

**Which? super-complaint to the
Competition and Markets Authority
Misleading and opaque pricing practices
in the grocery market**

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Which?

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Summary

Which? research and investigations over successive years have repeatedly uncovered pricing practices in the grocery sector that inhibit consumers' ability to choose the best deal for their needs. These practices are a problem in their own right, but cumulatively have an even greater impact and have persisted for far too long.

Under the Enterprise Act 2002, Which? can make super-complaints to regulators about any feature, or combination of features, of a market in the UK for goods or services that is, or appears to be, significantly harming the interests of consumers. This paper is a super-complaint to the Competition and Markets Authority (CMA) on misleading and opaque pricing practices. The practices of concern are:

- **confusing and misleading special offers that make extensive use of price framing including reference pricing, volume offers and free offers;**
- **a lack of easily comparable prices because of the limitations of unit pricing; and**
- **reductions in pack sizes without any corresponding price change.**

In addition, the CMA should examine the impact of price matching, a practice whereby supermarkets compare their own prices with their competitors and in some cases offer to reimburse customers in some way, usually at the supermarket checkout, if the products they bought could have been purchased elsewhere at a lower price.

A persistent problem for consumers

Which? has carried out research into a range of supermarket pricing practices for many years, and our investigations over the past seven years have repeatedly found problems with these practices. As a result of misleading and opaque practices, it is difficult for consumers to assess which products offer them the best deal.

Despite numerous attempts to persuade supermarkets to change their practices by Which?, regulators and enforcement bodies that have responsibility for ensuring that pricing practices help consumers and serve their interests, little has changed.

The regulations and guidance relating to the display of prices are themselves opaque and all too often serve to condone practices that are not in consumers' interests and prevent effective enforcement. Decisive action is now needed to ensure fair and transparent grocery prices that consumers can trust.

A cumulative effect

We are concerned about pricing practices both individually and because they interact to complicate consumer choices when many people have little time to carefully assess how accurate or meaningful the prices or savings that are being offered actually are.

The complexity of pricing, with many inconsistent units used for similar products makes it difficult even for very diligent consumers to effectively make comparisons. A repeated problem we have found of special offer prices lasting longer than the 'usual' or 'was' price of a product, means that even determined consumers cannot assess whether they are being offered a genuine deal or not unless they are willing to record and monitor prices over a period of time. The practice of 'shrinking' products without corresponding price reductions, means that consumers may not appreciate that they have paid the same price for less.

Problems with unit pricing also make the other two practices worse. Unit pricing is often missing from special offers, which can make it difficult for consumers to assess whether the offer price is really the best price compared to other products. If unit pricing was more consistent it would be one way to help consumers make decisions based on the true value of the products to them, regardless of size or whether they are on promotion or not.

Furthermore, the complexity of products in the grocery sector, with the enormous range of different brands, types and sizes for similar products, may mean that accurate price matching is impossible to achieve. To the extent that consumers rely on inaccurate or misleading price matching schemes, instead of shopping around, this may dampen consumer pressure on supermarket prices.

Action needed

A number of initiatives have attempted to improve some aspects of this situation. This includes work by the Department for Business, Innovation & Skills (BIS) to revise guidance on unit pricing and the Trading Standards Institute (TSI) review of the Pricing Practices Guide. But Which? is concerned that the scope of this work is too narrow, failing to address the persistence and cumulative effect of these practices.

A more comprehensive assessment of these practices is needed. Consumers should be able to have confidence that they can use pricing to accurately identify the cheapest product and rely on special offers and discounts to be genuine. We are therefore using our super-complaint power to request that the CMA investigates these pricing practices in the grocery market.

1. About Which?

Which? is the largest independent consumer organisation in Europe with more than 800,000 members. We operate as an independent, apolitical, social enterprise working for all consumers and funded solely by our commercial ventures. We receive no government money, public donations, or other fundraising income. Which?'s mission is to make individuals as powerful as the organisations they have to deal with in their daily lives, by empowering them to make informed decisions and by campaigning to make people's lives fairer, simpler and safer.

Which? is a designated body under Section 11 of the Enterprise Act 2002, able to make 'super-complaints' that 'any feature, or combination of features, of a market in the United Kingdom for goods or services is or appears to be significantly harming the interest of consumers.' This document and annex form a super-complaint to the CMA.

2. Introduction

Which? research has repeatedly identified a number of pricing practices in the grocery market which mean that consumers do not have clear enough information to make effective price comparisons and accurately identify which products offer best value. These practices include:

- **confusing and misleading special offers that make extensive use of price framing including reference pricing, volume offers and free offers;**
- **a lack of easily comparable prices because of the limitations of unit pricing; and**
- **reductions in pack sizes without any corresponding price change.**

Each of these practices, which are described within this super-complaint, can inhibit consumers from making the best purchasing decisions for their needs and have persisted for too long. The cumulative effect of these practices can be to obscure the best deals for consumers, leading them to over-buy or to buy products that do not offer the perceived value.

In addition, since the enormous range and types of products on offer may make accurate price matching impossible to achieve, the development of supermarket price match schemes for a basket of goods may in some cases falsely lead consumers to believe they have the best deal, or do not need to look for the best deal.

Potentially harmful effects

A typical large grocery store can have over 30,000 product lines, many of which will change price over time.¹ Discounts and special offers can convey useful information to consumers, and meet their needs, but only if they are reliable and genuine and not if they confuse or mislead. In particular, we are concerned that many offers we have observed take advantage of known biases in consumer behaviour that often result in consumers choosing differently to how they would have done if they have been provided with fair and unbiased information. Consumers may believe they have got a good offer or deal when this is not the case.

Consumers spend a significant amount of their income in this sector and on essential goods. Groceries and toiletries account for 14 per cent of overall household expenditure on average.² Spend on food alone within this sector accounts for 9 per cent of household expenditure on average, rising to 14 per cent in the lowest income decile group. Despite food prices falling recently, Which? consumer research shows that 7 in 10 (72 per cent) of people are worried about food prices and a similar proportion in the case of more general groceries (68 per cent).³

¹ <http://www.j-sainsbury.co.uk/extras/faqs/media/how-many-products-does-sainsburys-supermarkets-sell>

² Which? analysis of Family Spending 2013, Table 3.1E, Living Costs and Food Survey. This rises to 21 per cent for the lowest income decile and falls to 9 per cent for the highest income group

³ Populus on behalf of Which?, interviewed 2075 adults online between 18 and 19 March 2015. Data were weighted to be demographically representative of the UK population

With £115 billion spent on groceries and toiletries in 2013, if misleading price displays have the effect of raising the cost to consumers by only one per cent, there is consumer detriment of over £1 billion per year (over £40 for the average household).⁴

Special offers in the groceries sector are prevalent with around 40 per cent of groceries (by revenue) in Great Britain sold on promotion.⁵ The unit pricing issues we raise are partly a consequence of the current legislation, and partly a consequence of compliance with this legislation, and apply across the market and lead to widespread inconsistencies. Recent Which? research has highlighted that the third of the practices that we have identified, shrinking products, is also regularly occurring across the sector.

Supermarket price matching schemes for a basket of goods are a different but potentially important factor. The complexity of products in the grocery sector, with the enormous range of different brands, types and sizes for similar products, may mean that accurate price matching is impossible to achieve. To the extent that consumers rely on inaccurate or misleading price matching schemes, instead of shopping around, this may dampen consumer pressure on supermarket prices and may lead them to assume they have the best deal when this may not be the case.

The need for an investigation

Which? is therefore using its super-complaint powers under section 11 of the Enterprise Act 2002 to request that the CMA launches an investigation which addresses the following:

- **the extent to which the cumulative effect of these confusing and opaque pricing practices in the grocery sector is affecting consumers' ability to obtain best value and make informed purchasing choices;**
- **the drivers of these practices and their pervasiveness within the sector; and**
- **the changes that are needed in terms of regulation and ultimately business practice in order to bring about a more responsible approach based on transparent and honest pricing practices that enable consumers to make truly informed choices and obtain best value.**

This submission outlines the main areas that should fall within the scope of a CMA investigation.

⁴ Which? analysis of Family Spending 2013, Table 3.1E, Living Costs and Food Survey

⁵ Kantar Worldpanel, 52 w/e 1 March 2015

3. Scope of the super-complaint

The focus of this super-complaint is on grocery retailing in the UK. 'Grocery retailing' includes purchases made for home consumption in-store and on-line of the following products which are affected by the pricing practices we have identified:

- food
- non-alcoholic and alcoholic drink
- cleaning products
- household goods

Market definition

A previous investigation by the Competition Commission found that there were three overlapping major product markets for the supply of groceries by grocery retailers in the UK.⁶ The diagram below illustrates these findings and the overlapping parts of the market which we consider apply in this case. Each wider circle broadens the definition of the market to include the named type and all those in the inner circles.

Grocery market: overlapping markets



Source: Which? diagram based on findings of Competition Commission Grocery Market Investigation 2008

Features of the market that harm consumers

The three areas of problem pricing, and price matching, that we have set out interact with each other and cumulatively cause opaque pricing across the grocery retailing sector. This means that consumers may be misled into choosing products they would not have chosen had they realised the full facts. We are concerned that these practices take advantage of biases in consumer behaviour to influence consumers to make purchases they would not otherwise have made had they been in possession of the full facts.

⁶ Groceries market investigation, Competition Commission, 30 April 2008

Consumers face a wide choice when making decisions in the grocery market: a typical grocery store has over 30,000 individual product options to choose from.⁷ In these circumstances, there are limits to the ability of consumers to identify the best deal to meet their preferences when faced with such a large array of information. This is particularly true when the prices vary frequently, when consumers are time-poor (as they are when grocery shopping) and when consumers are buying numerous items of relatively low value.

At the heart of our concerns is widespread misleading reference pricing (in terms of discounts, special offers and shrinking products), compounded by unclear unit pricing and the effects of price matching. The Office of Fair Trading's (OFT) Advertising of Prices market study stated that:

We consider that there is now compelling evidence that price framing exerts a powerful effect, that the effect can lead to financial loss and other consumer harm when price frames are used in an inaccurate or misleading way, and that a significant proportion of the population have been affected.⁸

In particular, there are features of price framing in the grocery sector that the OFT identified as being forms most likely to cause harm, including:

- omitting to give customers the information they need, in a format they can use, to decide whether a volume offer is better or worse value than a smaller pack or quantity;
- omitting to tell consumers that price comparisons are not like for like or that they are not comprehensive in those circumstances where consumers might reasonably assume that they are.

A Which? survey conducted in March 2015 found that 38 per cent of people trust supermarkets to correctly or fairly price match, and 42 per cent of people think that price matching helps them ensure they are getting the best deal.⁹ So while it may be the case that people are split on whether to trust price matching schemes, it is possible that there is still a significant effect in reducing shopping around. In the same survey, a third (34 per cent) of consumers said that price matching means that people do not need to shop around as consumers get the same price everywhere.

⁷ <http://www.j-sainsbury.co.uk/extras/faqs/media/how-many-products-does-sainsburys-supermarkets-sell>

⁸ Advertising of Prices, Office of Fair Trading, 2010

⁹ Populus on behalf of Which?, interviewed 2075 adults online between 18 and 19 March 2015. Data were weighted to be demographically representative of the UK population

4. Evidence of each pricing practice

The way that these three practices impact on consumers' ability to identify the best choices for themselves is set out below. We then describe how they interact and cumulatively have an even greater impact on consumers' ability to identify the best deal.

(a) Special offers that are not special

According to recent data, 40 per cent of groceries (by revenue) in Great Britain are currently sold on promotion.¹⁰ Which? research has repeatedly shown that special offers are often not what they may seem. While some of these promotions may be beneficial to consumers, our investigations indicate that this will not always be the case and that they can often be misleading.

Consumer detriment is likely to arise where:

- the special offers do not represent a genuine saving. For example, where a 'was/now' price promotion is based on a previous price that was not properly established; and
- the price promotions are so numerous, dynamic and/or complex that consumers' ability to identify the true cost is inhibited.

The consumer detriment arises through the impact of various behavioural biases. For example, misleading special offers use consumers' tendency to find an 'anchor' for their price expectations whilst complex pricing strategies aim to obscure the true price of goods and encourage consumers to use non-price factors to choose. Research for the OFT (see below) showed that these sorts of misleading practices can lead to direct consumer losses and to greater errors in choosing the best product to buy or best shop to buy from than would have occurred with fair information.

Our findings

Our tracking and analysis of supermarket prices over time¹¹ has repeatedly found a number of persistent problems with the way in which prices are displayed to suggest a better deal than is really the case.

The main problems we have found can be summarised as:

- (i) The use of the 'was/now' price to suggest an offer that is not a genuine offer because it was at the lower price for longer than the higher price or there was no significant difference between the lengths of time at which the higher and lower prices applied.
- (ii) Prices increasing when going on multi-buy so that the saving is less than claimed, non-existent or products are more expensive when they are included in the multi-buy rather than when they were sold individually, before or after the offer. The higher unit price when on multi-buy may then be used as a 'was' price in subsequent 'was/now' promotions. For example, a product usually sold at 50p should not be increased to 75p and then put on promotion at 2 for £1 as we have found. We have also found examples where this approach also enables a subsequent offer based on 75p as the supposed normal price, when the price returns to 50p, reflecting the 'gaming' culture of pricing practices in some supermarkets.
- (iii) Seasonal offers where the higher price is only applied out of season.
- (iv) Larger pack better value offers, where the unit price of the bigger pack is actually more expensive.

¹⁰ Kantar Worldpanel, 52 w/e 01 March 2015

¹¹ Data from mySupermarket.co.uk

We have regularly found examples of these problems across a wide range of supermarkets over a number of years, suggesting that this is a common problem and not merely an isolated issue.

- **December 2008**
A Which? investigation tracking a basket of food items between June and August found offers that we considered to be in breach of the Pricing Practices Guide.¹²
- **November 2011**
A Which? investigation found examples across supermarkets of where products were sold at the offer price for longer than the 'normal' price.¹³
- **June 2012**
A Which? investigation found several examples of products sold as on offer in supermarkets where the price was increased for a few days, before being 'discounted' for weeks.¹⁴
- **December 2012**
A Which? investigation focusing on multi-buys found several examples of multi-buy deals that were not as good value as they suggested.¹⁵
- **December 2013**
A Which? investigation found several examples of misleading multi-buys where consumers paid more for products on multi-buy than when they were sold individually as well as examples of 'discounts' where the product was sold at the special offer price considerably longer than the normal price.¹⁶
- **August 2014**
Which? research again found more examples of offers that were not genuine.¹⁷
- **April 2015**
A Which? snapshot investigation revealed problems with offers for Easter products that were at the advertised higher price for a shorter period than the supposed offer price.
- **Spring 2015**
A Which? investigation has found further examples of a broad range of products sold on offer across supermarkets for longer than they were at the supposed normal price.

Full details of our published investigations are provided in the annex to this super-complaint.

¹² Supermarket special offers exposed, Which?, December 2008

¹³ Special offers that aren't so special, Which?, November 2011

¹⁴ Supermarket special offers exposed, Which?, June 2012

¹⁵ The true cost of multibuys, Which?, December 2012

¹⁶ Special offers under scrutiny, Which?, December 2013

¹⁷ Which? uncovers more dodgy supermarket special offers, August 2014

Examples to illustrate the problems we have uncovered are shown in the table below. We have also found that products can rotate on and off offer which makes it difficult for consumers to identify the true value of the product.

Nature of the practice	Examples from our investigations
<p>The use of a higher 'was' price where the item has been available for longer at the lower price</p>	<p>Asda sold Andrex Bold and Bright Toilet Rolls for 49 days at the higher price of £2.24 and then on offer for 81 days at 'was £2.24 now £2' (2013/14).</p> <p>Sainsbury's sold Carex Aloe Vera & Eucalyptus Moisturising Antibacterial Handwash (250ml) at a higher price of £1.80 for seven days and then on offer at 'was £1.80 now 90p' for 84 days (2013).</p> <p>Ocado increased the price of Waitrose blueberries to £3.99 for a week, before selling them on offer at £2.66 for over a month (2013).</p> <p>Tesco sold Flash All Purpose Cleaning Spray on offer for £1 for 47 days but it had only been at the higher price of £2 for 17 days (2013).</p> <p>Heston from Waitrose Acacia Honey & Ginger Hot Cross Buns were advertised at £1.50 for just 12 days before going on offer at '£1.12 was £1.50' for 26 days (2015).</p>
<p>Prices increasing when going on multi-buy so that the saving is less than claimed, non-existent or products are more expensive when they are included in the multi-buy rather than when they were sold individually, before or after the offer</p>	<p>Asda increased the regular price of Uncle Ben's rice from £1 to £1.58 as it went onto a '2 for £3' multi-buy, then returned it to £1 when the multi-buy ended - making it 50p more expensive per pack (2013).</p> <p>Asda increased the price of a Chicago Town Four Cheese Pizza Two-Pack from £1.50 to £2 as it went onto multi-buy at two for £3. It went back to £1.50 as the 'offer' ended (2013/14).</p> <p>Asda sold Innocent Pure Fruit Smoothie (750ml) for £2 and then increased the price to £2.78 as it went onto a multi-buy offer of 2 for £5. This meant it was 50p more a pack when on 'offer' (2013).</p>
<p>Seasonal offers where the higher price only applied out of season</p>	<p>Cadbury's Giant Creme Egg was £10 in Tesco and Sainsbury's in February. It was then on offer at £8 and £6.66 from March onwards. Easter was 31 March (2014).</p> <p>Nestle Kit Kat Chunky Collection Giant Egg was advertised at £7.49 for just 10 days in January at Ocado, but then sold on offer at £5 for 51 days (2015).</p>
<p>Larger pack better value offers, where the unit price of the bigger pack is actually more expensive</p>	<p>Asda sold 12 rolls of Andrex Toilet Tissue for more per roll than the four-pack. The larger Andrex pack was marked as 'great value' (2014).</p> <p>Tesco sold four cans of Green Giant Original Sweetcorn for £2 (was £2.44), but six cans were proportionately more expensive, at £3.56. That's despite the fact the larger pack said 'special value' (2013/14).</p>

Consumer detriment

In a Which? survey focusing on food prices in June 2013, 51 per cent of people told us that they were using special offers more often than in the previous 12 months.¹⁸ While some of these promotions will offer a genuine discount, Which? research shows that many of these offers are likely to mislead customers. Consumers are not getting the price reduction they think they are.

Where offers are misleading there is good evidence of the detrimental impact on consumers for the types of special offers we have described above. This includes financial detriment and wasted time through shopping errors, over-buying, buying a product that is not of the value that is assumed and emotional detriment through frustration and annoyance. The table below shows how the key practices might impact on competition and consumers.

Pricing practice	Nature of the price frame	Consumer biases	Evidence on direct welfare loss ¹⁹
Was/now pricing based on previous price that is not genuine	'Reference pricing'	Anchoring, cognitive errors, sunk cost fallacy	Error in choosing which shop to purchase from and how many products to purchase (7% increase in errors)
Seasonal offers where higher price applied only out of season			
Multi-buy offers that don't reflect a real saving	'Volume offers' and 'Complex pricing'	Response to complexity by using rules of thumb with associated cognitive errors	Over 3% welfare loss per £ spent
Larger pack better value offers, where the unit price of the bigger pack is actually more expensive			

Overall, it is clear that many of these practices are likely to lead to consumers paying a higher price than they needed to. In some cases, it may be that they have been diverted into buying a product of a different nature to what they intended or more than they intended to buy overall. Our consumer research has revealed confusion about whether special offers are beneficial or not. Seven in 10 (69 per cent) say that they sometimes feel that it is difficult to work out whether special offers are actually a good deal. A similar percentage (71 per cent) say that they think there are certain products that always seem to be on offer.

The level of consumer detriment will depend on the proportion of promotions that are misleading, which it is very difficult to establish given the range of products available and that prices need to be tracked over a long time to establish the strategies the supermarkets are following. However, we estimate that £46 billion is spent on goods on promotion.²⁰ Therefore, even a small proportion of misleading offers may lead to annual detriment figures in the hundreds of millions.

¹⁸ Populus, on behalf of Which?, surveyed 2028 GB adults, of which 1969 were grocery shoppers, online between 28 and 30 June 2013. Data were weighted to be representative of the GB population

¹⁹ Which? calculations based on The Impact of Price Frames on Consumer Decision Making, OFT, May 2010

²⁰ £114.5 billion is spent on groceries by UK consumers every year, and 39.9 per cent of GB groceries (by revenue) are currently sold on promotion

Initiatives aimed at improving practices

There have been regulatory initiatives that have attempted to improve practices in this area in response to our own findings, as well as research by the OFT.

Review of the Pricing Practices Guide (PPG)

Some of the practices we have uncovered are issues of lack of compliance and effective enforcement. Our research has repeatedly uncovered practices that are, in our view, in breach of the Consumer Protection from Unfair Trading Practices Regulations 2008 (CPRs) and the PPG, which should help to clarify responsibilities in this area in order to prevent consumers from being misled.²¹

The PPG may, however, lead to practices that are counter-productive to the aim of providing consumers with fair pricing information. In an environment where traders are competing heavily on price and consumers have become used to seeking out special offers, there has been a strong incentive for the PPG to be used incorrectly. Rather than applying the legal principles, the trading environment can encourage a 'tick box' approach where traders simply refer to the PPG to see if something is expressly prohibited.

The TSI is currently in the process of reviewing the PPG. In our response to its consultation we stressed the need to address the following issues:

- **Engendering a culture of compliance** – we are concerned that the PPG does not currently engender a culture of compliance. It does not have a clearly stated purpose for all parties concerned and it is not clear whether it sets out minimum standards or best practice.
- **Reducing uncertainty** – the provisions within the PPG are frequently worded or structured in such a general way that they leave too much room for interpretation and flexibility of application. Our research has found many examples of where the PPG is not followed or the wording is so vague or ambiguous that it is difficult to be clear if a practice breaches the PPG or not. The wording of the PPG therefore needs to be improved by setting out cross-cutting principles backed up by more specific provisions so that it is clear how these should be applied in specific circumstances.
- **Recognising and reflecting consumer behaviour** – an important aspect of the CPRs 2008 is that consumers should have enough information to make informed purchasing decisions, but this is not given enough prominence within the PPG, for example, by reflecting how consumer behaviour may vary depending on the nature of the purchase.²²

The specific areas where we consider the PPG is too weak are set out in our response to the TSI consultation on the PPG. However, we do not consider that merely revising the PPG will address what has become a far more widespread problem with pricing practices in the grocery market.

OFT principles on food pricing display and promotional practices

In an attempt to address the specific problems with pricing practices in supermarkets as identified by its own review and our research, the OFT published a set of principles on food pricing display and promotional practices in November 2012, which gave examples of good and bad practice.²³

²¹ See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31900/10-1312-pricing-practices-guidance-for-traders.pdf

²² Review of the Pricing Practices Guide, Call for Evidence, Trading Standards Institute, 5 February 2014

²³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/288368/oft1527.pdf

These principles provide advice about the use of internal reference pricing, stating that:

Prices should never be artificially manipulated so that future planned discounts are made more attractive (for example, actively 'establishing' a higher price in order to advertise a later 'discount', where that later 'discount' price is in fact just the normal selling price of the product).

They also state that where a price has been marketed as a discount price for longer than the period of time for which the higher selling price was initially charged, retailers should generally consider that the value of the product is now established at the lower price and that it is no longer appropriate to continue to describe this as a discount. This principle is described as the '1:1 ratio'. Retailers can depart from this principle, if they justify this and explain why the extended discount price is not in fact a normal selling price. References to previous selling prices should only be used where they give a relevant and meaningful basis for comparison.

While this initiative was a welcome attempt to improve practices and recognised that there was a problem with supermarket pricing practices, it was limited in that it only applied to food pricing and was reliant on a voluntary commitment by the supermarkets. Asda, for example, chose not to support the Principles. The initiative also resulted, unintentionally, in contradictory advice and uncertainty over whether the PPG or Principles should take precedence. For example, the PPG refers to the '28 day rule', but the Principles do not. The Principles refer to a 1:1 ratio, whereas the PPG does not.

More fundamentally, our research following the development of the Principles has found that they have failed to have a noticeable impact on supermarket pricing practices and have proved insufficiently broad to tackle all the concerns identified above. We have continued to find problems with mis-use of internal reference pricing in our monitoring of supermarket special offers following their introduction (for example, in our December 2013 and August 2014 investigations as outlined above, as well as a further investigation we will publish shortly).

Issues to be addressed

The problems that we first identified through our tracking of the price of numerous products over time persist despite these various initiatives. While some of these practices point to the need for a tougher enforcement approach, the repeated occurrence of these problems in our monitoring of pricing going back to 2008 shows that this is now a wider and more systemic issue.

(b) Lack of easily comparable prices

The problem of misleading special offers is compounded by the second of the pricing practices that form part of our complaint: outstanding problems with unit pricing which mean that some prices are not easily comparable.

Retailers are required to provide both a selling price for food and a unit price.²⁴ The unit price was made a requirement under EU Directive 98/6/EC on the indication of the prices of products offered to consumers to 'improve consumer information and facilitate comparison of prices'.

This is particularly important in the current economic climate where many people are shopping around to find the best value. Grocery products are sold in a vast array of pack sizes, and in 2009

²⁴ The Price Marking Order 2004 which implements Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers

rules specifying the quantities many foods had to be sold in - from loaves of bread to packets of pasta and jars of coffee - were removed to give people more choice.²⁵

If unit pricing was clear and easy to use, it would help consumers to assess which product is the cheapest price or best value overall. It would also enable consumers to better identify when special offers are a good deal or not. However, the limitations of the current requirements mean that this can be difficult and sometimes impossible.

Our findings

Unit pricing enables like for like comparisons (for example per kilogram (kg) or per 100g) and is therefore an essential tool to assess which brand or product is best value for money when products can come in a variety of sizes. However, Which? research has repeatedly found problems with the way that unit pricing is presented. These fall into the following three main areas.

Legibility

The unit price is not always easy for consumers to spot or to read relative to the selling price. The Price Marking Order (PMO) which implements the EU Directive states that pricing, including the unit pricing, should be 'unambiguous, easily identifiable and clearly legible', but Which? research has found that this is not always the case.

Following the Which? Price It Right campaign²⁶ and an initiative by BIS in 2013, the main retailers committed to improving the legibility of unit pricing.²⁷ Although there have been improvements, a number of supermarkets have yet to make their labels easier to read.



Inconsistency

We have also found many examples of inconsistent unit pricing which make it difficult for consumers to compare the price of similar products. Our research has found that this is partly a legislative issue and partly a compliance issue.

²⁵ Weights and Measures (Specified Quantities) (Pre-packed Products) Regulations 2009

²⁶ <http://www.staticwhich.co.uk/documents/pdf/clear-consistent-food-pricing-why-unit-pricing-must-be-improved-which-briefing-288006.pdf>

²⁷ <https://www.gov.uk/government/news/progress-on-clearer-pricing-in-supermarkets>

The EU Directive on the indication of prices specifies that the unit price should be provided per kg or per litre, but allows for Member States to make exemptions. The PMO includes a schedule with a wide range of exemptions. Bread and breakfast cereal products, for example, should be provided per 100g, except where sold by number. Cooked or ready to eat fish and meat must be provided per 100g, whereas there is no exemption from the main per kg requirement when they are sold raw.

Our research has indicated that the complexity of this schedule means that it can be difficult for supermarkets to work out which applies, particularly where there is ambiguity over what is cooked or not, for example. The many categories mean that mistakes can be made in ensuring that correct shelf edge labels are used in-store given the large number of price changes. The categories used, which were developed when the order was adopted in 2004, do not necessarily reflect the way that people shop and compare products now. Under the schedule, for example, raw prawns are required to be sold per kg; cooked prawns per 100g, whereas consumers may base their purchase on which one of these is cheaper.



Sauces per 100ml and per 100g (March2015)



Olives per kg and per 100g (March2015)

Some specific problems have also arisen in relation to certain categories, such as how to price semi-solid products such as mayonnaise or ice cream, which can sometimes be sold by weight and sometimes by volume. Inconsistent approaches have been used by different manufacturers. The same applies to where products can be priced by weight or by 'per item'. Examples of this include snack bars and biscuits.



Cakes per 100g and per item (March 2015)

Fruit and vegetables are particularly problematic. This is also because there is the option of providing the unit price by kg and by per item, where there are provisions for countable produce to be packed per item under relevant Weights and Measures legislation.²⁸ We have found numerous examples of where it is very difficult for consumers to work out which product is best value without using scales.



Bananas per kg and per item (March 2015)

Missing information on special offers

The third issue with current unit pricing practice is that some supermarkets do not always provide unit pricing information for products when they are part of a special offer. This is an issue because it makes it more difficult for consumers to compare the price of the product included in the offer with similar products that are not on offer. It could be the case that these other products are still better value and consumers would make a different choice if the unit price was provided on the offer.



No unit price for the offer price (March 2015)

²⁸ The Weights and Measures Act 1963 (Cheese, Fish, Fresh Fruits and Vegetables, meat and Poultry) Order 1984

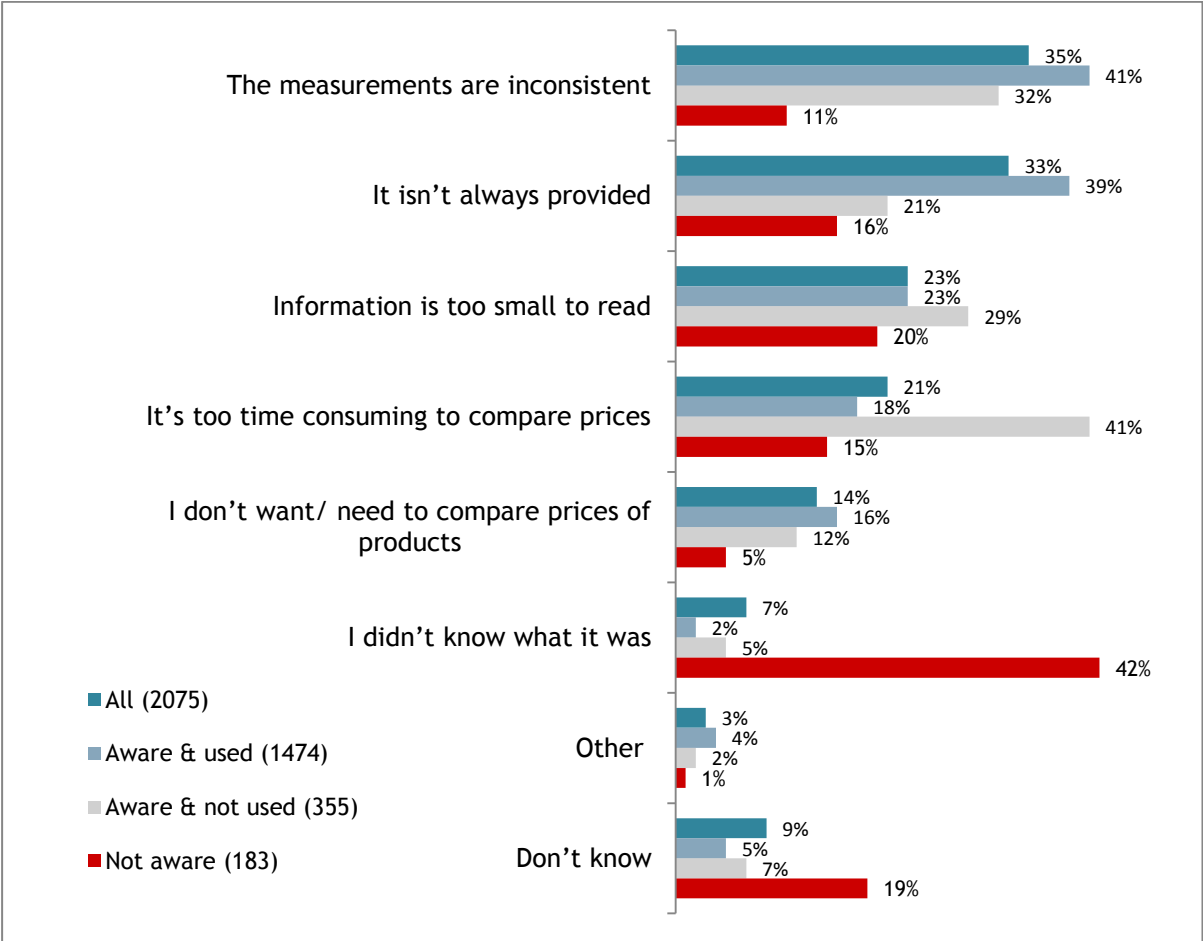
As a result of the BIS initiative on unit pricing in 2013, following the Which? campaign, some retailers committed to provide unit pricing information on certain types of offer. A recent visit to branches of the main supermarkets showed that there have been some improvements but that this information is still missing from many offers.

The ability to provide this information will depend on the nature of the special offer to some extent. It will be more difficult to provide this information for each product included in offers such as '3 for £10' where there may be a wide range of products that can form part of the deal, as well as for 'meal deals' which may have multiple combinations. However, overall there is clearly significant scope for making improvements and this information would provide valuable information that would help inform consumers choices when determining whether to opt for a product that is part of a multi-buy, discount or is advertising that there is 'X% extra free'.

Consumer detriment

Which? consumer research has highlighted that poor unit pricing practices mean that consumers are unable to effectively compare prices in the way that they should be able to and can lead to confusion.^{29,30} Direct consumer detriment arises as shoppers cannot identify the most appropriate product.

Reasons for not using unit pricing (March 2015)



Base: All respondents (2075)

²⁹ An online survey of 2100 UK adults between 24 and 27 August 2012. Data were weighted to be demographically representative of the UK population

³⁰ Populus, on behalf of Which?, interviewed 2075 UK adults online between 18th and 19th March 2015. Data were weighted to be demographically representative of the UK population

A Which? survey conducted in March 2015, for example, found that nearly 9 in 10 (87 per cent) people were aware of unit prices and around 7 in 10 (69 per cent) said that they have used them. The main reasons for not using unit pricing in general were that the measures are inconsistent (35 per cent) and it is not always provided (33 per cent). Of those who were aware and used unit pricing, the fact that the information is sometimes too small to read was also a reason (23 per cent). Of those who are aware, but have not used unit pricing, there is a view that it is also too time consuming to compare as currently provided (44 per cent).³¹

The same survey found that 46 per cent of people said that in the last month they had noticed special offers that did not have a unit price displayed for the promotional price. The preferred way to address unit pricing on offers was to include two prices – one with the offer taken into account as well as one without the offer (44 per cent), followed by just displaying the unit price with the offer taken into consideration (28 per cent).

Recent BIS initiatives

BIS has recognised the need to improve unit pricing for consumers. In 2013, BIS held a roundtable with retail representatives to discuss the problems that Which? research had identified in relation to consistency, legibility and special offers. This prompted the publication of the voluntary pledge referred to above, as well as to the establishment of an Expert Working Group to review the PMO and related guidance.

Which? was initially optimistic that this would lead to a revision of the schedule to the PMO so that unit pricing would be simpler for businesses to apply and consumers to use. But the reluctance of some retailers to move to much greater consistency has resulted in review of related guidance instead. This is looking at issues such as how to define semi-solids and clarify any other ambiguities about which category in the schedule particular products fall under. It is therefore focused on the correct application of the current schedule, and not, as we believe is absolutely necessary, its revision.

Issues to be addressed

There have been some improvements to the way that unit pricing is displayed since Which? launched its campaign in 2011: some supermarkets have designed their labels to make them more visible and easier to read.

But problems with clarity, inconsistency and missing information persist, preventing consumers from making simple and straightforward comparisons to assess which products are best value and make sense of the various offers in-store.

(c) Products that shrink, but the price does not

The third issue that our research has repeatedly identified across the sector is that product pack sizes can shrink without a corresponding decrease in the price of the product.

This technique can mask price rises and make it difficult for consumers to assess the best value product as consumers are not generally informed of the size reduction and may assume that the product they are buying is the same size as it was the last time they bought it. The problems that we have set out with unit pricing, such as the inconsistent units or missing information on products on special offer, can also make it difficult to spot this and identify which is the cheapest option overall.

³¹ Populus, on behalf of Which?, interviewed 2075 UK adults online between 18 and 19 March 2015. Data were weighted to be demographically representative of the UK population

Research has found that consumers are four times as sensitive to price changes as they are to package size. Consumers can therefore end up paying the same amount for less without realising.³²

Our findings

Our research has focused on branded items and repeatedly found problems with this practice.³³ We conducted research in 2013 and 2014.^{34 35} Our most recent research, published in March 2015, found further examples, such as those below:

- **Philadelphia Light Soft Cheese**
Size before: 200g / Size after: 180g
This product cost £1.84 in Asda before it shrank and £1.87 after. It was £1.85 in Sainsbury's before it shrank and £1 in Morrisons (on promotion, down from £1.85) – both these prices stayed the same for the smaller pack.
- **Birds Eye Select Mixed Vegetables**
Size before: 750g / Size after: 690g
These vegetables cost £2 before and after they shrank, in Asda, Morrisons and Sainsbury's (there were multi-buy offers both before and after the pack shrank in the different supermarkets – we've given the non-offer price).
- **Surf Essential Oils Powder Tropical Lily & Ylang Ylang**
Size before: 25 washes (2kg) / Size after: 23 washes (1.61kg)
This was £5 in Ocado and Tesco before and after it shrank.
- **Domestos Multipurpose Spray with Bleach and Cif Multi-Purpose Actifizz Lemon Spray**
Size before: 750ml / Size after: 700ml
The Domestos was £3 in Asda before and after it shrank and Cif £2.

When we have asked manufacturers if they charge supermarkets less when they reduce the size of their products they often refuse to comment or say that they have not, so unless wholesale prices drop it is not surprising that prices do not drop for the consumer. However, a consumer's shop will still be more expensive without them necessarily knowing why.

Consumer detriment

The practice of reducing pack sizes for frequently purchased items, when unit pricing is not prominent or in a form that consumers rely on, may cause some consumers to make purchasing decisions that they would not have done so given fair information. Consumers may be unaware of the reduction in size of the product and therefore fail to appreciate that they are no longer getting the value they assume.

A behavioural study published in the *Journal of Retailing* examined this effect and found that consumers are about four times as sensitive to price as they are to package size.³⁶ One theory for why this occurs is that as a response to complexity, consumers only make choices on a subset of characteristics of a product.³⁷ When initially making a purchase decision for groceries they may

³² Çakır and Balagtas (2014), *Consumer Response to Package Downsizing: Evidence from the Chicago Ice Cream Market*, *Journal of Retailing*, Volume 90, Issue 1, Pages 1-12

³³ Data from mySupermarket.co.uk

³⁴ Products shrink, prices don't, Which?, April 2013

³⁵ Shrinking products and sneaky price rises, Which?, April 2013

³⁶ Çakır and Balagtas (2014), *Consumer Response to Package Downsizing: Evidence from the Chicago Ice Cream Market*, *Journal of Retailing*, Volume 90, Issue 1, Pages 1-12

³⁷ For example see McConnell, R. C.; Brue, S.L. and Flynn, S.M. 2011. *Economics: Principles, Problems, and Policies*. Chapter 6. McGraw-Hill Higher Education 19th Edition

take into account both the price and size, but in subsequent decisions they use price as the key indicator of whether to purchase the product again. Due to the time and effort involved in checking product weights across their whole basket of goods, they do not do so and are therefore less responsive to changes in weight.

If consumers are aware of product size changes then there would be no problem, but as our research shows this is often done in such a way to mislead customers. A Which? survey conducted in March 2015 found a lot of consumer frustration with this practice. Nine in 10 (89 per cent) people think that if manufacturers make their products smaller, but keep the prices the same, they should tell you. The same percentage (89 per cent) say that they would be annoyed if they bought a product that had been reduced in size by the manufacturer but still cost the same price as before, while 87 per cent say that they have noticed that some products have shrunk and 86 per cent say that if a manufacturer reduces the size of a product they would expect the price to reduce too.

Issues to be addressed

While it is legitimate for manufacturers to change the size of their products, we do not consider it fair that they do this without informing consumers when the price is not consequently reduced. This is a way of passing on price increases without consumers necessarily knowing. This practice adds to the argument for clear, consistent unit pricing.

An additional factor: price matching

A relatively recent development which should be investigated alongside the three practices we have highlighted is the use of supermarket brand and price match schemes where supermarkets compare their own prices with their competitors and in some cases offer to reimburse customers in some way, usually at the supermarket checkout, if the products they bought could have been purchased at a lower price. Supermarkets seek to convince consumers through these schemes that there is no need to shop around as the supermarket will match any saving that is available elsewhere.

Our findings

In November 2013, we identified a number of ways in which price matching is not helpful to consumers, or is not as clear as it could be. These can be summarised as follows:

- **The comparisons only tell consumers which is cheapest according to each supermarket's definition of what 'cheapest' is:** supermarkets each set their own rules for what is and is not compared under price-matching schemes so it can be hard to tell which is the cheapest overall. We examined 59 different shopping trips made by ordinary shoppers, and found that the supermarket running the scheme was often the one that fared best (was found to be cheapest in the comparison).
- **The rules for the comparisons are different for each supermarket:** we found that Asda, Sainsbury's and Tesco schemes used different methods to identify the cheapest, and they did not always include the same items. Sainsbury's only included branded products, for example, while Tesco and Asda both included own-brands as well as named brands in their price matches. However, they had differing opinions about what constitutes a comparable item, along with other rules that could lead an item to be included in one scheme but not the other.
- **It is not always easy to double-check your price match is correct:** Ocado's price-matching scheme, for example, unlike the other three we looked at for this research, did not provide a breakdown of what was and wasn't included in your price match from the Ocado website. Whether Ocado says your shopping was cheaper at Ocado, or would have been cheaper

elsewhere, is something that cannot be double-checked online, although Ocado told us that it would provide this breakdown on request.

- **Products can be excluded due to different pack sizes:** well-known branded items aren't always included in price matches, as supermarkets sometimes stock them in different-sized packs, although the difference can be so small that only the most observant shopper would spot it. Asda and Tesco allow for this in their price matches by including products that are different in size by up to 10 per cent. Sainsbury's told us that in most cases it also includes items that are different by up to 10 per cent, as long as they are able to find a match. But even allowing for a 10 per cent difference, there are still some similarly sized items excluded. Below are examples of some that our research has discovered.³⁸
 - L'Oreal Elvive: 400ml in Sainsbury's and Tesco; 500ml in Asda. Excluded by Asda, Sainsbury's and Tesco.
 - Finish All in 1 Powerball Dishwasher Tablets had 52 tablets in most supermarkets, but only 48 in Asda.
 - Daz Powder was 3.06kg (45 washes) in Asda and 2.58kg (38 washes) in Tesco.
 - Birds Eye Chicken Nuggets were 630g (32 nuggets) in Asda and 720g (36 nuggets) in Sainsbury's and Waitrose.
- **Products can be excluded for other reasons:** across our investigations, we have found numerous errors. As well as similarly sized products, we came across other items in the research that were excluded for reasons we could identify. While these were subsequently addressed when pointed out to the supermarkets concerned, they point to a wider issue:
 - When one of our shoppers bought McVitie's Milk Chocolate Digestives from Tesco, they weren't included in the Tesco Price Promise comparison with Sainsbury's. Tesco said the pack size had changed in Sainsbury's since the match was first made, so it was not counted as a comparable match.
 - A pack of eight Toffee Crisp chocolate bars was not compared with Tesco by Sainsbury's. Sainsbury's said this was due to a technical error that has been rectified.
 - Asda matches comparable own-brand items, but we found Asda Smartprice Fish Fingers were not compared with the Sainsbury's Basics equivalent. Asda said the two products were listed in different ways, but this has been changed so that they can be matched.
 - Asda chopped tomatoes were not compared with the Sainsbury's version. Asda said one of these items was incorrectly listed as a tin instead of a carton, but this has been corrected.

It is clear from a review of the relevant pages of each supermarket's website that issues still persist. Given the difficulties of ever establishing a price match across the many ranges and products offered by the different supermarkets, the CMA should investigate whether the price matching practices operated by the supermarkets overall benefit consumers, or simply have the effect of reducing shopping around based on potentially misleading information.

³⁸ Who's the cheapest? Which? November 2013

5. Conclusion

Our complaint highlights a prolific and systemic problem with pricing practices in the grocery market. These practices are an issue individually, but cumulatively, the three practices that we have set out make it difficult, and sometimes impossible, for consumers to assess prices and identify the best choice. In many cases, the effect of these practices will be invisible to consumers who are influenced by them and change their purchases as a result.

The issues with misleading special offers would not, however, be so great if consumers could rely on unit pricing to help them identify the best value choice for example. The fact that pack sizes can change without this being obvious and no corresponding price reduction becomes even more of a frustration when unit pricing does not help consumers to assess the difference.

We consider the consumer detriment to be significant enough to require the CMA to investigate these practices to identify:

- **the extent to which the cumulative effect of these confusing and opaque pricing practices in the grocery sector is affecting consumers' ability to obtain best value and make informed purchasing choices;**
- **the drivers of these practices and their pervasiveness within the sector; and**
- **the changes that are needed in terms of regulation and ultimately business practice in order to generate a more responsible approach based on transparent and honest pricing practices that enable consumers to make truly informed choices and obtain best value.**

In addition, the CMA should investigate whether the price matching practices operated by the supermarkets overall benefit consumers or simply have the effect of reducing shopping around based on potentially misleading information.

Annex: Relevant Which? investigations

Supermarket special offers exposed, Which?, December 2008

Special offers that aren't so special, Which?, November 2011

Supermarket special offers exposed, Which?, June 2012

The true cost of multibuys, Which?, December 2012

Products shrink, prices don't, Which? April 2013

Who's the cheapest?, Which?, November 2013

Special offers under scrutiny, Which?, December 2013

Which? uncovers more dodgy special offers, Which?, August 2014

Shrinking products and sneaky price rises, Which?, April 2015



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Which? 2 Marylebone Road, London, NW1 4DF | which.co.uk | 020 7770 7000

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