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Mark Laybutt
Perishable Agricultural Goods Inquiry
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

By email - aginquiry@accc.gov.au

Dear Mark

Competition and Consumer (Price Inquiry—Perishable Agricultural Goods) Direction 2020

We refer to the government direction to the Australian Competition and Consumer Commission (the ACCC) to hold an inquiry into the markets for the supply of perishable agricultural goods. Thank you for the invitation to make a submission.

Coles is committed to supporting a positive and sustainable future for the Australian agricultural industries. As a customer obsessed and value-focused business, the success of Coles depends on an efficient, prosperous and sustainable agricultural sector in Australia. Our ability to provide quality fresh produce at competitive prices is underpinned by the strength of our farmers, growers, producers and other suppliers. Our relationships with suppliers are interdependent and we strive to make all supplier relationships fair and mutually beneficial.

The importance of having strong relationships within our supply chain has never been more evident than in the past 12 months. By working together with our suppliers, we were able to provide Australians with essential food and groceries during drought, bushfires and then COVID-19.

Coles strongly supports transparent and balanced competition in all commercial relationships, and specifically throughout the perishable goods supply chain. The efficient operation of agricultural markets has been a focus of the ACCC over the past 15 years resulting in five market studies and inquiries. Coles has participated in these inquiries by providing significant material to assist the ACCC's assessment of how markets function. These matters have included:

- Examination of the prices paid to farmers for livestock and the prices paid by Australian consumers for red meat (2007)

- Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries (2008) which included specific examination of the supply chains for various perishable goods including drinking milk, chicken, apples, eggs and beef
- Cattle and Beef Market Study (2016/7)
- Dairy Industry Inquiry (2017/8)

In support of these inquiries Coles has provided many documents and voluminous data to the ACCC including commercially sensitive pricing information, contracts with suppliers and detailed information on strategies and operations. Coles has also had numerous senior executives examined under oath by the ACCC during these inquiries. Coles has demonstrated its longstanding commitment to transparency and the effective operation and regulation of the supply chains in which it participates.

Coles has also participated and appeared in many federal government inquiries into markets and competition in relation to perishable agricultural goods, particularly in the dairy sector, including:

- *Milking it for all it's worth – competition and pricing in the Australian dairy industry* (2010) - The Senate Economics References Committee -
- *The impacts of supermarket price decisions on the dairy industry* (2011) - The Senate Economics References Committee
- *Australia's dairy industry – rebuilding trust and a fair market for farmers* (2017) - The Senate Economics References Committee
- *Performance of Australia's dairy industry and the profitability of Australian dairy farmers since deregulation in 2000* (current) - The Senate Standing Committee on Rural and Regional Affairs and Transport

Proportionality

Despite the presence of Coles in the lives of most Australians, the perception of Coles as a leading purchaser in terms of total volumes of Australian agricultural goods is inaccurate. For example, in its 2007 examination of red meat prices the ACCC identified that only 5.6 per cent of all Australian beef produced in 2005-6 was destined for Coles.¹ In the 2016/7 Cattle and Beef Market Study this figure was lower with the ACCC estimating that 3.6 per cent of total Australian beef production in 2015 was supplied to consumers by Coles.²

¹ ACCC (2007) *Examination of the prices paid to farmers for livestock and the prices paid by Australian consumers for red meat* at p.6 (<https://www.accc.gov.au/system/files/Examination%20of%20livestock.pdf>)

² ACCC (2017) *Cattle and beef market study – Final Report* at p. 35. 3.6% of total 2015 Australian beef production by weight represents the ACCC's estimated 16% of the 22.5% of total production by sold via Coles. (<https://www.accc.gov.au/system/files/ACCC%20Cattle%20and%20beef%20market%20studyFinal%20report.pdf>)

In its 2018 Dairy Inquiry the ACCC determined that Australian raw milk production was just over 9 billion litres in 2016/7.³ That year, Coles' own private label drinking milk volumes equated to approximately 3.1 per cent of that total national raw milk production volume.

Coles does not seek to minimise its role in many agricultural sectors and accepts willingly its responsibilities as an important participant in the perishable goods supply chain. These figures, however, highlight the reality that perishable goods are not solely destined for sale to consumers via supermarkets. Rather, significant proportions and in some cases most perishable goods grown in Australia are exported, used in the food services sector (e.g. cafes, restaurants and catering facilities) or transformed during processed food manufacturing.

Food and Grocery Code of Conduct Compliance Audits

Coles was one of the first supermarket signatories to the Government's Food and Grocery Code of Conduct (the Code) in 2015, reflecting its commitment to fair dealing. The Code is voluntary and provides a framework for trading relationships between retailers and suppliers. Coles considers that the Code has been valuable in building trust and transparency between parties in the retail supermarket supply chain.

As a voluntary signatory to the Code, Coles has twice been issued with section 51ADD Notices to produce information and documents to the ACCC for the purposes of assessing Code compliance. In 2016 and 2017 Coles provided documents to the ACCC recording its trading relationships with suppliers, including many perishable agricultural good suppliers. These documents included supply contracts and trading terms, fresh produce specifications and quality assessments, range review documentation, promotional agreements, supply chain updates and any complaints. These documents reflect all aspects of the trading relationship and were all reviewed by the ACCC. Each ACCC compliance audit has provided an opportunity for continued improvement and increased transparency.

Coles also reports to the ACCC on supplier complaints and outcomes as required by the Code. This reporting is done every six months. Coles remains strongly committed to the Code and its purpose to build and sustain trust and cooperation throughout the grocery supply chain.

Coles initiatives to support and strengthen supplier relationships

In addition to, and pre-dating, the Food and Grocery Code of Conduct, Coles also has a Supplier Charter (the Charter) which outlines the principles Coles commits to in terms of supplier

³ ACCC (2018) *Dairy Inquiry Final Report* at p. 13
(https://www.accc.gov.au/system/files/1395_Dairy%20inquiry%20final%20report.pdf)

relationships. The Charter commits Coles to supporting our merchandise suppliers to enable them to grow their businesses alongside Coles and continue to deliver great products for our customers. Coles recognises the importance of building strong, collaborative relationships with suppliers and the Charter is a formal commitment by Coles to deal with suppliers in good faith and according to open and transparent trading processes.

The Charter also committed Coles to establishing a fast-track, low cost dispute resolution procedure for suppliers. This process involves an Independent Arbiter, the Hon. Jeffrey Kennett, acting to investigate and resolve disputes raised by suppliers. Mr Kennett's most recent 2020 report to Coles noted that there had been a noticeable reduction in the number of complaints lodged by suppliers, and that, more often than not, Coles and its suppliers were able to directly resolve any disputes. Coles has been and continues to work hard to strengthen and enhance relationships with its suppliers.

Coles also seeks out supplier feedback in indirect ways and appreciates the opportunity to receive aggregated, de-identified supplier comments in programs coordinated by organisations like the Australian Food & Grocery Council and the Advantage Group. We have been pleased to see over recent years a continued improvement in supplier sentiment and that our suppliers generally agree that they enjoy working with us. The 2020 Advantage Survey saw Coles earn our highest ever net favourable score from our supplier base

Outside of our regular trading relationships with suppliers, Coles also financially supports Australian farmers and food producers to innovate and prosper. The Coles Nurture Fund was launched in 2015 to support small and medium Australian businesses. Australian businesses (whether they supply Coles or not) can apply for a grant of up to \$500,000 to help them develop market leading products, technologies and processes. Since commencing the fund in 2015 over \$20 million in financial support has been provided to over 60 businesses. Most recipients have been producers of perishable agricultural goods, including for example:

- 2015 Australian Fresh Leaf Herbs (\$430K grant), Harvey Citrus (\$500K grant), Moonrocks Garlic (\$400K grant)
- 2016 Rocky Ponds Qld (\$400K grant), Riviera Farms Watercress (\$183K grant), P&L Rogers Mushrooms (\$300K grant)
- 2017 Bill Crowther Cattle (\$500K grant), Arahura Farms (\$300K grant), Jalna Cattle Feedlot (\$500K grant), Nigel Stephens Cattle Farmer (\$134K grant), Oakmoor Orchards (\$500K grant), Kimberley Produce (\$500K0 grant),
- 2018 – Endhill Beef (\$400K grant)
- 2019 – Fitzpatrick Farms (\$190K grant), Caithness Pastoral Cattle (\$160K grant), Masalki Pears (\$400K grant), Edson Piggery (\$450K grant), Jinchilla Ag Dairy (\$200K grant),

- 2020 – Black River Produce (\$300K grant), Braebrook Pastoral (\$360K grant), Sutton Farms (\$400K grant), Hall Stanley Chestnuts (\$73K grant), Todaro Farms (\$78K grant).

Structural changes to improve relationships and outcomes

Since its introduction in 2011, \$1 per litre supermarket private label milk has been considered by many to be the source of various difficulties faced by the dairy sector. The level of this concern is evidenced by the many inquiries into the dairy industry, the most significant being the ACCC 2018 Dairy Inquiry.

The ACCC Dairy Inquiry Report made a number of findings that were contrary to the persistent narrative about the impact of the \$1/L per litre retail price of milk, the main one being

The ACCC has concluded that the introduction of \$1 per litre milk or reductions in other dairy retail prices did not have an observable direct impact on farm numbers, output or profitability. Rather, we have found that movements in farmgate prices can be attributed to changing demand conditions within the export or domestic market. Analysis of processor documents did not indicate that farmgate price movements were directly influenced by prevailing retail or domestic wholesale prices.⁴

Further, while supermarkets were found to be in a strong bargaining position vis-à-vis dairy processors, the contracting model for the supply of private label milk to supermarkets ensured that processors could pass through to supermarkets the farmgate price paid to farmers. The ACCC noted

This means that processors do not have an incentive to reduce farmgate prices as a result of the lower wholesale prices they receive for private label milk, as the farmgate prices are passed through to the supermarkets.⁵

The introduction of the Dairy Industry Code of Conduct is the regulatory response to addressing some of the asymmetries in the dairy industry that the ACCC identified as causing bargaining power imbalances in the sector. Coles is very supportive of the Code and as a direct acquirer of raw milk since mid-2019 has focused carefully on ensuring compliance.

Coles' new role as a direct acquirer of raw milk resulted from Coles' decision to change the way it participates in the dairy supply chain for the supply of private label Coles Brand milk. Recognising the ACCC Dairy Inquiry findings that the main determinants of dairy farm profitability are farming costs (particularly the cost of fodder) and farmgate prices (something Coles did not control under the old model) and the relative volatility of both,⁶ Coles created a new milk model where it contracts directly with dairy farmers for the purchase of their milk.

⁴ ACCC (2018) *Dairy Inquiry Final Report* at p. 134
(https://www.accc.gov.au/system/files/1395_Dairy%20inquiry%20final%20report.pdf)

⁵ *Ibid* at p.xiii

⁶ *Ibid* at p.135

Under this direct sourcing model, Coles sets the farmgate price, and importantly offers fixed price contracts, removing volatility and providing farmers with certainty of income for up to three years. Coles also has regular face to face meetings with its dairy farmer suppliers, ensuring that communication is frequent and direct, and that any concerns are acted on promptly.

A feature of the Coles direct sourcing model is the Coles Sustainably Dairy Development Group (the CSDDG). The CSDDG was formed by Coles to provide a forum for supplier dairy farmers to work with Coles to address many of the challenges facing the dairy industry. Coles has invested over \$3 million in the CSDDG and considers that it reflects the nature of the partnership model Coles now has with its dairy farm suppliers.

Since 2019 the CSDDG has supported supplier dairy farmers with:

- Exceptional circumstances payments of \$2.6 million for water and fodder during bushfire and drought (helping to manage one of the main causes of volatility of farm profitability identified by the ACCC);
- The supply of defibrillators to supplier dairy farms;
- Animal health care technology trials; and
- Deliveries of hand sanitiser and face masks to farms during COVID-19

Coles also extended its Employee Assistance Program offering free and confidential counselling services through Converge International to its dairy farmer suppliers.

In July 2020 Coles expanded its direct sourcing model for Coles Brand fresh milk to dairy farmers in SA and WA. This expansion follows a successful rollout of the model in Victoria and Central New South Wales in July 2019. Coles is very proud of the new paradigm it has established with the dairy farmer suppliers of Coles brand milk. It reflects Coles' focus on winning together with our suppliers and the symbiotic nature of the relationships Coles has with its supply partners.

Coles will continue to work closely with our growers, farmers and producers to deliver the best possible future for Australian agricultural industries. We look forward to growing profitably and sustainably together in our service of Australian consumers.

Coles confirms its willingness to assist the ACCC in its current inquiry as needed.

Yours sincerely



David Brewster
Chief Legal Officer