

POST CONFERENCE SUBMISSION TO THE NZ COMMERCE COMMISSION MARKET STUDY
INTO THE RETAIL GROCERY SECTOR:
GROCERY UNIT PRICING (PRICING PER UNIT OF MEASURE)

Ian Jarratt, 22 November 2021

INTRODUCTION

I welcomed:

- The opportunity to participate in the Conference session on Unit Pricing.
- The general support for:
 - The recommendation in the draft report that New Zealand should have a mandatory grocery unit pricing scheme
 - The scheme to be designed to cater for New Zealand conditions and needs.
- The recognition that some features of Australia's scheme were not appropriate for New Zealand, for example the eligibility criteria of 1000 sq m minimum store floor area and the very wide range of categories of grocery products that must be sold.

As indicated in my previous submissions, my view continues to be that New Zealand:

- Needs a mandatory effective, comprehensive, integrated and consistent unit pricing system that covers grocery products sold loose from bulk, and in random and constant measure pre-packages
- Has the opportunity to, and should, create a world-class, best-practice system of unit pricing.

I presume that if the final report recommends that a mandatory scheme be introduced in New Zealand that it will only provide guidance on high level issues and that the fine details of the scheme will be determined after consultation on the required legislation.

Therefore this submission deals mainly with the following key high level issues relevant to the final report:

- Regulatory instrument and consultation
- Businesses required to provide grocery unit pricing
- Products/items to be unit priced
- Provision of unit prices
- Display of unit prices
- Units of measure
- Consumer education
- Compliance monitoring and enforcement

RECOMMENDATIONS

1.Any CIS for grocery unit pricing be contained only within a Regulation and not involve any NZ standard.

2.Special efforts should be made to obtain input into the consultation from a wide range of consumers, including the aged and those who are vulnerable or disadvantaged or with disability.

3.The New Zealand scheme only exclude retailers who sell a very small range of food-based products.

4.Retailer characteristics for inclusion/exclusion be given careful consideration during the development of a New Zealand scheme and information be obtained from the Irish government on how well Ireland's main criterion - whether the retailer has computerized labelling – is operating.

5.The New Zealand scheme require that defined grocery retailers who voluntarily provide grocery unit pricing be required to comply with the same display and other requirements as those who must provide grocery unit pricing.

6.The Regulation require that specified grocery retailers be required to provide the unit price for ALL food products/items.

7.The number of non-food exemptions in the Regulation be minimized in order to maximize the provision, and consumer use, of unit prices.

8.The final report highlight that in order to achieve effective, comprehensive, integrated and consistent unit pricing system covering grocery products sold loose from bulk, and in random and constant measure pre-packages, consideration should be given to whether changes are need to the current weights and measures legislation or whether all the necessary requirements can be provided by a CIS.

9.For any product/item covered by the scheme:

- The unit price must be provided whenever a selling price is displayed, including when the price is a special offer.
- If the selling price is displayed multiple times so too must the unit price.
- The unit price must be displayed even if it is the same as the selling price
- If a selling price is displayed at any selling point or in ANY type of written advertisement the unit price must also be displayed.

10.The final report emphasize the need to:

- Ensure that ALL unit prices displayed, including on electronic labels and on the internet, are easy for ALL consumers to notice, read, understand and use.
- Provide retailers with the maximum amount of information/guidance on how to achieve the above requirement.
- Remind retailers about their obligations to comply with the requirements of other relevant legislation, including anti-discrimination.

11.A scheme objective should be to maximize consistency in the unit of measure used to indicate the unit price between:

- Different items of the same product type
- Similar and substitute product types
- Different selling methods e.g. packages (constant and variable/random measure) and loose from bulk
- Different retailers.

12.The design and requirements of a New Zealand unit pricing system take account of the apparent lack of specificity of New Zealand's weights and measures legislation on several important matters specified in Australian and other country weights and measures legislation that could significantly influence the achievement the consistency in the types of units of measure, and their denomination, used for unit pricing.

13.The final report recommend:

- There be an initial publicly funded consumer education campaign when the new unit pricing system is introduced and thereafter there be publicly funded special campaigns every 2- 3 years.
- The need for proactive on-going monitoring and enforcement of compliance with the requirements of a New Zealand unit pricing scheme.
- A comprehensive, independent review of the scheme be undertaken no later than 3 years after the date of full implementation, and that the review also include whether the scheme should be expanded to include non-grocery retailers and products.

HIGH LEVEL ISSUES

Regulatory instrument and consultation

There seems to be wide support for a scheme to be provided via a Consumer Information Standard (CIS). However, I understand that although all CISs are implemented via a Regulation, some also draw heavily on a NZ Standard.

I **recommend** that any CIS for grocery unit pricing be contained only within a Regulation and not involve any NZ standard. This is because:

- There is not an existing relevant NZ standard

- The topic is very complex
- The finalization of a NZ standard will likely take much longer than will a standalone Regulation
- Consultation on a Regulation is likely to get much greater stakeholder interest and involvement than a NZ standard.

However, there may be scope to refer in the Regulation to the ISO Standard **ISO 21041:2018 *Guidance on unit pricing***, and it definitely should be used during its development.

I also **recommend** that special efforts should be made to obtain input into the consultation from a wide range of consumers, including the aged and those who are vulnerable or disadvantaged or with disability. This is important because:

- The needs of these consumers are important.
- These consumers can be major beneficiaries from unit pricing that is easy for them to notice, read, understand and use.
- In my experience, the quality of the unit pricing provided by retailers for products in constant measure packages rarely meets the needs of these consumers.
- The provisions of anti-discrimination legislation may be relevant.

Businesses required to provide grocery unit pricing

The key issues are products sold, retailer characteristics, voluntary provision, and provision by manufacturers/packers of grocery products.

Products sold

The approach often taken to products sold is to regard foods as the products that determine whether a retailer is a grocery retailer and may be required to provide unit pricing.

In Australia, the Code lists 11 categories of “food-based grocery items” and only retailers who sell all of the categories may be required to provide unit prices. However, as I mentioned at the Conference, I think this is too restrictive since it excludes some retailers (including internet retailers who for example may not sell some food categories such as “eggs”, “fresh milk”, “fresh fruit and vegetables”) who sell significant amounts of food.

Therefore, I **recommend** that the New Zealand scheme only exclude retailers who sell a very small range of food-based products.

Retailer characteristics

As I mentioned at the Conference, internationally a wide range of approaches have been taken to the characteristics of a grocery retailer that determine whether unit prices must be provided. These approaches include: floor area, financial turnover, number of employees, and use of computerised labelling.

As mentioned at the conference, in Australia the eligibility criteria for store based retailers is a minimum store floor area least of 1000 sq m being used for selling groceries. I consider that this is far too large for Australia.

Therefore, I agree with the retailers who spoke at the Conference that such a large minimum floor area is not appropriate for a New Zealand scheme for store based retailers.

I **recommend** that retailer characteristics for inclusion/exclusion be given careful consideration during the development of a New Zealand scheme and that information be obtained from the Irish government on how well Ireland’s main inclusion/exclusion criterion - whether the retailer has computerized labelling – is operating. I was unable to explore this in detail while there on my Churchill Fellowship in 2007 but consider it has many advantages over other criteria. This is because manually providing the unit price on shelf and other labels/signs can have a significant effect on the cost of providing unit pricing (which is the main justification for considering exempting some retailers).

Voluntary provision by retailers

A feature of the Australian scheme is that certain grocery retailers who voluntarily provide grocery unit pricing are also required to comply with the Code. However, this only applies if they sell the minimum range of food-based grocery items. Therefore, this provision mainly affects store based grocery retailers with a floor area of less than 1000 sq m and internet retailers who do not sell the full range of food-based grocery items.

I am not aware of any other scheme with this type of requirement and I consider it very beneficial feature of the scheme because it helps to ensure consistency of provision between grocery retailers.

Therefore, I **recommend** that the New Zealand scheme require that defined grocery retailers who voluntarily provide grocery unit pricing be required to comply with the same display and other requirement as those who must provide grocery unit pricing.

Manufacturers/packers

If it is required to provide the unit price on products where the selling price is displayed (which I strongly support) and the product is not packaged by the retailer, it is possible that the Regulation may need to also apply to manufacturers/packers of grocery products. However, requiring the retailer to ensure that the unit price is displayed on the package may be sufficient to ensure that this happens.

Products/items to be unit priced

Food products/items

As mentioned above, internationally foods are often assumed to be the basic products that will be unit priced and are used to determine whether a retailer is a grocery retailer and may be required to provide unit pricing. And, the legislation usually refers to food in general, or to certain listed foods.

As also mentioned above, the latter approach is taken in Australia. However, non-listed foods are also captured because the provision of unit prices is required for grocery items and a “grocery item” is defined as being “any item sold by a prescribed grocery retailer, including a food-based grocery item”.

I **recommend** that the Regulation require that specified grocery retailers be required to provide the unit price for ALL food products/items.

Non-food products/items

Schemes also vary in the treatment of unit pricing of non- food items sold by grocery retailers. The approaches seem to include:

- exclude non-food products, or
- specify other non-food products that must be unit priced, or
- require provision for all other products sold with the food products, or
- require provision for all other products sold with the food products, but provide exemptions for some products.

In Australia the latter approach was adopted and seems to work satisfactorily. However, as I mentioned at the Conference, there is an exemption (not prohibition) for alcoholic beverages and tobacco products. It reflected public health and safety considerations. I do not have a view on this. However, I do consider that the following should not be in the Australian exemptions list:

- items for motor vehicle maintenance or repair (oil, etc)
- items for garden/pool maintenance (fertilizer, chemicals, etc)
- hardware items (screws, nails, glues, etc)

I **recommend** that the number of non-food exemptions in the Regulation be minimized in order to maximize the provision, and consumer use, of unit prices.

Packaged and non-packaged products

As I indicated in previous submissions and at the Conference, the achievement of an effective, comprehensive, integrated and consistent grocery unit pricing system in New Zealand covering grocery products sold loose from

bulk, and in random and constant measure pre-packages could be substantially hindered by the apparent very great flexibility allowed by New Zealand's weights and measures legislation on:

- The type of measurement unit, and the denomination(s) of these units, used when pricing products sold loose from bulk.
- The provision of a unit price for products sold in random measure packages and the denomination of any measurement units used for such unit pricing.
- The type of quantity information displayed on packaged products.

This is in contrast to the situation in Australia where the weights and measures/trade measurement legislation provides less flexibility regarding the above matters. Consequentially, the grocery unit pricing legislation applies only to products in constant measure packages and the units of measure required to be used for unit pricing some products reflects the requirements of the weights and measures legislation.

To achieve the required New Zealand unit pricing system the following may be required:

- The CIS to cover the provision of unit pricing for grocery products sold in pre-packages of constant measure **and** for products sold loose from bulk and in pre-packages of random measure.
- Appropriate changes to the weights and measures legislation.

I **recommend** that the final report highlight that in order to achieve an effective, comprehensive, integrated and consistent unit pricing system covering grocery products sold loose from bulk, and in random and constant measure pre-packages, consideration should be given to whether changes are need to the current weights and measures legislation or whether all the necessary requirements can be provided by a CIS.

Provision of unit prices

To maximize consumer awareness and use of unit pricing, I **recommend** that for any product/item covered by the scheme:

- The unit price must be provided whenever a selling price is displayed, including when the price is a special offer.
- If the selling price is displayed multiple times so too must the unit price.
- The unit price must be displayed even if it is the same as the selling price
- If a selling price is displayed at any selling point or in ANY type of written advertisement the unit price must also be displayed.

As I have indicated in previous submissions, for products sold loose from bulk the selling price is the unit price (for example loose apples might be offered for sale at \$3.99 per kg). So the unit price is normally readily available to consumers.

However, when a product is sold prepackaged the retailer may only provide the total price of the package and normally also quantity information. Therefore, unless the unit price is also provided, consumers must use the quantity information and the selling price to calculate the unit price themselves.

Consequently, packaged products, and particularly those of constant measure (where all the packages on offer at a stated price contain the same amount of product) have been the main focus of most unit pricing schemes since the first in some US states in the early 1970s. This focus has been is because many weights and measures laws require the provision of the unit price on or near products on offer in random measure packages.

However, as indicated in my previous comments, New Zealand's weights and measures legislation appears to be less prescriptive regarding the provision of a unit price for products sold loose from bulk and in random measure packages and regarding the provision of quantity information on packaged products.

Therefore, as also indicated earlier, in order to ensure that the unit pricing system is comprehensive, consistent, etc. and therefore covers products sold loose from bulk and in random measure packages, as well as those in constant measure packages, I made the following recommendation:

I **recommend** that the final report highlight that in order to achieve an effective, comprehensive, integrated and consistent unit pricing system covering grocery products sold loose from bulk, and in random and constant measure pre-packages, consideration should be given to whether changes are needed to the current weights and measures legislation or whether all the necessary requirements can be provided by a CIS.

Display of unit prices

The success of any New Zealand scheme will be determined by how well unit prices are displayed for use by all consumers and I consider this to be an extremely important issue for a New Zealand scheme.

This view was reinforced by the information given by retailers at the Conference about the current and proposed increased use of **electronic shelf labels**, because as I indicated at the Conference the quality of almost all the unit pricing I have seen provided on electronic shelf labels in other countries has been inadequate for consumers.

Consumers should not for example, have to get very close to read the unit price on labels which display it in very small print and there is insufficient contrast between the print and the background. Nor should they have to bend/stretch to be able to notice or read unit prices on shelf labels attached to high and low shelves or which have not been appropriately angled relative to the shelf to match the viewer's line of sight.

Therefore, I **recommend** that the final report emphasize the need to:

- Ensure that ALL unit prices displayed, including on electronic labels and on the internet, are easy for ALL consumers to notice, read, understand and use.
- Provide retailers with the maximum amount of information/guidance on how to achieve the above requirement.
- Remind retailers about their obligations to comply with the requirements of other relevant legislation, including anti-discrimination.

Units of measure

I strongly believe that the Regulation needs to specify not only the type of unit of measure e.g. mass, volume, length, area, number/count but also the denomination, e.g. kg, 100g, 10g, that must be used to show the unit price.

This is essential in order to minimize inconsistency in the types and the denominations of units of measure used to display unit prices of different items of the same or similar products in whatever form they are offered for sale (loose from bulk or in packages of constant or variable measure) and within and between grocery retailers.

Some examples of the types of inconsistencies that exist now in NZ and that need to be eliminated or minimized include:

- Ham being offered for sale loose from bulk at a price per 100g but the unit price on the variable weight package being per kg.
- Avocados being offered for sale at a price per each but when sold in a bag of constant weight being unit priced per kg.
- Some coffee bags in constant weight packages being unit priced per bag and some per 100g.
- Some mayonnaise in constant measure packages being unit priced per 100mL and some per 100g.

The use of both number/count and/or weight to indicate the quantity of product on offer and for pricing is a major impediment to the achievement of high levels of consistency in the units of measure used to unit price some types of products, especially for fruit and vegetables. Importantly, unit pricing inconsistency could be much reduced if grocery retailers increased the use of weight and reduced the use of each/count to indicate the quantity, and prices, of fresh fruit and vegetables. If required, I can provide more information about, and photos of, unit of measure inconsistency.

Also, as mentioned in a previous submission, to reduce inconsistency in the units of measure used for unit pricing a very useful requirement of the Australian Code is that for packages of products such as toilet paper, plastic bags, nappies, vitamins, etc. for which the quantity is indicated by number/count, if most of the packages contain more than 40 items of the product, all the packages must be unit priced per 100 items. An additional important benefit of this requirement is that it reduces the use of per each as the unit of measure for products when the per each unit

price is very small (for example for a plastic freezer bag) and unit price differences may be evident due to the unit price being rounded to the nearest cent.

Consumer use of, and confidence, in unit pricing will be substantially sub optimal if high levels of consistency in the units of measure, and the denominations of the units, are not achieved by a NZ scheme.

Therefore, I **recommend** that a scheme objective should be to maximize consistency in the unit of measure used to indicate the unit price between:

- Different items of the same product type
- Similar and substitute product types
- Different selling methods e.g. packages (constant and variable/random measure) and loose from bulk
- Different retailers.

As discussed earlier, I also **recommend** that the design and requirements of a New Zealand unit pricing system take account of the apparent lack of specificity of New Zealand's weights and measures legislation on several important matters specified in Australian and other country weights and measures legislation that could significantly influence the achievement of consistency in the types of units of measure, and their denomination, used for unit pricing.

Consumer education

I **recommend** that the final report recommend that there be an initial publicly funded consumer education campaign when the new unit pricing system is introduced and thereafter there be publicly funded special campaigns every 2- 3 years.

Compliance monitoring and enforcement

In most countries, regulators have done very little monitoring and enforcement of compliance with mandatory unit pricing legislation and this is one of the main reasons why in many countries the quality of the unit pricing is unsatisfactory and often extremely unsatisfactory, for consumers.

Therefore, I **recommend** that the final report recommend the need for proactive on-going monitoring and enforcement of compliance with the requirements of a New Zealand unit pricing scheme.

Review of effectiveness and need to expand to cover non-grocery retailers and products

A new grocery unit pricing scheme in New Zealand will involve hundreds of retailers and many thousands of grocery products and may require some early adjustments to the legislation, consumer education activities, compliance monitoring and enforcement work, etc.

Therefore, I **recommend** that the final report recommend that a comprehensive, **independent** review of the scheme be undertaken no later than 3 years after the date of full implementation, and that the review also include whether the scheme should be expanded to include non-grocery retailers and products.