agri-food exports stood at approximately €13 billion in 2019. Ireland has a strong reputation in food safety, quality and traceability.

The export profile of Irish food and beverages has been built on these credentials and more recently on the sustainability attributes of production systems. Excellence in quality, animal welfare and sustainability underpin the export profile of Irish beef.

Transparency is a key part of building stakeholder trust and credibility for the Irish food industry. Enhancing transparency throughout the beef supply chain should create a more cohesive operating environment amongst all stakeholders.

1.3 The Irish Beef Sector Agreement

The Irish Beef Sector Agreement was signed and commenced into action on 15 September 2019. The Agreement was reached after talks between the Department of Agriculture, Food and the Marine and the eight industry representatives: Meat Industry Ireland (MII); Beef Plan Movement (BPM); Irish Farmers Association (IFA); Irish Natura and Hill Farmers Association (INHFA); Irish Creamery Milk Suppliers Association (ICMSA); Irish Cattle and Sheep Farmers Association (ICSA); Macra na Feirme; and Irish Co-operative Organisation Society (ICOS).

Discussions had taken place in August between the stakeholders, in relation to a number of challenges facing the sector. During these meetings it was acknowledged that the current market conditions are particularly adverse. Other concerns facing the industry include Brexit, Mercosur, low farm incomes and climate action. It was noted that the beef sector is facing a time of considerable uncertainty which is contributing to downward pressure on beef prices. An agreement was brokered in August, which was subsequently followed by up the Irish Beef Sector Agreement in September, to address issues facing the industry.

The Agreement consists of two strands; Strand One: immediate benefits for farmers in terms of changes to the bonus payments and Strand Two: strategic structural reforms. Strand One comprises of a set of seven immediate actions including introduction of bonuses, reduction in residency requirement, the development of beef market

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price, review of the Quality Payment Grid and the establishment of a Beef Market Taskforce. Similarly, Strand Two involves a number of key actions to promote Irish beef internationally, protect and support beef farmers, introduce more transparency regarding pricing, to analyse the market, and to create a strategy through the creation of the Beef Taskforce.

1.4 Summary

The signing of the Beef Sector Agreement and establishment of the Beef Taskforce signalled a desire by all parties to work towards increased transparency along the supply chain. This situation has played a key part in instigating the commissioning of this report by the Department of Agriculture, Food and the Marine.

Grant Thornton were commissioned by the Department of Agriculture, Food and the Marine to conduct a literature review of the legislation in existence that underpins competition law in Ireland. The purpose of this review is to provide a succinct overview of competition law and its relevance to the beef sector in Ireland.

In undertaking this review, Grant Thornton have reviewed and analysed the following legislation, in consultation with the Department, noting the roles, rights, and obligations of key actors throughout the beef supply chain:

- Competition Act 2002;
- Consumer Protection Act 2007 (Grocery Goods Undertakings) Regulations 2016;
- EU Directive 2019/633 on unfair trading practices;
- EU Regulation 1308/2013 on establishing a common organisation of the markets in agricultural products;
- Industrial and Provident Societies (Amendment) Bill, 2018; and
- S.I 49 of 2016 European Union (Beef Producer Organisations) Regulation 2016.

This report aims to contextualise the roles of the various actors within the supply chain as is applicable under the relevant legislation.



2. Methodology

2. Methodology

Phase 1 | Discovery

Phase 2 | Analysis

Phase 3 | Report Development

Grant Thornton use a prescribed methodology for conducting literature reviews. The three phased approach entails 'discovery' of the relevant literature, 'detailed analysis' of the content and 'report development' to succinctly summarise the findings. Each step is outlined in detail below:

Phase 1 – Discovery

The first stage of this methodology is titled the *Discovery* phase. This phase encompasses identifying and collating all of the relevant and required information relating to competition law in the beef sector, in advance of the *Analysis* phase.

In consultation with the Department of Agriculture, Food and the Marine, we identified the relevant legislation regarding competition law in Ireland. In addition to this, we identified secondary sources relevant to competition law, Producer Organisations and Co-operative organisations. The text for each piece of legislation was sourced and, as appropriate, the overarching EU legislation was also sourced. The final list of legislation for review was shared with the Department of Agriculture, Food and the Marine to ensure that all relevant legislation had been captured.

This review has been based primarily on secondary research. During the development of this review, consultations were held with various industry stakeholders in relation to transparency in the beef sector. Some of these stakeholders volunteered their opinions in relation to legislative issues. All the information contained within the report has been sourced from secondary data sources.

Once all the relevant documentation had been sourced the project moved into the analysis stage.

Phase 2 - Analysis

The primary aim during the *Analysis* phase was to develop a comprehensive and succinct overview of existing legislation concerning competition law, and how it relates to the beef sector. We have done this by extensively analysing the information collated during the *Discovery* phase.

The literature review considers competition law as it relates to the beef sector, with particular reference to:

- The rights and obligations of all actors within the supply chain under competition law, encompassing price and contract negotiation; the role of Producer Organisations under EU regulations, and The Unfair Trading Practices Directive;

- The Grocery Goods Undertakings Regulations 2016;
- The rights and obligations of the Minister of Agriculture Food and the Marine and the Department under competition law, and their respective roles in the determination of prices for agricultural products and commodities; and
- The role of the Competition and Consumer Protection Commission (CPCC) in enforcing competition law within the beef sector.

Phase 3 – Report Development

The final phase of the literature review encompassed the completion of this report. In section 3 of this report, we have completed a comprehensive review of the relevant legislation to ensure that we are providing a detailed account of current competition law, in the context of the beef sector and supply chain in Ireland.

This engagement required a methodological approach. By first collating all the relevant documentation into a single repository and then analysing each piece of legislation, it enabled the review to maintain focus on the requirements as outlined by the Department of Agriculture, Food and the Marine. Once the documentation had been analysed the agreed format for the final report was developed with the relevant content.



3. Legislative Overview

3. Legislative Overview

Following a review of the legislation it was concluded that the following three areas are of particular relevance in the context of the issue at hand:

- Competition Law and the role of the Competition and Consumer Protection Agency (CCPC)
- Producer Organisations; and
- Co-operatives.

This legislative review analyses the key legislation within these three areas and details the roles, rights and obligations of the various stakeholders within the beef supply chain.

3.1. Competition law and the role of the Competition and Consumer Protection Commission (CCPC)

Competition law in Ireland regulates anti-competitive behaviour and promotes market competition for all undertakings. The Competition and Consumer Protection Commission (CCPC) is an independent statutory body responsible for enforcing competition and consumer protection law in Ireland. The CCPC formed in 2014 after the National Consumer Agency and the Competition Authority amalgamated. The CCPC work in partnership with:

- Business groups;
- Sector regulators;
- Other government departments; and
- International competition and consumer bodies.

The CCPC has a broad mandate. In addition to enforcing competition and consumer law, the CCPC is also responsible for promoting competition and consumer welfare through research, studies, submitting findings to inform Government policy and issuing guidelines on competition and consumer law in Ireland.

The CCPC have powers of investigation and is authorised to use enforcement tools such as initiating civil proceedings including: prohibition orders, issue compliance notices, undertake criminal investigations and proceedings, issue fixed payment notices and publishing trader names.

Unlike other enforcement agencies within the EU, the CCPC is unable to enforce fines on guilty parties. The role of the CCPC is to investigate alleged breaches of competition law. Breaches of competition law can be pursued through either criminal or civil proceedings. The Commission is authorised to initiate legal proceedings before the civil courts while the

Irish courts have the authority to decide on and impose remedies, fines, or custodial sentences for severe breaches of competition law.

3.1.1. The Competition Act, 2002

Competition law in Ireland is contained within various legislation. The Competition Act, 2002, is the fundamental legislation for detailing competition law in Ireland and the respective enforcement of the regulations. Part 2, Section 4(1) states that “*all agreements between undertakings, decisions, by associations of undertaking and concerted practices which have as their object or effect the prevention, restriction or distortion of competition in trade in any goods or services in the State or in any part of the State are prohibited and void*”. The legislation makes specific notice to:

- Fix prices;
- Limit or control production or markets;
- Share markets or sources of supply;
- Applying different conditions to equivalent transactions; and
- Make contractual conclusions subject to acceptance by other parties of supplementary obligations which by their nature have no connection with the subject of the contracts.

The legislation also details circumstances in which an agreement, decision or concerted practice is not prohibited if it complies with Part 2, Section 4(5) of the legislation which states: “*the agreement, decision or concerted practice, or category of agreement, decision or concerted practice, having regard to all relevant market conditions, contributes to improving the production or distribution of goods or provision of services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit and does not –*

- Impose on the undertakings concerned terms which are not indispensable to the attainment of those objectives; and*
- Afford undertakings the possibility of eliminating competition in respect of a substantial part of the products or services in question.”*

In addition to the above, Section 5 also prohibits against ‘any abuse by one or more undertakings of a dominant position in

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trade for any goods and services with regards to the same points listed in Part 2, Section 4(1) of the legislation.

The legislation gives authorisations to the 'Minister', which, was the then Minister for Trade and Enterprise, and is now the Minister for Business, Enterprise and Innovation. These authorisations include: oversight of new appointments, removal of individuals within the 'Authority', now referred to as the CCPC or the Commission, who are deemed as no longer able to meet the required expectations associated with their role, and grant to certain remunerations regarding schemes, with approval from the Minister for Finance.

The Competition Amendment Act 2012 details the penalties and proceedings relevant for those found in breach of the regulation. The penalties for summary convictions is a '*class A fine*', which according to the Fines Act of 2010 is not exceeding €5,000, for undertakings that are not individuals, and/or imprisonment of up to six months for natural persons. For conviction on indictments, an undertaking may be liable for fines of up to €5 million or 10% of their profits, whichever is greater, and/or imprisonment for up to ten years for natural persons. On an individual, penalties include fines of up to €5 million or 10% of his or her annual individual turnover in the financial year prior to the conviction, and/or 10 years imprisonment.

The aforementioned penalties act as a significant deterrent for all enterprises to engage in anti-competitive behaviour when negotiating or engaging in trade or supply of goods and services.

In 2014, prior to a Beef Forum roundtable established by then Minister for Agriculture, the CCPC wrote to the relevant parties and highlighted that discussing prices at such a forum could be construed as moving into competition-sensitive areas such as price fixing or anti-competitive collection action – which are both prohibited under competition law. In the context of maintaining a multi-stakeholder beef forum, the guidance of the CCPC in this regard should be noted.

The Competition Act, 2002, is the premise on which competition law in Ireland is established. Subsequent legislation enacted in Ireland and discussed within this report, is centred on regulating commercial relationships with an aim to create a formal relationship and achieve greater transparency between the relevant parties.

3.1.2. The Consumer Protection Act 2007 (Grocery Goods Undertakings) Regulation 2016

The Consumer Protection Act 2007 (Grocery Goods Undertakings) Regulations 2016 was signed into law by the then Minister for Jobs, Enterprise and Innovation on the 1st February 2016. The purpose of this legislation is to regulate and formalise certain practices in the commercial relationship between suppliers and retailers relating to the supply of food and drinks, in order to provide greater transparency between the two parties. The legislation outlines the roles and responsibilities of both parties engaged in a commercial relationship and details specific compliance requirements for retailers and wholesalers.

The Competition and Consumer Protection Act of 2014, inserted sections 63A – 63E into the Consumer Protection Act 2007. The introduction of these sections gave the Minister for Jobs, Enterprise and Innovation additional powers to introduce regulations in the grocery sector following consultation with the CCPC and others. Under this Act, the Minister can introduce regulations covering food and drink, household cleaning products, toiletries, and garden plants.

The Consumer Protection Act 2007 (Grocery Goods Undertakings) Regulation 2016 covers only food and drink "*that is intended to be sold for human consumption*". Included in this category are: food items and substances, additives, ingredients or intoxicating liquors.

The Consumer Protection Act 2007 (Grocery Goods Undertakings) Regulations 2016 imposes explicit obligations on grocery goods enterprises who are engaged in the retail wholesale of the grocery goods in the State, or is a member of a group of related undertakings, that has an annual turnover of more than €50 million.

The Regulations require that contracts between suppliers and relevant retailers and/or wholesalers are:

- Expressed in clear understandable language and recorded in writing;
- Signed and retained by the supplier and relevant grocery goods undertaking; and
- Not varied, terminated or renewed unless: the contract makes express provision for such variation, termination or renewal, and the contract specifies the period of written notice to be given.

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The legislation also explicitly details the rights of suppliers in relation to a service contract. Suppliers do not have to seek goods or services from a third party unless the goods are deemed as failing to meet “*reasonable quality standards*”, or if the quality and quantity provided by the supplier is not aligned to that of the third party provider proposed by the grocery goods enterprise.

There is also protection for suppliers for non-performance due to factors beyond “*reasonable control*”. Suppliers are however obliged to notify the relevant grocery goods enterprise on the reasons for the delay, the date and time at which the delay occurred and expected timelines for the resolution of the delay. Suppliers are also protected from incurring charges for stocking, displaying, or listing goods if these are not deemed to be based on reasonable estimates. Grocery goods enterprises may not charge suppliers for wastage and/or shrinkage unless it has been agreed by the two parties.

Promotions are given particular exemptions under this legislation in certain instances such as: stocking, listing, displaying goods, marketing costs, retention or allocation of shelf-space. In addition to this, suppliers are not obliged to make payments or grant allowances in respect of items listed on promotion.

Where there has been no express provision regarding payment within the contract, the grocery goods enterprise shall pay a supplier on the later of the below days:

- Within 30 days of the date of receipt of the invoice for the grocery goods, or
- Within 30 days of the date of delivery of the grocery goods.

A key observation from the legislation is the requirement for grocery goods enterprise to “*designate and train appropriate members of its staff to be responsible for*”:

- Compliance with these Regulations, and
- The dissemination of information in relation to the implementation of the Regulations.

This designated liaison officer will liaise with the Commission in relation to these Regulations along with submitting the annual compliance report to the Commission.

As outlined previously, the CCPC have certain powers of investigation. In relation to this legislation, they may inspect relevant grocery goods enterprises to monitor compliance.

They may also investigate complaints. Where a breach is suspected, and subject to an investigation, the Commission can issue a ‘Contravention Notice’ directing the grocery goods enterprise to remedy the breach. Failure to comply with this is deemed an offence.

The importance of the Consumer Protection Act 2007 (Grocery Goods Undertakings) Regulations 2016 centres on the layer of transparency it brings to commercial relationships between suppliers and retailers / wholesalers. Relationships between both of these parties must be conducted in a more formal and regulated manner and the Act sets out clear rights and obligations for these stakeholders involved in the food and drinks supply chain.

3.1.3. EU Directive 2019/633 on Unfair Trading Practices

The European Union Directive (EU) 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain was published by the EU in April 2019 and must be transposed into Irish law by April 2021. The Directive recognises that, within the agricultural and food products supply chain, “*significant imbalances in bargaining power between suppliers and buyers of agricultural and food products*” are a common occurrence.

The purpose of this directive is to correct this imbalance and regulate the commercial relationship while increasing transparency between both parties. The Directive is not dissimilar to the Consumer Protection Act 2007 (Grocery Goods Undertakings) Regulations 2016, which regulates and formalises the relationship between suppliers and retailers / wholesalers when entering into service contracts. Whereby the Consumer Protection Act 2007 (Grocery Goods Undertakings) Regulations 2016 applies to buyers with a turnover of €50 million or more, this Directive lowers the turnover threshold of buyers affected to between €2 million and €350 million and establishes “*turnover-based categories of operators to which protection is afforded*” relative to the size of the supplier and the buyer in terms of annual turnover. The lower turnover threshold laid down in this legislation, once transposed into law, will cover a significantly greater number of businesses and enterprises than currently legislated for under the Grocery Goods Regulation of 2016. This legislation compliments the principals laid down in the the Consumer Protection Act 2007 (Grocery Goods Undertakings) Regulations 2016 as it extends the reach in regulating a greater number of commercial relationships.

The EU Directive 2019/633 on unfair trading practices details activities that are prohibited in all circumstances. These include:

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- Payment for perishable agricultural and food products, later than 30 days; and for other agricultural and food products, later than 60 days;
- Short notice cancellations of perishable products: notice of less than 30 days shall always be considered as short notice;
- Unilateral changes to the terms of the supply contract, including frequency, method, place, timing or volume of the supply or delivery;
- Payments from the supplier that are not related to the sale of the agricultural and food products of the supplier;
- Payments for the deterioration or loss, or both, of agricultural or food products that occurs on the buyer's premises or after ownership has been transferred to the buyer;
- Misuse of trade secrets by the buyer;
- Acts of commercial retaliation against the supplier if the supplier exercises its contractual or legal rights; and
- Where the buyer requires compensation from the supplier for the cost of examining customer complaints.

The following six unfair trading practices are prohibited unless agreed in advance in a *“clear and unambiguous terms in the supply agreement or subsequent agreement”*. These include:

- The buyer returns unsold agricultural and food products to the supplier without paying for those unsold products or without paying for the disposal of those products, or both;
- The supplier is charged payment as a condition for stocking, displaying or listing its agricultural and food products, or of making such products available on the market;
- The buyer requires the supplier to bear all or part of the cost of any discounts on agricultural and food products that are sold by the buyer as part of a promotion;
- The buyer requires the supplier to pay for the advertising by the buyer of agricultural and food products;
- The buyer requires the supplier to pay for the marketing by the buyer of agricultural and food products; and
- The buyer charges the supplier for staff for fitting-out premises used for the sale of the supplier's products.

With regards enforcement of this Directive, Member states are required to designate one or more authorities to enforce the prohibitions contained within the Directive. As we await the transposition of this Directive, it is yet unclear as to the role, if any, of the Department of Business, Enterprise and Innovation, the Minister and/or the CCPC. The Directive does not designate any explicit responsibility on the Minister for Agriculture, Food and the Marine. It provides for a *“harmonisation approach”* and *‘allows Member States to adopt or maintain national rules which go beyond the unfair trading practices’* outlined in the Directive. It is a significant piece of legislation that continues to recognise the need for transparency in commercial relationships.

3.2 Producer Organisations

A report issued by the European Commission notes that a *“common definition of a producer organisation (PO) presents it as a rural business, owned and controlled by producers, and engaged in collective marketing activities.”*

Small farmers are perceived to be particularly vulnerable in the food supply chain. The establishment of PO's strengthen farmers' collective bargaining power, help them to reduce transaction costs and collaborate for processing and marketing purposes.

Legislation in the European Union and Ireland states that a PO must meet certain criteria in order to gain official recognition as such an entity or organisation.

Since the passing of EU Regulation 2017/2393, a PO in any agricultural sector must meet certain criteria to gain recognition as a PO. The criteria as per EU Regulation 2017/2393 include:

- Be set up on the initiative of producers;
- Meet minimum numbers;
- Be composed of and controlled by producers;
- File a request in the EU country in which it is based;
- Carry out at least one of the activities listed by EU law, such as joint processing, distribution, transport or packaging; or
- Follow at least one specific aim as per agricultural legislation including optimising production costs or developing initiatives in promotions or marketing.

This is a change from the initial legislation, EU Regulation 1308/2013 of the European Parliament and of the Council of

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17 December 2013, which had specific requirements for PO's in the beef and veal sector.

Legislation governing beef Producer Organisations in Ireland is covered under Statutory Instrument (S.I) No. 49 of 2016 European Union (Beef Producer Organisations) Regulations 2016. This national legislation governs the establishment, recognition criteria, enforcement and compliance that are legislated for when establishing a PO in Ireland. This legislation is derived from Chapter III of Title II of Part II of EU Regulation 1308/2013 of the European Parliament and of the Council of 17 December 2013 and has since been amended by EU Regulation 2017/2393. The amended Regulation saw the deletion of Article 170 which dealt specifically with beef and veal and contained amendments to Article 152 of EU Regulation 1308/2013, which covers Producer Organisations.

In 2017, the European Commission published a report which noted that there were 3,400 PO's established in the EU. The milk, dairy, fruit and vegetables sectors made up approximately 91% of these PO's while the remainder were attributed to 'Other'. Until recently, there were only two PO's established in Ireland. 2019 however, saw the introduction of two additional PO's, the first PO's established in the beef sector in Ireland:

- Emerald Isle Beef Producer CLG; and
- Glasson Beef Producers (T/A Irish Beef Producers).

A report published by the Joint Research Centre, the European Commission's in-house science service, noted that cooperation between farmers is a necessary condition required for improving their bargaining power and ultimate position within the agriculture food supply chain. The format and structure of a producer organisation allows for this cooperation and has been a predominant argument for setting up PO's into policy framework. In addition to allowing small individual agricultural farmers come together to strengthen their bargaining power, establishing and being a member of a PO allows for exemptions from certain competition rules.

Article 101(3) of the Treaty on the Functioning of the EU (TFEU) allows for limited exceptions to competition law for all undertakings, inclusive of Producer Organisations as long as it contributes to *"improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit"*. While the exemptions allowed for under Article 101(3) TFEU

are limited and applicable to all undertakings, there are specific exemptions for Producer Organisations within the agricultural sector. These exemptions are detailed in Article 152 of EU Regulation 1308/2013, as per amendments made by EU Regulation 2017/2393, which states that *"By way of derogation from Article 101(1) TFEU, a producer organisation recognised under paragraph 1 of this Article may plan production, optimise the production costs, place on the market and negotiate contracts for the supply of agricultural products, on behalf of its members for all or part of their total production."* Article 222 of the EU Regulation 1308/2013 also allows Producer Organisations to derogate from competition law rules during severe times of imbalance. This however, is not a unique benefit enjoyed by Producer Organisations as Article 222 now provides exemptions from Article 101(1) TFEU for farmers and farmers' associations.

S.I No. 49 of 2016 outlines the criteria that PO's must achieve in order to be recognised as such, including:

- Consisting exclusively of active beef suppliers;
- Have at least 20 active beef suppliers as members;
- Satisfy Articles 152, 153, 154, 155 and 170 of the Regulation (EU) No 1308/2013; and
- Is democratically constituted and has legal personality.

In addition to detailing the criteria to be achieved in order to obtain recognition as a PO, S.I No. 49 of 2016 outlines the rights of the Minister of Agriculture, Food and the Marine and their Department. Under the remit of the legislation, the Minister is authorised to:

- Establish a register of recognised PO's in the beef and veal sector;
- Publish the register of established PO's;
- Determine the format in which applications for PO recognition are submitted;
- Conduct checks on recognised PO's in order to ensure compliance with EU Regulation 1308/2013;
- Refuse an application for establishing a PO or withdraw an application for its establishment; and
- Prosecute offences of this Regulation.

The legislation also details the powers conferred onto authorised officers who govern PO's compliance with this legislation. Under the remit of this legislation, authorised officers may:

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- Enter and inspect, at all reasonable times, any premises, land, vehicle, container or vessel when carrying out checks to beef or veal products;
- Examine equipment, machinery, a container, a vehicle, a vessel or any other item used in connection with beef or beef products;
- Inspect and take copies of records;
- Take photographs or recordings;
- Take, without making payment, samples of beef or beef products; and
- Serve a compliance notice to PO's who are believed to be in breach of this legislation.

S.I No. 49 of 2016 also details requirements and obligations of PO's including:

- Providing the name and address of the '*owner, operator or person in possession or control*' of machinery, containers, vehicles, vessels or any other items used in connection with cattle, beef or beef products;
- The relevant person within a PO is required to produce documentary evidence of ownership of above listed property; and
- To assist authorised officers by providing documents, information, or any other items that relate to this national legislation and EU Council Regulation.

The legislation also details the penalties and implications for PO's that do not operate in compliance with the regulation. In the event that the relevant person within an established PO is issued with a compliance notice they are required to action the notice as specified or appeal the notice if there is disagreement surrounding the terms on which it was issued. If they fail to action the specified items within the notice or have not submitted a formal appeal, the PO's may be subject to a '*class A fine*'. The fine is imposed following a prosecution and a PO subsequently being found guilty. Offences for which a PO may also incur a class A fine include the failure to provide the Minister with information within 30 days, following receipt of the Ministerial request. Furthermore, it is prohibited to be a member of more than one PO unless the Minister is satisfied that this is not in breach of Article 153.1(b) of EU Regulation 1308/2013.

S.I. No. 49 of 2016 also outlines offences that may warrant a Class A fine for 'persons' who are in breach of regulation. These offences include:

- Obstructing an authorised officer in their work under the Regulation;
- Forging a commercial document with an intent to deceive or defraud;
- Failure or refusal to comply with a requirement outlined by an authorised officer;
- Failure to give assistance or additional information as requested by an authorised officer; or
- Providing information known to be false or omitting information / material of concern or relevance.

In summary, S.I. No. 49 of 2016, derived from EU Regulation 1308/2013 and the amendments made under EU Regulation 2017/2393, governs the establishment, criteria and compliance for PO's in Ireland. In addition, it authorises the Minister for Agriculture, Food and the Marine and the appointed authorised officers to enforce these regulations and ensure that PO's are acting in compliance with the Regulation. The legislation makes specific reference to instances in which PO's are required to assist the relevant authorised officers, acting on behalf of the Minister for Agriculture, Food and the Marine. If PO's fail to meet the necessary requirements or fail to work collaboratively with authorised officers, they may be subject to fines and penalties.

3.3 Co-operative Organisations

'Conditions, attitudes, and structures of successful PO's and co-operatives', an article issued by the European Food and Farmers Partnership (EFFP), defines an agricultural co-operative (co-op) as a "*voluntary association of persons established in order to pursue certain commercial objectives*". Unlike a PO, a co-operative does not need to meet specific criteria laid down in legislation or does not require official recognition to operate as such.

In a report issued by the European Commission, 'Support for Farmers' Co-operatives', it is noted that there are three basic principles when recognising a co-operative. These principles are:

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1. The User-Owner Principle – those who own and finance the co-operative are those who use the co-operative.
2. The User-Control Principle – those who control the co-operative are those who use the co-operative.
3. The User-Benefits Principle – the co-operatives sole purpose is to provide and distribute benefits to users on the basis of their use.

Additionally, there are some key functions and activities associated with being a co-operative. Among those recognised are:

- Co-operatives distribute profits amongst their members;
- Users typically control co-operatives by one vote per member voting mechanism; and
- Benefits are realised by returning net income to patrons in proportion to use, by enjoying prices, and by gaining access to market, supplies and services.

In summary, a co-operative can be defined as a *“user-owned and controlled business from which benefits are derived and distributed on the basis of use”*.

Legislation governing co-operatives in Ireland dates back to 1893 under the ‘Industrial and Provident Societies Act’. In 1913, the Industrial and Provident Societies (Amendment) Act was introduced, followed by the ‘Friendly Societies and Industrial and Provident Societies (Miscellaneous Provisions) Act 2014.

In 2018, the Industrial and Provident Societies (Amendment) Bill was proposed in order to modernise the regulatory basis for which co-ops are formed and operated in Ireland. This bill proposed three key amendments to industrial and provident societies. The amendments introduced are:

- Reducing the minimum number of members from seven to three;
- The inclusion of conditions allowing exemptions for filing annual returns; and
- The introduction of electronic forms of communication.

In 2018, S.I. No. 363 of 2018 the Industrial and Provident Societies (Forms) Regulation was introduced by the Minister for Business, Enterprise and Innovation to prescribe the forms to be used for the purposes of certain provisions of the Industrial and Provident Societies Acts 1893 to 2014.

There are differences between co-operatives and PO's including the fact that a PO may have the legal form of a co-operative, but in many cases does not. It is recognised that there are similarities between the two and that they can both offer commercially advantageous situations to producers within the farming sector. In the context of this review, it is important to note some of the particularly strong co-operatives in existence.

Co-operatives in Ireland have a strong presence, primarily in the dairy sector. Glanbia Co-operative Society is a leading dairy co-operative and has a shareholding in two main assets, 36.5% shareholding in global nutrition and 60% shareholding in Glanbia Ingredients. Kerry Co-Operatives Creameries is another example of a well established co-operative. The co-operative holds approximately 13% of Kerry Group PLC. Traditionally, the beef sector in Ireland has not organised itself in the form of co-operatives.



4. Conclusion

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The Irish beef sector is of central importance to the Irish agri-food industry, accounting for the largest category of Irish meat exports. Challenging market conditions in 2019 instigated a process of discussions which culminated in the signing of the Irish Beef Sector Agreement on 15 September 2019.

Grant Thornton were commissioned by the Department of Agriculture, Food and the Marine to undertake a literature review of the existing and relevant legislation that regulates competition law in Ireland. Competition law in Ireland was established under the Competition Act of 2002, while regulations governing commercial relationships between suppliers and retailers / wholesalers are legislated for separately. In addition, the laws governing PO's and co-operative organisations are of particular relevance in the current climate, when considering the opportunities that operating in such a manner can offer to producers.

When undertaking this review, Grant Thornton used a defined methodology which encompassed three distinct phases:

1. Discovery;
2. Analysis; and
3. Report delivery.

In taking this approach, Grant Thornton were able to develop a succinct and comprehensive understanding of the legislation and contextualise this with regards to the ongoing discussions within the Irish beef sector.

Throughout the legislation, authorisations are given to the relevant Government Ministers for the enforcement of the legislation including the appointment of required individuals and establishment of compliance standards and mechanisms to ensure adherence to the regulations.

While the Minister of Agriculture, Food and the Marine is granted specific authorisations under S.I. 49 of 2016 European Union (Beef Producer Organisations) Regulation 2016, inclusive of granting recognition or refusing recognition of a PO, there is no explicit role for the Minister in any of the legislation reviewed, for determining prices for agricultural products and commodities. The Minister, and the Department of Agriculture, Food and the Marine, are however bound by the legislation and cannot action in contravention to the legislation.

Much of the legislation introduced in recent years has placed an increased focus on achieving greater transparency between the relevant parties engaged in commercial relationship and partnership. It seeks to formalise the relationship between suppliers and retailers / wholesalers and correct imbalances in power between the two.

The CCPC is the designated body with a dual mandate to enforce competition and consumer protection law in Ireland and have investigative powers to support in the enforcement of these laws.

Under the Consumer Protection 2007 (Grocery Goods Undertaking) Regulations 2016, the CCPC is the designated agency for monitoring compliance, investigating complaints and where appropriate, taking enforcement action. Their role in the enforcement of EU Directive 2019/633 on Unfair Trading Practices is still unclear at this stage.

To conclude, the legislation governing competition law in Ireland is vast. The roles of primary stakeholders and their obligation to act in a transparent manner is detailed throughout various pieces of legislation. Authorisations are given to the relevant Government Minister and the national enforcement agency to ensure that the various actors within the food supply chain are compliant with these regulations.

