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Dear Review Secretariat

## **Government Review of the Retail Grocery Industry (Unit Pricing) Code of Conduct**

The Australian Competition and Consumer Commission (**ACCC**) welcomes the opportunity to make a submission to the Government Review of the Retail Grocery Industry (Unit Pricing) Code of Conduct (**the Review**).

### **Effectiveness of the Code**

The ACCC supports the remaking of the Retail Grocery Industry (Unit Pricing) Code of Conduct (**the Code**). The Code increases price transparency for grocery items by allowing consumers to compare the costs of similar products of different sizes. Independent research has confirmed that consistent and prominent unit pricing helps consumers make better-informed decisions on the value of products.<sup>1</sup> Where consumers make well-informed purchasing decisions, markets perform better.

As stated in the Review's discussion paper, unit pricing related contacts to the ACCC have been relatively minimal, and have decreased over time since the Code's introduction. Issues raised in these contacts tend to reflect isolated errors by retailers, rather than substantive non-compliance or disregard for the law. Although it is difficult to be conclusive, this suggests that the Code is functioning well and there is general compliance with the Code.

### **Display requirements**

As noted above, the number of unit pricing contacts to the ACCC are minimal. However, through stakeholder engagement and feedback, the ACCC considers that some consumers have difficulty understanding unit prices due to the way it is displayed by many retailers. For example, a survey conducted by CHOICE and the Queensland Consumers Association in 2011, found that 60% of respondents agreed that the unit price would be more helpful if the print size were larger, and 61% agreed that the unit price would be more helpful if the unit price stood out more clearly.<sup>2</sup> The survey further found that older Australians in particular

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<sup>1</sup> S. Bogomolova, I. Jarratt Unit pricing in supermarkets: Review of past evidence from academic and industry studies. Social Sciences Research Network, 2016. Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2853977#](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2853977#)

<sup>2</sup> [http://consumersfederation.org.au/wp-content/uploads/2011/12/UP\\_Survey\\_Report\\_-\\_FINAL1.pdf](http://consumersfederation.org.au/wp-content/uploads/2011/12/UP_Survey_Report_-_FINAL1.pdf)

supported unit prices being more prominent and more legible. Unit prices being more prominent and legible would also assist Australians with vision and/or mobility issues.

Considering this information, the ACCC supports the inclusion of more prescriptive requirements to improve the legibility of unit prices.

One potential change is to model the Code's size requirements on the US's National Institute of Standards and Technology best practice guidelines for unit pricing, which contain recommended display requirements.<sup>3</sup> Such a model could require that the unit price be no less than 6mm or no less than 50% of the retail price font size, whichever is larger. In the unlikely event that the retail price font size is less than 6mm, the Code could require both unit price and retail price to be the same size, but with both clearly distinguished on the label.

While changing the display requirements in the Code may lead to additional compliance costs, the Review should consider whether these costs are offset by the benefits to consumers of having clearer unit pricing available. Furthermore, the ACCC's view is that the above formalisation would not be a significant departure from the existing requirements for the clear and prominent display of unit prices, so these costs should not be significant.

### **Online unit pricing**

We further recommend that the Code be amended to ensure more consistent display requirements for retailers which have an online presence. While the Code currently requires online retailers to have a legible unit price for grocery items, there are disparities on how this is displayed.

For example the Code could be amended to require that online retailers have a function that allows consumers to sort comparable products by unit price. Based on a limited review of major supermarket chains' online stores, not all online retailers provide such an option, and of the ones that do the accuracy of the sorting tool is inconsistent. Consistency of online display requirements is increasingly important, as both Coles<sup>4</sup> and Woolworths<sup>5</sup> increased their online grocery sales by 30% in 2018. It is likely that the proportion of consumers purchasing their groceries online will continue to increase over time.

### **Alternative units of measurement**

The ACCC does not have evidence that the use of alternative measurements permitted by the Code is causing significant consumer detriment.

However, in principle the ACCC would support changes to the use of alternative measurements permitted by the Code that would reduce consumer confusion, should the Review receive evidence that such changes are needed.

### **Extension of the Code to retailers currently excluded**

While we do not make any specific recommendations about extending the Code to currently excluded businesses, the Review should closely consider stakeholders' input on whether the minimum floor sizing test is appropriate for current and future market dynamics. Alternative criteria such as 'minimum number of nationwide stores' or an exemption for single-store

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<sup>3</sup> <https://www.govinfo.gov/content/pkg/GOVPUB-C13-4851a46324cc86af742242cfc5a93d9a/pdf/GOVPUB-C13-4851a46324cc86af742242cfc5a93d9a.pdf>

<sup>4</sup> <https://www.wesfarmers.com.au/docs/default-source/reports/wes18-044-2018-annual-report.pdf?sfvrsn=4>

<sup>5</sup> [https://www.woolworthsgroup.com.au/icms\\_docs/195396\\_annual-report-2018.pdf](https://www.woolworthsgroup.com.au/icms_docs/195396_annual-report-2018.pdf)

businesses, or businesses with a small number of branded stores, could be more appropriate.

We note that both Coles and Woolworths have expanded their presence in the convenience store sector with their Coles Express, Woolworths Metro and petrol station business lines. Both Coles Express and Woolworths Metro market themselves to consumers as a potential substitute for shopping at a supermarket.

We understand that Coles Express and Woolworths Metro stores have been displaying unit prices in accordance with the requirements of the Code, despite some stores potentially coming under the size threshold. Therefore, some Woolworths Metro and Coles Express stores could, if they choose, remove their unit prices. This raises the risk of Australia's largest retailers having a significant number of their stores exempt from the Code.

We are aware that some stakeholders are advocating the Code be extended to retailers which do not primarily stock grocery products, such as pharmacies and hardware stores. We do not specifically advocate for the Code to be amended in such a way, but recognise the value to consumers that this proposal might offer.

We do not have specific knowledge of whether the likely compliance costs for small businesses has changed over time. We recommend the Review give careful consideration of stakeholders' input on this matter. Ultimately, the threshold test for the applicability of the Code should ensure that any compliance costs on businesses currently excluded from the application of the Code are outweighed by the benefits of assisting consumers to make better-informed purchasing decisions.

#### **Other issues related to the Code**

We generally support the principle of educating consumers and businesses on the operation of the Code. Educating businesses of their obligations arising from the Code will be particularly important if the Code is amended, especially if new businesses are to be included.

We also support further reviews of the Code occurring at reasonable intervals if the Code is remade. The food and grocery market has undergone significant change in the years since the original code was made, and further review will be necessary to account for new developments in the sector.

If you wish to discuss this letter please contact [REDACTED] or at [REDACTED].

Yours sincerely

[REDACTED]

Rod Sims  
Chair