



22nd April 2020

Australian Competition & Consumer Commission
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AACS SUBMISSION: AA1000477 – Coles Group on behalf of itself and participating supermarkets

To whom it may concern,

In the midst of the coronavirus pandemic where people are not only choosing to avoid large crowds but are required to, the sentiment expressed by this small business owner below is extremely concerning:

"I've been placing at least five orders a week over a range of suppliers trying to get toilet paper, flour, sugar, pasta, rice, all of those things that customers are looking for, and just haven't been able to get them. When you see the big people, the big supermarkets getting pallet loads and you can't get one carton, I find that extremely unfair behaviour."

- **Owner of Kerry's Korner Shop in QLD, Kerry Drennan, as reported by ABC News¹**

On behalf of members of the Australasian Association of Convenience Stores (AACS), the peak body for the convenience industry in Australia, we make the following submission as an interested party to the ACCC consultation on the application for authorisation from Coles Group on behalf of itself, Woolworths, Aldi and Metcash.

First, we acknowledge these are unprecedented times. We understand that like convenience stores, the major supermarkets are providing an essential service to consumers. It is not the purpose of this submission to seek any restraint on the trade of supermarkets during the pandemic.

It is the purpose of our submission to seek a fair and level playing field for convenience stores and other small retailers during the pandemic and following, including as it relates to the equitable distribution of critical items from suppliers.

¹ <https://www.abc.net.au/news/2020-04-14/corner-stores-supermarkets-supplies-coronavirus-pandemic/12144552>

Since the authorisation, there is a perception that AACS members have been negatively impacted in terms of their ability to source critical items due to the major supermarkets using their collective power to dominate and in some cases overwhelm the supply chain.

While small business orders go unfulfilled for weeks, supermarket shelves are re-stocked with some hard to get products. It is an issue which significantly affects these businesses as well as their customers.

Some convenience stores, which would otherwise be preferable places for people to buy their essential items in a clean, uncrowded way, are actually losing business because they can't get the supplies they need.

Many older customers who rely on local convenience stores are simply unable to access the things they need. This is particularly prevalent in regional and rural locations not serviced by the major supermarket chains.

The Council of Small Business Organisations Australia (COSBOA) makes a valid point when it says the coronavirus crisis provides small retailers with the opportunity to show they can be competitive and provide a valuable service. But they need to have fair access to supplies to do so.

The AACS urges the ACCC in determining the authorisation application for a further six months, to apply conditions to the authorisation which guarantee an equitable distribution of critical supplies to small retailers like convenience stores.

The public cost will be too great if these local stores, many of which are the single source of essential items in their communities, are unable to provide those items to people in need.

To illustrate this point, in this submission we've included a summary of the findings of independent research we recently commissioned into how consumers are using convenience stores during the pandemic.

Thank you for your consideration of our submission. Don't hesitate to contact me should you require further information.

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About the AACS

Established in 1990, the Australasian Association of Convenience Stores (AACS) is the peak body for the convenience industry in Australia.

Nationally, our industry employs over 40,000 people in over 6,500 stores. The majority of these stores operate as family run businesses, often under licence or franchise agreement, or independent ownership. They regularly employ family members and people from the local communities in which they operate.

The AACS represents the interests of these small businesses; their owners, staff, suppliers and customers.

In 2019 sales at C-stores were up 2.08% as at December 2019. In dollar terms this is \$8.776billion, according to companies contributing to the *2019 AACS Annual State of the Industry Report*. This report contains the most comprehensive information available on the convenience industry in Australia and we would be happy to provide a copy.

As an Association we enjoy strong ties with our international counterparts including the convenience stores associations in the US, Canada, the UK and New Zealand. We also visit similar stores in South East Asia to keep abreast of changing and emerging trends.

Disclaimer

The AACS has a broad membership comprising a variety of company sizes and structures which represent the diverse nature of the convenience sector. While our submissions always seek to represent the views presented by our members, we acknowledge that this is not always possible given a diverse membership and as such we would note that some members may not hold the same views as those expressed within this submission.

Response to select questions posed for the Consultation

In this section, we respond to select questions posed by the ACCC for the Consultation as outlined in the letter to AACS and other interested parties dated 3 April, 2020.

What impact has the supermarkets' coordinated conduct had on you?

The coordinated conduct of the supermarkets as permitted under the interim authorisation appears to have negatively impacted the ability of convenience stores to obtain the necessary supplies they need to provide the comprehensive and convenient service customers demand during the coronavirus pandemic.

This conduct undermines our capacity to provide the essential service we are empowered, by Government, to provide to the community.

Convenience stores remain open and available for consumers to visit. However many orders of necessary products, especially paper goods, cleaning and hygiene products but also staple grocery items, remain unfulfilled.

We know that this is because suppliers appear to be prioritising the orders of the major supermarkets and the interim authorisation has strengthened their position to dominate the supply of these critical items even further, due to their coordinated conduct.

This also impacts our customers, who continue to visit our stores but in many cases are unable to purchase all the essential items they need. Regional stores with limited deliveries are further affected.

Is the interim authorisation achieving its purpose of ensuring continued and equitable supply of Retail Products?

Regrettably, the interim authorisation is having a counterproductive impact to its stated purpose. The major supermarkets, individually, because of their buying power, already enjoy an advantageous bargaining position with many suppliers.

Having coordinated their conduct as permitted by the interim authorisation, the supply of critical items to other smaller competitors has been significantly impacted.

Like the applicant supermarkets, convenience stores have been deemed by Government to be an 'essential service'. The coordinated conduct of the supermarkets exacerbates the environment of inequality for convenience stores in terms of their ability to secure the items they, and their customers, need. Manufacturers appear to be using outdated sales volumes as a basis for order supply whereas the situation has changed markedly as a result of COVID-19 and consumers choosing to shop more at their local and smaller stores.

Have you identified any negative effects from coordinated conduct permitted by the interim authorisation?

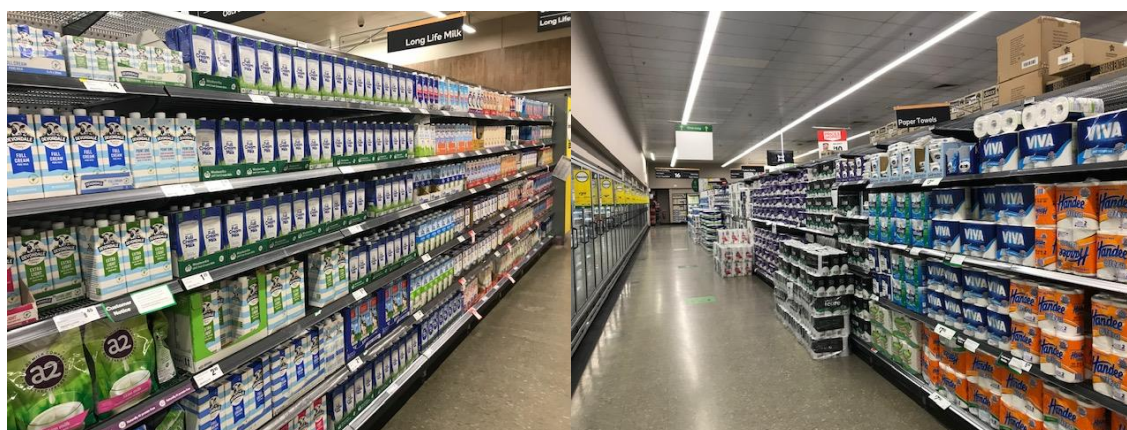
There are a range of critical items that convenience stores require to be able to perform the role they are capable of during the pandemic, and which Government expects of our industry.

These items can be broadly categorised as those which stores require to stay open, safe and clean, and those which our customers rely on our stores for.

The interim authorisation and subsequent coordinated conduct of the major supermarkets has negatively impacted convenience stores' capacity to obtain many items. Despite supermarkets lifting some restrictions on quantities able to be purchased by consumers, convenience stores are still unable to access a number of these products e.g. tinned vegetables, cleaners, long life milk. For the purpose of this submission, we will limit our listing of these items to those which fall into the above two categories:

- Rice
- Pasta and related products like sauces
- Toilet paper
- Paper towels
- Hand sanitiser
- Anti-bacterial wipes
- Cleaning products: kitchen, laundry, bathroom

These are photos from a major supermarket taken on 21st April that shows full shelves of stock – which is good news for consumers – but which smaller stores are still having difficulty in obtaining:



Is the coordinated conduct permitted by the interim authorisation likely to entrench anti-competitive behaviours that continue past the end of the COVID-19 pandemic?

It is possible and such an outcome would be shameful. We urge the ACCC to monitor the coordinated conduct of the supermarkets closely, irrespective of the end date of the interim

authorisation as well as inquire with manufacturers whether wholesalers and distributors of merchandise to c-stores did in fact receive a fair share of available products. .

We reinforce that we do not seek to restrain the trade of the supermarkets, or any business for that matter, during the pandemic.

Nevertheless, it is our position that the conduct of the supermarkets in some areas already amounted to anti-competitive behaviour. In dominating the supply of critical items, the interim authorisation has exacerbated the imbalance in the playing field.

The pandemic will change retail forever and it's impossible to know exactly what the operating environment of the future will look like. As a nation, we have an opportunity to re-shape the retail landscape to ensure small retailers can compete on a level playing field with the major supermarkets in the future.

We believe the ACCC has a critical role to play in achieving this.

Should any changes be made to the interim authorisation?

We urge the ACCC to apply strict conditions to the interim authorisation that ensure small retailers are accounted for in the distribution and supply of critical items that they need to remain open and to serve the community, and which their customers need to buy.

While the major supermarkets do not directly supply other independent retailers, many convenience stores source their products from Metcash. Metcash supplies thousands of independent retailers, Government institutions and other organisations, but importantly is the major supplier to IGA Supermarkets.

Though we are assured that our retailers' needs are being met as far as practical, we are concerned that Metcash may not be receiving sufficient stocks from manufacturers to meet its broad customer base, thereby putting smaller retailers at a disadvantage when compared with the large supermarkets.

The images overleaf are excerpts from a recent Metcash invoice provided by an AACs member showing the amount of items currently out of stock. The actual invoice itself includes around 10 pages of unavailable stock. More information can be made available.

The codes as follow refer to:

TOS: Temporary out of stock

TNA: Temporary not available

Line No.	Product ID	Product Description	IND	Qty	UOM	Pack Qty	Weight	GST%	Cost	Mrgn \$	GST \$	Total Cost ITEM	Total Val EXTENDED	Landed Unit Cost	Sugg Sell	GP%
* GROCERY *																
01101	419615	CONT R/MIX SAUSAGE CURRIED35GM	P TOS	1	CSE	12										
01102	330934	CONT R/MIX SHEPHERDS PIE 50GM	P TOS	1	CSE	12										
01103	676843	CONT RICE FRIED 115GM	P TOS	3	CSE	7										
01104	650083	COTTONS TAMPON 100% REG #16S	P TOS	1	CSE	10										
01105	67845	CSR CASTER SUGAR RAW 750GM	TOS	1	CSE	12										
01106	42939	CSR COFFEE CRYSTALS 500GM	TOS	1	CSE	12										
01107	694875	CSR RAW SUGAR 500GM	TOS	1	CSE	24										
01108	93809	CSR SUGAR CUBES 450GM	TOS	1	CSE	24										
01109	328238	CSR WHITE SUGAR PREM STKS150GM	TOS	1	CSE	12										
01110	941379	CURASH WIPES FRAG FREE 80S	P TOS	1	CSE	6										
01111	315510	D/DALE MILK SKIM SEMI UHT 1L	M TOS	2	CSE	10										
01112	460161	DETTOL H/CLN B/ROOM SPRY 500ML	TOS	2	CSE	6										
01113	460132	DETTOL H/CLN KITCHEN SPRY500ML	TOS	3	CSE	6										
01114	624668	DOLMIO CHNKY TOM/ON/GARL 785GM	TOS	2	CSE	6										
01115	390298	DOLMIO PST/BKE 3 CHEESE 490GM	P TOS	1	CSE	6										
01116	390125	DOLMIO PST/SCE CARBONARA 490GM	P TOS	1	CSE	6										
01117	390191	DOLMIO PST/SCE GARDEN VEG500GM	P TOS	2	CSE	6										
01118	390214	DOLMIO PST/SCE CRMY MSHRM490GM	P TOS	1	CSE	6										
01119	390256	DOLMIO PST/SCE FOUR CHSE 500GM	P TOS	1	CSE	6										
01120	388076	EARTHS CHCE CLNR FLR/SURF 1L	TOS	1	CSE	9										
01121	375060	FEBREZE X/STRG AMBI RFRS#370ML	P TOS	1	CSE	6										
01122	383589	HANDEE TOWEL ULT WHT DB/ROLL2S	TOS	4	CSE	4										
01123	592311	HUGGIES ULT/DRY CRAWL BOY 22S	P TOS	1	CSE	4										
01124	76483	KORLA PREM RICE LONG GRAIN 2KG	TOS	2	CSE	6										
01125	354441	LA PAST ALFREDO 4SRV 120GM	P TOS	2	CSE	6										
01126	22329	LIDDELLS MILK LACTR F/FAT 1L	TOS	4	CSE	12										
01127	683866	MAX'S CAT LITTER 4KG	TOS	1	CSE	3										
01128	41755	MCLINTOCKS VAN FRSH WIPE 500ML	TOS	2	CSE	6										
01129	297801	MORN/FRSH D/W LIQ LIME 400ML	P TOS	1	CSE	12										
01130	349700	MORN/FRSH D/W PWDR LEM CONC1KG	P TOS	1	CSE	6										
01131	81213	PALM D/WSH ULTRA D/SKIN 750ML	TOS	1	CSE	8										
01132	81239	PALM D/WSH ULTRA ORIG 750ML	TOS	2	CSE	8										
01133	81255	PALM D/WSH ULTRA A/B LEM 400ML	P TOS	1	CSE	10										
01134	464343	PINE-O-CLEEN LAVENDER 1.25L	TOS	5	CSE	8										
01135	64070	PINE-O-CLEEN PINE 500ML	TOS	5	CSE	8										
01136	430962	QUILTON TISSUE WHITE 3PLY 110S	TOS	4	CSE	12										
01137	94106	SELLEYS LIQUID SUGAR SOAP750ML	TOS	1	CSE	6										
01138	477176	SORBENT TISS THICK&LARGE 95S	P TOS	3	CSE	12										
01139	95982	SORBENT TISS VELVET LARGE 70S	P TOS	4	CSE	12										
01140	383644	SUIMIN CUP CHIC NOODLES 70GM	P TOS	1	CSE	12										
01141	43383	SUNRICE PREM WHITE L/GRN 500GM	TOS	1	CSE	18										
01142	394381	SUNRICE RICE WITH QUINOA 250GM	TOS	1	CSE	6										
01143	65262	TRIX DETERG LEMON 1L	TOS	1	CSE	9										
01144	333990	VELVET LAUNDRY SOAP 500GM	TOS	1	CSE	12										
01145	55241	WHITE KING BLEACH LAVNDR 2.5L	TOS	2	CSE	4										
01146	59449	WHITE KING BLEACH REG 2.5L	TOS	3	CSE	4										
01147	331639	ZAFARELLI NO4 SPAGHETTI 500GM	TOS	2	CSE	20										
01201	630368	A/FRSH GARLIC MINCED 400GM	P TNA	3	CSE	6										
01202	392740	AJAX PROF BATHROOM TRIG 500ML	P TNA	1	CSE	8										
01203	347949	AJAX S/WPE GLASS TRIG 500ML	P TNA	1	CSE	8										
01204	37442	AJAX S/WPE LEM TRG 500ML	P TNA	2	CSE	8										
01205	37450	AJAX S/WPE OCN FRSH TRG 500ML	P TNA	2	CSE	8										
01206	332350	AJAX WIPES M/PURP LMN RF 40PK	P TNA	3	CSE	10										
01207	366286	ARN HUNDREDS N THOUSANDS 200GM	TNA	1	CSE	20										
01208	309072	ARN SALADA 250GM	TNA	2	CSE	18										
01209	309153	ARN TINA WAFER #210ML	TNA	1	CSE	20										
01210	456837	AYAM SCE OYSTER #210ML	TNA	1	CSE	6										
01211	408402	B/CROCK BRNIE FDG TRP/CH500GM	P TNA	2	CSE	8										
01212	393490	B/CROCK C/KA CHOC FUDGE 540GM	P TNA	1	CSE	4										
01213	393505	B/CROCK C/KA DEVIL FOOD 540GM	P TNA	2	CSE	4										
01214	401230	B/GOLD BABY WIPES TUB 100S	TNA	4	CSE	6										
01215	18663	B/GOLD C/FD CHIC/BF/VEG 1KG	TNA	1	CSE	8										
01216	38079	B/GOLD FLOUR PLAIN 1KG	TNA	2	CSE	12										
01217	38095	B/GOLD FLOUR PLAIN 2KG	TNA	2	CSE	6										
01218	38477	B/GOLD FLOUR SR 1KG	TNA	2	CSE	12										
01219	38485	B/GOLD FLOUR SR 2KG	TNA	2	CSE	6										
01220	682496	B/GOLD METHYLATED SPIRIT 1L	TNA	4	CSE	12										
01221	86080	B/GOLD MILK F/CRM UHT 1L	TNA	4	CSE	12										
01222	680305	B/GOLD MILK L/LF RF 1L	TNA	4	CSE	12										
01223	86098	B/GOLD MILK SKIM UHT 1L	TNA	4	CSE	12										
01224	64142	B/GOLD MOIST TOWELTIES 70S	TNA	1	CSE	12										
01225	650619	B/GOLD OIL CANOLA 4L	TNA	1	CSE	3										
01226	41234	B/GOLD OIL VEGETABLE 2L	TNA	2	CSE	6										
01227	7599	B/GOLD P/CAKE SHAKER 350GM	TNA	2	CSE	8										
01228	72625	B/GOLD PENNE 500GM	TNA	2	CSE	12										
01229	15356	B/GOLD SALT TBLE PLN DRUM500GM	TNA	1	CSE	12										
01230	341189	B/GOLD SPAGHETTI 500GM	TNA	2	CSE	20										
01231	72552	B/GOLD SPIRALS 500GM	TNA	2	CSE	12										
01232	62222	B/GOLD T/SOAP 6X100GM	TNA	3	CSE	12										
01233	485064	B/GOLD TISSUES FACIAL 2PLY224S	TNA	4	CSE	24										
01234	28234	B/GOLD VINEGAR WHITE 2L	TNA	2	CSE	6										
01235	19059	BARILLA PESTO GENOVESE 190GM	TNA	1	CSE	12										
01236	19936	BARILLA PSTA SCE NAPOLINA400GM	TNA	2	CSE	6										
01237	86179	BARILLA PSTA SCE BASIL 400GM	TNA	2	CSE	6										
01238	20385	BARILLA SPAGHETTINI NO3 500GM	TNA	2	CSE	15										
01239	76996	BARILLA SPAGHETTI NO5 500GM	TNA	2	CSE	15										
01240	498554	BARILLA SPAGHETTINI NO7 500GM	TNA	2	CSE	15										
01241	93396	BASCO P/CAKE BIRLMILK G/F#325GM	P TNA	2	CSE	6										
01242	31988	BEGA P/BTR SMOOTH 780GM	P TNA	1	CSE	6										
01243	8477	BEGA PEANUT BTR CRNCH LGT500GM	P TNA	1	CSE	6										
01244	416439	BREEDERS CHCE CAT LITTER 6L	TNA	1	CSE	5										
01245	891142	BREEDERS CHCE CAT LITTER 15L	P TNA	6	CSE	1										
01246	682810	BREF TLT CLNR JCY LEMON 450ML	P TNA	1	CSE	8										
01247	306236	BUNDABERG WHITE SUGAR 1KG	P TNA	3	CSE	10										

On Friday last in the media it was announced that Woolworths has partnered with a food services supplier to get bulk goods delivered to essential businesses, with the service possibly being extended to large households struggling for groceries during the coronavirus pandemic.

Woolworths Group CEO Brad Banducci announced on Friday the supermarket has partnered with Australian Food Services Supplier, PFD. Will such a move place further pressure and restraints on stock available to convenience stores? PFD currently supplies certain products

to our channel. The supermarket said priority would be given to Woolworths' business customers with potential to serve large household customers further down the track.

"By partnering with PFD we can help these businesses to place bulk orders which meet their requirements through our online service." Source: Yahoo! News by Josh Dutton, Friday 17 April 2020, 2:23pm

AACS research: how are consumers using convenience stores during COVID-19?

In early April 2020, an independent research report commissioned by AACS and undertaken by CMA Consulting was finalised. A review of the *COVID-19 Impact Study: How shoppers are using convenience stores* reveals numerous key findings which reinforce the need for convenience stores to be assured of fair access to critical supplies given increased consumer preferences to purchase essential items from these outlets.

The research methodology used involved online surveying of 1,000 respondents in line with national representation, including 500 regular convenience store shoppers (determined by shopping for items other than fuel at least twice a week) and 500 regular supermarket shoppers (determined by shopping at supermarkets a minimum of fortnightly). Surveying occurred in late March 2020.

Below is a selection of key findings. For the full research report contact jeff@aacs.org.au noting that it is not for public dissemination, as it is an AACS members-only resource.

- **More than one in five** people are choosing to go to convenience stores for the items they need at the moment because it means they **avoid the supermarket**. In the 31–50 year age bracket, it's more than one in four.
- For 23% of shoppers, the fact that **there are less people in convenience stores** is a reason for them to visit. 28% of shoppers over 51 cite this reason for visiting convenience stores.
- **Speed of visit and accessibility to fuel** are also key reasons for people visiting convenience stores more since the pandemic broke.
- **Supermarket shoppers are visiting convenience stores more** as it reduces the number of places they need to go.
- Among people who identify as supermarket shoppers, **39% are now buying milk more often from the convenience store**. 30% of these shoppers are buying more general groceries and 25% are buying more food-on-the-go products from convenience stores.
- Among convenience shoppers, for 42% the time of day they typically shop at stores has changed. **For 67% of these people, the reason is to avoid crowds**.
- Most shoppers agree that **it's important for convenience stores to have personal care and hygiene products** on hand, that they have **over the counter medication** available, and that they remain open for products other than fuel so that people can top-up in one trip.
- When visiting stores, 60% of shoppers would like to see **hand sanitiser and/or antibacterial wipes at the pump**, and **social distancing policies in the queue**.

