



Draft Determination

Application for authorisation AA1000627
lodged by
Coles Group Limited on behalf of itself and other participating
supermarkets
in respect of
conduct in connection with the Soft Plastics Taskforce
Authorisation number: AA1000627

30 March 2023

Commissioners: Keogh
Lowe
Brakey

Summary

The ACCC proposes to grant authorisation, with conditions, to enable Coles Group Limited, Woolworths Group Limited, ALDI Stores and current and future Program Partners to engage in limited conduct for the purpose of developing the 'Roadmap to Restart' that has been developed to manage the effects of the suspension of REDcycle's soft plastics recovery program.

The ACCC considers that the Proposed Conduct is likely to result in significant public benefits, including a collaborative and collective approach to developing solutions for soft plastic recycling, including solutions aimed at increasing the potential to divert some soft plastics from landfill, the potential recommencement of an in store soft plastic collections and recycling program, as well as clear and consistent messaging for consumers regarding the 'Roadmap to Restart'.

The ACCC acknowledges there is a risk for potential public detriments to arise as a result of the Proposed Conduct, including increasing barriers to other industry participants being able to develop separate recycling schemes, a reduction in competition for the supply of transport, storage and recycling services for soft plastics, and the potential for the conduct to facilitate anticompetitive conduct.

To address these concerns and reduce the risk of public detriment, the ACCC proposes to authorise conduct that is narrower than what the Participants are seeking.

The ACCC considers that, with a narrower form of conduct and proposed conditions, the conduct proposed to be authorised is likely to result in a significant public benefit and that this public benefit would outweigh any likely public detriment.

The ACCC proposes to grant authorisation with conditions for 12 months.

The ACCC invites submissions in relation to this draft determination before making its final decision.

1. The application for authorisation

- 1.1. On 16 November 2022, Coles Group Limited lodged an application for authorisation (AA1000627) with the Australian Competition and Consumer Commission (the **ACCC**) on behalf of itself and its related bodies corporate (**Coles**), Woolworths Group Limited and its related bodies corporate (**Woolworths**) and ALDI Stores (a Limited Partnership) (**ALDI**) (together, the **Participants**). The Participants seek authorisation to engage in certain conduct in connection with an industry-led taskforce (the **Soft Plastics Taskforce**) created to explore solutions to address the immediate effects of the suspension of RG Programs and Services Pty Ltd's (**REDcycle**) soft plastics recovery program.
- 1.2. Authorisation is sought for a period of 12 months from the date of any final determination by the ACCC.
- 1.3. This application for authorisation AA1000627 was made under subsection 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**). If granted, an authorisation provides businesses with protection from legal action under the competition provisions in Part IV of the Act. The ACCC has a discretion to grant authorisation, but must not do so unless it is satisfied in all the circumstances that the conduct would result in benefit

to the public that would outweigh any likely public detriment (ss 90(7) and 90(8) of the Act (the **authorisation test**)).

The Participants

- 1.4. Coles lodged the application on behalf of itself and the Participants.
- 1.5. The Participants are also seeking for authorisation to apply to any current or future partners in the REDcycle program¹ or any other soft plastics recovery program established by two or more of the Participants in the context of the Soft Plastics Taskforce (**Program Partners**), being a class of persons within the meaning of section 88(2) of the of the Act.

2. Background

- 2.1. REDcycle is a Melbourne-based consultation and recycling organisation which developed and implemented the REDcycle Program. The Participants submit that since 2011, REDcycle has been the only return-to-store, soft plastics recovery program in Australia, facilitating the collection and processing of soft plastics into a variety of durable recycled plastic products. The Participants also submit that due to a lack of processing infrastructure, the majority of local councils in Australia do not currently collect soft plastics through kerbside recycling, however a number of trials are underway nationally which are aimed at developing a National Plastics Recycling Scheme.²
- 2.2. On 8 November 2022, REDcycle announced that it was indefinitely suspending its soft plastics collection program as its recycling partners had temporarily stopped accepting and processing soft plastics. The Participants submit that the suspension of the REDcycle program removed the primary established recycling pathway for soft plastics for consumers and created significant community concerns about existing stockpiles and how consumers can recycle soft plastics going forward.
- 2.3. Following REDcycle's announcement, Coles and Woolworths each announced that they would be suspending soft plastics collections from their stores until further notice.
- 2.4. As a result of the suspension, the Participants advised that:
 - a) the Soft Plastics Taskforce was to be formed and was to initially be chaired by the Commonwealth Department of Climate Change, Energy, the Environment and Water (the **Department**). The Participants anticipated that other relevant industry bodies not party to the application for authorisation, such as the Australian Packaging Covenant Organisation, will provide support to the taskforce and
 - b) the Soft Plastics Taskforce will explore solutions for managing the immediate effects of the suspension of REDcycle's return-to-store soft plastics recovery program in Australia given the community concern and environmental risk posed.
- 2.5. On 24 February 2023, the Participants advised the ACCC that they had formed the opinion that REDcycle is, or is likely to be, insolvent. Subsequent to this, on

¹ See Annexure 2 of Coles' Application for Authorisation (available [here](#)) for a list of partners in the REDcycle program current as at 15 November 2022.

² See Australian Food & Grocery Council, National Plastics Recycling Scheme: <https://www.afgc.org.au/industry-resources/national-plastics-recycling-scheme#:~:text=How%20it%20works,cost%20of%20collection%20and%20administration.>

27 February 2023, the NSW Supreme Court heard an application initially made by BigTee Group Pty Ltd for the winding up of REDcycle, with an order subsequently made and a liquidator appointed.

The Proposed Conduct

- 2.6. The Participants seek authorisation to propose, discuss, enter into or give effect to any contract, arrangement or understanding between them, or engage in any conduct that:
- a) occurs at, in preparation for, or arises out of, a meeting of the Soft Plastics Taskforce, and
 - b) has the purpose of considering, developing or implementing an **Interim Solution**
- (collectively, the **Proposed Conduct**).³
- 2.7. For the purposes of the Proposed Conduct, the Participants define an Interim Solution as a solution for the storage, transportation, processing, recycling and/or management of soft plastics collected from the sites of two or more of the Participants that is intended to be implemented in the period of 12 months from the date of a final determination by the ACCC and which relates to the following:
- a) **responsible management of collected soft plastics** – responsible management of any soft plastics materials collected from the sites of two or more of the Participants in the REDcycle program or any other soft plastics recovery program established with or by two or more of the Participants in the context of the Soft Plastics Taskforce
 - b) **customer communications** – planning or agreeing on communications to customers or to the public in relation to soft plastics which have been collected or how they can handle soft plastics going forward
 - c) **joint engagement of third-party recycling, logistics providers** – joint procurement of recycling, manufacturing, processing or logistics services by two or more Participants for the purposes of facilitating the implementation of an alternative soft plastics recovery program established with or by two or more Participants in the context of the Soft Plastics Taskforce; or
 - d) **joint acquisition of facilities to self-process soft plastics** – joint acquisition or leasing of facilities or other goods or services by two or more Participants for the purposes of recycling, manufacturing, processing or transporting soft plastics in order to facilitate the implementation of an alternative soft plastics recovery program established with or by two or more of the Participants in the context of the Soft Plastics Taskforce.
- 2.8. The Participants submit that the Proposed Conduct:
- a) does not involve any agreements on the price or supply of retail products or services sold by the Participants
 - b) does not prevent any individual Participant or Program Partner from exploring or developing soft plastics recycling capabilities in their own right
 - c) is not compulsory, and any Participant or Program Partner can opt out of any proposed collaboration the subject of the application for authorisation

³ On 17 March 2023, Coles, with the support of the other Participants, amended the application and the definition of the Proposed Conduct to remove reference to the REDcycle program to reflect REDcycle's insolvency.

- d) involves short-term arrangements only. The Participants have advised that any contract, arrangement or understanding entered into in reliance on any interim or final authorisation granted by the ACCC will provide for its immediate termination upon the expiry or revocation of such authorisation (unless the Participants apply for and are granted a further ACCC authorisation which permits those contracts, arrangements or understandings to continue for a further period, or the ACCC consents or does not otherwise object to the continuation of any of those contracts, arrangements or understandings).

Interim authorisation

- 2.9. The Participants requested urgent interim authorisation to enable them and any Program Partners to begin discussions as soon as possible in light of the suspension of the REDcycle program (see paragraph 2.2) with a view to identifying Interim Solutions for the collection and management of soft plastics on an urgent basis.
- 2.10. On 25 November 2022, the ACCC granted interim authorisation with conditions under subsection 91(2) of the Act. Interim authorisation will remain in place until the date the ACCC's final determination comes into effect, the application for authorisation is withdrawn or until the interim authorisation is revoked.
- 2.11. Interim authorisation was granted for arrangements substantially similar to the Proposed Conduct, with some adjustments and conditions.⁴ Specifically, the ACCC granted interim authorisation for the Participants and any Program Partners to propose, discuss, enter into or give effect to any contract, arrangement or understanding between them, or engage in any conduct, that:
 - a) both:
 - (i) occurs at, in preparation for, or arises out of, a meeting of the Soft Plastics Taskforce, and
 - (ii) has the purpose of considering, developing or implementing a **Short-term Solution**; or
 - b) constitutes planning or agreeing on communications to customers or to the public in relation to the steps taken towards a **Short-term Solution**,
(collectively, the **Interim Authorised Conduct**).
- 2.12. For the purposes of the Interim Authorised Conduct, a Short-Term Solution is a solution for the storage, transportation, processing, recycling and/or management of soft plastics collected from the sites of two or more of the Participants that is intended to be implemented during the period from the date of this conditional interim authorisation until 12 months from the date of a final determination by the ACCC, and which relates to the following:
 - a) responsible management of collected soft plastics – responsible management of any soft plastics materials collected from the sites of two or more of the Participants in the REDcycle program or any other soft plastics recovery program established with or by two or more of the Participants in the context of the Soft Plastics Taskforce;
 - b) joint engagement of third-party recycling, logistics providers – joint procurement of recycling, manufacturing, processing or logistics services by two or more Participants for the purposes of facilitating the continuation of the REDcycle program (or the implementation of an alternative soft plastics recovery program

⁴ See ACCC's Interim Authorisation Decision (25 November 2022). Available on the ACCC's [public register](#).

established with or by two or more Participants in the context of the Soft Plastics Taskforce); or

- c) joint acquisition of facilities etc. to self-process soft plastics – joint acquisition or leasing of facilities or other goods or services by two or more Participants for the purposes of recycling, manufacturing, processing or transporting soft plastics in order to facilitate the continuation of the REDcycle program (or the implementation of an alternative soft plastics recovery program established with or by two or more of the Participants in the context of the Soft Plastics Taskforce).

2.13. The interim authorisation granted by the ACCC was limited to short-term arrangements only, with any contracts, arrangements or understandings entered into in reliance on any interim or final authorisation granted by the ACCC to provide for immediate termination upon the expiry or revocation of such authorisation.

2.14. The ACCC granted interim authorisation with two reporting conditions. Public versions of documents provided pursuant to these conditions are available on the ACCC's [public register](#).

3. Consultation

3.1. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Proposed Conduct.

3.2. The ACCC invited submissions from a range of potentially interested parties including manufacturers, relevant industry associations or peak bodies, consumer groups, state and federal government and relevant regulatory bodies.⁵ The ACCC received 5 submissions from interested parties in relation to the application. All submissions were received prior to the order winding up REDcycle.

3.3. Repeat Plastics Pty Ltd (**Replas**) is a recycled plastic manufacturer that converts soft plastics into a range of recycled products including indoor and outdoor furniture, bollards and signage. Replas was one of the manufacturing partners that processed soft plastics collected by the REDcycle program. Replas did not have concerns with the interim authorisation and noted that it was happy for this to continue as long as deemed necessary by the ACCC.

3.4. The Department has administrative responsibility for national waste and recycling matters and has, to date, been chairing the meetings of the Soft Plastics Taskforce. The Department supports the authorisation application for the Participants to explore solutions for managing the immediate effects of the suspension of REDcycle's program. The Department submits that consumer confidence and established soft plastic recycling behaviours that have been built since the REDcycle program commenced in 2011 may be eroded without prompt action from industry to establish a viable solution. The Department states that, beyond the proposed activities of the Soft Plastics Taskforce, a broader range of consultative activities will take place, drawing in other entities across the plastics supply chain, to address longer term solutions for soft plastics in Australia.

3.5. Qenos Pty Ltd (**Qenos**) manufactures plastic. It is the sole manufacturer of polyethylene and polymers within Australia. In its submission, Qenos agrees that the cessation of REDcycle's activities requires urgent action. In particular, it submits that the soft plastics that have been collected or may continue to be collected should not be

⁵ A list of the parties consulted and the public submissions received is available from the ACCC's public register www.accc.gov.au/authorisationsregister.

sent to landfill and should be applied to the highest and best use possible. If this requires the Participants to work together for a limited period of time, Qenos does not object to this. Qenos' submission outlines the need for an Australian circular economy for plastics and the important role that could be played by the Participants and the soft plastics that would otherwise be recycled through the REDcycle scheme.

- 3.6. Qenos suggests priority be given to circular plastic-to-plastic recycling solutions. Qenos submits that a circular solution for soft plastic means that waste plastic is recycled back into quality plastic that can be used in the original application in place of fossil-based plastic.
- 3.7. Qenos also submits that, while not expressly excluded by the scope of the proposed conduct, an interim solution for soft plastics must not negatively impact the feasibility of long term domestic circular solutions. Qenos submits that offshore processing and recycling options should be considered for an interim solution until a local capability can be established if:
 - Infrastructure is not available locally to achieve the highest order solution in the waste hierarchy
 - Assurance can be obtained that the waste material is recycled back into circular plastic through a certified chain of custody scheme, and
 - Compliance with Basel convention protocols for transboundary movement of hazardous waste can be assured.
- 3.8. Further, Qenos submits that the current wording of the Interim Solution referenced in the application for authorisation includes a solution for the storage, transportation, processing, recycling and/or management of soft plastics. Qenos considers "management" to be a broad term, and submits that this could extend to permitting the Participants the opportunity to employ a waste management solution that will most likely result landfill of these materials, thereby removing the waste plastic resource from supply to more beneficial options. Qenos submits that this scope should be narrowed by removing "management" from the scope or clarifying its meaning to exclude any solution that would send the soft plastics to landfill other than those plastics that have been determined as unsuitable for either mechanical or advanced recycling for technical reasons. Qenos notes that such conduct need not be done by the Participants working together.
- 3.9. The NSW Environment Protection Authority (**NSW EPA**) supports collaboration between packaging manufacturers, brand owners of consumer products, recyclers and other relevant industry participants to find alternatives and solutions to soft plastics recycling and therefore supports, in principle, the Proposed Conduct.
- 3.10. NSW EPA considers that the Participants may not be limited to only considering solutions that involve taking physical or financial responsibility for managing the environmental impact of their products and/or packaging at the post-consumer state of their life cycle. NSW EPA submits that, to adequately address the issue surrounding the suspension of the REDcycle program, a whole-of-lifecycle approach is needed that involves producers of these materials to take responsibility for the full life cycle of soft plastics, including the development, design, creation, production, assembly, supply, use (or re-use), recovery, recycling and remanufacturing of soft plastics.
- 3.11. NSW EPA submits that interim solutions that are more immediate (i.e., less than 12 months) will be required by the Participants to address the immediate management of existing stockpiles in NSW including the cost of warehouse and storage. NSW EPA further stated that, given the interim solution may include joint acquisition of facilities to

recycle, process and remanufacture soft plastics, co-investment from manufacturers, collectors and recyclers can lead to positive outcomes.

- 3.12. NSW EPA submits that the Proposed Conduct will ensure a nationally consistent and collaborative approach by the major supermarkets in addressing the issue of soft plastics recycling. NSW EPA further submits that objectives for an industry-led solution should include the solution being funded by industry, from collection through to recycling, as well as a high-level awareness, knowledge and access to the system, which should be capable of and with the intention to deliver high rates of recovery and recycling.
- 3.13. NSW EPA submits that there should be a high level of transparency for any solutions developed by industry, including a high level of reporting on the proposed or actual performance of the system at all levels. On 23 February 2023, NSW EPA served Coles and Woolworths with a draft clean-up notice to remove more than 5200 tonnes of soft plastic stockpiled at 15 sites across the state.
- 3.14. The WA Department of Water and Environmental Regulation supports the application for authorisation, stating that the REDcycle program makes an important contribution in collecting and recovering soft plastics and that the suspension of this program is negatively impacting plastics recycling and potentially undermining public confidence.
- 3.15. Public submissions by the Participants and interested parties are on the Public Register for this matter.

4. ACCC assessment

- 4.1. The Participants have sought authorisation for conduct that would or might contravene provisions of the Act relating to cartel conduct (Division 1 of Part IV of the Act) and to contracts, arrangements or understandings, concerted practices, exclusive dealing and other conduct that has the purpose, effect or likely effect of substantially lessening competition (sections 45, 46 and 47 of the Act).
- 4.2. Consistent with subsection 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied, in all the circumstances, that the conduct would result or be likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would be likely to result.

Relevant areas of Competition

- 4.3. To assess the likely effect of the Proposed Conduct, the ACCC identifies the relevant areas of competition likely to be impacted.
- 4.4. The ACCC considers that the relevant areas of competition are likely to be the supply and acquisition of services for the storage, collection, transportation or logistics, recycling, manufacturing, management and processing of soft plastics in Australia as well as general grocery retailing in Australia.⁶

⁶ However, the ACCC considers it is not necessary to precisely define the relevant markets for the purpose of considering the application for authorisation.

Future with and without the Proposed Conduct

- 4.5. In applying the authorisation test, the ACCC compares the likely future with the Proposed Conduct that is the subject of the authorisation to the likely future in which the Proposed Conduct does not occur.
- 4.6. The Participants submit that, in the absence of the Proposed Conduct, there would be material restrictions on their ability to work together and with government as part of the Soft Plastics Taskforce.
- 4.7. The Participants submit that some discussions could still take place, but the Participants would likely be prevented from fulsomely exploring and implementing collaborative Interim Solutions for soft plastics recycling. They submit that, due to concerns about competition law risks, some participants may be discouraged from participating in the Soft Plastics Taskforce. The Participants submit that, alternatively, if the Soft Plastics Taskforce were to proceed without authorisation, it would be substantially less effective and efficient than if the Participants were permitted to engage in the Proposed Conduct.
- 4.8. The Participants submit that collaboration to date under the interim authorisation has resulted in (and will continue to result in) material public benefits. In particular, the Participants submit that the challenges relating to soft plastics recycling are complex, multi-faceted and cannot be solved by any Participant acting alone. The Participants submit that the interim authorisation has enabled them to work closely with stakeholders to understand existing processing capabilities in Australia and to identify and commence evaluation of a range of potential short-term solutions.
- 4.9. The ACCC considers that, without the Proposed Conduct, a solution to the soft plastic recycling stockpiles would need to be reached through alternative means. The Participants could engage in unilateral discussions with the Department to develop their own programs to collect, store and arrange recycling soft plastics or seek other alternatives to participate in soft plastic recycling. However, this approach would mean that the Participants would be unable to plan a pilot together to recommence collections and would not have been able to discuss together the stockpile and future management. It is also unclear whether the Soft Plastics Recycling Contribution Fund (discussed at paragraphs 4.22-4.24) would have been able to be set up. Without the Proposed Conduct, the Taskforce may be able to operate in a limited way but would likely be less effective.
- 4.10. The ACCC considers that, without the Proposed Conduct, there would be a higher risk that the existing and future stockpiled soft plastic material would likely be contributed to landfill.
- 4.11. The ACCC accepts that the Proposed Conduct is likely to facilitate a cohesive and more effective approach to soft plastic recycling by the Participants in the short term. The ACCC considers this view is supported by the steps the Soft Plastics Taskforce has been able to take towards developing such a plan since interim authorisation was granted.

Public benefits

- 4.12. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that in considering public benefits:

...we would not wish to rule out of consideration any argument coming within the widest possible conception of public benefit. This we see as anything of value to the community generally, any contribution to the aims pursued by society including as

*one of its principal elements ... the achievement of the economic goals of efficiency and progress.*⁷

4.13. The ACCC has considered the following public benefits:

- developing interim solutions
- the increased potential for soft plastics to be diverted from landfill
- clear and consistent messaging for consumers.

4.14. As a condition of the interim authorisation, the Participants were required to submit a report to the ACCC on the occurrence of certain Reporting Events, including the elapsing of 3 months from the date of the conditional interim authorisation (the **Progress Report**). The Progress Report notes that, since the Interim Authorisation was granted, the Soft Plastics Taskforce has met regularly to identify and evaluate Short-term Solutions in light of the suspension of REDcycle's soft plastics recovery program.⁸

4.15. The Progress Report identifies that, since the Soft Plastics Taskforce's first meeting on 9 December 2022, the Soft Plastics Taskforce and its members have worked through a Taskforce workplan, focusing primarily on the following activities:⁹

- a) Information gathering: undertaking detailed factual investigations into existing and future capabilities in Australia to recycle soft plastics, including with the assistance of government representatives who were able to share data and insights with the Soft Plastics Taskforce.
- b) Evaluation of Short-term solutions: investigating and evaluating a range of Short-term Solutions (being solutions intended to be implemented within 12 months of the date of a final authorisation decision by the ACCC) including export options, existing local processing capabilities, developing or accelerating new local processing facilities and the establishment of a new stewardship program. As part of this exercise, the Soft Plastics Taskforce and/or its members met with a number of local recyclers and processors to understand and corroborate their current and projected domestic soft plastic recycling capability.
 - i. The Soft Plastics Taskforce also consulted a number of international recyclers on chemical recycling options that could potentially form part of a Short-Term Solution to recommence a recycling program, to complement domestic recycling capabilities, until domestic recycling capacity reaches sufficient maturity to process material.
 - ii. The Soft Plastics Taskforce has also spent considerable time fielding a significant number of general enquiries relating to unproven and underdeveloped soft plastics capabilities.

⁷ Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677.

⁸ Interim Authorisation Decision AA1000627 – Condition 2, Progress Report 27 February 2023 from Participant Supermarkets, <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/coles-group-on-behalf-of-itself-and-participating-supermarkets-2>

⁹ Interim Authorisation Decision AA1000627 – Condition 2, Progress Report 27 February 2023 from Participant Supermarkets, <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/coles-group-on-behalf-of-itself-and-participating-supermarkets-2>

- c) Meeting with industry stakeholders: meeting with industry stakeholders such as the Australian Packaging Covenant Organisation (**APCO**) and the Australian Food and Grocery Council (**AFGC**) to understand the status of work on longer term solutions that were already underway when the REDcycle program was suspended to assess whether existing analysis and/or planning could inform or be leveraged for the purpose of developing a Short-term Solution as soon as possible.
- d) Environmental Regulators: receiving briefings from the Victorian and New South Wales Environmental Protection Agencies (**EPAs**) on the extent and location of the stockpiles and risks associated with existing soft plastics stockpiles that were collected by REDcycle and stored improperly across various locations across several states. The supermarket members of the Soft Plastics Taskforce have been working collaboratively with the EPAs in relevant states on a plan that aims to avoid REDcycle's stockpiled soft plastics unnecessarily going into landfill.
- e) Roadmap: developing a "Roadmap to Recovery" (**Roadmap**)¹⁰ for the resumption of soft plastic collection, processing and recycling in Australia, including the minimum requirements and safeguards that would be required to ensure that there is no single-point of dependency for recovery and processing of soft plastics, as well as determining the collection and transport logistics required to support a sustainable model, which will likely require consultation with waste service and transport providers.
- f) Stockpile management: in accordance with the interim authorisation, Coles and Woolworths made an offer to REDcycle to take control of its stockpiled soft plastic and provide safe storage of the material while recycling solutions are explored. This offer was welcomed by federal and state governments. REDcycle accepted the offer and Coles and Woolworths are commencing work on a safe storage and stockpile management plan.

4.16. The ACCC's assessment of public benefits is informed by submissions from the Participants and interested parties, Minutes of Taskforce meetings, the 3-month Progress Report and the Roadmap and from its own observations of the coordination under the interim authorisation.

Developing interim solutions

Participants' submissions

4.17. The Participants note that the challenges in relation to soft plastics recycling are complex and multi-faceted, involving a global downturn in market demand for soft plastic products and an oversupply of reclaimed plastics in Australia. The Participants submit that these are not challenges that any of the Participants or REDcycle can solve alone.

4.18. The Participants submit that the Proposed Conduct will enable government and industry experts to workshop and innovate Interim Solutions to the current soft packaging crisis in an open, frank and collaborative manner that would not be possible without the protection of ACCC authorisation.

¹⁰ Soft Plastics Taskforce, Roadmap to Restart (7 March 2023). Available here: <https://www.aldiunpacked.com.au/storage/2023/03/Soft-Plastics-Taskforce-Roadmap-20230307.pdf>.

4.19. The Participants also submit that, if they are permitted to work together on Interim Solutions to the soft plastic crisis, they are likely to develop solutions in a more timely and effective manner than if they were required to act independently.

ACCC assessment

4.20. To assist in its assessment, the ACCC has considered the effects of the Interim Authorised Conduct that has been occurring under the interim authorisation to date.

4.21. The Soft Plastics Taskforce has met regularly since 1 December 2022. The ACCC understands other occasional invited guests have included REDcycle, the Australian Food and Grocery Council, the Australian Packaging Covenant Organisation, domestic and international recyclers and processors of soft plastics and consultants who have joined various meetings to present plans and findings.¹¹

4.22. The Participants provided meeting minutes of the Soft Plastics Taskforce to the ACCC. In addition to the Progress Report, these minutes have provided the ACCC with a contemporaneous understanding of conversations that have taken place during the Soft Plastics Taskforce meetings. The ACCC acknowledges the steps the Participants have been taking to date to work towards developing solutions, including by consulting with stakeholders, exploring local and international possibilities and developing the Roadmap outlining next steps.

4.23. The ACCC notes that, by enabling the Participants to collaborate under the interim authorisation, Coles and Woolworths were able to make an offer to REDcycle to assume control of the existing soft plastics stockpiles so they can be stored safely while the retailers explore recycling options. The Participants submit that the storage and management of the stockpiled material will be paid for from a Soft Plastics Recycling Contribution Fund to which Coles and Woolworths are each to provide an initial multi-million-dollar contribution. Coles and Woolworths have stated that they welcome contributions from brand and packaging members of the REDcycle program, whose products have been collected by the scheme.

4.24. The ACCC notes that the Participants via the Taskforce have achieved a number of good outcomes, such as offering to take control of the stockpile from REDcycle and are continuing to develop interim solutions.

4.25. The ACCC accepts that under the interim authorisation the Participants were able to collaborate in relation to the making of the offer to REDcycle and determining the funding for that offer, which demonstrates that facilitating collaboration between the Participants is likely to enable them to take steps to develop interim solutions. The Proposed Conduct is likely to result in existing recycling capacity within Australia being used most efficiently so that the maximum volume of recycling can occur at the lowest cost. Without the Proposed Conduct, it is more likely that in-store collection would not resume, and existing recycling capacity would go unused, at least in the short term.

4.26. The ACCC considers the urgent development of interim solutions is particularly important given the company behind the REDcycle program has been declared insolvent. The ACCC considers that collaboration as part of the Soft Plastics Taskforce has and would continue to provide an important opportunity for industry and government stakeholders to workshop a variety of solutions relating to soft plastics recycling. The ACCC agrees that a cohesive approach is necessary to tackle the recycling challenges for soft plastics, and that collaboration as part of the Soft Plastics Taskforce is likely to facilitate this, resulting in an increased likelihood of a more

¹¹ See Soft Plastics Taskforce, Roadmap to Restart (7 March 2023). Available here: <https://www.aldiunpacked.com.au/storage/2023/03/Soft-Plastics-Taskforce-Roadmap-20230307.pdf>.

efficient and comprehensive solution being developed and implemented which will constitute a substantial public benefit.

4.27. However, the ACCC considers that this public benefit can be achieved through authorisation of a narrower description of conduct that specifically references solutions consistent with the Roadmap. Given the substantial work undertaken to date by the Soft Plastics Taskforce, and acknowledging that the ACCC's assessment is based upon the content of the Roadmap, the ACCC considers that authorising collaboration in respect of solutions consistent with the Roadmap is likely to lead to a more innovative, effective solution that can be implemented in a more timely fashion when compared to the situation without this conduct. By narrowing the conduct that is proposed to be authorised by reference to the Roadmap, the ACCC considers there would be greater clarity around the scope of the conduct that is proposed to be authorised, and greater confidence that the public benefit in relation to developing and implementing an innovative solution is likely to be achieved.

Increased potential to divert soft plastics from landfill

Participants' submissions

4.28. The Participants submit that the implementation of an alternative soft plastics recovery program, established by two or more Participants in the context of the Soft Plastics Taskforce, would have the significant environmental benefit of diverting those household soft plastics from landfill.

4.29. Within the Progress Report and the Roadmap, the Soft Plastics Taskforce has noted that it remains committed to evaluating and progressing solutions through the Soft Plastics Taskforce with a view to facilitating, as soon as is reasonably possible, a restart to post-consumer soft plastics recovery in Australia. While the Soft Plastics Taskforce remains open to all viable recycling partners and models, it agrees that landfilling is not a desirable solution for the management of the existing stockpiles and that this should be avoided where this is achievable.

4.30. In support of this, the Roadmap outlines that the Soft Plastics Taskforce's core objectives are to:

- resume access to soft plastics recycling through Australian supermarkets
- restore public confidence in soft plastics recycling
- maximise the recovery of soft plastics.

4.31. The Progress Report and the Roadmap detail the Participants' progress in considering ways in which the existing stockpile could be diverted from landfill and possibilities for recommencing collections, to divert future soft plastic from landfill. In support of these discussions, the Participants submit that the Soft Plastics Taskforce has been exploring domestic and international options. The Participants submit that the Soft Plastics Taskforce has received input from the Australian Packaging Covenant Organisation, government and industry to help in creating a scalable solution through multiple material recovery channels that can increase overall recovery rates and, when coupled with the emerging recycling technologies and capacity, can facilitate the circularity of soft plastics into the future.

4.32. The Participants have identified the following specific steps and proposed timelines for the recommencement of in-store collections and processing:

Table 1: Instore collection recommencement steps¹²

Instore collection Recommencement Steps	2023												2024					
	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J
Processor engagement & site visits	Initial Activity	Initial Activity	Initial Activity															
Finalisation of a stockpile remediation action plan which will include safety risk assessments, safe storage and development of processing options			Initial Activity	Initial Activity														
Implementation of stockpile remediation action plan including management of storage arrangements and processing of stockpiles			Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity					
Completion of domestic and offshore capacity assessment, preparation of a preferred solution shortlist including capacities by geography and expected timeframes			Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	
Development of contract terms and establishment of service level agreements, audit process			Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	
Ongoing launch strategy development based on geographic/volume metrics. Finalising collection and end to end management approach in readiness for pilot			Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	
Development of high level principles cost-sharing model with brands and other retailers			Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	
Negotiate contracts for arrangements with processor and logistics partners*							Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	
Target first pilot launch for recommencement of soft plastic collection and processing*												Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	Initial Activity	
Target expansion of program from pilot area to additional geographical area/s*																	Initial Activity	

*(subject to sufficient progress in managing stockpiles and available processing capacity)

Initial Activity

Ongoing Activity

4.33. While the Roadmap indicates the first pilot for recommenced in-store soft plastics is currently targeted to begin in late 2023, the Roadmap also notes that this timeline could be affected by current local processing capacity and the need to dedicate local processing capacity to the existing stockpiles prior.

ACCC assessment

4.34. The ACCC recognises that, as a result of being able to engage in the Interim Authorised Conduct, the Participants have been able to take steps toward developing a plan to divert the existing stockpile and future soft plastics from landfill. The ACCC considers it likely that the development of this plan would not have been possible without the interim authorisation facilitating constructive and informative conversations between the Participants.

4.35. The ACCC recognises the complexity involved in recommencing collection and that the information gathering that has already been done by the Soft Plastics Taskforce could result in existing recycling capacity being used most efficiently as a result of coordination between the Participants. To the extent the Proposed Conduct enables the Participants to plan for and coordinate the resumption of an in-store collections and recycling program more quickly than if this was left to individual actions by the Participants, the ACCC considers that this is likely to result in a public benefit in terms of increased potential for diversion of soft plastics from landfill, even if there are some variables which may inevitably delay the resumption of any such program, or mean that some of the stockpiles may end up in landfill.

¹² Soft Plastics Taskforce, *Roadmap to Restart*, 2023 at p 19.

- 4.36. The ACCC also recognises that the Proposed Conduct has enabled the Participants to incorporate planned recycling options for the stockpile into the Roadmap to potentially divert it from landfill. The Participants, with the assistance of the Department, are continuing to explore exporting the stockpile as an option, which if successful, will allow the pilot resumption of collections to occur sooner. This option is subject to a number of factors including government approval and contamination issues. This could have the effect of diverting more soft plastics from landfill if the Participants can continue to collaborate in relation to the management and recycling of the soft plastics collected in the future.
- 4.37. In addition, the ACCC considers it is likely that interim solutions formulated by the Soft Plastics Taskforce are likely to be more cost-effective and broader in scope than if each Participant were required to formulate their own individual solutions. For example, joint procurement is likely to be more efficient and have less transaction costs involved than ad hoc procurement by individual Participants. The ACCC considers that the lower such costs are, the potential to recycle larger volumes is likely to increase, which in turn could increase the potential for reducing the amount of soft plastic going to landfill.
- 4.38. The ACCC considers that the collaboration between the Participants in relation to the Roadmap is likely to result in the maximum volume of soft plastics being recycled in the most efficient way. Further, ongoing collaboration as facilitated by the Proposed Conduct is likely to enable the Participants to take the further necessary steps together to ensure that the objectives of the Soft Plastics Taskforce are achieved, including to increase the potential to divert some soft plastics from landfill.

Clear and consistent messaging for consumers

Participants' submissions

- 4.39. The Participants submit that, by facilitating the urgent establishment and effective operation of the Soft Plastics Taskforce, the Proposed Conduct will assist in alleviating community concern about the stockpiles and the suspension of the REDcycle program.
- 4.40. The Participants submit that facilitating collaboration by government and industry experts across the packaging supply chain will instil greater confidence in the community that the soft plastics recycling crisis is being managed appropriately and that Interim Solutions are being explored in detail by parties who know and understand the recycled plastics supply chain.
- 4.41. The Participants also submit that collaboration by the Participants will also facilitate clear and consistent messaging to the public and other stakeholders such as local councils and environmental organisations about the steps being taken to address the immediate effects of the suspension of REDcycle's program.

ACCC assessment

- 4.42. The ACCC considers that the formation of the Soft Plastics Taskforce has helped provide clear and consistent messaging for consumers about the steps taken to date to develop a plan to address the existing stockpiles.
- 4.43. The Participants also have submitted minutes to the ACCC for meetings of the Soft Plastics Taskforce which summarise the topics discussed in those meetings, provided the Progress Report, and developed the Roadmap. Non-confidential versions of each of these documents are publicly available on the ACCC's [public register](#). The ACCC considers that this consistent and regular reporting has facilitated transparency and accountability.

- 4.44. The joint release of the Roadmap and associated media release in particular by the Participants was facilitated by the interim authorisation and provided consistent, united messaging to the community.
- 4.45. The Minister for the Environment and Water acknowledged that the announcement by Coles and Woolworths to responsibly manage REDcycle's stockpiles was a big step forward and would mean a lot to the Australians who took the time to return their plastics for recycling, noting their efforts have not gone to waste.¹³
- 4.46. The ACCC acknowledges the public benefit in consumers receiving clear and consistent messaging in respect of soft plastics recycling in Australia given the suspension of the REDcycle program.
- 4.47. However, the ACCC considers that narrowing the conduct that is proposed to be authorised to only include communications about the Roadmap is necessary to provide sufficient clarity on what conduct regarding communications is authorised, and to ensure that the public benefit of clear and consistent messaging regarding the progress of the Soft Plastics Taskforce arises.
- 4.48. As currently drafted, the Proposed Conduct does not provide sufficient clarity about the nature and content of communications as it broadly describes communications in relation to soft plastics which have been collected or how customers or the public can handle soft plastics going forward. The ACCC has narrowed the scope of communications that are proposed to be authorised to communications agreed between the Participants in respect of the Roadmap. With this narrower form of conduct that is proposed to be authorised, the ACCC is satisfied that the public benefit in clear and consistent messaging is likely to arise.

ACCC conclusion on public benefit

- 4.49. The ACCC considers that the narrower form of conduct proposed to be authorised as described above, which in general terms is limited to the Roadmap, is likely to result in significant public benefits from:
- facilitating the development of interim solutions to soft plastic recycling.
 - the increased potential to divert some soft plastics from landfill through collaborative efforts.
 - providing clear and consistent messaging for consumers by enabling collaborative, streamlined and united public messaging.

Public detriments

- 4.50. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.¹⁴

¹³ The Hon Tanya Plibersek, MP, Minister for the Environment and Water, [Industry steps up on soft plastics recycling](#) [media release], Department of Climate Change, Energy, the Environment and Water, accessed on 17 March 2023.

¹⁴ Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

4.51. The Participants submit that the Proposed Conduct is unlikely to result in any public detriments for the following reasons:

- The Proposed Conduct is limited to Interim Solutions as defined above in paragraph 2.7 and limited to a period of 12 months.
- The Proposed Conduct will not detract from longer term solutions such as increased kerbside recycling by local councils or the development of additional soft plastics recycling capacity.
- There is a high level of supervision and oversight including that Proposed Conduct is restricted to conduct occurring at, in preparation for or arising out of a meeting of the Soft Plastics Taskforce, the Department chairing or attending meetings and Minutes provided to the ACCC.
- No Participant is prevented from exploring or developing their own soft plastics recycling capacity and any Participant can opt out.
- The Proposed Conduct does not change the Participants' incentives to compete during or after the period of authorisation and that the conduct does not relate in any way to the price or supply of products supplied by any of the Participants in competition with one another.

4.52. The ACCC has considered the following public detriments:

- increased barriers to other industry participants
- reduced competition for the supply of transport, storage and recycling services for soft plastics
- potential for the coordination to facilitate unauthorised conduct between the Participants.

Increased barriers to other industry participants

4.53. The ACCC has considered whether any solution, both in relation to the management of the stockpiled material and the recommencement of any in-store collections and recycling program, formed by the Participants may affect the ability of others to compete for the acquisition of recycling, manufacturing, processing or logistics services for soft plastics. The ACCC has also considered whether any solution that is formed could impact other markets (for example, an impact on grocery retailing as a result of exclusion from any recycling program).

4.54. The ACCC considers there are a number of ways barriers to entry for other industry participants could arise. One example where this could occur is where the Participants enter into an agreement with a business that restricts that business' ability to deal with others. For example, if the Participants were to enter into an agreement that a third party soft plastics recycler was not to supply soft plastics recycling services to the Participants' competitors seeking to acquire those services.

4.55. Barriers to entry could also arise without exclusive arrangements, for example by virtue of the volume of soft plastics managed by the Soft Plastics Taskforce participants taking up all available capacity for soft plastic recycling, manufacturing, processing or logistics service providers, even if temporarily, so that other businesses looking to acquire those services are unable to do so.

4.56. There is also a potential risk that other industry participants including the Program Partners, may not be able to gain access to solutions proposed by the Participants. The effect of exclusion is that customers may decide to frequent the Participants'

stores more than they might stores that do not offer a soft plastic recycling solution, out of convenience. Offering a soft plastics recycling solution as a service to customers could encourage customers to drop off their soft plastics at that store and shop at that store, rather than visit another store to shop.

- 4.57. Exclusion from any solution developed by the Participants would likely require the excluded industry participant to develop its own program to collect, store and arrange recycling soft plastics or seek other alternatives to participate in soft plastic recycling.
- 4.58. The Roadmap notes that, subject to authorisation, the Soft Plastics Taskforce will consider funding models to support a new soft plastics recycling scheme it plans to roll out.¹⁵ However, no details are available yet as to the form and structure of the scheme.
- 4.59. The Roadmap further notes that the defunct REDcycle program provided a general public service accepting soft plastics from any producer, regardless of their involvement with the REDcycle program. It notes this allowed traditional and online retailers that did not financially contribute to the program to benefit from supermarkets' management of their waste streams. The Soft Plastics Taskforce noted that as it continues its efforts to establish a new collection system, its engagement will expand to the broader groups who share the responsibility for the creation and stewardship of soft plastic packaging, from other grocery retailers and other retail and e-commerce outlets to consumer brands and manufacturers. It is noted that extensive engagement will take place on the model including with other retailers and manufacturers, both directly and through the Australian Food Grocery Council, the Australian Retailers Association and the National Retail Association as well with the Australian Packaging Covenant Organisation, federal and state and territory governments.
- 4.60. The ACCC considers that the likelihood and extent of any competitive harm that could arise as a result of increased barriers to other industry participants will be limited by the proposed 12-month authorisation period, as well as by the limitation of the conduct proposed to be authorised by reference to the Roadmap.
- 4.61. The ACCC also notes that a variety of longer-term solutions are being developed which will increase the ability for consumers to recycle and create wider access to soft plastics recycling across Australia. These include:
 - Australian Food and Grocery Councils' proposed National Plastics Recycling Scheme which outlines and trials a new kerbside model to collect household soft plastics and is running independent small scale trials across six Local Government Areas across Victoria, New South Wales and South Australia from November 2022 to March 2023. This has been developed with funding support from the Australian Government's National Product Stewardship Investment Fund.¹⁶
 - The Victorian Government has announced a state-wide rollout of kerbside soft plastics recycling, pending the success of the National Plastics Recycling Scheme trial.
 - The Australian Packaging Covenant Organisation is convening a Flexible Plastics Materials Stewardship Committee (**Stewardship Committee**), intended to play a convening and advisory role in the delivery of legitimate and sustainable pathways to effective soft plastics recycling and circularity. The

¹⁵ Soft Plastics Taskforce [Roadmap to Restart](#), 2023 at p 17.

¹⁶ Households in trial areas receive specially produced kits contain organ recycling bags, which soft plastics are placed into, before the bag is sealed and placed in the yellow-led kerbside recycling bin. These bags are then extracted from the other waste in the yellow bin and sent for sorting and processing.

Stewardship Committee's charter states that in 2023 it will focus on developing a strategic 3-5 year roadmap representing both recycling/reprocessing and collection for soft plastics, based on a shared vision of delivering the National Packaging Targets and working towards a circular economy for packaging.

4.62. The ACCC considers that a narrowing of the conduct proposed to be authorised is required to limit and reduce any impacts on competition as a result of potential for increased barriers to other industry participants. In particular, the ACCC considers that potential recycling solutions considered, developed or implemented, in respect of existing stockpiles and any restart to collections should be consistent with the Roadmap. By limiting the conduct proposed to be authorised in this way, the ACCC is satisfied that this potential public detriment is less likely to arise as there is increased certainty as to the limited scope of the conduct proposed to be authorised.

Reduced competition for the supply of transport, storage and recycling services for soft plastics

4.63. The ACCC has considered whether the Participants acting in collaboration may reduce competition between service providers for the supply of transport, storage and recycling of soft plastics. Whilst there are no details available as yet in relation to the contracts or arrangements that will form part of the scheme, the conduct essentially allows for the joint tendering of transport, storage and recycling services.

4.64. Regarding solutions for the stockpile, it is acknowledged that this likely relates to a one-off provision of services until the stockpile is resolved and so any competitive harm is limited in that respect.

4.65. With regard to the short-term solution for transport, storage and recycling of future collected soft plastics, there is a risk that joint tendering by the Participants for services may potentially reduce competition and lead to less independent rivalry between the Participants for such services. The ACCC considers that it likely that the Participants will have an incentive to promote competition for these services as this is likely to reduce their costs.

4.66. The ACCC ultimately considers that this is unlikely to give rise to significant public detriment given the benefits that are likely to be obtained by the Participants coordinating to develop interim solutions to soft plastics recycling and that any public detriment arising from this would likely be outweighed by the public benefits generated by the coordination.

4.67. In respect of transport and storage services, the ACCC considers that this is likely to be a low risk, given these services form part of a wider general market for transport and storage services.

4.68. In respect of recycling services, the ACCC considers that given the current limited capacity over the next 12 months, any detriment is outweighed by the benefit of ensuring such capacity is utilised efficiently.

4.69. The ACCC also considers that the short period for which authorisation is sought (12 months) serves to limit the likelihood and extent of competitive harm in markets for transport, storage and recycling services in Australia.

4.70. However, as with the potential public detriment relating to increased barriers to other industry participants, the ACCC considers that a narrowing of the conduct proposed to be authorised is required to limit any short or longer-term impacts on competition for the supply of transport, storage and recycling services for soft plastics. The ACCC considers this will be achieved by making it clear that any coordination in respect of

any solutions not already contemplated under the Roadmap is not proposed to be protected.

Potential to facilitate anticompetitive conduct

- 4.71. The ACCC has considered whether there is the potential for collaboration and coordination to extend beyond the scope of the conduct that is authorised, and that the conduct proposed to be authorised could therefore facilitate anticompetitive conduct.
- 4.72. The ACCC considers that discussions occurring at, in preparation for, or arising out of Soft Plastics Taskforce meetings may give rise to the risk of the Participants and/or Program Partners discussing other matters, which could constitute anticompetitive conduct.
- 4.73. The ACCC notes that no concerns about such collusion have been raised during the period the interim authorisation has applied. The ACCC also notes that such conduct may breach the Act, and would not be protected under the proposed authorisation.
- 4.74. The ACCC considers that narrowing the conduct proposed to be authorised by reference to the Roadmap will ensure the conduct authorised is sufficiently clear and transparent to Participants and Program Partners and that this will assist in reducing the risk of anticompetitive conduct being facilitated.
- 4.75. The ACCC also considers that these risks will be further mitigated by the proposed reporting conditions as outlined at paragraph 5.8 which would continue to aid transparency and accountability, in addition to the ongoing oversight and presence of the Department at the Soft Plastics Taskforce meetings.

ACCC conclusion on public detriment

- 4.76. The ACCC considers that the Proposed Conduct is likely to have limited public detriments in the form of reduced competition for the supply of transport, storage and recycling services for soft plastics and by increasing barriers to other industry participants, including due to the proposed authorisation period being limited to 12 months.
- 4.77. The ACCC considers there is a risk the Proposed Conduct could result in unauthorised coordinated conduct between the Participants, which may affect competition in other markets, but notes that no concerns about unauthorised conduct under the interim authorisation have been raised to date and that such conduct would not be protected from prosecution.
- 4.78. However, the ACCC considers that by narrowing the conduct proposed to be authorised by reference to the Roadmap, the likelihood of these potential detriments arising, and their extent, will be further reduced. By reducing the scope of the conduct proposed to be authorised in this way, the ACCC is satisfied that the likely impacts on competition for transport, storage and recycling services and any increased barriers to industry participants will not arise, or will arise to a lesser extent, because there is more clarity and limitations on what the conduct proposed to be authorised will involve.
- 4.79. The ACCC also considers conditions are necessary, including conditions additional to those imposed on the interim authorisation, to ensure that only short-term solutions by reference to the Roadmap are implemented and that there is sufficient transparency and accountability.
- 4.80. The conduct the ACCC proposes to authorise (defined as the **Proposed Authorised Conduct**), and the proposed conditions are set out at paragraphs 5.7- 5.8 below.

Balance of public benefit and detriment

4.81. The ACCC considers that the Proposed Authorised Conduct is likely to result in significant public benefits in the form of:

- facilitating the development of interim solutions to soft plastic recycling.
- the increased potential to divert some soft plastics from landfill through collaborative efforts.
- alleviating community concerns by enabling consistent and united public messaging.

4.82. The ACCC considers that the Proposed Authorised Conduct is likely to have limited public detriments in the form of reduced competition for the supply of transport, storage and recycling services for soft plastics or in respect of increased barriers to entry.

4.83. The ACCC also considers that any competitive harm is likely to be outweighed by the benefit of having the Participants resource and fund a short term solution with a view to the resumption of soft plastic collection and responsibly managing existing stockpiles. The ACCC considers that a failure to develop any short term solution, which is more likely without the Proposed Authorised Conduct, will lead to a lesser public benefit due to the likely delay to the resumption of any in-store collection of soft plastics for recycling in Australia, and responsible management of the existing stockpiles in a timely fashion.

4.84. The ACCC considers that narrowing the conduct proposed to be authorised (i.e., confining it to the Proposed Authorised Conduct), and specifying conditions, is required to further reduce the risk and extent of public detriments likely to arise including in relation to communications to consumers.

4.85. With the limitation of the Proposed Authorised Conduct, and by specifying the conditions in paragraph 5.8, the ACCC is satisfied that the Proposed Authorised Conduct is likely to result in a public benefit and that this public benefit would outweigh any likely detriments to the public from that conduct.

Length of authorisation

4.86. The Act allows the ACCC to grant authorisation for a limited period of time.¹⁷ This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.

4.87. In this instance, the Participants seek authorisation for 12 months from the date of any final determination made by the ACCC.

4.88. The ACCC has considered the Interim Authorised Conduct under the interim authorisation and the progress the Soft Plastics Taskforce has been able to make to date under that interim authorisation. The ACCC considers that the Participants have been consistent and thorough in adhering to the reporting conditions under that interim authorisation and notes that the Roadmap suggests that the Soft Plastics Taskforce should be well on its way to developing and implementing a plan for recommencement by the time a 12 month authorisation would expire.

¹⁷ Subsection 91(1) of the Act.

- 4.89. The Participants submit that the Proposed Conduct under the sought authorisation is limited to the exploration and development of immediate solutions to the suspension of the REDcycle program pending development of a longer term solution. The Participants submit that the Proposed Conduct is limited to Interim Solutions, being solutions for soft plastics collections, processing or management that are intended to be implemented in a period of 12 months from the date of a final determination by the ACCC.
- 4.90. The ACCC accepts that granting authorisation for the 12 months will enable the Participants to take important steps to achieving an interim solution.

Conditions

- 4.91. The ACCC may specify conditions in an authorisation. The legal protection provided by the authorisation does not apply if any of the conditions are not complied with.¹⁸
- 4.92. The ACCC may specify conditions in circumstances including where, although the relevant public benefit test is met, without the conditions the ACCC would not be prepared to exercise its discretion in favour of the authorisation.¹⁹
- 4.93. The ACCC considers that the reporting provided by the Participants pursuant to conditions on the interim authorisation have provided a level of oversight and accountability of the steps taken by the Soft Plastics Taskforce. The ACCC considers that a level of ongoing oversight and accountability will be necessary and beneficial moving forward. The ACCC proposes similar conditions to those specified in the interim authorisation, subject to amendments in respect of the frequency at which minutes of Soft Plastic Taskforce meetings must be provided to the ACCC, and a progress report detailing solutions identified and implemented by the Participants and Program Partners.
- 4.94. To address concerns regarding the potential for unauthorised conduct in respect of longer term solutions which may have impacts on competition or barriers to entry (as described in paragraphs 4.53-4.62 above), the ACCC also proposes to specify a condition requiring any contracts, arrangements or understandings entered into in reliance on the proposed authorisation to terminate on expiry or revocation of the proposed authorisation (unless authorised to continue under another authorisation granted by the ACCC).
- 4.95. For these reasons, the ACCC proposes to grant authorisation with conditions (as outlined at paragraph 5.8).

5. Draft determination

The application

- 5.1. On 16 November 2022, the Participants lodged application AA100627 with the ACCC, seeking authorisation under subsection 88(1) of the Act.
- 5.2. The Participants seek authorisation for Proposed Conduct as described in paragraphs 2.6-2.8. Subsection 90A(1) of the Act requires that before determining an application for authorisation, the ACCC shall prepare a draft determination.

¹⁸ Subsection 88(3) of the Act.

¹⁹ Application by Medicines Australia Inc (2007) ATPR 42-164 at [133].

The authorisation test

- 5.3. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the Proposed Conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the Proposed Conduct.
- 5.4. For the reasons outlined in this draft determination, the ACCC is satisfied, in all the circumstances, that the Proposed Authorised Conduct, with conditions, would be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Proposed Conduct, including any lessening of competition.
- 5.5. Accordingly, the ACCC proposes to grant authorisation with conditions for the **Proposed Authorised Conduct** as detailed below.

Conduct which the ACCC proposes to authorise

- 5.6. The ACCC proposes to grant authorisation AA1000627, with conditions, to the Participants and Program Partners for the conduct specified at paragraph 5.7 below.
- 5.7. The ACCC is proposing to grant authorisation to enable the Participants and any Program Partners to propose, discuss, enter into or give effect to any contract, arrangement or understanding between them, or engage in any conduct, that:
 - a) both:
 - (i) occurs at, in preparation for, or arises out of, a meeting of the Soft Plastics Taskforce, and
 - (ii) has the purpose of considering, developing or implementing solutions that are consistent with the Soft Plastic Taskforce's Roadmap to Restart dated 7 March 2023; or
 - b) constitutes planning or agreeing on communications to customers or to the public in respect of the Soft Plastic Taskforce's Roadmap to Restart dated 7 March 2023,(collectively, the **Proposed Authorised Conduct**).
- 5.8. The ACCC proposes to grant authorisation with the following conditions:

Condition 1 – Provision of information: The Participants and any Program Partners who become involved in the Proposed Authorised Conduct must promptly provide any further information about the Proposed Authorised Conduct or compliance with the conditions imposed by this authorisation that the ACCC requests from time to time.

Condition 2 – Progress reporting requirements: The Participants, either jointly or individually, must submit a report to the ACCC (including a non-confidential version for publication on the ACCC's public register where appropriate) on the occurrence of each Reporting Event identified in the table below, with that report to contain the relevant Report Content identified in the following table.

Reporting Event	Report Content
<p>The elapsing of 3, 6 and 9 months from the commencement of this authorisation</p>	<p>Detailed description of the progress made by Participants and any Program Partners towards implementing the Roadmap to Restart dated 7 March 2023</p> <p>AND</p> <p>Meeting minutes of each meeting of the Soft Plastics Taskforce (including a non-confidential version of the minutes for publication on the ACCC’s public register where appropriate) which occurred within the last 3 months which summarises the topics discussed at each meeting, with those minutes to include:</p> <ul style="list-style-type: none"> a) a comprehensive explanation of, including the parties to and relevant dates, for all decisions, contracts, arrangements or understandings formed pursuant to this authorisation, and b) the topics discussed at the meetings where those decisions, contracts, arrangements or understandings were formed, and/or the material content of those contracts, arrangements, understandings or decisions, and any other key details.
<p>Any Participant forming the opinion there is no solution where the implementation of which can be commenced within 12 months from the date of this authorisation</p>	<p>Detailed description(s) of potential solutions considered and implemented by Participants and any Program Partners, and an explanation of why each would not be a feasible solution and/or why the implementation of each could not be commenced within 12 months from the date of this conditional authorisation.</p>

Condition 3 – Termination of arrangements upon expiry of authorisation: all contracts, arrangements or understandings entered into in reliance upon this authorisation must immediately terminate upon the expiry or revocation of this authorisation, unless the Participants are granted a further authorisation pursuant to section 88(1) of the Act which authorises giving effect to those contracts, arrangements or understandings.

5.9. The ACCC may authorise the ACCC Competition Exemptions Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision-making function

under these conditions on its behalf and that authorisation may be subject to any conditions which the ACCC may impose.

5.10. Authorisation is proposed to be granted in respect of Division 1 of Part IV of the Act, and sections 45, 46 and 47 of the Act.

5.11. The ACCC proposes to grant authorisation for 12 months.

5.12. This draft determination is made on 30 March 2023.

6. Next steps

6.1. The ACCC now invites submissions in response to this draft determination. In addition, consistent with section 90A of the Act, the applicant or an interested party may request that the ACCC hold a conference to discuss the draft determination.