



Draft Guidelines for Planning Authorities – Retail Planning

Submission by the Competition Authority to the Department of the Environment, Community and Local Government

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An tÚdarás Iomaíochta

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1. SUMMARY

- 1.1 The Competition Authority very much welcomes the Minister for the Environment, Community and Local Government's proposed new Retail Planning Guidelines (the "Draft Guidelines"). Competitive local markets and vibrant local markets are mutually compatible goals. Choice and value for money in retail centres make them more attractive for local communities.
- 1.2 The aim of the Draft Guidelines is to ensure that *"the planning system plays a key role in ensuring competitiveness in the retail sector advancing choice for the consumer while promoting and supporting the vitality and viability of city and town centres and contributing to a high standard of urban design and encouraging a greater use of sustainable transport"*.¹ Balancing this variety of social, economic and environmental objectives is not an easy task. The Competition Authority has found that, in the past, retail competition was excessively inhibited in pursuit of other objectives.² The new Draft Guidelines redress this imbalance to a considerable extent, at least in terms of local level competition.
- 1.3 The new Guidelines will put into effect four of the recommendations made by the Competition Authority in our 2008 report on *The Retail Planning System as Applied to the Grocery Sector: 2001- 2007* (the "Grocery Retail Planning Report"), following an examination of over 300 grocery retail planning applications. The implementation of these recommendations will bring benefits to both retailers and consumers:
- The planning process will be faster and less burdensome for new retailers and so retail development will be more responsive to consumers' needs.
 - The planning system will no longer unduly favour existing retailers in an area over new retailers but instead look at the impact of the new retailer on the vitality of the town centre or district centres as a whole.
 - Local authority development plans and strategies will take more account of the needs and preferences of local consumers than is currently required.
 - The Draft Guidelines recognise the potential benefits of having a variety of different business models in retailing and allowing retailers the opportunity to be innovative in their retail format. This should lead to more choice of retailers for consumers in their local area.
 - These changes overall promote a retail sector that offers both vitality and value to communities across the country.
- 1.4 The Draft Guidelines do not implement one recommendation of the Grocery Retail Planning Report – to remove blanket caps on the size of retail stores. Instead, they propose to apply a different set of caps to

¹ The Department of Environment, Community and Local Government "Minister Hogan Publishes Draft Retail Planning Guidelines", Press Release, 21/11/2011

² Competition Authority (2008) *The Retail Planning System as Applied to the Grocery Sector: 2001- 2007*.

the existing caps. Therefore, Ireland is unlikely to see the kind of large scale discount retailers that exist in other countries and the lower prices that go with them.

- 1.5 This rest of this submission outlines the most important positive retail planning changes outlined in the Draft Guidelines and their impact on retailers and consumers. This is followed by a few suggestions for some small further improvements. In the interests of completeness, an appendix provides information on the issue of store size caps.

2. ENHANCED PROMOTION OF RETAIL COMPETITION

Implementation of Competition Authority recommendations

- 2.1 A 2008 report by the Competition Authority examining *The Retail Planning System as Applied to the Grocery Sector: 2001- 2007* found that the planning system, through a variety of mechanisms, makes it difficult for new retailers to enter the Irish grocery sector and for existing retailers to expand. These findings were on the basis of an analysis of over 300 planning applications from 2001 to 2007.
- 2.2 While recognising the difficult job planners have to do in balancing a variety of social, economic and environmental objectives, we found that the Retail Planning Guidelines excessively inhibited the development of retail competition. The Guidelines did not sufficiently recognise consumer interests and how the benefits of competition could be harnessed to promote the vitality and viability of towns and cities. Choice and value for money in retail centres make them more attractive for local communities.
- 2.3 The Grocery Retail Planning Report contained seven recommendations - six related to the Retail Planning Guidelines.³ The six recommendations are:
1. End the discrimination against discount retailers.
 2. Allow for more flexibility within six-year projections of floorspace requirements.
 3. Include an assessment of competition in health checks of local development plans.
 4. Recognise that competition from new retail centres benefits local consumers.
 5. Formally survey consumers regarding attitudes and preferences.
 6. Remove caps on grocery retail space.
- 2.4 Since the publication of the Report, we met with officials in the Department of the Environment, Community and Local Government to offer practical suggestions on how the recommendations could be incorporated into the Guidelines.
- 2.5 The first four recommendations listed above are fully implemented in the new guidelines. The fifth was directed at the floorspace assessment process, which has yet to be finally decided on. The seventh has not been implemented. More generally, the language and provisions throughout the Draft Guidelines better reflect the benefits of competition and the interests of consumers in retail development.
- 2.6 Our recommendations did not require a sea change in Irish planning policy, but rather a refocusing of the system to better accommodate competition and consumer issues. In this regard, we believe that the newly published Draft Guidelines strike a better balance between their

³ The seventh recommendation was to research ways to limit appeals by competitors.

various objectives and will support the vitality, viability and competitiveness of city and town centres.

2.7 The remainder of this section highlights some of the most significant changes in the Draft Guidelines which will serve to:

- reduce barriers to entry into the retail market,
- widen the choice of retail outlets for consumers,
- ensure an adequate provision of space for retail development, and
- ensure that consumer attitudes and preferences receive more attention in retail planning policies.

Combined, these changes will enhance competition and encourage existing retailers to improve their offering.

Increased recognition of the benefits of competition

2.8 The Draft Guidelines explicitly recognise, for the first time, the need for the planning system to play its part in ensuring an effective range of choice and value for money for consumers. The recognition in the Draft Guidelines that *"strong competition is essential to drive down retail costs and ensure that costs savings are passed on to retail customers in the form of lower prices"*⁴ and that *"planning authorities and the Board should avoid taking actions which would adversely affect competition in the retail market"*⁵ is important. It will help ensure that the impact on competition of a planning decision, and the potential benefits to consumers from new competition, is considered by planning authorities in their decision making. This is a good for consumers.

2.9 This recognition of the importance of competition to a vibrant retail sector is reflected throughout the Draft Guidelines. A key example of this is the change in the *"trade diversion test"*.⁶ In the Grocery Retail Planning Report, the Competition Authority raised a concern that some planning authorities were placing too much emphasis on the impact on existing retailers of a proposed new or expanded retail outlet. This had the effect of protecting existing retailers in an area from normal competition and ultimately was likely to have blocked or limited new retailers from entering.

2.10 When making planning applications, retailers are required to produce *"retail impact assessments"*, the core of which is an estimate of *"retail diversion"*. That is, how much trade will be diverted from existing retail centres by the proposed new retail development. If a new retail outlet will result in a significant decrease in the turnover of those retailers already in the retail centre, it will not be permitted. The requirement that planning applicants demonstrate that not "too much" trade is diverted from existing retailers is a barrier to entry. Normal competition would suggest that a new retail development would naturally impact on existing stores. Retailers expect to compete with each other for customers and to vie for market share.

⁴ *Draft Guidelines for Planning Authorities*, November 2011, Section 3.5 *Retail Planning* pg 21.

⁵ Ibid.

⁶ Ibid.

- 2.11 The Draft Guidelines now state *"when the issue of trade diversion is being considered in the assessment of proposed retail development, planning authorities and the Board should assess the likelihood of any adverse impacts on the vitality and viability of the city or town centres as a whole, and not on existing traders"*⁷. This is a very encouraging change. It will effectively allow retailers to demonstrate the positive impact that their entry will have on the vitality and viability of town centres. Indeed, this has been specifically recognised in the criteria an applicant must address when carrying out a retail impact assessment. Section 5.8 of the Draft Guidelines, states that, the applicant shall demonstrate whether or not the proposal would *"have the potential to increase employment opportunities and promote economic regeneration"* and whether *"it will respond to consumer demand for its retail offering"*.⁸
- 2.12 These changes will move the focus of the retail impact assessment from one that concentrates solely on what new entry "takes away", to an assessment which also enables retailers to express how their entry may increase the attractiveness of the town and thereby meet many of the core objectives of the Guidelines.

Discrimination against discount stores removed

- 2.13 The Draft Guidelines do away with the current distinction between the size of discount food stores and other food retailers. This will remove any uncertainty for both planning authorities and discount retailers about the size of store that will be permitted. It may also encourage entry by new discount retailers whose business models require larger floor spaces than the existing discount food stores.
- 2.14 In the Grocery Retail Planning Report, the Competition Authority highlighted a concern that discount food stores appeared to face a different store size cap than other grocery retailers. Discount food stores are described in the current Guidelines as *"being single level, self service stores normally of between 1,000m² and 1,500m² of gross floorspace, selling limited range of goods at competitive prices and often with adjacent car parking"*. While there is no specific mention of a cap on the size of discount food stores, from our analysis of planning application refusals, it appeared that planning authorities interpret this part of the Guidelines to mean that discount food stores can have a gross floorspace of no greater than 1,500m².
- 2.15 Limiting more price-aggressive competitors' retail capacity to less than that of other stores is particularly anti-competitive and likely to disincentivise discounters and price competition. While this may not have been the intention of the Retail Planning Guidelines, the evidence suggests that this is in fact the case in practice. Ireland currently has two discount food stores – Lidl and Aldi. While their particular business model may not require floorspace of over 1,500m², there are certainly other discounters operating in Europe that would require larger floor spaces. The definition of discounters in the Retail Planning Guidelines may have discouraged these types of large scale discounters from entering the Irish market. Discount stores can extend the range of convenience retailing in an area and should be considered to be in the same land use class as any other superstore or supermarket. The

⁷ Ibid Section 3.5 *Planning and Delivering a Competitive Retail Sector*, pg 21.

⁸ Ibid Section 5.8 *Retail Impact Assessment*, pg 36.

deletion of the distinction between the size of discount food stores and other food retailers is a very welcome change.

More flexibility in retail floorspace assessments

- 2.16 The new wording of the retail floorspace assessment is an improvement on the existing Guidelines and has removed rigidities identified in our Grocery Retail Planning Report.
- 2.17 Local authorities must identify optimum locations for new retail development in their development plans. In order to identify suitable sites, planners need some indication of the expected demand for floorspace. Thus some assessment of future floorspace requirements must take place.
- 2.18 The Competition Authority had concerns, however, that planning authorities were placing too great a weight on the floorspace assessments, which are only ever indicative at best of the need for increased retail space. Contravention of the local authority development plan on the grounds that the size of the proposed development exceeded that envisaged in the floorspace assessment was a common reason for refusal of the planning application in the 300+ applications we examined. Overly-strict adherence to the floorspace assessments has the potential to act as a barrier to entry. It could be seen as pre-determining how many entrants will be admitted to the retail trade in a particular area.
- 2.19 The clarification in the Draft Guidelines that "*estimates of future retail requirements are only intended to provide broad guidance as to the additional quantum of convenience and comparison floorspace provision; they should not be treated in an overly prescriptive manner, nor should they serve to inhibit competition*" is very welcome. It will allow planners to judge each application on its merits without a preconceived decision on the size of the application that will be accepted (so long as a store is within the relevant retail size cap).

Increased consumer representation in retail planning

- 2.20 The Draft Guidelines propose to increase the amount of attention paid to consumer interests in planning process. These changes are very welcome.
- 2.21 As highlighted in the Grocery Retail Planning Report, special interests in the retail trade – e.g. retailers, small business, and environmentalists – are well-organised and capable of influencing local authority development plans and decisions. Consumers on the other hand tend to have less of a voice in the planning process.
- 2.22 The Draft Guidelines provide for consumer considerations to be taken into account in the "health check" analysis of town centres. A health check analysis is an analysis undertaken by local authorities of the vitality and viability of town centres and currently focuses on such things as diversity of uses, retail rents and accessibility. Under the new Draft Guidelines, local authorities must also obtain an indication of the competitiveness of the retail environment. Is the current mix of retail stores offering choice to consumers? Is there a need for more

innovative offerings and services for the benefit of consumers?⁹ The Draft Guidelines also maintain that regular surveys of customer views and behaviour be undertaken as part of the health check.

- 2.23 The Competition Authority recommended that local authorities should be required to formally survey consumers to accurately ascertain their attitudes and preferences, in a statistically representative manner, specifically when carrying out floorspace assessments. The Department of the Environment's consultation states that the proposed methodology for estimating retail floorspace requirements has yet to be finalised. The Draft Guidelines state that *"the preparation of retail strategies and/ or development plans should also have regard to qualitative factors in determining the need for future floorspace e.g. changing retail trends and formats. Again suggestion on how such factors can be simply and effectively factored into future floor space requirements would be welcome"*.¹⁰ We reiterate our recommendation that the floorspace assessment would be a good opportunity to formally survey consumer attitudes and preferences.

A less burdensome process

- 2.24 Two policies contained within the Draft Guidelines will help to alleviate the burdensome nature of the planning process. The length and costly nature of the planning process in Ireland were two of the reasons cited by retailers to the Competition Authority as acting to discourage or delay them making a planning application.
- 2.25 The first change is that where a planning application meets the criteria set out in the retail policies and objectives of the local authority's development plan and retail strategy, it will no longer be necessary for the applicant to submit additional supporting background studies. Only if there is no retail strategy to inform the development plan or it is out of date must full supporting documentation be attached, including, where appropriate, retail impact assessments. This change will reduce the cost imposed by the planning process on retailers. Our analysis of 300+ planning applications found that retailers currently go to the expense of carrying out a retail impact assessment for nearly each and every planning application, regardless of whether it is for a site within the town centre or outside the town centre.
- 2.26 The second change is that the Draft Guidelines emphasise that planning authorities should have pro-active pre-application engagement with applicants. They state that *"if the project is not acceptable in the context of the retail strategy and/ or development plan, or related city or town centre strategies, then this should be clearly communicated to the applicant at the earliest possible stage"*. This change should help speed up the planning application process for larger retailing proposals, and make the whole the application process a lot more efficient and focused. This reduces barriers to entry.

More opportunities for different business models to develop

- 2.27 The Draft Guidelines better allow for innovation in retailing and this will promote the choice of retailers available to consumers and help the retail sector to adapt to changing market circumstances.

⁹ Ibid Annex II *Assessing the vitality and viability of city and town centres*, pg 60.

¹⁰ Ibid Annex 4.5 *Qualitative Assessment*, pg 68.

- 2.28 Retailing has changed a over time as travel and technology options change and consumers needs and shopping habits change. For example, retailers now have to compete with on-line retailers as well as their local competitors. This has led to retailers innovating in the way they do business.
- 2.29 Some retail formats can adapt easier than others to variations in their outlet size. Some retailers can establish themselves in smaller town centre locations without any radical changes to their business model but for some retailers this is not as easy. Some retail formats are incompatible with a sequential approach policy – i.e. Ireland’s policy whereby retailers must set up in a town centre and only move to the edge of or outside the town if no suitable site is available within the town centre. To set up in a sequentially preferable site would lead them to alter their core business model and have a detrimental impact on their offering to consumers. In our Grocery Retail Planning Report, the Competition Authority noted that the sequential approach to retailing can therefore act as a barrier to entry.
- 2.30 The Draft Guidelines now state *“where an applicant can provide evidence that the requirement to set up in the sequentially preferable site is leading them to altering their core business model, and having a detrimental impact on the offering to the consumer, planning authorities may need to demonstrate flexibility in the assessment of the application. Where a case has been made for an out-of-centre site the applicant must show through use of the sequential approach that the most appropriate out-of-centre site has been chosen”*.¹¹ This is a very welcome and important change that could encourage the entry of a retailer that thus far would have been prevented from entering the Irish market with its full retail offering.

¹¹ Ibid Section 5.6 *Out-of-Centre-Retailing* pg35.

3. FURTHER AREAS FOR CONSIDERATION

Fundamental objectives of the Guidelines

- 3.1 The objectives set out in the Draft Guidelines are apt and laudable but don't actually mention consumers. The fundamental role of retailing is to bring goods to consumers in an efficient manner. This should be mentioned in the section (1.3) on the *Importance of Retailing*.
- 3.2 The fundamental objective in the Draft Guidelines of "*facilitating a competitive and healthy environment for the retail industry sector*"¹² is particularly welcome. As the ultimate aim of a competitive retail sector is to benefit consumers, rather than retailers (who benefit indirectly), this aim would be better phrased as "*facilitating a competitive and healthy environment in the retail industry sector*".

Definitions in the glossary

- 3.3 The overview at the beginning of the Draft Guidelines' glossary states that retailing is dynamic and as such it should be noted that "*new forms of retailing may evolve which are inadequately described by current terminology, and should be assessed on their merits*".¹³ This is very welcome. It allows for retail models which may meet consumer demand to develop, without concerns that they will face barriers obtaining planning permission because they do not fit traditional ideas of what a retail outlet should be.
- 3.4 Despite this, the definitions of *Types of Retailing* on page 55 of the Draft Guidelines may inadvertently create problems for grocery retail applicants that do not fit in with the definition of "supermarket" given. Supermarkets are described as being "*Single level, self service store selling mainly food, with a net sales area of less than 2,500 sq m*". Hypermarkets are described as being "*Self service stores on single or more levels selling both food and a range of comparison goods, with net sales area in excess of 5,000 sq m with dedicated surface level car parking*".¹⁴ We appreciate that each form of retail outlet is to be assessed on their merits. However, given the rigid following of the definitions given in the current Retail Planning Guidelines by planning authorities in the past, it may be prudent to include a definition of business models in between 2,500 sq m or 5,000sq m. i.e. larger supermarkets or "superstores" as per the current Retail Planning Guidelines.

Town centres, district centres and major village centres

- 3.5 The current Retail Planning Guidelines state that "*Town centres, together with district centres and major village centres serving rural areas provide a broad range of facilities and services and act as a focus for the local community. In this guidance the term "town centre" is*

¹² "Draft Guidelines for Planning Authorities, Retail Planning", Section 1.1. Aim of the Guidelines, page 1; later reflected in Policy Objectives, Section 3.2 pg 18.

¹³ Ibid Annex 1 Glossary of Terms pg 54

¹⁴ Retail Planning, Guidelines for Planning Authorities, Glossary *Types of Convenience Good Shopping* pg 42

used to refer to district centres as well as centres of smaller settlements”¹⁵.

- 3.6 They go on to define district centres as *“either traditional or purpose build group of shops, separate from the town centre and either located within the built-up urban area or in a suburban location on the edge of an urban area, usually containing at least one food supermarket or superstore and no-retail services, such as banks, building societies and restaurants”*.¹⁶ The current Guidelines also define local or neighbourhood centres as *“Small groups of shops, typically comprising a newsagent, small supermarket/general grocery store, sub-post office and other small shops of a local nature serving a small, localised catchment population”*.¹⁷
- 3.7 The Draft Guidelines however no longer make reference to the importance of district centres or neighbourhood centres in the retail hierarchy. We are concerned that this may lead to a limitation being placed on space allocated for retail development, other than in traditional town centres. The effect of this would be to limit the opportunities for entry, by forcing retailers into smaller sites in town and city centres. As this may not be the intention of the Draft Guidelines, we would suggest that the issue is given further consideration and clarified.

¹⁵ Ibid pg 8

¹⁶ Ibid pg 43

¹⁷ Ibid pg 44

4. APPENDIX: RETAIL FLOORSPACE CAPS

The Competition Authority recommendation

- 4.1 Currently there is a retail cap of 3,500m² in the Greater Dublin Area, and 3,000m² everywhere else. The Greater Dublin Area is defined to include the counties of Dublin, Kildare, Meath and Wicklow.
- 4.2 The Competition Authority recommended that all caps on grocery retail space be removed and local authorities be allowed to determine the extent of retail development in their respective administrative areas. We made this recommendation as we believed that:
- (a) the caps were not strictly necessary, as there are lots of other controls in the Guidelines that prevent large stores from being established, and
 - (b) the caps could be preventing retailers with low price-large scale business models from entering the Irish grocery market and reducing prices in Ireland.
- 4.3 This has not been done and the Draft Guidelines instead include (new) caps on retail floorspace. This policy choice prioritises social goals associated with preserving small scale convenience retailing over the economic goals of lower prices and productivity. A number of countries have similar rules, but typically set at local authority level.

The new retail caps

- 4.4 The Draft Guidelines have varied the retail caps – upwards and downwards – from those in the current Guidelines. This was recommended in the Forfás *Review of the Economic Impact of the Retail Cap* of April 2011 that was undertaken as part of the terms of the EU/IMF programme for Financial Support for Ireland and recently published alongside the Draft Guidelines.
- 4.5 The Draft Guidelines provide for new higher caps in Dublin (4,000m²) and the National Spatial Strategy (NSS) areas of Cork, Waterford, Galway, Limerick/Shannon (3,500m²). The remainder of the country will see a cap of 3,000m². These changes mean that the retail caps will increase in some areas (the five areas above) and decrease in others (the counties of Wicklow, Kildare and Meath). The retail warehouse floorspace cap is to be maintained at 6,000m², but there are specific criteria to allow for an exemption from this floorspace cap in city centre areas in the five main National Spatial Strategy gateway cities.

The impact of the new retail caps

- 4.6 The Draft Guidelines are likely to continue to deter the entry of low price-large scale retailers and the lower prices that come with them. They may improve competition between the brands of products on supermarket shelves. Their likely impact on employment is not clear.

The effect on entry

- 4.7 The Draft Guidelines are likely to deter a new type of retailer from entering or emerging in Ireland – a low price-large scale retailer that

typically involves low margins and relatively high turnover. The new restrictions on floorspace are likely to inhibit the effectiveness of this business model and as such may discourage entry by these retailers to Ireland. The fact that Ireland does not have any of the large scale low cost grocery retailers that exist in other European countries (where prices are lower than in Ireland), e.g. Carrefour or Asda, provides some evidence that the current caps are already restricting the entry of these retailers.

- 4.8 Low price-large scale stores are only sustainable in areas of high population density. Thus you would only expect them to want to locate, and, under any good retail planning system, be allowed to locate in a few locations in Ireland e.g. within the National Spatial Strategy areas.
- 4.9 Low price-large scale retailers have been shown to reduce grocery prices. A 2008 study of the impact of these retailers in France found that they were associated with a price drop of 2.7%.¹⁸ The price drop was not isolated to the retailers themselves, but found throughout other retail formats.¹⁹ This indicates that there is a spill-over effect from the low price-large scale retailers pushing other retail formats to charge lower prices.
- 4.10 Ireland saw a similar kind of spillover/ripple effect in 2009 when sterling dropped in value relative to the euro and consumers began to shop in Northern Ireland in large numbers. It was like having a number of low-cost retail outlets suddenly appear along the other side of the border. This had an impact on the prices being charged by retailers in the Republic of Ireland – first locally and then nationally. For example, Tesco began by reducing the prices in their eleven stores in border counties and gradually made their way down the country until they finally changed the prices in the southern part of the country weeks later.²⁰
- 4.11 Thus the impact of the Draft Guidelines may be to prevent Ireland from achieving as low prices as it could otherwise. Large scale store format has also been found to be key driver of retail performance and productivity in an economy, with large formats generally having higher productivity than small formats and specialized formats.²¹ Low price-large scale are the most productive format and can increase the entire productivity of a retail sector.²²

Inter-brand competition

- 4.12 Large food stores facilitate larger shopping aisles, additional shelves and additional storage. They thus support a wider choice of products for consumers. This in turn supports competition between different brands of similar goods ("inter-brand competition"). Limiting floorspace, through its effect on limiting the extent of the product ranges that a retailer can carry, tends therefore to limit inter-brand competition and innovation. The increase in the caps in the NSS areas

¹⁸ McKinsey, *Creating Economic Growth In Denmark Through Competition*, November 2010, pg125-126.

¹⁹ Ibid.

²⁰ Brian Hutton and Elaine Keogh, *Low prices set to roll out across the country in weeks*, The Irish Examiner, 6 May 2009; Sean MacCarthaigh, *Shoppers will benefit as Tesco moves to extend cuts*, The Irish Examiner, 1 July 2009.

²¹ Ibid, p.128.

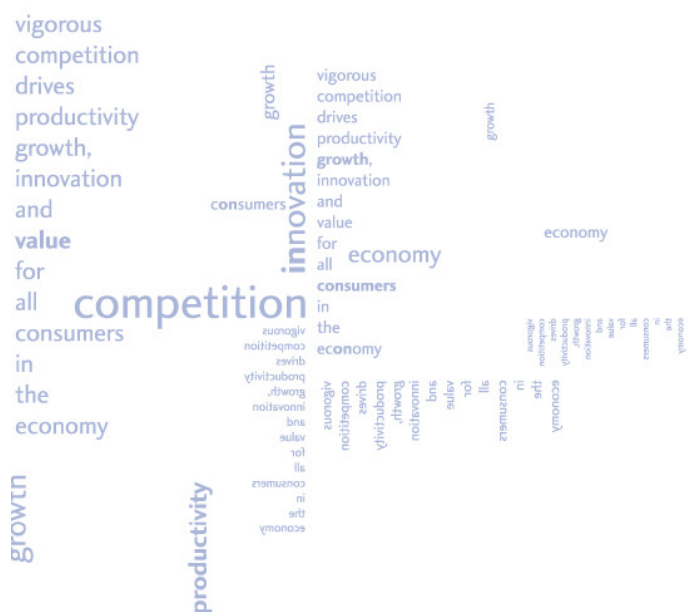
²² Ibid.

could therefore have a positive economic impact to the extent that it increases inter-brand competition.

The effect on employment

- 4.13 The precise impact of hypermarkets and supermarkets on employment levels – both locally and nationally - are still hotly debated. Different studies yield opposing conclusions.
- 4.14 The international economic think tank, the Organisation for Economic Cooperation and Development (OECD), has stated that increasingly the evidence suggests that preventing the development of large stores actually reduces employment and raises prices to a higher level – both in the immediate local area and nationally.²³

²³ OECD, *Land Use Restrictions As A Barrier To Entry*, Working Party No. 2 on Competition and Regulation, Background Note by the Secretariat, 18 February 2008.



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