



**Coles Group on behalf of itself and participating supermarkets –
Application for revocation of AA1000627 and the substitution of
authorisation AA1000673 in relation to soft plastics recycling
Interim authorisation decision
18 July 2024**

Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has decided to suspend the operation of authorisation AA1000627 and has granted interim authorisation with conditions in respect of the application for authorisation AA1000673 in substitution for the authorisation suspended.
2. Application for revocation of authorisation AA1000627 and substitution of authorisation AA1000673 was lodged by Coles Group Limited (**Coles**) on behalf of itself and its related bodies corporate, Woolworths Group Limited and its related bodies corporate (**Woolworths**) and ALDI Stores (together, the **Participants**) on 24 June 2024.
3. Interim authorisation is granted for the conduct specified in paragraph 23 below, and to the parties identified in that paragraph, with the conditions at paragraph 36 below.
4. The conduct authorised under this interim authorisation is substantially the same as that authorised under authorisation AA1000627, and with similar conditions.
5. Interim authorisation will enable the Participants to continue the pilot instore soft plastics collections program and processing of the stockpile of soft plastics from the REDcycle program while the ACCC continues its assessment of the substantive application for revocation and substitution of authorisation. Without interim authorisation, the Participants submit that their pilot program would be paused, leaving no alternative program available to consumers in the interim, and that processing of the stockpiles would also likely be disrupted.
6. The ACCC expects that the Participants will continue the processing of stockpiles with some urgency in line with expectations of consumers, as well as prioritising the continuation and expansion of their instore collection pilot program during the period of interim authorisation.
7. In considering the substantive application for authorisation, the ACCC expects the applicants to further define the scope and principles applying to the application of its Instore Collection Recommencement Steps.
8. The ACCC recognises the importance of developing long-term solutions to soft plastics recycling on a whole of industry scale. The ACCC's clear expectation is that any longer-term collection program will operate on a non-discriminatory basis, and that it will not prevent or restrict program partners from entering into arrangements with non-participants. The ACCC understands that any long-term solution, whether in the form of an industry-led stewardship scheme or otherwise, is likely to be the subject of a separate, future application for authorisation.
9. The ACCC grants interim authorisation in relation to Division 1 of Part IV of the *Competition and Consumer Act 2010* (Cth) (the **Act**) and sections 45(1), 46(1) and 47(1)

of the Act. Interim authorisation does not apply in respect of any contraventions of the Australian Consumer Law, including in relation to any misleading or deceptive conduct relating to product packaging or consumer communications.

10. Interim authorisation commences immediately and remains in place until it is revoked, the application for revocation and substitution is withdrawn, or the date the ACCC's final determination comes into effect.

Background

11. RG Programs and Services Pty Ltd was a Melbourne-based consultation and recycling organisation which developed and implemented the REDcycle soft plastics collection and recycling program. The Participants partnered with REDcycle to provide collection points for consumers to return their soft plastics instore for collection by REDcycle for processing into durable recycled plastic products.
12. On 8 November 2022, REDcycle announced the indefinite suspension of its soft plastics collection program as its recycling partners had temporarily stopped accepting and processing soft plastics. Following REDcycle's announcement, Coles and Woolworths each announced the suspension of soft plastics collections from their stores until further notice.
13. On 25 November 2022, the ACCC decided to grant interim authorisation to the Participants, with conditions, to consider, develop or implement a short-term solution for the storage, transportation, processing, recycling and/or management of soft plastics, as part of the Soft Plastics Taskforce.¹
14. Following interim authorisation, the Soft Plastics Taskforce was formed. The Taskforce is chaired by the Department of Climate Change, Energy, the Environment and Water and includes the Participants.
15. On 24 February 2023, Coles and Woolworths made an offer to REDcycle to take control of the stockpiled soft plastics and provide safe storage of the material while recycling solutions were explored, which was accepted by REDcycle.²
16. It was later estimated that REDcycle had approximately 11,000 tonnes of stockpiled soft plastics across 44 sites nationally.
17. On 27 February 2023 an application was heard by the Supreme Court of NSW for the winding up of REDcycle's parent company. An order was subsequently made, and a liquidator was appointed.
18. On 7 March 2023, the Soft Plastics Taskforce issued a 'Roadmap to Restart,' an interim plan to restore community access to soft plastics recycling through Australian supermarkets.
19. On 30 June 2023, the ACCC decided to grant authorisation AA1000627, with conditions, to the Participants for 12 months.
20. As required by the conditions of authorisation, the Participants have provided 4 progress reports and 20 sets of minutes recording meetings held by the Soft Plastics Taskforce.³
21. The progress reports provided outline the key steps undertaken by the Soft Plastics Taskforce during authorisation including:
 - relocating and consolidating approximately 11,000 tonnes of stockpiled soft plastics into secure facilities in NSW and Victoria. The Participants have advised

¹ Available on the ACCC's [public register](#).

² Coles Group and Woolworths Group (24 February 2023) [Coles and Woolworths offer to save REDcycle stockpiles from landfill](#) [media release], Coles Group and Woolworths Group, accessed 11 July 2024.

³ Available on the ACCC's [public register](#).

that less than 4% of stockpiled material has been sent to landfill, being material too heavily contaminated or deteriorated to recycle.

- commencement of processing of stockpiled soft plastics material in Victoria, following processors Close the Loop and Centre for Regenerative Design and Collaboration (**CRDC**) coming back online in the first quarter of 2024. Two additional recycling facilities were expected to come online in NSW in 2024.
- implementation of a resumption of instore soft plastics collection through the pilot program (which commenced on 7 February 2024), which is currently operating in 12 stores in Victoria (5 Coles stores, 5 Woolworths stores and 2 ALDI stores). As of 28 March 2024, 3.058 tonnes of soft plastic had been collected at these participating stores and is being processed by CRDC or Close the Loop.
- securing partners to take recycled product.

The current application for authorisation

22. Coles makes this application on behalf of itself and the Participants, and requests that any interim or final authorisation apply to any current or future partners in the Participants' instore soft plastics pilot program (**Program Partners**). The current Program Partners are listed at Schedule 1.

23. 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 2 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,

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 in-store 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.

(collectively, the **Conduct**)

24. The Participants seek authorisation until 31 July 2025.

The authorisation process

25. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the Act. Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

26. The ACCC may specify conditions in an authorisation. The legal protection provided by an authorisation does not apply if any conditions are not complied with.

Interim authorisation

27. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation. This allows the parties to engage in the Conduct while the ACCC is considering the substantive application for authorisation.

28. The Participants have requested interim authorisation on the basis that it will permit them to continue with the Conduct without disruption as Authorisation AA1000627 expires on 22 July 2024.

29. In support of its request for interim authorisation, the Participants submit that

- Interim authorisation will allow continuation of the processing of the stockpiles of soft plastics initially collected by REDcycle prior to the termination of their operations.
- Interim authorisation will allow the continuation of the instore soft plastics collection pilot program in 12 stores in Melbourne.

Consultation

30. The ACCC invited submissions from a range of potentially interested parties including relevant government departments, recycling processors, environmental and consumer groups.
31. The ACCC did not receive any submissions in response to the Participants' request for interim authorisation.
32. The ACCC notes that while the period for submissions on the request for interim authorisation was short, the ACCC invites submissions on the substantive application until 6 August 2024.
33. Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the [ACCC's Authorisations public register](#).

Reasons for decision

34. The ACCC has decided to grant interim authorisation with conditions under section 91(2) of the Act for the Conduct described above at paragraph 23.
35. The ACCC has decided to grant interim authorisation for the following reasons:
 - The current authorisation AA1000627 is due to expire on 22 July 2024. Interim authorisation will enable the ACCC to give due consideration to the application for revocation and substitution.
 - Interim authorisation will maintain the status quo of the instore soft plastics collection pilot program and the continued processing of stockpiled materials.
 - If interim authorisation is not granted, it is likely that there would be disruption to both the instore soft plastics collection pilot program and the processing of the stockpiles, as the Participants' ability to coordinate with each other would be limited following the expiry of the current authorisation on 22 July 2024. The ACCC is concerned that if interim authorisation was not granted, a higher volume of stockpiled materials may be sent to landfill instead of being processed for recycling or may further delay processing of the stockpile.
 - Interim authorisation will allow the Participants to continue to further test and develop their instore pilot program without disruption which is more likely to assist in enabling future expansion of the program than if interim authorisation was not granted.
 - The Conduct will remain subject to supervision and oversight given the following:
 - The conduct 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 are chaired by a federal government representative, being the Department of Climate Change, Energy, the Environment and Water.
 - The Participants must continue to provide progress reports at regular intervals and submit minutes of the Soft Plastics Taskforce to the ACCC (as described below in paragraph 36) as part of the conditions of this authorisation.
36. The ACCC has decided to grant authorisation with the following conditions:

Condition 1- Provision of information: The Participants and any Program Partners who become involved in the Conduct must promptly provide any further

information about the 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>On the following dates:</p> <ul style="list-style-type: none"> • 22 July 2024 • 22 October 2024 • 22 January 2025 • 22 April 2025 	<p>Detailed description of the progress made by Participants and any Program Partners towards implementing the Instore Collection Recommencement Steps.</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 (or a previous ACCC) 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.

Condition 3 – Termination of arrangements upon expiry of interim authorisation: All contracts, arrangements or understandings entered into in reliance upon this interim authorisation must immediately terminate upon the expiry or revocation of this interim 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.

Reconsideration of interim authorisation

37. The ACCC may review the interim authorisation at any time. The ACCC’s decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.

SCHEDULE 1

Current Program Partners

Australian Food and Grocery Council and its participating members

Bingo Waste Services Pty Ltd

CARRABBA's

Centre for Regenerative Design and Collaboration

Close the Loop

IQ Renew

Mercorella

Paper Trade Processing (AUST) Pty Ltd

Planet Ark

Plasmar

saveBOARD

Streamlined

Tasman Logistics Services

Veolia