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23 April 2020

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

By email: adjudication@accc.gov.au

Dear Commission,

AA1000477 – Coles Group on behalf of itself and participating supermarkets – submission

Thank you for the opportunity to make this submission and participate in the Australian Competition and Consumer Commission (**ACCC**) assessment process in respect of the application for authorisation from Coles Group on behalf of itself, Woolworths, Aldi and Metcash (the **Applicants**).

We make this submission on our own behalf, as well as on behalf of the individual members of our association.

Your letter of 3 April 2020 seeks views on two main issues:

1. Our experience to date of any impacts associated with conduct under the interim authorisation granted to the Applicants by the ACCC on 23 March 2020 (the **Interim Authorisation**); and
2. Any comments on the likely public benefits and detriments, whether the ACCC should authorise the conduct for a further six months, and whether any conditions should be placed on the authorisation.

Our submission is suitable for public release.

We would be pleased to discuss this matter further with the ACCC and to receive any requests for further information which may be helpful to the ACCC.

Yours sincerely

George Tsapoutas
General Manager

Background

The Distributors is a national independent wholesale distributor representing an association of members which is concerned with the wholesale supply of goods to the petrol and convenience, corner store, pharmacy, newsagent, school and route markets.

Specific questions

1. What impact has the supermarkets' coordinated conduct had on you? How have the Applicants' dealings with you changed as a result of the interim authorisation?

It has been our experience that since the Interim Authorisation has been in place that it has been difficult for us and our members, as wholesalers, to obtain stock that normally would be readily available, in particular, grocery staples such as toilet paper, cleaning products etc. Anecdotally, our members are reporting shortages of supply being attributed to manufacturers supplying Coles, Woolworths, IGA/Metcash and Aldi in priority to other parties seeking supply.

Given the sudden and unprecedented demand from consumers for certain items, this prioritisation of supply to the major supermarket chains has had a significant impact on smaller wholesalers such as our members. The ABC reported on this issue last week, noting that many corner stores are experiencing significant difficulty in obtaining supplies because products are being directed to the major supermarket chains.¹

We note also that Woolworths' recent announcement of its partnership with PFD Food Services² to service the B2B market appears to have exacerbated difficulties experienced by other wholesalers, including our members, in accessing stock and supplying that section of the market. While this is described as supporting "temporary fulfilment of orders" to Woolworths' B2B customers, we are concerned that the current situation will be used to entrench such arrangements at the expense of other market participants.

¹ Schwarz, Dominique & Lloyd, Mary "Coronavirus sends shoppers back to corner stores, but they're battling big supermarkets for supplies" *ABC News*, 14 April 2020 <<https://www.abc.net.au/news/2020-04-14/corner-stores-supermarkets-supplies-coronavirus-pandemic/12144552>>

² Woolworths Group Limited, *Press Release – Woolworths partners with PFD for deliveries to B2B customers*, 17 April 2020 <https://www.woolworthsgroup.com.au/page/media/Press_Releases/woolworths-partners-with-pfd-for-deliveries-to-b2b-customers/>

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

While it appears that the initial increase in purchasing by consumers was triggered by misunderstanding and uncertainty as to the impact of COVID-19 which has now abated to some extent,³ resulting in improvements in availability of those items in major supermarkets, our members advise us that they are continuing to experience shortages.

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

The Australasian Association of Convenience Stores (**AACS**) recently commissioned a national survey of 1,000 shoppers to ascertain if COVID-19 had changed buying behaviour. The study found that during the last two weeks of March, half of the shoppers had visited greengrocers, pharmacies, petrol stations and convenience stores for items which they would usually buy in a supermarket. A copy of a summary of that study is attached for your reference, with permission.

Clearly, convenience and corner stores provide an opportunity for consumers to shop locally for essential supplies in a smaller scale environment, avoiding crowds. This should be encouraged in the context of the COVID-19 pandemic. However, if these stores experience ongoing and regular shortages, customers will be less inclined to patronise them and will be forced to use larger, better stocked retailers. However, this may not even be an option for some consumers located in areas which are not serviced by large supermarket chains, where convenience stores and small retailers perform an important supply role for grocery staples⁴.

³ Thackray, Lucy & Austin, Madeline "Coronavirus shopping limits need to be eased even further, say rural shoppers" *ABC News*, 11 April 2020 <<https://www.abc.net.au/news/rural/2020-04-09/woolworths-eases-restrictions-but-shoppers-say-more-is-needed/12137732>>

⁴ Australian Associated Press, "COVID-19 creates remote groceries crisis" *The Canberra Times*, 20 April 2020 <<https://www.canberratimes.com.au/story/6727900/covid-19-creates-remote-groceries-crisis/?cs=14231>>

4. 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 our concern that the Interim Authorisation is likely to entrench and exacerbate the dominance of the FMCG sector by the major supermarket chains. The major supermarkets already have substantial market power in the sector. The shortages being experienced by smaller wholesalers and retailers confirm this. Suppliers of key grocery lines appear to be under pressure to prioritise supply to the supermarkets in the current environment.

The refusal (or inability) to supply smaller wholesalers and retailers may result in those businesses being forced to close their doors. Further lockdown measures (if deemed necessary by relevant governments) may also result in closure of such businesses. The COVID-19 pandemic is unprecedented in the uncertainties it raises. In particular, in the present context, there is no way of predicting the length of time that such closures may be in effect. However, it seems clear that the longer that such businesses remain closed, the less likely that they will be reopen and even if they do, consumer behaviour patterns may have been altered irretrievably. This may lead to a lessening of competition in the marketplace to the benefit of the major supermarkets.

In this regard we refer also to the Council of Small Business Organisations Australia's (**COSBOA**) concerns about the adverse competition impact of COVID-19 measures, including the Interim Authorisation, in its submission dated 25 March 2020.

5. Should any changes be made to the Interim Authorisation?

We refer to the interim authorisation granted to NBN Co Limited and others (Application for authorisation AA1000483) pursuant to which NBN Co and Telstra, Optus, Vodafone Hutchison, TPG and Vocus were authorised to share information, coordinate strategies to manage congestion and take other steps to address significant demand changes caused by COVID-19. In that case, a condition of the authorisation was that they must share learnings with the smaller players in the telecommunications market.

The imposition of such a condition is an acknowledgement that there can be significant differences and asymmetries in a given marketplace. It is our submission that similar problems have been revealed in the FMCG sector and the Interim Authorisation (and any final Authorisation) should prioritise the following aspect of goal of the proposed conduct – *“the fair and equitable distribution of Retail Products to consumers”*. In light of the problems described above, there should be an express requirement that the permitted conduct not achieve the goals of continued supply at the expense of smaller market players.