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Our ref: AA1000477

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3 April 2020

Dear Sir/Madam

Coles Group on behalf of itself and participating supermarkets application for authorisation - AA1000477 – interested party consultation

On 20 March 2020, the Australian Competition and Consumer Commission (the **ACCC**) received an application for authorisation from Coles Group on behalf of itself, Woolworths, Aldi and Metcash (**the Applicants**).

This letter invites your views on two main issues:

1. Firstly, if you have been directly impacted by the conduct under the interim authorisation granted by the ACCC on 23 March 2020, what is your experience to date.
2. Secondly, do you have any comments on the likely public benefits and detriments, whether the ACCC should authorise the conduct for a further six months, and whether any conditions should be placed on the authorisation.

We are interested in hearing from you at any time during the ACCC's assessment process in relation to point 1. We request submissions in relation to point 2 by **Friday 1 May 2020**.

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

The application for authorisation

Broadly, the Applicants seek interim authorisation, as well as final authorisation for a period of six months from the date of the ACCC's final determination, to discuss and coordinate for the purpose of ensuring the continued supply and fair and equitable distribution of Retail Products to consumers during the COVID-19 pandemic.

The ACCC granted interim authorisation on 23 March 2020 to allow the Applicants to immediately engage in the proposed conduct. The interim authorisation allows certain other grocery retailers to seek the ACCC's approval. The ACCC expects a number of retailers will apply. An up to date list of participants will be maintained on the ACCC's public register.

Further details about the application for authorisation and interim authorisation are at **Attachment A**.

Submissions

Submissions on the coordinated conduct permitted by the interim authorisation

If you have been impacted by the coordinated conduct permitted by the interim authorisation, you are invited to make a submission to the ACCC in relation to how it has affected you. In providing this feedback, it is important to note that the authorisation permits certain

coordinated conduct by the applicants. Unilateral conduct by individual supermarkets is not relevant to the authorisation. Please therefore be clear that you are referring to coordinated conduct by the applicants following the ACCC's 23 March decision to grant interim authorisation.

In particular, we seek your views on the following issues:

1. What impact has the supermarkets' coordinated conduct had on you? How have the Applicants' dealings with you changed as a result of the interim authorisation?
2. Is the interim authorisation achieving its purpose of ensuring continued and equitable supply of Retail Products?
3. Have you identified any negative effects from coordinated conduct permitted by the interim authorisation?
4. Is the coordinated conduct permitted by the interim authorisation likely to entrench anti-competitive behaviours that continue past the end of the COVID-19 pandemic?
5. Should any changes be made to the interim authorisation?

The ACCC invites submissions on the coordinated conduct permitted by the interim authorisation any stage over the coming months.

Submissions for purposes of the draft determination

The ACCC will progress its assessment of the application for authorisation in a timely manner. The ACCC will issue a draft determination setting out its preliminary views about the public benefits, effects on competition, and public detriments likely to result from the application for authorisation.

If you wish to make submissions before the ACCC issues a draft determination (as distinct from making a submission on the conduct authorised under the interim authorisation), we will accept submissions at any time up until **Friday 1 May 2020**.

We recognise that the COVID-19 situation may be causing disruptions to your normal operations. For this reason, we are taking a flexible approach to receiving feedback on the conduct. You may wish to contact us by phone to discuss your views before this deadline.

How to make a submission

Please email your submission to adjudication@acc.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 application for authorisation

The applicants are seeking authorisation under the *Competition and Consumer Act 2010* (Cth). Authorisation would give the applicants legal protection to continue to: discuss, enter into or give effect to any arrangement between the applicants (including with manufacturers, suppliers, transport and logistics 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 in most 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.

Conduct which has the purpose of any of (i) – (iv) above includes discussing, entering into or giving effect to any arrangement, or engaging in any conduct, which has been recommended by the Supermarket Taskforce convened by the Department of Home Affairs, or the main working sub-committee of that Taskforce (both of which include a representative from the ACCC), and approved by the Minister for Home Affairs.

The applicants are seeking authorisation for a period of 6 months after the ACCC's final decision. A full copy of the application for authorisation is available on the ACCC's [authorisations public register](#).

Interim authorisation

On 23 March 2020, the ACCC granted interim authorisation to the Applicants.

On 26 March 2020, the ACCC published an updated Statement of Reasons amending the ACCC's interim authorisation decision of 23 March 2020. The amended Statement of Reasons clarifies the process for other grocery retailers who wish to be covered by the interim authorisation. The Statement of Reasons is available on the [authorisations public register](#).