



**Coles Group on behalf of itself and other participating
supermarkets –
Application for authorisation AA1000627
Interim authorisation decision
25 November 2022**

Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has granted conditional interim authorisation in respect of the application for authorisation AA1000627, lodged by Coles Group Limited (**Coles**) on behalf of itself and Woolworths Group Limited (**Woolworths**) and ALDI Stores (**ALDI**) (together, the **Participants**) and Program Partners on 16 November 2022.
2. The Participants seek authorisation, and request urgent interim authorisation, to propose, discuss, enter into or give effect to any contract, arrangement or understanding between them, or engage in any conduct that:
 - a) occurs at, in preparation for, or arises out of, a meeting of the Soft Plastics Taskforce and
 - b) has the purpose of considering, developing or implementing an interim solution for the storage, transportation, processing, recycling and/or management of soft plastics collected from the sites of two or more Participants.
3. The Participants have requested that any interim or final authorisation apply (in addition to the Participants) to any Program Partners who become engaged in the Proposed Conduct.
4. The application was made following the suspension of the REDcycle program on 9 November 2022. The REDcycle program is a return-to-store soft plastics recovery program that facilitates the collection and processing of soft plastics into durable recycled plastic products.
5. The ACCC has granted interim authorisation to the Participants and the Program Partners for the Authorised Conduct as specified in paragraphs 29 and 30, with the conditions set out in paragraph 31. The Authorised Conduct for which the ACCC has granted conditional interim authorisation is narrower than the Proposed Conduct for which authorisation has been sought.
6. 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. The 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.
7. Interim authorisation commences immediately and remains in place until it is revoked, the application for authorisation is withdrawn, or the date the ACCC's final determination comes into effect.

Background

8. REDcycle is a Melbourne-based consultation and recycling organisation which developed and implemented the REDcycle Program. The Participants submit that since 2011, REDcycle has been the only return-to-store, soft plastics recovery program in Australia, facilitating the collection and processing of soft plastics into a variety of durable recycled plastic products. The Participants also submit that due to a lack of processing infrastructure, the majority of local councils in Australia do not currently collect soft plastics through kerbside recycling, however a number of trials are underway nationally which are aimed at developing a National Plastics Recycling Scheme.¹
9. On 8 November 2022, REDcycle announced that it was indefinitely suspending its soft plastics collection program as its recycling partners (Replas, Close the Loop and Plastic Forests) had temporarily stopped accepting and processing soft plastics. The Participants submit that the suspension of the REDcycle program removed the primary established recycling pathway for soft plastics for consumers and created significant community concerns about existing stockpiles and how consumers can recycle soft plastics going forward.
10. Following REDcycle's announcement, Coles and Woolworths each announced that they would be suspending soft plastics collections from their stores until further notice.
11. As a result of the suspension, the Participants advise that:
 - a) an industry taskforce (the **Soft Plastics Taskforce**) is to be formed and initially chaired by the Commonwealth Department of Climate Change, Energy, the Environment and Water (the **Department**). The Participants anticipate that other relevant industry bodies not party to the application for authorisation, such as the Australian Packaging Covenant Organisation (**APCO**), will provide support to the taskforce, and that
 - b) the Soft Plastics Taskforce will explore solutions for managing the immediate effects of the suspension of REDcycle's return-to-store soft plastics recovery program in Australia given the community concern and environmental risk posed.
12. The Participants do not seek authorisation for the Soft Plastics Taskforce itself.

The application for authorisation and urgent interim authorisation

13. The Participants seek authorisation to propose, discuss, enter into or give effect to any contract, arrangement or understanding between them, or engage in any conduct that:
 - a) occurs at, in preparation for, or arises out of, a meeting of the Soft Plastics Taskforce, and
 - b) has the purpose of considering, developing or implementing an **Interim Solution**
(the **Proposed Conduct**).
14. For the purposes of the application, the Participants define an **Interim Solution** as 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 that is intended to be implemented in the period of 12 months from the date of a final determination by the ACCC and which relates to the following:
 - a) responsible management of collected soft plastics – responsible management of any soft plastics materials collected from the sites of two or more of the

¹ See Australian Food & Grocery Council, National Plastics Recycling Scheme <[National Plastics Recycling Scheme - Australian Food and Grocery Council \(afgc.org.au\)](https://www.afgc.org.au)>.

Participants in the REDcycle program or any other soft plastics recovery program established with or by two or more of the Participants in the context of the Soft Plastics Taskforce;

- b) customer communications – planning or agreeing on communications to customers or to the public in relation to soft plastics which have been collected or how they can handle soft plastics going forward;
- c) joint engagement of third-party recycling, logistics providers – joint procurement of recycling, manufacturing, processing or logistics services by two or more Participants for the purposes of facilitating the continuation of the REDcycle program (or the implementation of an alternative soft plastics recovery program established with or by two or more Participants in the context of the Soft Plastics Taskforce); or
- d) joint acquisition of facilities etc. to self-process soft plastics – joint acquisition or leasing of facilities or other goods or services by two or more Participants for the purposes of recycling, manufacturing, processing or transporting soft plastics in order to facilitate the continuation of the REDcycle program (or the implementation of an alternative soft plastics recovery program established with or by two or more of the Participants in the context of the Soft Plastics Taskforce).

15. The Participants seek authorisation on behalf of themselves, and any current or future partners in the REDcycle program or any other soft plastics recovery program established by two or more of the Participants in the context of the Soft Plastics Taskforce (**Program Partners**) being a class of persons who become engaged in the Proposed Conduct.
16. The Participants have advised that the Proposed Conduct is intended to enable the Participants to form the Soft Plastics Taskforce and explore solutions for managing the immediate effects of the suspension of the REDcycle program, and in particular the Participants wish to develop interim solutions for the collection and management of soft plastics until a longer-term solution can be developed.
17. The Participants consider that urgent steps are required to address the immediate effects of the suspension of REDcycle's Program, and have requested urgent interim authorisation to ensure steps can be taken as quickly as possible.
18. The Participants submit that the Proposed Conduct:
 - does not involve any agreements on the price or supply of retail products or services sold by the Participants
 - does not prevent any individual Participant or Program Partner from exploring or developing soft plastics recycling capabilities in their own right
 - is not compulsory, and any Participant or Program Partner can opt out of any proposed collaboration the subject of the application for authorisation
 - involves short-term arrangements only. The Participants have advised that any contract, arrangement or understanding entered into in reliance on any interim or final authorisation granted by the ACCC will provide for its immediate termination upon the expiry or revocation of such authorisation (unless the Participants apply for and are granted a further ACCC authorisation which permits those contracts, arrangements or understandings to continue for a further period, or the ACCC does not object to or oppose the continuation of any of those contracts, arrangements or understandings).
19. The Participants have proposed to submit meeting minutes to the ACCC within 3 business days of any meeting of the Soft Plastics Taskforce which summarises the

topics discussed in the meeting and that, where appropriate, to provide a non-confidential version of the minutes for publication on the ACCC's public register. This requirement is set out as Condition 1 in paragraph 31.

20. The Participants seek authorisation for a period of 12 months from the date of the ACCC's final determination.

The authorisation process

21. 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 likely benefit to the public from the conduct outweighs the likely public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether proposed conduct results in a net public benefit.
22. 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

23. Section 91 of the Act allows the ACCC, where it considers it appropriate to do so, to grant interim authorisation. This allows the parties to engage in the Proposed Conduct while the ACCC is considering the substantive application for authorisation.
24. The Participants submit that interim authorisation is urgently required to enable the Participants and any Program Partners to begin discussions as soon as possible with a view to identifying Interim Solutions for the collection and management of soft plastics in light of the suspension of the REDcycle program. The Participants note that federal and state governments wish to work with industry to develop solutions for soft plastics recycling, including to deal with the stockpiles of waste and generate solutions for recycling options in the "near term".²

Consultation

25. The ACCC has not conducted a public consultation process in respect of the request for interim authorisation due to the urgency of the Participants' request. The ACCC is engaged in ongoing discussions with the Department regarding the application and understand it is supportive of the interim authorisation.
26. The ACCC will conduct a public consultation process on the substantive application for authorisation and will further examine the public benefits and detriments likely to result from the Proposed Conduct during that process.
27. Should interested parties have concerns about the impact of this interim authorisation, they should contact the ACCC by email at exemptions@acc.gov.au. The ACCC is able to review and revoke interim authorisation at any time.
28. Further information in relation to the application for authorisation and details regarding how to make a submission will be available on the [ACCC's authorisations public register](#).

² See [The Guardian](#), Tanya Plibersek says Coles and Woolworths must 'step up' to fix plastic recycling crisis <<https://www.theguardian.com/environment/2022/nov/09/coles-woolworths-plastic-recycling-scheme-crisis>>.

The Authorised Conduct

29. The ACCC grants conditional interim authorisation for the Participants and any Program Partners to propose, discuss, enter into or give effect to any contract, arrangement or understanding between 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 a **Short-term Solution**; or
- b) constitutes planning or agreeing on communications to customers or to the public in relation to the steps taken towards a **Short-term Solution**,

(collectively, the **Authorised Conduct**).

30. For the purposes of the Authorised Conduct, a Short-term Solution is 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 that is intended to be implemented during the period from the date of this conditional interim authorisation until 12 months from the date of a final determination by the ACCC, and which relates to the following:

- a) responsible management of collected soft plastics – responsible management of any soft plastics materials collected from the sites of two or more of the Participants in the REDcycle program or any other soft plastics recovery program established with or by two or more of the Participants in the context of the Soft Plastics Taskforce;
- b) joint engagement of third-party recycling, logistics providers – joint procurement of recycling, manufacturing, processing or logistics services by two or more Participants for the purposes of facilitating the continuation of the REDcycle program (or the implementation of an alternative soft plastics recovery program established with or by two or more Participants in the context of the Soft Plastics Taskforce); or
- c) joint acquisition of facilities etc. to self-process soft plastics – joint acquisition or leasing of facilities or other goods or services by two or more Participants for the purposes of recycling, manufacturing, processing or transporting soft plastics in order to facilitate the continuation of the REDcycle program (or the implementation of an alternative soft plastics recovery program established with or by two or more of the Participants in the context of the Soft Plastics Taskforce).

Granting of conditional interim authorisation

31. The ACCC grants interim authorisation with the following conditions:

Condition 1 – Meeting minutes and other information: The Participants must submit meeting minutes to the ACCC (including a non-confidential version of the minutes for publication on the ACCC's public register where appropriate) within 3 business days of any meeting of the Soft Plastics Taskforce which summarises the topics discussed in the meeting, including:

- a) a comprehensive explanation of, including the parties to and relevant dates for, all decisions, contracts, arrangements or understandings formed pursuant to the interim 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.

The Participants and any Program Partners who become involved in the Authorised Conduct must promptly provide any further information about the Authorised Conduct or compliance with the conditions imposed by this interim 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 table below.

Reporting Event	Report Content
The elapsing of 3 months from the date of this conditional interim authorisation	Detailed description of the progress made by Participants and any Program Partners towards identifying and implementing a Short-term Solution , including the details of any Short-term Solutions proposed, considered, implemented or rejected by the Soft Plastics Taskforce and a summary of discussions relating to those Short-term Solutions
Any Participant forming the opinion there is no Short-Term Solution where the implementation of which can be commenced within 12 months from the date of this conditional interim authorisation	Detailed description(s) of potential Short-term Solutions considered by Participants and any Program Partners, and an explanation of why each would not be a feasible Short-term Solution and/or why the implementation of each could not be commenced within 12 months from the date of this conditional interim authorisation
Any Participant being informed, or forming the opinion, that RG Programs & Services Pty Ltd: <ul style="list-style-type: none"> • is, or is likely to be, insolvent; or • has had, or is likely to have, receivers or managers appointed to it 	Full details of the circumstances surrounding the information or opinion constituting the relevant Reporting Event

Reasons for decision

32. The ACCC recognises the urgency of the request for interim authorisation in light of the suspension of the REDcycle program and the uncertainty faced by consumers and retailers with regard to soft plastics recovery and recycling in Australia.
33. In making its decision, the ACCC acknowledges that the interim authorisation seeks to address the immediate effects of the suspension of REDcycle’s soft plastics collection

program while industry and government consider options for longer-term solutions. The ACCC will closely monitor the Participants' progress via the reporting conditions (detailed at paragraph 31) and through public consultation, to inform its consideration of the substantive application for authorisation. The ACCC expects the Participants to take positive action and work expeditiously towards a Short-term Solution consistent with their request for urgent interim authorisation.

34. The ACCC also acknowledges the importance of consistent communications to consumers about the steps taken towards a Short-term Solution. The ACCC expects that the Participants will ensure that all communications planned or agreed pursuant to this interim authorisation will be clear, up to date and in compliance with their Australian Consumer Law obligations.

35. The Authorised Conduct does not detract or adversely impact the development of longer-term solutions for soft plastic recovery and recycling in Australia.

36. In addition, the ACCC considers that:

- It is unlikely that interim authorisation will materially alter the competitive dynamics in any market, and the market will be able to return to substantially its current state once the urgent circumstances are addressed. In particular:
 - The Authorised Conduct, and interim authorisation, is a temporary measure while the ACCC considers the substantive application for authorisation.
 - The Authorised Conduct is limited to short-term solutions as defined above, being solutions for the storage, transportation, processing, recycling and/or management of soft plastics that are intended to be implemented during the period from the date of this conditional interim authorisation until 12 months from the date of a final determination by the ACCC. Further to this, the Participants advise that any contracts, arrangements or understandings entered into in reliance on any interim or final authorisation granted by the ACCC will terminate upon the expiry or revocation of such authorisation, limiting the scope of any possible harm to competition.
 - The Authorised Conduct does not involve any agreement on the price or supply of retail products or services sold by the Participants and the Participants will continue to compete with respect to retail prices of products and services.
 - The Authorised Conduct is not compulsory and does not prevent any individual Participant or Program Partner from exploring or developing soft plastics recycling capabilities in their own right
 - There will be oversight of the Authorised Conduct, including by the Department. Meetings will initially be chaired by the Department and will continue to be attended by representatives of the federal government and it is anticipated that other relevant industry stakeholders will also attend. Further to this, the Participants must comply with the conditions requiring the provision of meeting minutes and progress reports to the ACCC as detailed above in paragraph 31.
- There are likely to be significant public benefits in the current circumstances, including:
 - The Authorised Conduct will enable Participants and industry stakeholders to quickly and efficiently explore urgent or short-term

solutions to either continue the REDcycle program or implement an alternative program.

- Enabling the Participants to develop urgent or short-term solutions may have a significant environmental benefit of diverting household soft plastics from landfill and addressing the existing stockpile while a longer-term arrangement is developed.
- The granting of interim authorisation will assist the Participants to engage in the Authorised Conduct quickly which will assist in alleviating community concern about the suspension of the REDcycle program and provide coordinated communications about the steps taken towards a Short-term Solution.
- The absence of authorisation may discourage some Participants from participating in the Soft Plastics Taskforce or may substantially reduce engagement (or its effectiveness) which may delay urgent or short-term solutions being developed and implemented.

Reconsideration of interim authorisation

37. The ACCC may review a decision on interim authorisation at any time.

38. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not final authorisation will be granted.