

**Application for revocation and substitution
of an authorisation under s 91C(1) of the
*Competition and Consumer Act 2010 (Cth)***

Lodged by:

Coles Group Limited

on behalf of itself and other operators of supermarket chains
in Australia

Public version

24 June 2024

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1 Summary

1.1 Background

This application seeks revocation of existing ACCC authorisation AA1000627 dated 30 June 2023 (**Existing Authorisation**) and substitution with interim and final authorisation under section 91C(1) of the *Competition and Consumer Act 2010* (Cth) (**CCA**) to engage in the conduct described in section 5.2 (**Proposed Conduct**).

The application is made by Coles Group Limited (**Coles**), on behalf of:

- (a) itself and its related bodies corporate (**Coles Group**);
 - (b) Woolworths Group Limited and its related bodies corporate (**Woolworths**); and
 - (c) ALDI Stores (A Limited Partnership) (**ALDI**),
- (together, the **Participants**).

In November 2022, the Participants formed an industry taskforce to explore solutions for managing the effects of the termination of REDcycle's return-to-store, soft plastics recovery program in Australia (the **Soft Plastics Taskforce**).

Since the Existing Authorisation came into effect on 22 July 2023, the Participants have undertaken significant consolidation and relocation activities of stockpiled materials from across Australia. Approximately 11,000 tonnes of soft plastics have been relocated to secure EPA & Council approved facilities in New South Wales, Victoria and South Australia (as well as very small volumes in WA and Tasmania). Processing of these materials is underway, with completion dates dependant on how quickly expected processing capacity comes on line. Based on the Participants' best estimates, it is currently expected that all materials in New South Wales will be processed by end of December 2024 / early 2025 and all materials stored in Victoria will be processed by the end of July 2025. Other states will be processed as soon as processing capacity becomes available. Importantly, of the stockpiled materials which the Participants have sorted and relocated to secure facilities, only 4% was sent to landfill, being heavily deteriorated and/or contaminated product where recycling was not feasible.

The Participants also launched a pilot program for the recommencement of instore soft plastics collection which commenced on 7 February 2024 in 12 Victorian stores and is ongoing. As at 28 March 2024, 3,058 tonnes of soft plastic have been collected at participating stores.

The Participants, along with [REDACTED], have also engaged [REDACTED] to facilitate the establishment of a Producer Responsibility Organisation (**PRO**) to develop and manage an industry wide voluntary not for profit product stewardship scheme to underpin industry wide collections and stewardship of soft plastics, of which the Participants' instore collection program could form one part. It is anticipated that such a scheme would be developed by the PRO and may be subject to a further ACCC authorisation application at the appropriate time. However, it is unlikely that the stewardship scheme will be fully operational before the expiry of the Existing Authorisation. To ensure the Participants can continue to work together to manage and process stockpiled and collected materials and further develop the instore collection pilot program, prior to the development of a broader industry wide program, the Participants seek reauthorisation until 31 July 2025. The Participants request that any interim or final authorisation granted by the ACCC apply (in addition to the Participants) to any current or future partners in the Participants' instore soft plastics pilot program (**Program Partners**), being a class of persons within the meaning of section 88(2) of the CCA.

1.2 Application for interim authorisation

To ensure that the Participants can continue to take steps as needed to undertake the Instore Collection Recommencement Steps outlined in section 5.2, and for the reasons detailed in section 5.3, the Participants request that the ACCC grant interim authorisation prior to the expiration of the Existing Authorisation on 22 July 2024. This will ensure that stockpile remediation activities and the instore collection pilot can continue without disruption.

2 Applicant's details

2.1 Applicant

Name, address (registered office), telephone number and ACN	Contact person's name, position, telephone number and email address	Description of business activities
Coles Group Limited (ACN 004 089 936) and its related bodies corporate 800 Toorak Road Hawthorn East, VIC 3123 (03) 9829 5111	David Brewster Chief Legal & Safety Officer Coles Group Limited [REDACTED] 800 Toorak Road Hawthorn East, VIC 3123 [REDACTED]	Acquisition and retail supply of retail products through supermarkets, liquor and convenience outlets and online

2.2 Email address for service of documents in Australia

Rosannah Healy
Partner
Allens

[REDACTED]
[REDACTED]

3 Authorisation to be revoked (the Existing Authorisation)

3.1 The registration number and date of the authorisation which is to be revoked

Authorisation AA1000627 dated 30 June 2023.

3.2 Other persons and/or classes of persons who are a party to the authorisation which is to be revoked

Current parties to the Existing Authorisation are described in section 1.1 above and section 4.1 below.

3.3 The basis for seeking revocation

The Participants request that the ACCC revoke the Existing Authorisation because it is due to expire on 22 July 2024. The Participants seek to substitute in its place a new authorisation on substantially the same terms as the Existing Authorisation.

4 Authorisation to be substituted (the new authorisation)

Details of any other persons and/or classes of persons who, in addition to Coles Group, also propose to engage, or become engaged, in the Proposed Conduct and on whose behalf authorisation is sought are set out below.

4.1 Other persons who propose to engage in the Proposed Conduct

Name, address (registered office), telephone number and ACN	Contact person's name, position, telephone number and email address	Description of business activities
Woolworths Group Limited (ACN 000 014 675) and its related bodies corporate 1 Woolworths Way Bella Vista, NSW 2153 (02) 8885 000	Bill Reid Chief Legal Officer Woolworths Group Limited [REDACTED] [REDACTED]	Acquisition and retail supply of retail products through supermarkets, convenience outlets and online
ALDI Stores (A Limited Partnership) (ABN 90 196 565 019) Locked Bag 56 St Marys Delivery Centre, NSW 2760 13 25 34	Bronwyn Gallacher Managing Director CCL Consultants Pty Ltd [REDACTED] [REDACTED]	Acquisition and retail supply of retail products through supermarkets outlets

5 The Proposed Conduct

5.1 Background

Prior to November 2022, REDcycle operated the only return-to-store soft plastics recovery program in Australia, facilitating the collection and processing of soft plastics into durable recycled plastic products.

On 8 November 2022, REDcycle announced that due to unforeseen challenges, its recycling partners were no longer in a position to accept and process soft plastics collected by REDcycle and that REDcycle had been holding stock in warehouse storage facilities temporarily until it could be processed. Given REDcycle's announcement, each of Coles and Woolworths subsequently suspended soft plastics collections from stores until further notice.

Coles applied for the Existing Authorisation on 16 November 2022 shortly after REDcycle announced the suspension of its program. The Participants proposed to form the Soft Plastics Taskforce and initially sought ACCC authorisation to explore 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 for 12 months following the date of a final ACCC authorisation. Interim ACCC authorisation was granted on 25 November 2022.

Under the interim ACCC authorisation, the Participants worked intensively and systematically to develop a Roadmap to Restart for the resumption of a pilot instore soft plastics collection, processing and recycling program in Australia as well as stockpile management of the volumes which had been held in warehouse storage facilities by REDcycle prior to the suspension of the program.

The ACCC ultimately granted final ACCC authorisation (the Existing Authorisation) on 30 June 2023. In summary, the Existing Authorisation permitted the Participants to implement the Instore Collection Recommencement Steps that had been developed as part of the Roadmap to Restart, which included both ongoing management of the stockpiles and the necessary steps to relaunch an instore

soft plastics collections program. The ACCC granted the Existing Authorisation on the basis that authorisation would:

- facilitate the development of interim solutions to soft plastic recycling;
- increase the potential to divert soft plastics from landfill; and
- lead to clear and consistent messaging for consumers by enabling collaborative, streamlined and united public messaging.

Coles considers that the Existing Authorisation has been effective to date in achieving these public benefits. In particular, the Participants:

- launched their in-store pilot program for in-store soft plastics collection in early 2024;
- have commenced and made substantial progress in recycling the stockpiled materials, as processing capacity has come online; and
- are in discussions with the [REDACTED] and [REDACTED] about the establishment of the PRO which will manage the product stewardship scheme to underpin industry wide collections and stewardship of soft plastics, of which the Participants' instore collection program could form one part.

While it is expected that the PRO will be registered shortly after this application is submitted, it is unlikely that the stewardship scheme will be fully operational before the expiry of the Existing Authorisation. To ensure the Participants can continue to work together to manage and process stockpiled and collected materials and further develop their instore pilot program in this interim period, the Participants seek reauthorisation on substantially the same terms as in the Existing Authorisation until 31 July 2025.

5.2 The Proposed Conduct

The Participants seek authorisation for the Participants and any Program Partners to propose, discuss, enter into, or give effect to any contract, arrangement or understanding between two or more of 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 Instore Collection Recommencement Steps as set out below; or
- (b) constitutes planning or agreeing on communications to customers or to the public in respect of the Instore Collection Recommencement Steps as set out below, including providing recycling directions for soft plastics packaging in respect of any new instore soft plastics collections program,

(collectively, the **Conduct**).

Table 1: Instore Collection Recommencement Steps

#	Instore Collection Recommencement Steps
1.	Engagement (including site visits) with third-party recycling and logistics providers (including domestic or overseas providers).
2.	Ongoing development of a stockpile remediation action plan which will include undertaking safety risk assessments and identifying safe storage, processing and transport options for stockpiled

	materials. The stockpile remediation action plan may also include disposal options for certain stockpiled materials but only where landfill cannot reasonably be avoided.
3.	Implementation of stockpile remediation action plan developed under point 2 above.
4.	Completion of domestic and offshore processing capacity assessment and preparation of a preferred solution shortlist including capacities by geography and expected timeframes.
5.	Negotiation, development and establishment of contract terms with third-party recycling and logistics providers, including establishment of service level agreements and formalised audit process.
6.	Ongoing development of launch strategy for instore soft plastics collections program based on geographic/volume metrics. Finalising of collection logistics and end to end management approach in readiness for pilot.
7.	Exploration and development of business models to support cost sharing, including with brands and other retailers for the purposes of implementing a new instore soft plastics collections program.
8.	Development and launch of pilot for recommencement of soft plastic collection and processing in specific geographic areas to serve as test for ongoing viability of program.
9.	Development and launch of expanded program from original pilot area to additional geographical area/s (subject to sufficient progress in managing stockpiles and available processing capacity).
10.	Development of membership Terms and Conditions and membership fees for the Participants and Program Partners.

5.3 Application for interim authorisation

To ensure that the Participants can continue to take steps as needed to undertake the Instore Collection Recommencement Steps outlined in section 5.2, and for the reasons detailed in section 5.3, the Participants request that the ACCC grant interim authorisation prior to the expiration of the Existing Authorisation on 22 July 2024. This will ensure that stockpile remediation activities and the instore collection pilot can continue without disruption.

The Participants seek interim authorisation to ensure that stockpile remediation activities and the instore collection pilot can continue without disruption. The Participants consider that the conduct engaged in pursuant to the Existing Authorisation has generated significant public benefits and will continue to do so.

If, while interim authorisation is in place, the ACCC is concerned about the continued effectiveness of the Proposed Conduct, it will be open to the ACCC to revoke that authorisation at any time.

5.4 Rationale

Reauthorisation will enable the Soft Plastics Taskforce to continue to work together to implement the Instore Collection Recommencement Steps, including stockpile remediation activities and the continuation of the instore collection pilot, without disruption.

5.5 Provisions of the CCA which might apply to the Proposed Conduct

The Participants compete in relation to the acquisition of grocery and household items, transport and logistics services as well as the supply of groceries and other consumer products to consumers through their retail supermarkets, liquor store outlets and/or wholesaling functions, as well as other inputs to their business operations.

In the absence of re-authorisation, the Proposed Conduct risks giving rise to contraventions of the CCA, including by provisions of the CCA relating to:

- (a) cartel conduct (Division 1 of Part IV), in that it may involve contracts, arrangements or understandings containing provisions which have the purpose or effect of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price or a discount, allowance, rebate or credit in relation to goods or services supplied, acquired or likely to be supplied or acquired by the parties, or have the purpose of preventing, restricting or limiting the acquisition or supply or likely acquisition or supply of goods or services by the parties (ss 45AD(2), 45AD(3), 45AF, 45AG, 45AJ, and 45AK of the CCA); or
- (b) contracts, arrangements or understandings, concerted practices, exclusive dealing and other conduct that have the purpose, effect or likely effect of substantially lessening competition (ss 45(1), 46(1) and 47(1) of the CCA).

5.6 Term of authorisation sought

The Participants seek authorisation to continue to engage in the Proposed Conduct from the date of the Existing Authorisation's lapse (or revocation) until 31 July 2025. The Participants submit that the proposed term is appropriate for the following reasons.

- (i) In the Participant's most recent progress report dated 22 April 2024, the Participants submitted that the Soft Plastics Taskforce has been, amongst other things, working with soft plastic processing companies to accelerate the commencement of their processing operations, engaging with and finalising contract terms with potential offtake partners, and progressing the pilot program for the recommencement of soft plastics instore collection and processing in 12 stores in Victoria. The Participants submit that although significant progress has been made, there will remain outstanding matters for the Participants to finalise. For example, processing of soft plastic materials (in particular in NSW, Victoria and South Australia) is still underway. Based on the Participants' best estimates, processing of soft plastics stored in facilities in NSW is not expected to be completed until December 2024 / early 2025. Stockpiled materials in Victoria are expected to be processed by approximately July 2025¹ and in other states as soon as processing capacity becomes available. An additional term of twelve months would allow the Participants to continue to process these materials prior to the establishment of the industry wide stewardship scheme. [REDACTED]
[REDACTED]
[REDACTED]
- Reauthorisation would increase the likelihood of a seamless transition between the Participants' instore collections program and the development of a broader industry wide stewardship program which is currently under discussion with [REDACTED]

¹ The processing of the stockpiled materials is subject to a variety of factors outside of the Participants' control, including:

- the issues faced by processing companies due to unforeseen operational reasons, which could impact processing capacity;
- the volume of offtake the government commits to and the other offtake partners available to processing companies, which is subject to change; and
- other delays to or pauses in processing. For example, Close the Loop has recently ceased work after commencing later than expected, meaning CDRC is the only processor currently in operation in Victoria;

Ultimately, the ACCC can, on the application of the Participants or on its own initiative, revoke the authorisation under section 91B of the CCA should there be a material change in circumstances (eg, any proposed long term solution is implemented to an extent where the Instore Collection Recommencement steps are no longer necessary).

5.7 Persons who may be directly impacted by the Proposed Conduct

The persons who would be directly impacted by the Proposed Conduct include:

- consumers wishing to recycle their soft plastics;
- retailers whose customers wish to recycle their soft plastics;
- entities which collect, process and recycle soft plastic packaging;
- entities and consumers wishing to purchase products derived from recycled soft plastic packaging; and
- industry groups which may contribute to the Soft Plastics Taskforce from time to time.

6 Counterfactual

In the absence of the Proposed Conduct, there would be material restrictions on the ability of the Participants to continue to work together and with government as part of the Soft Plastics Taskforce to implement the Instore Collection Recommencement Steps, including continuation of the instore collection pilot program and joint management of stockpiles.

Concerns about competition law risks would impede Participants from implementing many of the Instore Collection Recommencement Steps at all. For example, the Participants would likely need to pause the instore collection pilot program. Given the costs and logistical challenges of setting up such a program individually, this may mean that there would be no instore pilot program operating in Australia at all as compared to the scenario where reauthorisation is granted. In respect of management of stockpiles, the Participants would likely need to manage these stockpiles independently and this could lead to those stockpiles being managed and processed in a less efficient and timely manner than if the parties can work together.

7 Public benefits

The Existing Authorisation has resulted in a number of significant public benefits, namely:

- (a) Facilitating the development of solutions to soft plastics recycling:** the Existing Authorisation has enabled the Participants to work together on developing solutions to the collapse of the REDcycle program, including managing existing stockpiles that were not able to be processed by REDcycle, and implementing an instore soft plastics collection pilot program. The ACCC similarly acknowledged in the Final Determination (see paragraphs 4.16 – 4.26) that the cooperation permitted by the authorisations had been facilitative to positive outcomes in addressing soft plastics recycling challenges. The ACCC acknowledged that the coordination contemplated under the Existing Authority would likely 'result in existing recycling capacity within Australia being used most efficiently so that the maximum volume of recycling can occur at the lowest cost.' For example, it was noted that coordination between Participants had achieved a good outcome in the Participants taking control of REDcycle's stockpile of soft plastics. The ACCC also considered that, without the conduct contemplated under the Existing Authority, it would have been more likely than not that instore collection of soft plastics would not have resumed.
- (b) Accelerating the commencement and activities of processing companies:** under the Existing Authorisation, the Participants were able to engage with and provide support to a

range of soft plastics processing companies to accelerate the commencement of their processing operations to service soft plastics collected from an from stockpile remediation as well as soft plastics collected from the in-store soft plastics program now and in the future. This included:

- (i) providing ██████ in forward purchase order to ██████ and ██████ in funding to ██████ to procure equipment to recycle ██████ tonnes and ██████ tonnes of soft plastics per annum respectively;
- (ii) providing funding to ██████ to build sorting and processing infrastructure for ██████ tonnes of mixed soft plastics per annum;
- (iii) working with ██████ to refine processing needed for them to receive ██████ tonnes per annum of processed materials; and
- (iv) working with ██████ to underpin their construction of a ██████ tonne per annum recycling plant that will process ██████ tonnes per annum.

By combining the Participants' expertise, resources and focus into a combined project, the Existing Authorisation enabled the Participants to evaluate, engage with and provide support to a greater number of processors than would otherwise have been possible with the Participants acting independently. This has likely accelerated the development of new processing capacity in Australia compared with the scenario where cooperation had not been possible.

- (a) **Diverting a significant amount of stockpiled material from landfill:** The Participants have engaged in significant stockpile consolidation and relocation activities. As noted above, approximately 11,000 tonnes of soft plastics have been relocated to secure EPA & Council approved facilities nationally pending processing and less than 4% was sent to landfill, being heavily deteriorated and/or contaminated product where recycling was not feasible. This public benefit was also acknowledged in the Final Determination at paragraphs 4.27 – 4.36 where the ACCC recognised that, as a result of being able to engage in 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.'²
- (b) **Providing clear and consistent information to the public, alleviating community concern and supporting the rebuilding of public trust in soft plastics recycling:** The Existing Authorisation enabled the Participants to develop clear and consistent public communication about the suspension of the REDcycle program, the management of stockpiles, what consumers should do with their soft plastics in the interim and about the pilot instore collection program underway in Victoria. These clear and consistent communications played a role in alleviating community concern about the collapse of REDcycle and in supporting rebuilding of public trust in soft plastics recycling. Similarly, in the Final Determination, the ACCC considered at paragraphs 4.37 – 4.44 that the formation of the Soft Plastics Taskforce had provided clear and consistent messaging for consumers about the steps taken to up to the date of the Final Determination to develop a plan to address the existing stockpiles. The ACCC acknowledged the public benefit in consumers receiving such clear and consistent messaging.

The Participants submit that these significant public benefits will continue to be realised if the Proposed Conduct is reauthorised. In particular, reauthorisation will allow the Participants to:

² ACCC Determination to Application for authorisation AA1000627 [4.32], available at https://www.accc.gov.au/system/files/public-registers/documents/Final%20Determination%20-%2030.06.23%20-%20PR%20-%20AA1000627%20Coles%20%26%20Ors_0.pdf?ref=0&download=y.

- (a) continue processing stockpiles as efficiently as possible, ensuring the diversion of those materials from landfill;
- (b) continue industry cooperation on soft plastics recycling prior to the development of a broader industry wide stewardship scheme and in particular to continue to:
 - (i) operate and develop their pilot program for the recommencement of instore soft plastics collection;
 - (ii) engage with and support soft plastics processors on a collective basis, supporting the development and efficient use of Australia's soft plastics recycling capacity; and
 - (iii) provide clear and consistent information to the public about the suspension of the REDcycle program, the management of stockpiles, what consumers should do with their soft plastics in the interim and the pilot instore collection program underway in Victoria.

8 Public detriment

The Participants submit that the Proposed Conduct will result in a significant net public benefit and is unlikely to result in any public detriments for the following reasons:

- (a) The Proposed Conduct is limited to the implementation of the In-store Recommencement Steps for a further period of twelve months, prior to the development of a longer term industry wide scheme.
- (b) The Proposed Conduct will not detract from, or adversely impact in any way, the development of any longer term solutions, including the broader stewardship scheme currently under discussion. In addition, no Participant is prevented from exploring or developing their own soft plastics recycling capacity.
- (c) It is proposed that authorisation be granted on condition that any contracts, arrangements or understanding entered into in reliance on any interim or final authorisation granted by the ACCC will terminate upon the expiry or revocation of such authorisation (unless a further authorisation is granted).
- (d) The Proposed Conduct will remain subject to a high level of supervision and oversight in light of the following:
 - it is restricted to conduct occurring at, in preparation for or arising out of, a meeting of the Soft Plastics Taskforce;
 - meetings of the Soft Plastics Taskforce will be attended and chaired by federal government representatives; and
 - the Participants will provide progress reports at regular intervals to the ACCC (which will include submitting relevant meeting minutes of the Soft Plastics Taskforce to the ACCC).

In these circumstances, the Participants submit that there is little room (if any) for detriment to arise.

- (e) The Proposed Conduct is not compulsory, and any Participant can opt out of any proposed collaboration the subject of this application.
- (f) The Proposed Conduct does not change the Participants' incentives to compete during or after the period of authorisation. The authorised 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.

9 Proposed conditions of authorisation

The Participants propose that the Proposed Conduct must only be engaged in under the following conditions:

- (a) **(Provision of information)** The Participants and any Program Partners who become involved in the Conduct will promptly provide any further information about the Conduct or compliance with the conditions imposed by this proposed authorisation that the ACCC requests from time to time.
- (b) **(Progress reporting requirements)** The Participants, either jointly or individually, will 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>On the following dates:</p> <ul style="list-style-type: none"> • 22 July 2024 • 22 October 2024 • 22 January 2024 	<p>Detailed description of the progress made by Participants and any Program Partners towards implementing the Instore Collection Recommencement Steps.</p> <p style="text-align: center;">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.

- (c) **(Termination of arrangements upon expiry of authorisation)** All contracts, arrangements or understandings entered into in reliance upon this authorisation will 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 CCA which authorises giving effect to those contracts, arrangements or understandings.

10 Contact details of relevant market participants

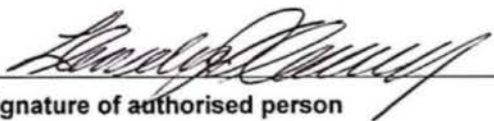
See sections 2 and 4 above.

11 Declaration by applicant

The undersigned declares that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertakes to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned is aware that giving false or misleading information is a serious offence and is aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).


Signature of authorised person

General Manager Legal – Coles Group Limited

Office held

Llew Fleming (signing on behalf of David Brewster)

Name of Authorised person

24 June 2024

Date