

Hi,

My submission is directly adjacent to unit pricing, but I hope it could somehow be considered by MBIE and passed to the minister or whomever for consideration.

And that is that "2 for \$x" or "3 for \$x" pricing deals should also allow you to buy just a single item at whatever the individualised price would be. Arguably this should apply to all retail, not just grocery, but I could see it being more complicated outside grocery (especially for retailers who like to do "buy 1 get a 2nd at 50% off" type sales).

Such laws exist in several states in the United States for example, and it would not surprise me if it existed in other countries also.

These 2-for-x pricing schemes allow supermarkets to force customers to buy larger quantities of goods than what the customers may actually be able or prepared to afford, forcing them to forego a potential savings of money due to the marketing practices of the supermarket. Such practices can also result in waste, where a customer ends up buying 2 or 3 (or sometimes more, like 5 chocolate bars for \$5) of some item even though they didn't really want that many, but they had to buy that many in order to get the saving.

The way I have seen it work in Wisconsin for example is the signage says "2 for \$5" and then in smaller size font "single price \$2.50 each".

This also helps deal with the case where there is only 1 single item left of the type offered by the sale, making it impossible for the customer to take advantage of the advertised sale as they need to buy 2 of the item to be eligible, even though technically the product is in stock.

Thanks,
Greg

Hi,

This is my second submission, which is going to cover the ground of my first submission but hopefully in a better written form, and also discusses several new issues around grocery supermarket pricing that is directly adjacent to the topic of this review that I think is worth further consideration.

I am also CC'ing this submission to the relevant minister as I believe that MBIE may be constrained from considering all of my feedback or taking any action on it. Hopefully the minister can take action even if MBIE cannot.

I am a Software Developer by profession and thinking about the interface between technology and users is a core part of my job. In practice a lot of this boils down to specifying the behaviour of the system being designed - both what it must do and must not do, to meet the requirements of the person paying us the money to make the product for them.

In this case the government supermarket pricing inquiry has a requirement to "Make supermarket pricing more transparent to customers and improve competition, so as to reduce prices paid by consumers", so I have a set of suggestions for regulations that can work towards achieving this requirement.

I appreciate that my suggestions below are not directly on the subject that this submission is about, however if this government is serious about cracking down on supermarket pricing behavior and increasing transparency to customers, which would seem to be the point behind unit pricing, then these are all policies that need serious consideration. If the government is going to have an intervention into the supermarket sector, it makes sense to do a proper job of it the first time around, instead of small dribs and drabs that have limited impact.

Consumer NZ surveys of supermarket customers show that they now trust them less than ever. Many customers believe the price they see on the shelf is not the price they pay at the register.

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Regulation of electronic pricing tags in supermarkets

I believe we need regulation of electronic price tags in supermarkets. Here are some issues I have observed with the price tags at my local Pak 'n' Save and New World stores.

1. The electronic price tags have red sale markers, but they do NOT indicate the size of the discount. Many times the discount is in fact something on the order of a 5c discount on a \$2 item, but it has exactly the same Sale text as a product with a 50c discount on a \$2 item.

The two stores I am referring to used to have paper price tags, and on these paper price tags they would display the size of the discount on the product. When moving to electronic tags they have deliberately removed this information.

Suggestion 1: electronic price tags must always display the size of any discount offered in dollars and cents, in addition to the CORRECT unit pricing associated with that product due to the new sale price.

2. My local Pak 'n' Sav now had a handheld scanner that I use to do my shopping. It is a very excellent time saver and a great innovation, however in addition to saving a lot of time (don't need to queue at the checkout), it is also the only way to tell what the size of the discount is on each product that is on sale, because as mentioned above the price tag no longer says the size of the discount.

You must be a Sticky Club member in order to use the handheld scanners. Thus Pak n Sav are discriminating against their customers - only those who belong to their loyalty scheme are given full information about the prices of products that are on sale in their store.

Suggestion 2: Supermarkets should not be able to hide price information from customers dependent on their being members of a loyalty scheme, regardless of what route they take to get here. Note: this is a distinctly separate point from saying that supermarkets should not be able to have loyalty schemes with discounts, which I am not proposing.

3. Electronic price tags will often display "Sorry, manufacturer out of stock" for particular product lines. I believe the supermarkets are doing this as a favour to their customers and to remove some flack from themselves - ie don't blame us for this spot on the shelf being bare, it's the manufacturer's fault. I suspect that in many cases it is simply not true and the product is available in their warehouse for distribution.

Anyway, the issue here is that when price tags display this message, they do NOT display the price of the product on the shelf - or the unit pricing of those products. This is not an issue when the product is not actually on the shelf because you can't buy it anyway. However MANY times I come across a tag that says "Sorry, manufacturer is out of stock" but the product is on the shelf anyway. Clearly the supermarkets systems are not fully in sync between what the computer thinks is in stock and what is actually on the shelf.

But it is the customer who misses out. If the price tag does not display the price, or the unit price, this prevents the customer from making an informed decision about which product to buy.

I have an example of this in action with 'Schrodinger's dishwash liquid' - a product that is simultaneously in stock and out of stock, but no price is displayed because apparently lying to the customer about reality is more important to the supermarket than informing the customer about the price of the product they might want to buy.

Suggestion 3: electronic price tags must always display the price, and the unit price, of products. They may also display messages about product unavailability, however these messages must not prevent the price from being displayed.

Multibuy sales promotions

This was the subject of my previous submission. The below submission should be considered a restatement /

replacement of my original submission.

4. Directly adjacent to the issue of unit pricing for products, is the issue of multibuy promotions for products. Supermarkets want to encourage customers to buy multiple of their products because it boosts their turnover, however many times a customer may not want to purchase the required number of products to receive the discount - eg, 5 chocolate bars for \$5, but the customer may only wish to purchase 2 chocolate bars. If they only purchase 2 they give up the discounts available from purchasing 5. This is a level of coercion that other jurisdictions around the world do not allow, for example in Wisconsin State in the US in the supermarket I saw signs for "Buy 2 for \$5" with smaller text below saying "Or \$2.50 single price". This allows customers to access the multibuy saving but on an individual unit price.

The other element here is that it is not uncommon to find a number of items left on the shelf that do not qualify for the sale, eg if you have to buy 3 of something to get a discount and there are only 2 on the shelf, then you cannot access the discount. If other customers had been able to buy just 1 or 2 of products instead of being forced to buy 3, then more customers could partake in the discounts on offer.

Furthermore, forcing customers to buy more products than they actually want can result in waste. If customers don't actually need to buy 2 bunches of celery and are only doing so in order to get a multibuy deal, and then they end up discarding a celery before they consume it, then this pricing structure is creating food waste in our society that we should want to minimise.

Suggestion 4: The above 3 issues can be addressed by enforcing that multi-buys discounts be offered at the same price level on individual items, thereby allowing customers more choice and supermarkets to have less power over customer purchasing behaviour.

5. It is not uncommon for Pak 'n' Save to have limited multibuy promotions. In fact I was very nearly caught out by this today. They will say "2 for \$5" and in smaller font "Limit 2 sets". So if you put 4 items in your trolley you would pay \$10, but if you put in 6, then 2 of them will be charged at full price.

Today I put in 8 boxes of muesli bars into my trolley using the handheld scanner I mentioned earlier in this submission. When scrolling through the list of products I had scanned, I noticed that 4 of the boxes of muesli bars were charged at the full price, and not \$2.50 per box. I then went back to the shelf and saw, in very small font on the electronic price tag, "limit 2 sets". I put 4 of them back on the shelf as a result. I did NOT see it the first time when I put the 8 boxes of muesli bars into my trolley, I only saw the 2 for \$5 signage (because people's attention are drawn to sales and \$ signs). It was only later that I realized I was being charged more than I expected.

Customers who are not paying careful attention to these limits will pay more than they expect, and most customers will not notice this at the checkout. I think this can be considered a form of bait-and-switch advertising by the supermarkets - they are counting on people not obeying the multibuy limit, although the text is visible so they can use that as a defense of the practice should they ever be questioned by the commerce commission about it. Basically this is predatory and obeying the law as written, but not the spirit.

Suggestion 5: ban limited multibuy sales promotions outright. This suggestion goes hand-in-hand with suggestion 4: if all multi-buy sales are enforceable for single products, then having limits on sets of multibuys is a logical extension to that regulation.

Suggestion 6: If suggestion 5 is rejected, then at the least supermarkets should be forced to make the limit more obvious - with the electronic price tags on the shelves at Pak 'n' Sav, the limit text is very small.

Criteria around when products can be flagged as On Sale

These suggestions in particular are referring to existing rules in the Fair Trading Act with regards to the use of Sale signage, which means such changes here are likely to extend beyond the supermarket sector and into general retail, which may make these suggestions much more fraught to implement.

But that doesn't mean it shouldn't be changed. This government needs to be bold and show it is making changes that are in the best interests of NZ consumers and they are wanting to tackle the rising cost of living.

7. The Commerce Commission's final inquiry into supermarket pricing found that NZ has one of the highest proportion of products 'on sale' in any given week at almost 60%, compared to Australia at around 40%, the UK at near 30% and Germany and France at 20% to 17%. This is because the duopoly is so powerful in NZ and have so much pricing power. NZers are habituated to buying products on special - but that also means that retailers don't really compete on the regular price. They compete on the special price. But smaller companies do not have the economies of scale to compete in this manner.

Suggestion 7: Require that any products on discount must be discounted by at least 15% off the regular price. This circles back to suggestion 1, where supermarkets will hide the size of the discount and put a Sale sign on

anyway even if it's a paltry 5c saving, another form of manipulative and predatory behavior by supermarkets. 15% seems like the threshold at which something is a 'genuine' saving and worthy of a sale sign.

By putting a minimum size on discounts offered by supermarkets, it should overall mean fewer such discounts in stores, reducing customer fatigue when seeing a sea of sale signs. In turn as fewer items are on sale, it means supermarkets will have to compete with each other more on the regular price of items (which they already try to do with their 'Great price' and 'Everyday value' signage).

8. The existing rules for when something can be considered 'on sale' vaguely refer to the length of time for which products have been offered at 'the regular price', with the intention that products cannot be permanently marked as being 'on sale'. There have been several cases in recent years where supermarkets - and other retailers - have been found guilty of breaching this duty. In particular I recall Countdown in Auckland being fined for having certain brans of beer 'on sale' for 6 months continuously.

Clearly the current legislation is too vague and it is causing retailers to waste a lot of time trying to work out what the duration for products being on sale actually is. Lets instead have some hard and fast minimum time frames, so it's clear for everyone. This should reduce the number of cases brought to the commerce commission, as well as much judgements on the cases that are brought much more straightforward and automatic, saving everyone time and money.

Suggestion 8: Clarify the existing commerce commission rules about how often a product is allowed to go on sale, with specific time periods. Something along the lines of products not being allowed to be marked 'on sale' for more than 25% of the time, with a maximum duration for any individual product of 6 weeks, at which point it must revert to its non-sale price. This goes hand in hand with suggestion 7 around the minimum discount that must be considered for a product to be considered On Sale, and will reduce the number of 'sales' in our supermarkets to be more in line with international comparators, and force supermarkets to compete on regular prices more as customers will be buying more of their products at those regular non-sale prices.

Note that alcohol products already have maximum sale limits, I believe this is 25%, and cigarettes are prevented from ever being discounted. There's no reason that minimum sale thresholds for all products, or just grocery products, cannot be introduced by the regulator, apart from timidity on the part of the government.

Have the courage to be bold. Mandatory unit pricing as proposed by itself is not going to do much to shift grocery prices at all, because most supermarkets already display unit pricing anyway, even if it is often inconsistent between products within the same category and sometimes outright wrong.

Thanks,
Greg