



Number 4 of 2006

COMPETITION (AMENDMENT) ACT 2006

ARRANGEMENT OF SECTIONS

Section

1. Amendment of Competition Act 2002 by inserting new Part 2A.
2. Amendment of section 30 of Competition Act 2002.
3. Amendment of section 45 of Competition Act 2002.
4. Revocation of Groceries Order.
5. Repeals.
6. Short title, collective citation and commencement.

SCHEDULE

ENACTMENTS REPEALED

[No. 4.] *Competition (Amendment) Act 2006.* [2006.]

ACTS REFERRED TO

Competition Act 2002	2002, No. 14
Interpretation Act 2005	2005, No. 23
Restrictive Practices Act 1972	1972, No. 11
Restrictive Practices (Confirmation of Order) Act 1975	1975, No. 15
Restrictive Practices (Confirmation of Order) Act 1978	1978, No. 11
Restrictive Practices (Confirmation of Order) Act 1979	1979, No. 14
Restrictive Practices (Confirmation of Order) Act 1980	1980, No. 19
Restrictive Practices (Confirmation of Order) Act 1981	1981, No. 4
Restrictive Practices (Confirmation of Order) Act 1987	1987, No. 23
Restrictive Practices (Confirmation of Orders) Act 1974	1974, No. 4
Restrictive Practices (Confirmation of Order) (No. 2) Act 1978	1978, No. 12
Restrictive Practices (Confirmation of Order) (No. 2) Act 1980	1980, No. 38
Restrictive Practices (Confirmation of Order) (No. 2) Act 1981	1981, No. 7
Restrictive Practices (Confirmation of Order) (No. 3) Act 1978	1978, No. 31
Restrictive Trade Practices (Confirmation of Order) Act 1956	1956, No. 15
Restrictive Trade Practices (Confirmation of Order) Act 1960	1960, No. 20
Restrictive Trade Practices (Confirmation of Order) Act 1963	1963, No. 6
Restrictive Trade Practices (Confirmation of Order) Act 1966	1966, No. 11
Restrictive Trade Practices (Confirmation of Order) Act 1969	1969, No. 28
Restrictive Trade Practices (Confirmation of Order) Act 1972	1972, No. 18
Restrictive Trade Practices (Confirmation of Orders) Act 1958	1958, No. 31
Restrictive Trade Practices (Confirmation of Orders) Act 1962	1962, No. 16
Restrictive Trade Practices (Confirmation of Orders) Act 1972	1972, No. 8
Restrictive Trade Practices (Confirmation of Order) (No. 2) Act 1956	1956, No. 16
Restrictive Trade Practices (Confirmation of Order) (No. 2) Act 1962	1962, No. 30
Restrictive Trade Practices (Confirmation of Order) (No. 3) Act 1956	1956, No. 33



Number 4 of 2006

COMPETITION (AMENDMENT) ACT 2006

AN ACT TO AMEND THE COMPETITION ACT 2002 BY PROVIDING, IN THE INTERESTS OF THE COMMON GOOD, FOR THE PROHIBITION OF ACTIVITIES WHICH PREVENT, RESTRICT OR DISTORT COMPETITION IN TRADE IN GROCERY GOODS IN THE STATE, TO REVOKE THE RESTRICTIVE PRACTICES (GROCERIES) ORDER 1987 AND TO REPEAL THE RESTRICTIVE PRACTICES (CONFIRMATION OF ORDER) ACT 1987 AND OTHER RELATED AND SPENT ACTS.

[11th March, 2006]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—The Competition Act 2002 is amended by inserting the following Part after Part 2:

Amendment of Competition Act 2002 by inserting new Part 2A.

“PART 2A

COMPETITION IN GROCERY GOODS TRADE

Definitions and operation of this Part.

15A.—(1) In this Part—

‘allowance’ includes any discount, rebate, price concession or other advantage that is collateral to a sale or purchase of grocery goods but is not applied directly to the selling or purchase price;

‘grocery goods’ means any food or drink for human consumption that is intended to be sold as groceries, and includes—

- (a) any substance or thing sold or represented for use as food or drink for human consumption,
- (b) any substance or thing sold or represented for use as an additive, ingredient or processing aid in the preparation or production of food or drink for human consumption, and
- (c) intoxicating liquors;

‘grocery goods undertaking’ means, subject to subsections (2) and (3), an undertaking that is engaged for gain in the production, supply or distribution of grocery goods, whether or not the undertaking is engaged in the direct sale of those goods to the public;

‘retailer’ means a grocery goods undertaking that sells or resells grocery goods directly to the public.

(2) For the purposes of this Part, an undertaking that produces, supplies or distributes an additive, ingredient or processing aid referred to in paragraph (b) of the definition of ‘grocery goods’ in subsection (1) is not a grocery goods undertaking unless the additive, ingredient or processing aid is intended to be sold by a retailer as an additive, ingredient or processing aid.

(3) Subsection (2) applies only to the extent that the undertaking does not otherwise fall within the definition of ‘grocery goods undertaking’ in subsection (1).

(4) For the avoidance of doubt, this Part does not apply to that part of an undertaking’s operation the business of which is to do any of the following:

- (a) serve or supply food or drink in the course of providing catering, restaurant or take-away services or any similar hospitality services;
- (b) serve or supply intoxicating liquor for consumption on the premises.

(5) This Part operates without prejudice to Part 2.

Anti-competitive conduct in grocery goods trading.

15B.—(1) Subject to subsection (5), a grocery goods undertaking shall not directly or indirectly attempt to compel or coerce another grocery goods undertaking, whether by threat, promise or any like means, to resell or advertise for resale any grocery goods at—

- (a) a price fixed directly or indirectly by the first mentioned grocery goods undertaking, or
- (b) a price above a minimum price fixed directly or indirectly by the first mentioned grocery goods undertaking.

(2) Subject to subsection (5), a grocery goods undertaking shall not apply dissimilar conditions to equivalent transactions with any other grocery goods undertaking.

(3) Subject to subsection (5), a grocery goods undertaking shall not directly or indirectly compel or coerce, whether by threat, promise or any like

means, another grocery goods undertaking to make any payment or grant any allowance for the advertising or display of grocery goods.

(4) Subject to subsection (5) and without limiting the generality of subsection (3), a retailer shall not directly or indirectly compel or coerce, whether by threat, promise or any like means, another grocery goods undertaking to make any payment or grant any allowance to the retailer in consideration of any of the following matters:

- (a) providing space for grocery goods within a new retail outlet on or within the first 60 days after its opening to the public;
- (b) providing space for grocery goods within a newly expanded or extended retail outlet on or within the first 60 days after the opening to the public of the expanded or extended part of the outlet;
- (c) providing space for grocery goods within a retail outlet on or within the first 60 days after its opening to the public under new ownership.

(5) Conduct described in subsections (1) to (4) shall not be prohibited unless it has as its object or effect the prevention, restriction or distortion of competition in trade in any grocery goods in the State or in any part of the State.

Right of action for breach of section 15B.

15C.—(1) Any person who is aggrieved in consequence of any conduct which is prohibited under section 15B shall have a right of action under this subsection for relief against any of the following:

- (a) any grocery goods undertaking which is or has at any material time been a party to the prohibited conduct;
- (b) any director, manager or other officer of such an undertaking, or a person who purported to act in any such capacity, who authorised or consented to, as the case may be, the prohibited conduct.

(2) The Authority shall have a right of action under this subsection in respect of conduct which is prohibited under section 15B.

(3) Subject to subsection (4), an action under subsection (1) or (2) may be brought in the Circuit Court or in the High Court.

(4) Subsections (4) to (6), (8) and (9) of section 14 apply with the necessary changes for the purposes of an action under subsection (1) or (2) of this section and, for those purposes, a reference in subsections (4) to (6), (8) and (9) of section 14 to

an action under subsection (1) or (2) of that section is to be read as a reference to an action under subsection (1) or (2) of this section, as the case may be.”.

Amendment of section 30 of Competition Act 2002.

2.—Section 30(4)(b) of the Competition Act 2002 is amended by substituting “relief under section 14 or 15C” for “relief under section 14”.

Amendment of section 45 of Competition Act 2002.

3.—Section 45(13)(a) of the Competition Act 2002 is amended by substituting “under section 14 or 15C,” for “under section 14,”.

Revocation of Groceries Order.

4.—(1) The Restrictive Practices (Groceries) Order 1987 (S.I. No. 142 of 1987) is revoked.

(2) The revocation of the order under *subsection (1)* of this section does not—

- (a) revive anything not in force or not existing immediately before the revocation,
- (b) affect the previous operation of the order or anything duly done or suffered under it or in relation to it,
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under or in relation to the order,
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence against or in relation to or contravention of or in relation to the order which was committed before the revocation, or
- (e) prejudice or affect any legal proceedings (civil or criminal) pending at the time of the revocation in respect of any such right, privilege, obligation, liability, offence or contravention.

(3) Any legal proceedings (civil or criminal) in respect of—

- (a) a right, privilege, obligation or liability acquired, accrued or incurred under or in relation to the order referred to in *subsection (1)* of this section,
- (b) an offence against or in relation to that order, or
- (c) a contravention of or in relation to that order,

may be instituted, continued or enforced, and any penalty, forfeiture or punishment in respect of an offence under *paragraph (b)* of this subsection or a contravention under *paragraph (c)* of this subsection may be imposed and carried out, as if the order had not been revoked.

(4) This section operates without prejudice to section 27 of the Interpretation Act 2005.

Repeals.

5.—(1) The enactments referred to in the *Schedule* to this Act are repealed to the extent specified in the third column of that *Schedule*.

(2) In so far as it is unrepealed, the Restrictive Practices Act 1972 is repealed.

6.—(1) This Act may be cited as the Competition (Amendment) Act 2006.

Short title,
collective citation
and
commencement.

(2) This Act and the Competition Act 2002 may be cited together as the Competition Acts 2002 and 2006.

(3) This Act shall come into operation on such day or days as the Minister for Enterprise, Trade and Employment may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

SCHEDULE

Section 5(1).

ENACTMENTS REPEALED

Number and Year (1)	Short Title (2)	Extent of Repeal (3)
No. 15 of 1956	Restrictive Trade Practices (Confirmation of Order) Act 1956	The whole Act
No. 16 of 1956	Restrictive Trade Practices (Confirmation of Order) (No. 2) Act 1956	The whole Act
No. 33 of 1956	Restrictive Trade Practices (Confirmation of Order) (No. 3) Act 1956	The whole Act
No. 31 of 1958	Restrictive Trade Practices (Confirmation of Orders) Act 1958	The whole Act
No. 20 of 1960	Restrictive Trade Practices (Confirmation of Order) Act 1960	The whole Act
No. 16 of 1962	Restrictive Trade Practices (Confirmation of Orders) Act 1962	The whole Act
No. 30 of 1962	Restrictive Trade Practices (Confirmation of Order) (No. 2) Act 1962	The whole Act
No. 6 of 1963	Restrictive Trade Practices (Confirmation of Order) Act 1963	The whole Act
No. 11 of 1966	Restrictive Trade Practices (Confirmation of Order) Act 1966	The whole Act
No. 28 of 1969	Restrictive Trade Practices (Confirmation of Order) Act 1969	The whole Act
No. 8 of 1972	Restrictive Trade Practices (Confirmation of Orders) Act 1972	The whole Act

Number and Year (1)	Short Title (2)	Extent of Repeal (3)
No. 18 of 1972	Restrictive Trade Practices (Confirmation of Order) Act 1972	The whole Act
No. 4 of 1974	Restrictive Practices (Confirmation of Orders) Act 1974	The whole Act
No. 15 of 1975	Restrictive Practices (Confirmation of Order) Act 1975	The whole Act
No. 11 of 1978	Restrictive Practices (Confirmation of Order) Act 1978	The whole Act
No. 12 of 1978	Restrictive Practices (Confirmation of Order) (No. 2) Act 1978	The whole Act
No. 31 of 1978	Restrictive Practices (Confirmation of Order) (No. 3) Act 1978	The whole Act
No. 14 of 1979	Restrictive Practices (Confirmation of Order) Act 1979	The whole Act
No. 19 of 1980	Restrictive Practices (Confirmation of Order) Act 1980	The whole Act
No. 38 of 1980	Restrictive Practices (Confirmation of Order) (No. 2) Act 1980	The whole Act
No. 4 of 1981	Restrictive Practices (Confirmation of Order) Act 1981	The whole Act
No. 7 of 1981	Restrictive Practices (Confirmation of Order) (No. 2) Act 1981	The whole Act
No. 23 of 1987	Restrictive Practices (Confirmation of Order) Act 1987	The whole Act
No. 14 of 2002	Competition Act 2002	Section 49