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Our ref: IM-72199
Contact officer: Caylie McDonald / Eado Varon
Contact phone: (03) 9290 1470 / (03) 9910 9415

2 May 2023

Dear Interested Party

Re: Request for submissions: Coles' proposed acquisition of fresh milk processing facilities from Saputo

The Australian Competition and Consumer Commission (**ACCC**) is seeking your views on Coles Group Limited's (**Coles**) proposed acquisition of two fresh milk processing facilities from Saputo Dairy Australia Pty Ltd (**Saputo**) (the **proposed acquisition**). Further details are provided at **Attachment A**.

The ACCC's investigation is focused on the impact of the proposed acquisition on competition. In particular, we are seeking your views on:

- the impact on prices or terms of supply farmers receive for their raw milk in New South Wales and Victoria
- the impact on prices for fresh milk processing services in New South Wales and Victoria
- whether the proposed acquisition is likely to give Coles the ability and/or incentive to foreclose other dairy processors, wholesalers or retailers.

Further issues you may wish to address are set out in **Attachment B**.

This matter is public and you can forward this letter to anybody who may be interested.

The legal test which the ACCC applies in considering the proposed acquisition is in section 50 of the *Competition and Consumer Act 2010*. Section 50 prohibits acquisitions that are likely to have the effect of substantially lessening competition in a market.

Please provide your response by **23 May 2023** via email with the title: *Submission re: Coles/Saputo processing facilities - attention Caylie McDonald/Eado Varon*. If you require more time to respond, please let us know.

If you would like to arrange a time to discuss the matter with ACCC officers, or have any questions about this letter, please contact Caylie McDonald on (03) 9290 1470 or

Eado Varon on (03) 9910 9415.

Updates regarding the ACCC's investigation will be available on the ACCC's Public Mergers Register at ([ACCC mergers register](#)).

Confidentiality of submissions

The ACCC treats sensitive information it receives during a merger review as confidential, and will not publish your submission. We will not disclose submissions to third parties (except our advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with s155AAA of the Competition and Consumer Act 2010. Where the ACCC is required to disclose confidential information, we will notify you in advance where possible so that you have an opportunity to be heard. Therefore please clearly indicate if any information you provide is confidential. Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

Yours sincerely



Suzie Copley
General Manager
Policy, Coordination & Remedies

Attachment A

Proposed acquisition

Coles proposes to acquire Saputo's fresh milk processing facilities in Laverton North (Victoria) and Erskine Park (New South Wales).

Saputo

Saputo is a wholly-owned subsidiary of Saputo Inc., a Canadian based dairy product company. Saputo produces and wholesales a wide range of dairy products for the domestic market including fresh drinking milk, cheese, extended shelf-life milk and cream products, cultured products and dairy ingredients. Saputo's products are sold under brands including Cheer, Devondale and Sungold.

Saputo is one of the largest dairy processors in Australia, with 10 manufacturing facilities. At the Erskine Park and Laverton facilities that are the subject of the proposed acquisition, Saputo produces fresh milk for its Devondale brand, and for other parties including Coles, for on-sale as own brand products at the retail level. Coles is the primary customer at the Erskine Park and Laverton facilities with its own brand fresh milk products accounting for the majority of the current annual volumes produced at the facilities.

Saputo's milk supply contracts are not included in the proposed acquisition (with the contracts Saputo holds with New South Wales and Victorian dairy farmers being retained by Saputo on current contractual terms).

Coles

Coles (ASX: COL) is a major supermarket chain and one of Australia's largest grocery and general merchandise retailers. Coles operates an integrated supply chain which includes a national distribution network and associated logistics. Coles is also 50% shareholder of the flybuys loyalty program.

Coles supplies branded and own brand fresh milk products at the retail level through its supermarkets. Coles is the distributor for its own brand fresh milk to Coles stores, produced under tolling arrangements with producers including Saputo. Coles does not currently own or operate any dairy processing facilities.

Attachment B

1. Please describe your business or organisation and explain your interest in the proposed acquisition, including any commercial relationship(s) with Coles or Saputo.

Farmers

2. List the processor(s) to which you currently sell your raw milk.
3. What is the annual volume of milk you supply? Please break down the proportions supplied to different processors or supplied for other uses. What is your calving pattern (i.e. seasonal, split or year-round)?
4. Are there any other processor(s) to which you could sell your milk? If so, please list them. If you decide to exclude any particular processors in your region from this list, please provide reasons why.
5. Have you switched between processors in the past? If so, please indicate how frequently.
6. What impact do you think Coles acquiring Saputo's Erskine Park and Laverton facilities will have on your business and the milk price you can obtain?
7. Could you supply to a processor that does not have a processing plant in your region? If so, please indicate which processor(s) or region(s).

Dairy processors

8. Who do you consider are currently your closest competitors in acquiring raw milk in New South Wales and/or Victoria? If there is a particular processor/s in New South Wales and/or Victoria that you don't consider you compete strongly with, please provide detail as to why.
9. Please comment on whether you think the proposed acquisition will have an effect on competition for the acquisition of raw milk in those regions. If yes, please explain how. If no, please explain why not.
10. Please identify whether there is any unused capacity available at your dairy processing plant, and if so, outline how much capacity you have available to process additional milk.
11. Does Coles currently acquire processed milk from your plant? If so, what impact do you think the proposed acquisition would have on this relationship?

Wholesalers and retailers

12. Which dairy processing plants do you currently use and/or acquire processed milk from?
13. Are there other processors you could use and/or acquire processed milk from? If no, please explain why not.

14. Please comment on whether the proposed acquisition will impact the prices or terms on which you currently acquire processed milk and/or use processing plants.

Other information or competition issues

15. Please provide any additional information or comments that you consider relevant to the ACCC's consideration of the proposed acquisition.