

21 April 2020

Australian Competition and Consumer Commission
23 Marcus Clarke Street
CANBERRA ACT 2601

Via Email: adjudication@acc.gov.au

Dear Sir / Madam

AA1000477 – Coles group on behalf of itself and participating supermarkets – request to be covered by interim authorisation

We refer to the decision of the Australian Competition & Consumer Commission (herein after referred to as the “ACCC”) dated 26 March 2020 wherein an interim authorisation was granted to the Applicants, Coles Group, Woolworths, ALDI and Metcash (herein after referred to as the “Participating Supermarkets”) to engage in conduct which might ordinarily risk giving rise to contraventions of the Competition and Consumer Act 2010 (Cth) (herein after referred to as “The Act”).

It would be superfluous to herein recite the background and details of the Application for interim and final authorization under s88(1) of the Act (herein after referred to as “the Application”) dated 20 March 2020, which gave rise to the interim authorisation. We do, however, bring your attention to section 3.1 of the Application which states, that, amongst other things:

“The participating Supermarkets propose to engage in a number of coordinated activities with a view to ensuring the supply and fair and equitable distribution of Retail Products to Australian consumers during the COVID-19 pandemic. Specifically, the Participating Supermarkets seek authorisation to:

discuss, enter into or give effect to any arrangement between them (including with manufacturers, suppliers, transport and logistics providers), or engage in any conduct, which has the purpose of:

- (i) facilitating or ensuring the acquisition and/or supply of Retail Products in Australia (especially of those Retail Products in short supply);
- (ii) ensuring fairer access to Retail Products among the general public;
- (iii) providing greater access to Retail Products to those in most need (including the elderly and disadvantaged members of the public, such as consumers who may be too unwell to travel to the supermarket); or
- (iv) **facilitating access to Retail Products in remote or rural areas...**
[emphasis added]

By way of history, The Arnhem Land Progress Aboriginal Corporation (herein after referred to as “ALPA”) is a diverse organization, operating in a multitude of industry sectors, with a turnover of just over \$100mil (FY19). We are a public benevolent institute and a deductible gift recipient for Australian taxation purposes.

ALPA operate commercial businesses (retail stores, accommodation lodges, a mechanical workshop, construction company, furniture factory) and work in service delivery in some of the most remote regions in Australia, with some of Australia’s most vulnerable peoples. We have a footprint of approximately 1.2 million square kilometers. We currently employ in excess of 1,400 in our team, over 78% of whom are indigenous.

ALPA’s core business – that of operating remote retail stores – **ensures** food security to the 22 remote communities within which we operate throughout the Northern Territory, Far North Queensland and the Torres Strait. We are the lifeblood of those communities. We are considered an “essential service” in the eyes of the Federal, State and Northern Territory Governments and our workers and freight partners have exemptions to travel restrictions for that purpose. We meet regularly with the Covid-19 Remote Food Security Working Group convened by the National Indigenous Australians Agency and with Minister Ken Wyatt AM MP.

If, as the Participating Supermarkets state in their Application, the conduct authorised under the interim decision is intended to enable them to work together during the COVID-19 pandemic in order to “...ensure that all consumers will continue to have fair and reasonable access to Retail Products... as well as consumers in remote or regional areas...” then certainly granting ALPA interim (and final) authorisation (concurrent and for equal duration as that of the Participating Supermarkets) would enable ALPA to share real data with the Participating Supermarkets as to what *actual* impact (whether detrimental or not) their conduct is having (or is likely to have) on the supply of Retail Products to remote and regional areas.

ALPA is the largest aboriginal corporation and the largest non-government remote retailer in Australia. Whilst both significant achievements, and ones that make us proud of our 48-year history, neither enable us to effectively contend with the buying power and influence of the Participating Supermarkets. We are already experiencing difficulties with supply, as a result of suppliers and manufacturers reallocating Retail Products to meet the demand of customers of the Participating Supermarkets.

We have been in contact with Coles and Woolworths and we are aware of stock donations from both retailers to remote communities. However, this (while appreciated and helpful) was a drop in the ocean of what is required. They have declined to share essential stock with Metcash who, as an independent wholesaler, supplies the vast majority of remote stores.

Furthermore, in our discussions with some of the Manufacturers wherein we have sought a larger share of product, the Manufacturers have indicated that Coles, Woolworths and Aldi have placed large forward orders to secure stock for their markets leaving little for independents and even less for remote community stores.

We submit that customers in remote Indigenous communities generally have one store in the community and cannot simply go the next supermarket or suburb if the one they shop at is out of stock. They cannot buy it if it's not in their community store which is an untenable situation when having regard to food and essentials.

The risk of *failing* to grant ALPA authorisation to engage in the conduct, is that the authorisation could result in a net public detriment (in contravention of Section 7 of the Application.)

In order to achieve the purpose set out in section 13 of the interim authorisation, namely, to "...ensure the fair and equitable distribution of Retail Products to consumers, including elderly and disadvantaged members of the public..." we respectfully submit that it is absolutely imperative for ALPA to be able to engage in coordinated activities with the Participating Supermarkets without risking contraventions of the Act as outlined in Section 3.4 of the Application.

We further submit that Outback Stores (OBS) in the Northern Territory and Community Enterprises Queensland (CEQ) are also authorised as participating supermarkets for the same reason as ALPA.

We invite any questions which may arise as the result of this submission and await your decision.

Regards,



Mr Alastair King OAM FAICD
CEO

The Arnhem Land Progress Aboriginal Corporation