



12 May 2023

Submission to: MBIE

Submission From: Supie

## Submission on the Consumer Information Standards (Unit Pricing for Grocery Products) Regulations 2023 (“Draft Regulations”)

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### 1. Introduction

- 1.1. Supie is an online supermarket owned and operated in New Zealand, currently supplying into the Auckland, Waikato and Tauranga markets.
- 1.2. Pursuant to clause 5(1)(a), Supie is captured by the Draft Regulations because it sells products in all of the categories in subclause (2) on an online platform.

### 2. Regulated grocery product (section 5)

- 2.1. The stated purpose of the Unit Pricing Regulations in the Consultation Paper is to “help consumers make informed purchasing decisions and promote competition in the retail grocery sector”.
- 2.2. Regulation 5 (1) (a) means this regulation will capture **all** online businesses, no matter their size, who are attempting to provide meaningful competition in the sector.
  - 2.2.1. This clause will also capture small, local online businesses that may sell in all of the product categories in subclause (2) even if their revenue is low, including dairies, superettes and other small grocers who choose to offer their products online.
- 2.3. Conversely there are stores with the resources, IT and financial support of the supermarket duopoly that will be excluded from the Draft Regulations due to the 1000m<sup>2</sup> floorspace threshold in 5(1)(b)(ii). For example, the two duopoly supermarkets in a small town in the South Island are Super Value and Four Square with floor spaces of 404m<sup>2</sup> and 845m<sup>2</sup> respectively. These two supermarkets may be excluded from the regulations, along with many other duopoly stores which have less than 1000m<sup>2</sup> of floor space. However, an online-based superette in this small town will not be exempt from the regulations.
  - 2.3.1. We submit that the floor space threshold is set too high and propose that there should either be a lower threshold set in clause 5(1)(b)(ii) or an additional qualifying attribute provided for in the same clause to ensure the requirements are not voluntary for subsidiaries or franchises associated with the duopoly.

- 2.4. The product categories list in clause 5(2) provides the opportunity for retailers to be exempt from the regulation if they choose not to sell in one of these categories. For example, an online retailer could choose to not sell medicine or fish (entirely conceivable) and therefore would not be required to comply with this regulation.
- 2.5. The product categories list also warrants further refinement and at least more than minimal definition. For example, the term 'medicine' is overly vague – does it include healthcare products? The term manufacturer-packaged food requires further clarity given virtually all non-perishable food is packaged by a manufacturer. Does it imply canned and packaged non-perishable products? It is also notable toiletry items are excluded from the category list.
- 2.6. The purpose of this regulation, to “help consumers make informed purchasing decisions”, would not be achieved if products on sale at a reduced price is exempt from unit pricing 5(3)(f)(ii). Consumers already find special stickers confusing and having products on special exempt from displaying a unit price defeats the purpose of the regulation. We submit that products on sale at a reduced price should not be exempted items.

### **3. Unit price must be displayed (section 6)**

- 3.1. Being an independent retailer, without the resources of the supermarket duopoly, the cost to upgrade IT systems and the customer-facing website, and update information for 7,000+ products will come at a cost to Supie of an estimated \$250,000. We suggest a revenue threshold be applied to ensure that new entrants and small businesses aren't burdened with the cost of the implementation and maintenance of the unit pricing measures.

### **4. Conclusion**

- 4.1. Due to the investment required (estimated \$250,000), Supie will not be able to comply with the regulation without the proposed changes. A compliance cost of this size, to a business the size of Supie, would threaten its ability to remain viable.
- 4.2. Meaningful competition in the grocery sector will most conceivably come in the form of an online player. Regulation 5 means any competitor in this space will immediately be required to abide by this legislation. The additional financial barrier to entry will discourage competitors entering this space. Conversely the duopoly will easily be able to absorb this cost within their in-store and online businesses and associated systems, further cementing their dominance.
- 4.3. While these regulations are well intentioned, they will have the opposite effect of “promoting competition in the retail grocery sector”.

- 4.4. The supermarket industry in New Zealand is extremely difficult to enter. Regulations such as this will be easy for the duopoly supermarkets to absorb due to their large balance sheets and annual revenues in the billions. This regulation will disproportionately impact smaller players, particularly online entrants to the market.

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*Supie is on a mission to create a better and fairer grocery alternative for New Zealand.*