

# Submission on Discussion paper on Mandatory unit pricing for grocery products

Submitted to:

Ministry of Business, Innovation & Employment

13 July 2022



# Commerce Commission submission on the Discussion paper on Mandatory unit pricing for grocery products

## Introduction

1. The Commerce Commission (the Commission) appreciates the opportunity to make a submission on the Ministry of Business, Innovation & Employment (MBIE) Discussion Paper on mandatory unit pricing for grocery products (the paper).<sup>1</sup> We look forward to our ongoing engagement with MBIE on this topic.
2. One of the recommendations made in the Commission's market study into the retail grocery sector<sup>2</sup> was for the Government to mandate the consistent display of unit pricing for grocery retail products. In our view, consistent unit pricing can help consumers compare the price of goods within and between retailers. Even when not directly comparing products and retailers, clear and accurate unit pricing information can help consumers to develop perceptions of value over time which in turn help them to decide where to shop to best meet their needs<sup>3</sup>.
3. The paper seeks feedback on how mandatory unit pricing should be designed and implemented. We generally support the outcomes sought in the paper, in particular the objective that unit pricing is displayed in a manner that is clear and consistent.

## Commission's role

4. The Commission is New Zealand's primary competition, fair trading, consumer credit and economic regulatory agency. We enforce legislation that promotes competition in New Zealand markets and prohibits misleading and deceptive conduct by traders.
5. We note that one option to implement mandatory unit pricing is through a consumer information standard under the Fair Trading Act 1986 (FTA). Consumer information standards are set by regulation under the FTA and provide for the disclosure of consumer information, which can include price, in respect of goods or services.<sup>4</sup> Such information can help consumers make informed decisions about the products they buy.
6. We focus our comments on the practical regulatory and enforcement considerations that might arise from a consumer information standard. Although, we acknowledge that similar considerations might apply if mandatory unit pricing is implemented through the other option proposed in the paper, amending the Weights and Measures Act 1987 (noting that the Commission does not enforce the Weights and Measures Act).

---

<sup>1</sup> MBIE Discussion paper, Mandatory unit pricing for grocery products, May 2022, [link](#)

<sup>2</sup> Commerce Commission Market Study into the retail grocery sector, Final report, 8 March 2022 - [Link](#)

<sup>3</sup> Paragraph 9.222 of the Commission's Final report on Market Study into the retail grocery sector

<sup>4</sup> Section 27, Fair Trading Act 1986

7. If enforcement falls to the Commission under a consumer information standard, we recommend consideration is given to how the provisions of the consumer information standard might align with the parallel obligations under the Weights and Measures Act, to provide clarity for businesses, consumers and the Commission.

*The Commission's market study into the retail grocery sector*

8. The Commission issued its final report on competition in the grocery sector on 8 March 2022.<sup>5</sup> One of the Commission's recommendations was that the Government mandate the consistent display of unit pricing for grocery retail products. In making this recommendation, the Commission considered that where unit pricing information is not consistently available or cannot be easily assessed and acted upon by consumers, they may be less able to make informed decisions and less likely to shop around. This may reduce the major grocery retailers' incentives to engage in price competition.<sup>6</sup>

**Design and Implementation**

9. The Commission made some specific recommendations<sup>7</sup> aimed at ensuring that grocery retailers display unit pricing in a manner that is clear and consistent and that consumers are empowered to make informed purchasing decisions, for example, that minimum standards regarding display be specified and that standardised units of measurement be specified for each category of products to be covered by the requirements. The paper asks a number of questions as to how this consistency and clarity might be achieved. We comment as follows on the practical implications of some of the issues raised in the paper.

*Who mandatory unit pricing should apply to?*

10. The paper explores three potential threshold options for the application of mandatory unit pricing, namely, store floor space, product range and annual revenue. On balance, taking into account submissions made by major grocery retailers, the Commission's market study recommended use of a minimum annual revenue threshold.<sup>8</sup> This was to avoid disproportionate compliance costs being placed on smaller grocery retailers and because a revenue threshold (unlike the floor space requirement in Australia) could more easily apply to both physical and online retailers.
11. From a practical enforcement perspective, we note that the regulator, when carrying out its market surveillance or compliance activities, would need appropriate evidence to determine when the minimum threshold was met. It would require financial information that is not currently made publicly available nor readily accessible.

---

<sup>5</sup> As above.

<sup>6</sup> Paragraph 7.119 of the Commission's Final report on Market Study into the retail grocery sector

<sup>7</sup> Commission's Final report on Market Study into the retail grocery sector

<sup>8</sup> Paragraphs 9.227 – 9.232 inclusive in the Commission's Final report on Market Study into the retail grocery sector

12. To assist with this issue, if an annual revenue threshold is the preferred option, we suggest that MBIE considers specifying a means by which revenue information is to be disclosed. We note the approach adopted in two of the existing safety standards under the FTA that the Commission enforces; Cigarette Lighters and Hot Water bottles.<sup>9</sup> In both cases, retailers are required to provide particular information on request, i.e. compliance certificates. In the case of mandatory unit pricing. It would facilitate more efficient enforcement if retailers were required to disclose annual revenue information to the regulator. In the absence of such a requirement, the regulator could compel the production of that information under s47G of the Fair Trading Act.
13. In addition, it will be necessary for the consumer information standard to specify whether the minimum annual threshold is to be set at store level or group level (noting the differing ownership and franchise models used) and what the specific annual revenue threshold should be.
14. If a floor space threshold was to be preferred, the Commission considers that this could be met in relatively straightforward manner using existing records and it would be unlikely to change on as regular a basis as annual revenue. Nevertheless, disclosure by grocery retailers of relevant floor space would be useful from an enforcement perspective as discussed above in relation to the disclosure of information relating to annual revenue. If this option was preferred, then the consumer information standard should clearly define what floor areas are considered relevant, i.e. retail, storage, and/or warehousing.
15. We note that a threshold based on retail floor space assumedly would not be applicable to all online retailers. The Commission considers that online grocery retail should also be subject to unit pricing regulation as discussed in the market study and therefore, if a floor space threshold was preferred, separate provision may be required for online grocery retail.

*Where/how retailers should display unit pricing?*

16. We reiterate our recommendation<sup>10</sup> that the requirements apply to in-store display and advertising in print media and online where the selling price is displayed, but not television, radio or other video or audio content. This is consistent with the position in Australia. We also note that static digital media such as electronic billboards are becoming increasingly prevalent in public places such as bus stops and roadside billboards. They often show static advertisements on rotation. In our view, this kind of digital advertising should be subject to unit pricing regulation and is not subject to the same limitations as television, radio or audio content.
17. In terms of how unit pricing should be displayed, the Commission considers legibility and visibility to be key considerations. If a principles-based approach is adopted, we

---

<sup>9</sup> [Product Safety Standards \(Cigarette Lighters\) Regulations 1998](#), and [Unsafe Goods \(Hot Water Bottles\) Permanent Prohibition Notice 2016](#)

<sup>10</sup> Paragraph 9.226.4 in the Commission's Final report on Market Study into the retail grocery sector

consider the Australian Code to be useful starting point in that it specifies that the unit price for a grocery item must be prominent (easily seen), legible (easy to read), unambiguous (accurate and its meaning clear) and in close proximity to the selling price for the grocery item.

18. A more prescriptive approach has some benefits in delivering greater regulatory certainty. However, we note that a more prescriptive approach also carries a risk of reducing flexibility, stifling innovation or use of new technology, and potentially increasing compliance costs beyond what is required to deliver effective unit pricing.
19. If prescribed text requirements are adopted, we note the importance of avoiding the unintended consequence of causing consumer confusion between the primary selling price indication and the displayed unit price.

*What should be the standard measurements for unit pricing?*

20. In our view, standardised units of measurement (specified for each category of regulated products) will allow for direct, and the most meaningful, comparisons to be made across comparable products and differing outlets. To this end, we favour adopting the Australian approach to standard and non-standard unit measurements as a starting point, but agree that adding the following requirements will be more effective in achieving the outcomes of consistency, certainty and accuracy:
  - 20.1 The same unit of measurement be used for products within the same product category (the unit that is most dominantly or prevalently displayed within that category); and
  - 20.2 Using kilograms and litres as the standard units of measurement for weight and volume (aligning with the Weights and Measures Act).
21. We note that for some products, e.g. eggs and tea bags, a unit price per number of products as opposed to weight is likely to provide a more valuable comparison for consumers.

*Guidance by retailers*

22. The paper suggests<sup>11</sup> that there may be benefits in requiring grocery retailers to educate consumers about unit pricing and the ways in which unit pricing can be used to make in-store purchasing decisions. We agree that empowering consumers to understand and use unit pricing when making purchasing decisions is beneficial. For this reason, it may be useful to include specific requirements for the content and dissemination of educative materials by retailers to consumers explaining their use of unit pricing.

**Enforcement of a consumer information standard under the FTA**

23. Government recently announced an intention to appoint the Commerce Commission as the grocery sector regulator, with the function to be led within the Commission by a Grocery Commissioner. In the event that a unit pricing consumer information

---

<sup>11</sup> Paragraph 24 of the paper

standard is introduced under the Fair Trading Act, it may be necessary to consider the role of the Grocery Commissioner in relation to this standard.

24. While still under development, it is difficult to determine the likely resource required to administer a unit pricing regulatory regime. However, we anticipate that the regulator will need to be funded appropriately to ensure that it achieves the outcomes sought. We would be happy to discuss this further as development of unit pricing regulation progresses alongside wider initiatives relating to the regulation of the grocery sector.

### **Conclusion**

25. We thank MBIE for this submission opportunity and would be pleased to provide any further assistance that you may require. If you have any specific questions on this submission, please contact Grant McIntosh in the first instance.