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Our ref: IM-70865
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11 May 2021

Dear Interested Party

Re: Request for submissions: Woolworths Group Limited's proposed acquisition of PFD Food Services Pty Limited – proposed undertaking

The Australian Competition and Consumer Commission (**ACCC**) is currently reviewing the proposed acquisition of a 65% shareholding in PFD Food Services Pty Limited (**PFD**) by Woolworths Group Limited (**Woolworths**) (the **proposed acquisition**).

On 15 December 2020, the ACCC published a [Statement of Issues](#) which raised concerns that the proposed acquisition may:

- increase Woolworths' upstream buyer power,
- lessen competition in wholesale food distribution, and
- allow Woolworths to foreclose competitors that are supplied by PFD.

Woolworths and PFD subsequently offered a draft proposed undertaking to the ACCC pursuant to section 87B of the *Competition and Consumer Act 2010* (the **Act**) (the **proposed undertaking**).

The purpose of this letter is to seek your views on whether the proposed undertaking would adequately address the competition concerns identified. Your views will assist the ACCC in reaching a final decision on the proposed acquisition. **Attachment A** to this letter outlines the background to the proposed acquisition and a summary of the proposed undertaking. A list of specific questions is at **Attachment B**.

If you wish to make a submission, please provide it by **9am on Wednesday 19 May 2021**. Submissions may be emailed, preferably in PDF format to mergersru@accc.gov.au with the subject line: *Submission re: Woolworths/PFD - proposed s87B undertaking (Attention: Nick Schuller / Sara Mirabella)*.

This matter is public and you can forward this letter to anybody who may be interested.

Please note the ACCC has not yet formed a concluded view as to the nature and extent of

competition concerns or whether they are capable of being addressed by the proposed undertaking or any other possible remedy. The market consultation process should not be taken as an indication that the ACCC will accept the proposed undertaking or that any remedy will be capable of satisfying its competition concerns.

The ACCC may require changes to the proposed undertaking depending on the nature and extent of any concerns raised during the market consultation process. The ACCC will only accept the proposed undertaking if it is satisfied that the proposed undertaking will sufficiently address its competition concerns, and after consideration of the monitoring and compliance costs and any risk to competition associated with the implementation of the proposed undertaking (or failure to do so).

If you have any questions in relation to this matter, or would like to arrange a teleconference to discuss your response, please contact Nick Schuller on (02) 6243 1158 or Sara Mirabella on (07) 3835 4640.

Confidentiality of submissions

The ACCC will not publish submissions regarding the proposed acquisition. We will not disclose submissions to third parties (except our advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with s155AAA of the *Competition and Consumer Act 2010*. Where the ACCC is required to disclose confidential information, the ACCC will notify you in advance where possible so that you may have an opportunity to be heard. Therefore, if the information provided to the ACCC is of a confidential nature, please indicate as such. Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

Yours sincerely



Daniel McCracken-Hewson
General Manager
Merger Investigations Branch

Attachment A

Background – the ACCC review

The ACCC commenced its public review of the proposed acquisition on 23 September 2020. Further information about the ACCC's review can be accessed from the ACCC's Mergers Register at: www.accc.gov.au/mergersregister.

Woolworths

Woolworths is an ASX listed Australian and New Zealand retailer. Its operations include supermarkets, liquor and general merchandise stores as well as licensed premises. Woolworths is Australia's largest grocery retailer. It provides the retail sale of grocery products to consumers both in-store and online.

In addition to its retail operations, Woolworths also supplies food and groceries to businesses via its Australian Grocery Wholesalers business (**Woolworths AGW**) and the Woolworths at Work platform. Woolworths AGW's customers include Caltex as well as charitable organisations and two ready meal/meal kit businesses in which Woolworths has a financial interest. Woolworths at Work is an online platform by which business customers can purchase products from Woolworths' supermarkets. The platform allows for multiple shoppers from businesses to place orders, have multiple delivery locations and consolidated monthly invoicing.

PFD

PFD is a privately owned wholesale food distribution business in Australia.

PFD supplies and delivers an extensive range of fresh, frozen and dry goods to over 39,000 business customers across Australia. It services two broad customer groups: Quick Service Restaurants including major national franchisee brands; and other food service business such as hotels, supermarkets, restaurants/cafes, petrol and convenience, bakeries, airlines and institutions. PFD operates nationally via a network of distribution centres and its own logistics fleet.

In response to the short term impact of COVID-19, PFD recently launched an online service called PFD2Home, which allows non-business customers to purchase from it (with a minimum order spend of \$200).

Proposed Acquisition

Woolworths proposes to acquire 65% of the shares in PFD, with a call option over the remaining 35% of PFD's shares, for a total value of approximately AU\$302 million. Originally, Woolworths would acquire PFD's 26 freehold distribution centres, however, these distribution centres are no longer part of the proposed acquisition.¹

Overview of the proposed undertaking

Woolworths and PFD have offered a draft section 87B undertaking which the parties submit is designed to address the ACCC's competition concerns by maintaining separation and independence between Woolworths and PFD for a period of three years post-acquisition. The parties submit that the measures will preserve the current

¹ In May 2021, PFD sold 25 distribution centres to Charter Hall, retaining the remaining distribution centre.

market dynamics by allowing market participants to continue to interact with Woolworths and PFD independently of one another, for a period of time, and will allow the market to adjust to the prospect of Woolworths and PFD ceasing to be independent of each other.

To keep Woolworths and PFD separate, the proposed undertaking requires Woolworths and PFD to ensure that the Board and governance structure of PFD will be structured and operated in accordance with the commitments set out in a non-confidential summary of Confidential Schedule 2 of the proposed undertaking. This includes that: PFD's Board will consist of five Directors; Woolworths will appoint three Directors; and PFD will appoint up to two Directors, depending on the Equity Proportion held by the Smith Family (the other shareholder in PFD).

The proposed undertaking also requires Woolworths and PFD to:

- implement, maintain and comply with the confidentiality obligations and protocols contained in Clause 5 of the proposed undertaking, in addition to those contained in a non-confidential summary of Confidential Schedule 3 of the proposed undertaking to prevent Woolworths from receiving and using Commercially Sensitive Information subject to a number of exceptions, and
- implement training in relation to the obligations in the proposed undertaking and also the Food and Grocery Code of Conduct.

The definition of Commercially Sensitive Information varies depending on the identity of the third party to whom the information relates, and it may be broader or narrower.

The obligations in the proposed undertaking will remain in place for a period of three years. However, this period could be shorter if certain early termination provisions in the proposed undertaking are triggered. These early termination provisions generally depend on PFD's CEO. For example, if PFD's CEO ceases to be involved in the day to day management of PFD on a full time basis the three year period could end earlier.

The proposed undertaking also requires PFD to implement and publish on its website the charter set out in Schedule 4 of the proposed undertaking. The charter reflects certain principles of the Food and Grocery Code of Conduct and contains commitments from PFD to maintain confidentiality of suppliers' information and deal with suppliers in good faith. These obligations will remain in place for five years.

Attachment B

We have set out below a list of questions you may wish to address in your submission. Please feel free to comment on any other issues that you consider relevant to the ACCC's assessment.

1. Please outline the reasons for your interest in the Proposed Acquisition, including any commercial relationship/s with either of Woolworths or PFD.
2. Does the proposed undertaking provide effective constraints on Woolworths and PFD's ability to:
 - a. use any increased buyer power to demand better terms and prices from suppliers? Why or why not?
 - b. stop Woolworths' retail competitors from accessing products they currently purchase from PFD, or to increase prices for these products? Why or why not?
3. Will PFD continue to be an alternative channel to the supermarkets for suppliers, for the duration of the proposed undertaking? Why or why not?
4. Does the proposed undertaking provide for effective separation measures between Woolworths and PFD? Why or why not?
5. Does the proposed undertaking provide for effective confidentiality protocols between Woolworths and PFD? Why or why not?
6. What information, should be prevented from being disclosed between Woolworths and PFD?
7. In relation to the charter contained in Schedule 4 of the proposed undertaking:
 - a. does the charter provide for PFD to effectively interact with suppliers independently? Why or why not?
 - b. do you have any concerns regarding the enforceability of the charter?
8. The separation obligations in the proposed undertaking last for three years, subject to certain early termination provisions. Is the proposed term (noting the exceptions) sufficient?