



13 November 2014

SUBMISSION ON THE COMPETITION POLICY REVIEW'S DRAFT REPORT

BACKGROUND

The Queensland Consumers' Association (QCA) is a non-profit organisation which exists to advance the interests of Queensland consumers. QCA's members work in a voluntary capacity and specialise in particular policy areas.

QCA is a member of the Consumers' Federation of Australia, the peak body for Australian consumer groups, which is a member of Consumers International, the global voice for consumers.

QCA welcomes the opportunity to make this submission which, due to lack of resources, can only be very brief.

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RECOMMENDATIONS

That:

1. The following be added to the lists of aims/objectives for competition policy on pages 5 and 28 of the Draft Report

- **recognise the relevance of, and complement, consumer policy.**

2. Where appropriate the Review make recommendations on specific demand side policies and measures that will enhance competition.

3. The Review recognise the potential for further significant enhancement of competition in the grocery sector from improved grocery unit pricing arrangements and the potential to enhance competition in other sectors by the provision of unit pricing by other types of retailers.

4. The Review to recommend that Grocery Industry (Unit Pricing) Code of Conduct be reviewed as soon as possible and that the review:

- **Be independent.**
- **Be fully transparent with the opportunity for stakeholders to participate and the results made public.**
- **Be undertaken by more than one person, with at least one having recognised expertise and experience in consumer affairs.**
- **Be sufficiently resourced to be able to undertake or commission research/investigations on relevant matters.**
- **Consider and report on whether:**
 - **changes are required to: the provisions of the Code; implementation by grocery retailers; and the ACCC's monitoring and enforcement of compliance (including the adequacy and practicality of penalties for persistent non-compliance).**

- other types of retailers should be required to provide unit prices, or if providing voluntarily should be required to comply with national standards.

-responsibilities and requirements for consumer awareness and education should be changed.

5. The Review recommend that infringement notices and penalties and court imposed penalties be allowed for non compliance with the Grocery Industry (Unit Pricing) Code of Conduct.

GENERAL COMMENTS

As indicated at the Review’s public forum in Brisbane on 15 October, QCA considers that the draft report does not sufficiently recognise the importance of, or make recommendations on, “demand side” policies and measures to achieve effective competition.

By “demand side” policies and measures we mean those that that help consumers to be confident and effective participants in markets. They include: consumer education, consumer protection, access to information, rights to redress, etc.

The draft report appears to assume that the demand side will be satisfactory if there is sufficient competition on the supply side and very high levels of consumer choice.

We consider this is an unbalanced and unrealistic view of what is needed on the demand side to achieve effective competition.

The importance of the demand side in the competition equation was emphasised in several submissions on the Review’s Issues Paper, including those from Choice, the Consumer Action Law Centre, and the Consumers Federation of Australia.

And, it was a key finding of the Productivity Commission’s Review of Australia’s Consumer Policy Framework report¹ released in April 2008. For example:

Page 46 - “Confident and informed consumers are the first line of defence against inappropriate supplier conduct. ‘Empowered’ consumers will not only be less likely to suffer detriment, but will invigorate competition between suppliers with all of the flow-on benefits for themselves and the community.”

Page 12 ...“consumers’ lack of information about some goods and services can expose them to significant detriment. Behavioural biases — such as over-confidence and an excessive focus on short term benefits and costs — and information overload can similarly lead them to make poor and potentially costly decisions.

As well as the direct consequences for individuals, such features of consumer markets can make it easier for bad or poorly performing businesses to survive. They can also make consumers less willing to deal with unfamiliar suppliers. These effects will in turn weaken competition and lead to higher prices, reduced quality and less innovation.

This illustrates that competition policy alone cannot always be relied upon to deliver well-functioning markets and the attendant benefits for consumers and the community.”

Therefore, QCA **recommends** that the following be added to the lists of aims/objectives for competition policy on pages 5 and 28 of the Draft Report

- recognise the relevance of, and complement, consumer policy.

QCA also **recommends** that where appropriate the Review make recommendations on specific demand side policies and measures that will enhance competition and provides below its views on how the Review can do this to increase the price transparency of some retail products.

¹ <http://www.pc.gov.au/projects/inquiry/consumer/docs/report>

RETAIL PRICE TRANSPARENCY AND COMPETITION

Introduction

Effective transparent pricing enables consumers to easily know and compare prices and values and thus make informed decisions on what to purchase. This in turn indicates consumer preferences clearly to businesses and thus facilitates competition.

The contribution of effective price transparency is increased when, as indicated frequently in the Review's draft report, competition policy aims to achieve continuous innovation in the provision of goods and services and increased consumer choice.

This is particularly the case with the grocery sector which is of particular interest to QCA and QCA notes and welcomes that the draft report (page 170) recognises the importance of competition in the grocery retailing markets in Australia "because these products are frequently purchased, largely non-discretionary for most consumers, and account for a significant proportion of consumer spending".

Overview of grocery unit pricing in Australia

Nearly, fifty years ago, the Australian consumer movement recognised that the provision of the unit price (price per unit of measure), in addition to the selling price, for constant measure packaged grocery products would greatly increase price transparency in this sector and thus greatly contribute to consumer and national welfare and enhance competition between retailers and between product suppliers.

However, largely due to retailer opposition, even though unit pricing had been provided voluntarily or compulsorily in other countries for many years, the provision of unit prices only became widespread in Australia in December 2009 with the commencement of the Retail Grocery Industry (Unit Pricing) Code of Conduct. This is a mandatory industry code administered by the ACCC under the *Competition and Consumer Act 2010*. A compulsory national unit pricing system was recommended by the ACCC's 2008 report² on the grocery sector and the recommendation was accepted by the Government.

QCA lead the last stages of the consumer campaign for the compulsory provision of unit pricing and was heavily involved in the negotiations and consultations that resulted in the Code which applies mainly to very large (over 1000 sq metre) bricks and mortar, and online, grocery retailers. However, it is estimated that it covers annual expenditure of over \$80 billion on products bought very frequently by virtually every household in Australia. Thus, it has the potential to have very significant impacts on consumers, the economy, and competition.

The potential benefits from the Australian system were increased because consumer advocacy resulted in per kg being the mandatory unit of measure for the unit pricing of the constant measure packs of certain products, for example meat, fish, cheese, and fruit and vegetables. Per kg is also the unit of measure required by trade measurement legislation to unit price these products when sold loose from bulk or in random measure prepacks.

Thus, in theory the Australian system should allow consumers to easily compare the price and value of:

- Different package sizes
- Different brands
- Special offers and regular prices
- Packaged and unpackaged products
- Packaging types
- Substitute products.

² <https://www.accc.gov.au/about-us/consultations-submissions/public-consultations/grocery-inquiry-2008>

The need for improved grocery unit pricing in Australia

QCA has continued to take a great interest in the Code since its introduction and has: monitored retailer compliance with the Code; assessed the adequacy of the Code's provisions and the ACCC's enforcement powers; undertaken research on consumer awareness, use and views on possible improvements to the system; and undertaken considerable consumer awareness and education activities.

For example, in 2011 QCA and Choice commissioned an online survey³ of over 1000 adults who shopped at either Coles or Woolworths supermarkets. The survey indicated that 80% used unit prices and 72% found them very helpful. However, it also showed that 67% considered that unit pricing would be more helpful if the unit prices were in bigger print or stood out more.

And, in May 2014 QCA released the results of research⁴ covering supermarkets in Queensland, NSW, Victoria, and South Australia which found that far too often the unit price was:

- too difficult to notice or read, even though the Code requires that unit prices be “prominent” and “legible”
- not provided for some items/offers/classes of products required by the Code
- indicated with the wrong or an inconsistent unit of measure, contrary to the Code's requirements.

There were several types of problem at the big chains and at most the main one was many unit prices being insufficiently prominent or legible

At the 25 independent supermarkets visited, all had unit prices insufficiently legible or prominent, in 76% unit prices were not provided for some items, and in 68% an incorrect unit of measure was used for some or all items of a product type.

QCA has also undertaken exploratory research on shelf labels which shows that the unit price on the bottom shelves at ankle level, where unit prices are a long way from the eye, are very much easier to notice and read when the print is large and located under the selling price, and when the label is angled out. But currently, the print used for the unit price on bottom shelf labels is not large enough in all supermarkets, in most the unit price is not located below the selling price, and in some these labels are vertical - not angled out. Consequently, the unit prices on such shelves are frequently very difficult/impossible to notice or read.

QCA is particularly concerned about any assumption that the unit price should be substantially less prominent or legible than the selling price to avoid consumer confusion between the two prices. This is an invalid assumption because in several states in the USA, and in Sweden, unit prices must be equal to or almost as prominent and legible as the selling price. Yet QCA is unaware of any evidence that this is confusing for consumers. The assumption also fails to recognise the valid needs of those consumers who wish to use unit prices easily and quickly when shopping. In this regard, QCA suggests that more consumers now focus mainly on the unit price of prepackaged products not the selling price - as has always been very common when consumers buy products like meat, fish, cheese and fruit and vegetables sold on a per kg basis loose from bulk and in random measure prepacks. The proportion of such consumers, and the use of unit pricing, would increase substantially if Code-regulated unit prices were much more prominent and legible than they are at present.

Also relevant to this issue is recent research⁵ undertaken at Monash University on a range of unit pricing matters which found that “unit pricing, despite adding information content to the product label, represents value to consumers, even when they are under time pressure”.

³ <http://www.choice.com.au/media-and-news/media-releases/2011%20media%20releases/supermarket-pricing-system-needs-birthday-boost.aspx>

⁴ <http://www.choice.com.au/blog/2014/may/unit-pricing-supermarkets.aspx>

⁵ Yao, Jun and Oppewal, Harmen (2014), Unit Pricing Matters More When Consumers are Under Time Pressure, working paper available at SSRN: <http://ssrn.com/abstract=2475547>

QCA's views and research on these matters have been provided regularly to the ACCC and the QCA has made numerous complaints to the ACCC about non-compliance by retailers. However, the quality of the unit pricing provided by most retailers remains well below that needed for consumers and the economy to obtain the full benefits possible from unit pricing.

Benefits from the provision of grocery unit pricing

Despite the above problems and concerns, QCA considers that grocery unit pricing has been very beneficial for consumers, the economy and competition. Treasury's Post Implementation Review of the Code released in October 2012⁶ also considered that the Code had been very beneficial although it only estimated the costs in detail, not the benefits. However, it noted that in the worst case scenario of annual costs of \$15 million and with only 10% of all households using unit pricing, the consumer benefits needed to equal the cost would be only 32 cents per week on an average weekly grocery bill of \$176 and that this was achievable by saving just under 58 seconds per shopping trip, or saving just over 11% on a 1 kg bag of long grain rice by using unit pricing, or receiving an additional 113 grams of rice by using unit pricing.

QCA estimates, assuming that only 30% of households are obtaining moderate benefits from unit pricing, that the overall benefit to consumers from the current unit pricing system is currently between \$1 and \$2 billion per annum.

QCA also considers there is great scope to increase the overall consumer benefit by providing better grocery unit pricing and more consumer education. Even if this resulted in only a 15% increase in benefits, these would be worth a further \$140 to \$280 million per annum. QCA considers that in practice even high percentage increases are readily achievable.

Regarding the impact of unit pricing on **competition**, QCA considers that grocery unit pricing has significantly increased competition between retailers and between suppliers. For example, since the introduction of compulsory unit pricing the market share of supermarket own brands has increased substantially and Aldi is reported to have increased its market share to at least 10%.

In the case of Aldi, QCA considers the provision of unit pricing has allowed consumers to compare the value of Aldi's unfamiliar brands and package sizes with those of its competitors much more easily than would have been possible without unit pricing and that this has had a very positive effect on Aldi's market share. Aldi also introduced unit pricing voluntarily in 2007 and, unlike other stores, initially undertook considerable consumer education.

Regarding **grocery prices**, page 190 of the Draft Report states that "few concerns have been raised about prices charged to consumers by supermarkets". This is understandable because since 2009 grocery prices are reported to have increased much less rapidly than in previous years and QCA considers that the advent of unit pricing has contributed to this situation. However, it is important to recognise that there is still considerable scope for consumers to get even better value from lower grocery prices overall and from changing the brands, products, etc they buy. Consumer friendly unit pricing can, and does, greatly assist them to do this.

Although many factors will have influenced the changes mentioned above QCA considers consumer use of unit prices has been a significant influence on all the changes.

QCA also emphasises that currently there is considerable pressure on the standard of living of many consumers and savings made on grocery expenditure, which still account for a substantial proportion of annual expenses for many consumers, can help reduce these pressures. For example, QCA has shown that it is possible to reduce the cost of a basket of 33 common packaged grocery items by 43% – from \$131 to \$74 – by buying the brand with the lowest unit price rather than a popular national brand of each item.

⁶ <https://ris.govspace.gov.au/files/2012/11/unit-pricing-pir.pdf&lang=en>

Most were basic products of identical or similar quality, and in similarly sized packs. And, QCA has found the unit prices of 20 packaged national brand items were reduced by an average of 28% by choosing the large rather than the medium-sized pack.

Need and scope to improve and extend unit pricing

Notwithstanding the above benefits arising from the provision, and consumer use, of grocery unit pricing QCA considers that there is great scope to cost effectively achieve even greater benefits from unit pricing, including from enhanced competition, by:

- improving the provisions of the Code and how it is implemented, administered and enforced;
- extending the concept to other types of retailing⁷ - for example hardware stores and chemists (for non prescription items); and
- further improving consumer awareness and education activities.

Therefore, QCA **recommends** that the Review recognise the potential for further significant enhancement of competition in the grocery sector from improved grocery unit pricing arrangements and the potential to enhance competition in other sectors by the provision of unit pricing by other types of retailers.

In this regard, the Unit Pricing Regulatory Impact Statement⁸ prepared for and published upon the implementation of the Code in mid 2009, said “a longer term review of the scheme after a five year period should be undertaken by an independent body or eminent persons.” It also identified the following areas for particular attention: Exemption criteria, Changes in the Market, Awareness and Education Campaigns, and Enforcement

Given the problems with the current unit pricing arrangements and the great potential for beneficial changes, QCA considers it important that this review be undertaken as soon as possible and that it be independent, and comprehensive.

Therefore, QCA **recommends** the Review to recommend that Grocery Industry (Unit Pricing) Code of Conduct be reviewed as soon as possible and that the review:

- Be independent.
- Be fully transparent with the opportunity for stakeholders to participate and the results made public.
- Be undertaken by more than one person, with at least one having recognised expertise and experience in consumer affairs.
- Be sufficiently resourced to be able to undertake or commission research/investigations on relevant matters.
- Consider and report on whether:
 - changes are required to: the provisions of the Code; implementation by grocery retailers; and the ACCC’s monitoring and enforcement of compliance (including the adequacy and practicality of penalties for persistent non-compliance).
 - other types of retailers should be required to provide unit prices, or if providing voluntarily should be required to comply with national standards.
 - responsibilities and requirements for consumer awareness and education should be changed.

Code compliance

QCA considers that that compliance with the Grocery Industry (Unit Pricing) Code of Conduct would be much easier to achieve if the ACCC could issue infringement notices and penalties and there were court imposed penalties for non compliance. At present, the ACCC can not issue infringement notices for non compliance with the Code. QCA understands that this means the ACCC must use enforceable undertakings or initiate legal proceedings which are costly and time consuming exercises and QCA is not aware of the ACCC taking such action against any retailer.

⁷ as occurs in the European Union

⁸ OBPR reference number 9806

By contrast, if a retailer fails to comply with the unit pricing requirements of the National Trade Measurement Regulations for products sold loose from bulk or in random measure prepacks the regulator, the National Measurement Institute, can issue infringement notices and penalties. QCA considers that the ACCC should also be able to do this for non compliance with the Code.

In this regard QCA notes that the Draft Report covers the enforcement of compliance with industry codes of conduct, including the use of infringement notices and penalties and court imposed penalties and concludes that “having these options available for CCA codes is a significant development.”

QCA recommends that the Review recommend that infringement notices and penalties and court imposed penalties be allowed for non compliance with the Grocery Industry (Unit Pricing) Code of Conduct.