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Our ref: AA1000477

Contact officer: Will Sommers/Theo Kelly

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12 May 2020

Dear sir/madam

Coles Group on behalf of itself and participating supermarkets application for authorisation – AA1000477 – interested party consultation regarding proposed amendments to interim authorisation

On 23 March 2020, the Australian Competition and Consumer Commission (the **ACCC**) granted interim authorisation to Coles Group on behalf of itself, Woolworths, ALDI and Metcash (the **Participating Supermarkets**). On 26 March 2020, the ACCC published a further Statement of Reasons revoking the ACCC's interim authorisation decision of 23 March 2020 and replacing it with an amended conditional interim authorisation. The 26 March 2020 Statement of Reasons clarifies the application process for other parties who wish to be covered by the conditional interim authorisation.

On Friday 8 May 2020 Coles Group requested a narrowing of the scope of the proposed conduct in its application and a corresponding narrowing of the conduct permitted under the current conditional interim authorisation. The latter is proposed to be achieved by revoking the current conditional interim authorisation and replacing it with a further amended conditional interim authorisation.

We are writing to you to invite your comments on the proposed amendment to the scope of the current conditional interim authorisation because you are a participating grocery retailer under it.

We request submissions by **Friday 22 May 2020**.

You are welcome to pass this letter on to others who may wish to make submissions.

The proposed amendments to the current conditional interim authorisation

The current conditional interim authorisation allows participating grocery retailers to discuss, enter into or give effect to any arrangement between them relating to any of the four purposes listed in the interim authorisation relating to ensuring supply of Retail Products (as defined). This covers discussions and conduct related to the Supermarkets Taskforce, as well as discussions and conduct that occur outside of the Taskforce.

Coles and Woolworths have both advised the ACCC that they have been involved in minimal discussions outside of the Supermarkets Taskforce. Coles advises that in light of the improving public health situation and the suspension of the main Supermarkets Taskforce, it does not anticipate engaging in any discussions or conduct pursuant to the current conditional interim authorisation except through the Supermarkets Taskforce and related working groups.

Accordingly, Coles proposes that the interim authorisation be narrowed to cover discussion and cooperation arising from the Supermarkets Taskforce and its working groups only.

Authorised parties would continue to be protected if they give effect to any contracts, arrangements or understandings that were entered into within the scope of the revoked interim authorisation dated 23 March 2020 or the conditional interim authorisation dated 26 March 2020.

The wording of the amendment proposed by Coles is set out at **Attachment A**. Coles' letter to us setting out its proposal is available on the [public register](#).

Submissions

We seek your views on the proposed amendment to the scope of the interim authorisation. In particular, we seek your views on the following issues:

1. Whether your organisation has been relying on and is intending to continue relying on the current conditional interim authorisation to allow discussions and conduct outside of the Supermarkets Taskforce, and if so, the nature of the relevant discussions and conduct.
2. To what extent should the authorisation seek to cover future changes to the structure of the Supermarkets Taskforce and working groups, for example if it is further scaled back or combined with another forum.
3. The likely effects of narrowing the current conditional interim authorisation on your organisation, and on achieving the purpose of ensuring continued and equitable supply of Retail Products generally.
4. Whether you have any comments or concerns on the wording proposed by Coles.
5. Should any other changes be made to the current conditional interim authorisation?

We are also open to receiving any comments on the Applicants' substantive application for authorisation in light of this change to the scope of the proposed conduct.

How to make a submission

Please email your submission to adjudication@accc.gov.au, with the subject 'AA1000477 – Coles Group on behalf of itself and participating supermarkets – submission'. Please contact Will Sommers or Theo Kelly on the numbers below if you wish to provide comments by phone.

Your submission **will** be placed on the ACCC's [authorisations public register](#) on the internet unless you have made a request (with reasons) for us to exclude part or all of the submission from the public register. (see [Guidelines for Excluding Information from the Public Register](#) for more information on how to make a request and how we assess requests).

This letter has been placed on the ACCC's public register. If you have any questions or wish to discuss any aspect of this matter, please do not hesitate to contact Will Sommers on (03) 9910 9444 or Theo Kelly on (02) 6243 1179.

Yours sincerely,



Kai Fu
Director
Adjudication Branch

ATTACHMENT A

The amended application for authorisation

Coles proposes that the Proposed Conduct (as defined in the Application) be varied as below.

[T]he Participating Supermarkets seek authorisation to discuss, enter into or give effect to, any arrangement between them (including with manufacturers, suppliers, transport and logistic providers), or engage in any conduct, which has the purpose of:

- i. facilitating or ensuring the acquisition and/or supply of Retail Products in Australia (especially of those Retail Products in short supply)
- ii. ensuring fairer access to Retail Products among the general public
- iii. providing greater access to Retail Products to those most in need (including the elderly and disadvantaged members of the public, such as consumers who may be too unwell to travel to the supermarket); or
- iv. facilitating access to Retail Products in remote or rural areas.

The Proposed Conduct is subject to the following additional limitation:

- a) As of [#] May 2020, the Proposed Conduct is limited to conduct that relates to, or is agreed upon in, any future meeting of the Supermarket Taskforce, the Safety of Staff and Customers Working Group or the Food Supply Working Group, as convened by the Department of Home Affairs; or
- b) Notwithstanding (a) above, the Participating Supermarkets may continue to implement any contract, arrangement or understanding previously entered into in reliance on the Interim Authorisations dated 23 and 26 March 2020.