

Submission on the exposure draft of the Consumer Information Standards (Unit Pricing for Grocery Products) Regulations 2023.

Your name and organisation

Name	Erin Vercoe General Counsel
Organisation (if applicable)	The Warehouse Group

Responses

Statistical Information	
1	Do you consider 12 months to be an appropriate transitional period before compliance is mandatory?
	<p>Yes.</p> <p>We also consider that there should be a six month transition period (after the regulations come into force) for any person who commences selling the products listed in regulation 5(2).</p> <p>Entry or expansion into retailing all the categories of products in regulation 5(2) is likely to involve significant investment. New entry is desirable and will immediately benefit consumers. Allowing a transition period before the unit pricing regulations apply to a new entrant will ensure that a requirement for immediate compliance with these regulations does not inadvertently hinder or impede such entry or expansion.</p>
2	Please explain why you think a 12-month transition period is sufficient or not?
	No further comment.
3	Do you have any comments on the key definitions in regulation 3?

	Please see our comments in relation to regulation 5.
4	Do you have any comments on regulation 5?
	<p>While we support the overall intent of these regulations, we are concerned that regulation 5 is too broad in two ways.</p> <p>First, as drafted, a regulated grocery product is <i>any</i> product sold by a person who sells the products in regulation 5(2). There is no requirement in regulation 5(1) for the product itself to be a grocery product (i.e., a product in one of the categories in regulation 5(2)).</p> <p>The result is that sales of products that are not grocery products will be subject to the unit pricing regulations if a person also sells all the products in regulation 5(2) (unless an exception in regulation 5(3) applies). We do not know whether this was intended.</p> <p>If not corrected, this wide definition risks creating asymmetries between retailers who sell non-grocery products and risks creating disincentives for an existing retailer to provide a full grocery offering.</p> <p>For example, suppose Retailer A sells non-grocery products and is considering selling all the grocery products in regulation 5(2). In that situation, if Retailer A starts to sell all the grocery products in regulation 5(2), then all of Retailer A’s non-grocery products will also be subject to the unit pricing regulations. This may act as a disincentive for Retailer A to enter the grocery market. It will also create an asymmetry with Retailer A’s competitors whose sales of non-grocery products would not be subject to the unit pricing regulations.</p> <p>We recommend that regulation 5(1) be amended by confining a regulated grocery product to products that fall within the categories in regulation 5(2). This could also be achieved by amending the definition of product in regulation 3.</p> <p>Second, there is an asymmetry in regulation 5(1) insofar as it treats online sales and physical stores differently.</p> <p>Regulation 5(1)(a) provides that the unit pricing regulations apply to all of a person’s online sales if they sell products in all the categories in regulation 5(2). That is the case, even though the person might sell different categories of products through different online channels, stores, or websites.</p> <p>In contrast, regulations 5(1)(b) and (c) only apply at the store level. That is, all the products in regulation 5(2) must be sold in a specific store for the unit pricing regulations to apply in that store. If the owner of that store sells other products, or a subset of grocery products at another store, the unit pricing regulations will not apply to sales in the second store.</p> <p>We recommend that this asymmetry be removed by amending regulation 5(1)(a) so that it applies only to sales from a single website.</p>
5	<p>Do you have any comments on the “exempt products” set out in regulation 5(3)?</p> <p>Is there anything that you think is missing, or anything that you think should not be exempt? Please provide your reasoning.</p>
	We do not have specific comments on regulation 5(3). However, we do not believe that the definitions of exempt products are likely to be sufficient to prevent unit pricing from applying to a range of non-grocery products (should the other criteria in regulation 5(1) be met).

6	Do you have any comments on the on the requirements for where unit pricing must be displayed, as set out in regulation 6?
	No.
7	Do you have any comments on the advertising exemption set out in regulation 9?
	No.
8	Do you have any comments on regulation 7?
	No.
9	Do you have any comments on the display requirements provided in regulation 8?
	No
10	Do you have any general comments regarding the regulations?
	<p>Subject to the comments we have made, The Warehouse Group supports the regulations. We believe unit pricing will help consumers compare the price of the same types of grocery products more easily, in-store and online.</p> <p>We are also conscious that regulations of this nature inherently carry a risk of unintended consequences. We do not believe that it would be in New Zealand consumers' interests if, for example, these regulations acted as a disincentive to promotional, personalised, or innovative, pricing approaches, or deterred entry into the grocery market. Therefore, we suggest that as part of its oversight role, the Commerce Commission is tasked with ensuring that these regulations are delivering better outcomes for New Zealand consumers. This could be recorded in proposed s 4(1) of the Grocery Industry Competition Bill.</p>