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17 March 2023

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Naomi Menon
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Australian Competition and Consumer Commission
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By Email

Dear Ms Camilleri and Ms Menon

Variation to Application for Authorisation by Coles Group Limited and Replacement of Interim Authorisation

We refer to the application for authorisation by Coles Group Limited (**Coles**) lodged on 16 November 2022 (the **Application**), the interim authorisation granted by the ACCC to Coles, Woolworths and ALDI (the **Participants**) on 25 November 2022, the progress report lodged with the ACCC on 27 February 2023 (**Progress Report**) and to our recent discussions.

The purpose of this letter is to seek a minor variation of the Application given recent developments, including REDcycle being declared insolvent. If the ACCC accepts Coles' request to amend its Application, Coles submits that it would be appropriate for the scope of the Interim Authorisation to be narrowed to a corresponding extent.

1 Preliminary observations

As detailed in the Progress Report, since the Interim Authorisation was granted, the Soft Plastics Taskforce (the **Taskforce**) has worked intensively and systematically to identify and evaluate Short-Term Solutions in light of the suspension of REDcycle's soft plastics recovery program. This included evaluation of export options, existing local processing capabilities, developing or accelerating new local processing facilities and the establishment of a new stewardship program.

These inquiries have been complex and multi-faceted, particularly because soft plastics processing capacity is only expected to become operational in Australia at staggered intervals over the next 5 years. The Taskforce is also strongly of the view that a supermarkets soft plastics recycling program should only recommence where processing partners can demonstrate a viable business model, credible ongoing commercial offtake for their products and a commitment to minimising storage of collected soft plastics. Considerable efforts have therefore been made to meet with local partners to understand and validate their current and projected processing capability.

The Participants currently expect to restart soft plastics collections in-store in late 2023. This is expected to occur in a geographically staggered way, to align with the staged increases in domestic processing capacity. This also assumes that the existing stockpiles of soft plastics that were collected and stored by REDcycle are not being processed by local processors at this point in time and that available local capacity can be used solely for new soft plastics collections.

Our Ref 120921699:121132710
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Following the submission of their Progress Report to the ACCC, Coles and the other Participants have reflected carefully on whether the scope of the proposed Authorised Conduct remains appropriate or whether it could be narrowed in light of the considerable work that has been completed to date.

Having reflected on these matters, Coles (together with Aldi and Woolworths) submits that the scope of the Proposed Conduct remains appropriate for the following reasons:

- While considerable activities have been undertaken by the Taskforce and its members since Interim Authorisation was granted, these efforts have focused primarily on the technical and practical aspects of relaunching a supermarkets soft plastics recovery program in Australia. In other words, these activities have focused on assessing whether an alternative supermarkets soft plastics recovery program is practically viable having regard to current and projected domestic processing capacity.
- The Participants are only in a position to consider the appropriate legal and contractual structures to support such a program once there is a high degree of confidence about the practical and commercial viability of the new program and how it will work in practice. At the present time, the Participants have not been in a position to evaluate these matters, all of which are relevant to the scope of the Proposed Conduct. For example, it is not yet clear whether an alternative program would be established and administered by way of a joint venture, through sponsorship of a new entity or some other arrangement. This question would directly impact whether or not the Participants require authorisation to jointly manage collected soft plastics, jointly engage third party providers and/or jointly acquire facilities.
- Given that these legal and contractual matters are still to be determined, the Participants are concerned that it would be premature to narrow the scope of the Application, and that doing so may constrain the effectiveness of the Taskforce and impede its ability to progress a Short-Term Solution.
- As part of considering the scope of the Application, the Participants also considered whether exemption from section 46 of the *Competition and Consumer Act 2010 (Cth)* is still required. Given the suspension of the REDcycle program and REDcycle's subsequent insolvency, there are good arguments that restarting an alternative soft plastics recovery program in supermarkets could *not* have the effect of substantially lessening competition. That is, because launching an alternative program would facilitate the provision of a service to consumers, and the provision of offtake to processors, that would otherwise not occur without the Participants working together. However, it can be difficult to predict the effect of a new program on competition in the market, particularly markets involving soft plastics recovery which are in a state of transition and are still experiencing challenging economic conditions. Given these difficulties and given that the Participants reflect three of the major supermarket chains, the Participants respectfully submit that exemption from section 46 is still appropriate. Without such protection, the Participants may be reluctant to launch or participate in an alternative supermarkets soft plastics recycling program.
- The Proposed Conduct is in any event confined in scope, subject to a high level of supervision and oversight and short term in nature. In particular, the Proposed Conduct is limited to conduct that occurs at or arises out of a Taskforce meeting which is attended and chaired by federal government representatives. The Participants are also required to provide detailed minutes to the ACCC for publication on its authorisations register. The Proposed Conduct is also limited to Short-Term Solutions that can be implemented within 12 months of the ACCC granting authorisation.

2 Request for variation

Although the Participants consider that the Proposed Conduct remains largely appropriate in scope, the Participants have proposed a minor narrowing of scope to take account of recent developments and in particular, REDcycle's recent insolvency.

The precise terms of Coles' proposed amendment to the Application are set out in Annexure A.

Coles submits that, with these minor amendments, the Proposed Conduct is appropriately framed and will result in the same public benefits detailed in Coles' Application.

Coles has consulted with the other Participants, who have indicated that they are supportive of the proposed narrowing of the scope of the Proposed Conduct.

Please do not hesitate to contact us to discuss.

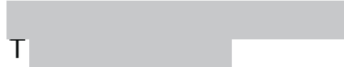
Yours sincerely



Rosannah Healy
Partner
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Jessica Jane
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Annexure A

Proposed variation to Application

In light of the suspension of the REDcycle program, the Participants seek authorisation on behalf of themselves 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) 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).

An **Interim 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 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 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).

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 this application; and
- involves short term arrangements only. 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 consents or does not otherwise object to the continuation any of those contracts arrangements or understandings).