

Allens

101 Collins Street
Melbourne VIC 3000 Australia

GPO Box 1776
Melbourne VIC 3001 Australia

T +61 3 9614 1011
F +61 3 9614 4661
www.allens.com.au

ABN 47 702 595 758

Allens > < Linklaters

5 August 2020

Kai Fu
Director, Merger and Authorisation Review Division
Australian Competition and Consumer Commission
Level 17
2 Lonsdale Street
Melbourne VIC 3000

Will Sommers
Analyst, Adjudication
Australian Competition and Consumer Commission
Level 17
2 Lonsdale Street
Melbourne VIC 3000

By Email

Dear Kai

Coles Group Limited - application for authorisation AA1000477 - submission regarding draft determination

We refer to the ACCC's draft determination dated 15 July 2020 (**Draft Determination**) in relation to the application for authorisation lodged by Coles Group Limited (**Coles**) on behalf of itself and participating supermarkets. The purpose of this letter is to provide Coles' views in relation to the draft determination and the submissions that have been made by interested parties.

1 Draft determination

Coles submits that the proposed conduct the subject of the Draft Determination will result in a significant net public benefit and that it would be appropriate for the ACCC to grant authorisation as proposed.

As noted in the Draft Determination, the proposed conduct has been engaged in by retailers since March 2020 under interim authorisations granted by the ACCC and has resulted in public benefits within the broad categories of ensuring consumer access to retail products, reducing community concerns about stockpiling and grocery availability, and reducing strain on supply chains for retail products. Coles submits that these public benefits would continue to be realised from ongoing collaboration between authorised retailers, particularly in circumstances where community transmission of COVID-19 has continued in Australia and further outbreaks may be possible during the proposed term of the authorisation. In particular, during the current second wave of infections in Victoria, an unprecedented public health crisis, the current interim authorisation has enabled participating supermarkets and government representatives to continue to co-operate on critical issues to facilitate access to groceries, such as safety of workers, access to supermarkets by vulnerable customers and strategies to prevent panic buying.

2 Interested party submissions

While interested party submissions in response to the Draft Determination largely support authorisation being granted, Coles notes that some submissions raise concerns about the proposed conduct contributing to shortages of supply experienced by convenience stores and other

Our Ref 1062758:120921699
JYSB 510955199v3 120921699 5.8.2020

Your Ref AA1000477

independent retailers, including in rural and regional areas. As Coles has previously outlined to the ACCC, there is no basis to these claims. In particular:



- Collaboration between Coles and other participating supermarkets under the interim authorisations has been limited to matters such as staff and customer safety, access to supermarkets for vulnerable customers and strategies to prevent hoarding and panic buying. There have been no joint discussions with suppliers or joint procurement in relation to stock and all participating retailers have continued to purchase their stock independently. Accordingly, interim authorisation could not have given rise to stock shortages as alleged.
- All discussions among participating supermarkets have been facilitated by Government and in Government run forums such as the Department of Home Affairs' Supermarket Taskforce and its associated working groups. A representative of the ACCC has also attended a number of these meetings. It is not credible to suggest that Government run forums would have facilitated or endorsed industry based collaboration that would adversely affect independent supermarkets or convenience stores, including in rural and regional areas.
- Coles has itself experienced shortages of stock due to the unprecedented customer demand arising from COVID-19 pandemic. Any steps that Coles has taken to improve its stock position have focused on improving efficiencies in its own supply chain, such as working collaboratively with suppliers to adjust orders and committing additional resources to Coles' stores and supply chain so that available stock could be collected, distributed and placed on shelf as quickly as possible. These steps, taken independently by Coles, focused on Coles' own supply chain and could not have had any impact on issues being faced by convenience stores or independent retailers.

Accordingly Coles rejects any assertion that the proposed conduct has caused or would be likely to cause any shortages in supply to convenience stores and other small retailers. Rather, Coles considers that the industry as a whole continues to be affected by increased customer demand as a result of the pandemic.

Coles also notes that one submission queries whether the proposed period of authorisation is excessive in light of the rapidly changing nature of the pandemic and its resultant effects on consumer demand and business operations. Coles submits that such uncertainty, in fact, supports the period of authorisation extending until at least March 2021. Coles also considers that the current second wave in Victoria demonstrates how fragile the current situation is in Australia and the need for supermarkets to be able to act quickly to ensure ongoing grocery supplies in the event of other outbreaks.

Please do not hesitate to contact us if you would like to discuss any issues raised in this letter.

Yours sincerely


Rosannah Healy
Partner
Allens


James Somerville
Senior Associate
Allens
