

From: [Jane, Jessica](#)
To: [Kolacz, Miriam](#)
Cc: [Healy, Rosannah](#); [Somerville, James](#)
Subject: ACCC Coles re-authorisation - Application revised 24 March 2022 [Allens-File-DMS.FID1929462]
Date: Thursday, 24 March 2022 10:05:58 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[Application for revocation and substitution of authorisation AA1000546 - 9 March 2022 \(Revised 24 March 2022\).pdf](#)

Dear Miriam

In response to the ACCC's query, we confirm that the reference to '*the next Authorised Meeting*' at paragraph 5.2(1)(c)(ii) of the application for revocation and substitution AA1000606 ought to refer to '*the next relevant Authorised Meeting*'.

Attached is an updated version of the application which incorporates this change in mark up and can be placed on the public register.

Please do not hesitate to contact us if you have any further queries.

Kind regards
Jess

Jessica Jane
Associate, **Allens**

DL [REDACTED] M [REDACTED]

**Application for revocation and substitution
of an authorisation under s 91C(1) of the
*Competition and Consumer Act 2010 (Cth)***

Lodged by:

Coles Group Limited

on behalf of itself and other operators of supermarket chains
in Australia

Public version

9 March 2022

[Revised 24 March 2022](#)

Contents

1	Summary	3
2	Applicant's details	4
3	Authorisation to be revoked (the Existing Authorisation)	4
4	Authorisation to be substituted (the new authorisation)	5
5	The Proposed Conduct	5
6	Counterfactual	11
7	Public benefits	12
8	Public detriment	12
9	Contact details of relevant market participants	13
10	Declaration by applicant	13
	Annexure 1: Other Approved Supermarkets	14

1 Summary

1.1 Background

This application seeks revocation of existing ACCC authorisation AA1000546 dated 25 August 2021 (**Existing Authorisation**) and substitution with interim and final authorisation under section 91C(1) of the *Competition and Consumer Act 2010* (Cth) (**CCA**) to engage in the conduct described in section 5.2 (**Proposed Conduct**). Substantially similar conduct was the subject of an earlier authorisation AA1000477 granted by the ACCC on 3 September 2020 (**Initial Authorisation**).

The application is made by Coles Group Limited (**Coles**), on behalf of:

- (a) itself and its related bodies corporate (**Coles Group**);
- (b) Woolworths Group Limited and its related bodies corporate (**Woolworths**);
- (c) ALDI Stores (A Limited Partnership) (**ALDI**); and
- (d) Metcash Limited, its related bodies corporate and the class of persons comprising each of the owners and/or operators of supermarkets or liquor stores trading under a brand owned or licensed by Metcash Limited or its related bodies corporate (**Metcash**)
(together, the **Participating Supermarkets**).

The critical role of supermarkets in Australian communities continues to be highlighted by the COVID-19 (coronavirus) pandemic. The Existing Authorisation, which is due to expire on 31 March 2022, has generated significant public benefits by enabling the Participating Supermarkets to work together to ensure the supply and fair and equitable distribution of fresh food, groceries, household products and liquor (**Retail Products**) during the pandemic. This collaboration has focused on critical matters such as the safety aspects of trading during the pandemic, availability of key product lines for customers and cleaning and hygiene measures.

Although Australia has achieved strong COVID-19 vaccination rates, the situation continues to be uncertain and fragile, as demonstrated by the emergence of new COVID-19 variants in 2021 and increases in COVID-19 case numbers as restrictions eased in the lead up to Christmas. With further lifting of restrictions and the re-opening of Australia's international border on 21 February 2022, Australia has entered a new phase of managing COVID-19, one which may raise different issues and challenges to those faced to date. Accordingly, the Participating Supermarkets seek reauthorisation until 31 December 2023 to ensure that they can continue to work together to address supply and safety issues that could arise in future in relation to the COVID-19 pandemic.

The outcome of this application would also apply to:

- (a) any other grocery retailer who has approval from the ACCC to engage in the conduct the subject of the application pursuant to the Initial or Existing Authorisation (or any related interim authorisation) (see full list in Annexure 1 below); and
- (b) any other grocery retailer who in future wishes to engage in the conduct the subject of the application and is approved to do so by the ACCC.

(together, **Other Approved Supermarkets**).

1.2 Application for interim authorisation

To ensure that the Participating Supermarkets can continue to take steps as needed to address any supply issues which may arise in relation to the COVID-19 pandemic, and for the reasons detailed in section 5.3, the Participating Supermarkets request that the ACCC grant interim authorisation prior to the expiration of the Existing Authorisation on 31 March 2022. This will ensure that the clear public benefits associated with the Existing Authorisation are maintained without disruption pending the ACCC's final determination of this application.

2 Applicant's details

2.1 Applicant

Name, address (registered office), telephone number and ACN	Contact person's name, position, telephone number and email address	Description of business activities
Coles Group Limited (ACN 004 089 936) and its related bodies corporate 800 Toorak Road Hawthorn East, VIC 3123 [REDACTED]	David Brewster Chief Legal & Safety Officer Coles Group Limited [REDACTED] 800 Toorak Road Hawthorn East, VIC 3123 [REDACTED]	Acquisition and retail supply of Retail Products through supermarkets, liquor and convenience outlets and online

2.2 Email address for service of documents in Australia

Rosannah Healy
Partner
Allens

[REDACTED]
[REDACTED]

3 Authorisation to be revoked (the Existing Authorisation)

3.1 The registration number and date of the authorisation which is to be revoked

Authorisation AA1000546 dated 25 August 2021.

3.2 Other persons and/or classes of persons who are a party to the authorisation which is to be revoked

Current parties to the Existing Authorisation are described in section 1.1 above and section 4.1 below.

3.3 The basis for seeking revocation

Coles requests that the ACCC revoke the Existing Authorisation because it is due to expire on 31 March 2022. Coles seeks to substitute in its place a new authorisation on substantially the same terms as the Existing Authorisation.

4 Authorisation to be substituted (the new authorisation)

Details of any other persons and/or classes of persons who, in addition to Coles Group, also propose to engage, or become engaged, in the Proposed Conduct and on whose behalf authorisation is sought are set out below.

4.1 Other Participating Supermarkets

Name, address (registered office), telephone number and ACN	Contact person's name, position, telephone number and email address	Description of business activities
Woolworths Group Limited (ACN 000 014 675) and its related bodies corporate 1 Woolworths Way Bella Vista, NSW 2153 [REDACTED]	Bill Reid Chief Legal Officer Woolworths Group Limited [REDACTED] [REDACTED]	Acquisition and retail supply of Retail Products through supermarkets, convenience outlets and online
ALDI Stores (A Limited Partnership) (ABN 90 196 565 019) Locked Bag 56 St Marys Delivery Centre, NSW 2760 13 25 34	Bronwyn Gallacher Managing Director CCL Consultants Pty Ltd [REDACTED] [REDACTED]	Acquisition and retail supply of Retail Products through supermarkets outlets
Metcash Limited (ACN 112 073 480) and its related bodies corporate and each of the owners and/or operators of supermarkets or liquor stores trading under a brand owned or licensed by Metcash Limited or its related bodies corporate 1 Thomas Holt Drive Macquarie Park NSW 2113 [REDACTED]	Julie Hutton General Manager Legal & Company Secretary Metcash Limited [REDACTED] [REDACTED]	Wholesale and retail supply of Retail Products through distribution centres, warehouses, supermarkets, liquor and convenience outlets and online

4.2 Other Approved Supermarkets

Details of the Other Approved Supermarkets, that Coles is aware of as at the date of this application, based on the ACCC public registers for Authorisations AA1000477 and AA1000546, are outlined in Annexure 1.

The Participating Supermarkets propose that authorisation also apply to other retailers which are approved by the ACCC subject to the requirements in section 5.2 below, or any other conditions imposed by the ACCC.

5 The Proposed Conduct

5.1 Overview

The conduct the subject of this application relates to cooperation between the Participating Supermarkets and Other Approved Supermarkets in response to the COVID-19 pandemic to ensure the supply and fair and equitable distribution of Retail Products to Australian consumers and the health and safety of customers and staff.

The Participating Supermarkets first applied for authorisation early in the pandemic in March 2020 following a continued surge in demand for certain Retail Products as consumers sought to stockpile goods. Among other things, the Participating Supermarkets sought authorisation to engage in limited coordinated activities in order to curb stockpiling behaviour and encourage consumers to return to normal shopping patterns. By curbing stockpiling behaviour, the Participating Supermarkets sought to ameliorate community concerns about availability of Retail Products, ensure fair and reasonable access to Retail Products for all customers (including elderly and disadvantaged members of the public) and ensure the safety of customers and staff. The ACCC granted interim authorisation in March 2020 and then the final Initial Authorisation on 3 September 2020 until 31 March 2021.

The Participating Supermarkets applied for the Existing Authorisation in March 2021 in light of continued outbreaks and lockdowns to ensure that they could continue to work together to ensure the supply and fair and equitable supply of retail products to consumers, and the health and safety of customers and staff, during the COVID-19 pandemic.

Coles considers that the Initial Authorisation and Existing Authorisation have been effective in achieving these aims and that the Existing Authorisation has continued to give rise to significant public benefits. As restrictions were eased and case numbers increased, including due to the emergence of the Omicron variant, the Existing Authorisation enabled the Participating Supermarkets to consult and cooperate on a number of matters, including in relation to maintaining sufficient numbers of staff in stores and distribution centres. While in practice only a small number of agreements have been reached in reliance on the Initial Authorisation and Existing Authorisation, they have enabled open, frank and timely discussions between Participating Supermarkets and the government during the pandemic on topics such as:

- (a) the safety aspects of trading during the pandemic;
- (b) availability of key product lines for customers;
- (c) trading hours;
- (d) customs clearance and border closures;
- (e) use of hand sanitiser and masks;
- (f) customer numbers and security in supermarkets and shopping centres;
- (g) supply to vulnerable customers, including through online channels;
- (h) access to grocery supplies by remote and indigenous communities; and
- (i) cleaning and hygiene measures undertaken to protect team members and customers.

In particular, more recently the Existing Authorisation has enabled or facilitated discussions between the Participating Supermarkets in relation to:

- (a) **staff vaccination program:** the Participating Supermarkets worked closely with Government to develop a prioritisation process for distribution centre and store staff to access vaccinations;
- (b) **'close contacts' protocol:** the Participating Supermarkets worked closely with the Department of Home Affairs and the National Coordination Mechanism to develop updated safety protocols in relation to 'close contacts', to facilitate the Participating Supermarkets' ability to maintain continuity of supply of Retail Products; and
- (c) **supply chain strains due to logistical issues:** Participating Supermarkets were able to work closely with Government to address shortages of Retail Products contributed to by panic buying, staff shortages and supply chain constraints.

Had Coles been unable to collaborate with the other Participating Supermarkets and the government in this manner, it is likely that stock shortages on shelves, associated supply chain constraints and restricted store trading hours would have continued for a considerably longer period, to the detriment of Australian consumers. In addition, open and collaborative discussions among Participating Supermarkets about safety matters enabled the Participating Supermarkets to share ideas and best practice information, providing all Participating Supermarkets with a high degree of confidence about the safety measures being implemented to protect consumers and staff, including similar or consistent public messaging about those safety measures.

The emergence of the Omicron strain of COVID-19 since the date of the Existing Authorisation demonstrates the potential for the pandemic to evolve and the importance of continued authorisation to enable targeted collaboration between the Participating Supermarkets as new issues emerge.

To ensure the Participating Supermarkets can continue to work together to address supply and health and safety issues that arise in future in relation to the COVID-19 pandemic, the Participating Supermarkets seek reauthorisation on substantially the same terms as in the Existing Authorisation for until 31 December 2023.

5.2 The Proposed Conduct

The Participating Supermarkets seek authorisation:

- (1) to propose, discuss, enter into or give effect to any contract, arrangement or understanding (including contracts, arrangements or understandings involving manufacturers, suppliers, transport and logistic providers), or engage in any conduct, where the contract, arrangement or understanding, or conduct:
 - (a) involves two or more of any Participating Supermarket or Other Approved Supermarkets; and
 - (b) has the purpose of ensuring the supply and fair and equitable distribution of Retail Products to Australian consumers during the COVID-19 pandemic by:
 - (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 most in need (including the elderly and disadvantaged members of the public, such as consumers who may be too unwell to travel to the supermarket);
 - (iv) facilitating access to Retail Products in remote or rural areas; or
 - (v) ensuring supermarkets provide a safe operating environment for staff, including contractors and third parties, and consumers, including vulnerable consumers; and
 - (c) either occurs at, in preparation for, or arises out of:
 - (i) **(Authorised Meeting)** an Authorised Meeting that occurs on or after the date that authorisation is granted; or
 - (ii) **(Urgent Measures)** discussions within 24 hours of a government COVID-19 direction or response (such as a government response to an outbreak) concerning urgent measures to ensure a safe operating environment, which measures are subsequently tabled at the next [relevant](#) Authorised Meeting that is held. The ACCC must be provided with as much notice of the relevant discussion or meeting as is reasonably practicable in the circumstances; and

- (2) for themselves and any Other Approved Supermarket to continue to give effect to any contract, arrangement or understanding previously entered into in reliance on:
- (a) the Interim Authorisations dated 23 and 26 March 2020 and 9 June 2020 and the Initial Authorisation dated 3 September 2020;
 - (b) the Interim Authorisation dated 25 March 2021 and the Existing Authorisation dated 25 August 2021;
 - (c) any Interim Authorisation granted in relation to this application,
(Existing Arrangement).

Authorised Meetings

For the purposes of paragraph (1)(c)(i) above, each of the following is an **Authorised Meeting**:

- (a) meetings of the Supermarket Taskforce (convened directly or through the National Co-ordination Mechanism) and any of its working groups, as convened by the Department of Home Affairs from time to time;¹ or
- (b) meetings of the COVID-19 Food Security Working Group and the Coordinated Corporate Taskforce as convened by the National Indigenous Australians Agency; or
- (c) meetings of a taskforce, working group or forum convened or attended by a representative of a Federal, State or Territory Government department or agency with the objective of responding to the COVID-19 pandemic where:
 - (i) the ACCC is notified by a Participating Supermarket in writing to exemptions@accc.gov.au, at least two clear working days before the date of any meeting (or, if a shorter period of notice is given, the ACCC advises in writing that it accepts the shorter period of notice provided), that the Participating Supermarket wishes meetings of the relevant group to be covered by this authorisation, and sets out the time and date of the first meeting, proposed attendees, the purpose of the meeting and the group, and the matters to be discussed at the meeting;
 - (ii) more than one Participating Supermarket, or one or more Participating Supermarkets and one or more Other Approved Supermarkets, has been invited to the forum; and
 - (iii) the ACCC does not notify the relevant Participating Supermarket at least one business day in advance in writing that it is not satisfied that the meeting has been convened to further one or more of the purposes set out at (1)(b) above.

For the avoidance of doubt, a forum includes a coordination mechanism convened by a Federal, State or Territory Government department or agency where Government liaises and/or coordinates with more than one Participating Supermarket, or one or more Participating Supermarkets and one or more Other Approved Supermarkets, even though the relevant supermarkets may not meet or speak directly, provided that the relevant Federal, State or Territory Government department or agency specifies to each relevant Participating Supermarket and/or Other Approved Supermarket that it is a forum for the purposes of this Authorisation.

Urgent measures

¹ As of the date of this application, this has included the Safety of Staff and Customers Working Group and the Food Supply Working Group.

For the purposes of paragraph 1(c)(ii) above, the Participating Supermarkets propose that **Urgent Measures** must only be engaged in if:

- (a) the ACCC has been provided with as much notice as is reasonably practicable in the circumstances of any Urgent Measures discussions or meetings taking place. Notice must be provided in writing to exemptions@accc.gov.au; and
- (b) any Urgent Measure is tabled at the next relevant Authorised Meeting that is held. A relevant Authorised Meeting for this purpose includes:
 - (i) in relation to Urgent Measures adopted at a State or Territory or local level, either an Authorised Meeting attended by representatives of a State or Territory Government department or agency in the State or Territory in which the Urgent Measures are adopted, or an Authorised Meeting attended by representatives of a Federal Government department of agency; and
 - (ii) in relation to Urgent Measures adopted across more than one State or Territory, an Authorised Meeting attended by representatives of a Federal Government department or agency.

Other parties wishing to engage in Proposed Conduct

The Participating Supermarkets propose that, in addition to the Participating Supermarkets and current Other Approved Supermarkets:

- (a) Parties that wish to engage in the Proposed Conduct must seek the approval of the ACCC by sending an email to exemptions@accc.gov.au with the subject '[Authorisation application number] – request to be covered by authorisation', identifying the entity(ies) that wish to be covered by any authorisation granted pursuant to this application, detailing the type(s) of conduct covered by this application that those entities propose to engage in and the reasons it wishes to do so.
- (b) If the ACCC approves a party to engage in some or all of the conduct for which authorisation is granted, that party will have the protection of authorisation subject to any condition specified by the ACCC, from the time it is notified of the ACCC's decision.
- (c) When considering the participation of any party, the ACCC may refuse to approve the party engaging in any or all of the Proposed Conduct or impose conditions which restrict the type or extent of the Proposed Conduct in which that party may engage.
- (d) Unless the ACCC approves a party (other than the Participating Supermarkets and current Other Approved Supermarkets) engaging in the Proposed Conduct, that party will not have the protection of authorisation granted pursuant to this application.

5.3 Application for interim authorisation

The Participating Supermarkets seek interim authorisation to ensure that collaborative action is available should issues arise during the period that the application is pending. As the ACCC concluded in its final determination in relation to the Existing Authorisation, and discussed in section 7 below, the conduct engaged in pursuant to the Initial and Existing Authorisations and their associated interim authorisations has generated significant public benefits and the Proposed Conduct is likely to continue to do so while there is a need to manage supply and health and safety issues related to COVID-19.

If, while interim authorisation is in place, the ACCC is concerned about the continued effectiveness of the Proposed Conduct, it will be open to the ACCC to revoke that authorisation at any time.

5.4 Rationale

Reauthorisation is sought to ensure that a framework remains in place for Participating and Other Approved Supermarkets to manage risks associated with the COVID-19 pandemic. This includes measures to address any anomalies in consumer demand (ie, panic buying) and disruptions to supply chains that may arise, as well as measures to ensure the safety of customers, employees and contractors.

As previously submitted in relation to the Existing Authorisation:

- the Proposed Conduct is intended to secure the supply and fair and equitable distribution of Retail Products to consumers, and the health and safety of customers, staff and other visitors, and does not involve collective decisions as to the retail price of Retail Products;
- the Proposed Conduct is not compulsory, and any Participating Supermarket or other Approved Supermarket can opt out of any proposed collaboration the subject of this application; and
- the Proposed Conduct is a temporary measure to deal with the supply difficulties that the Participating Supermarkets and other Approved Supermarkets have been facing and are likely to continue to face in light of the COVID-19 pandemic.

5.5 Provisions of the CCA which might apply to the Proposed Conduct

The Participating Supermarkets (and Other Approved Supermarkets) compete in relation to the acquisition of grocery and household items, transport and logistics services as well as the supply of groceries and other consumer products to consumers through their retail supermarkets, liquor store outlets and/or wholesaling functions, as well as other inputs to their business operations.

Accordingly, in the absence of authorisation, the Proposed Conduct risks giving rise to contraventions of the CCA, including by provisions of the CCA relating to:

- (a) cartel conduct (Division 1 of Part IV), in that it may involve contracts, arrangements or understandings containing provisions which have the purpose or effect of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price or a discount, allowance, rebate or credit in relation to goods or services acquired or likely to be acquired by the parties, or have the purpose of preventing, restricting or limiting the acquisition or supply or likely acquisition or supply of goods or services by the parties (ss45AD(2), 45AD(3), 45AF, 45AG, 45AJ, and 45AK of the CCA); or
- (b) contracts, arrangements or understandings, concerted practices, exclusive dealing and other conduct that have the purpose, effect or likely effect of substantially lessening competition (ss 45(1), 46(1) and 47(1) of the CCA).

5.6 Term of authorisation sought

The Participating Supermarkets propose to engage in a limited number of coordinated activities on a temporary basis, as required, in order to manage risks that may arise throughout the duration of the pandemic.

The Participating Supermarkets seek authorisation to engage in the Proposed Conduct from the date of the Existing Authorisation's lapse (or revocation) until 31 December 2023. The Participating Supermarkets submit that the proposed term is appropriate for the following reasons.

- as Chief Medical Officer Professor Paul Kelly noted in a COVID-19 committee meeting earlier this month, "*we will not be leaving this pandemic for some time.*"² It is difficult to

² Select Committee on COVID-19. Senate Committee, 2 February 2022
<https://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/25633/toc_pdf/COVID-19%20Select%20Committee_2022_02_02.pdf; fileType=application%2Fpdf#search=%22committees/commsen/25633/0000%22>

predict with certainty how long it may continue to be necessary for Participating Supermarkets and Other Approved Supermarkets to collaborate in relation to issues arising from the COVID-19 pandemic.

- Government efforts to offer vaccination to all Australians remains ongoing, including in relation to the provision of 'booster' doses and the roll out of vaccinations to children under 16 years old.³ While COVID-19 vaccines are effective at preventing serious illnesses from COVID-19 infections, the World Health Organisation's advice remains that, like all vaccines, COVID-19 vaccines will not be 100% effective at preventing infection with the virus.⁴ In addition, variant-specific COVID-19 vaccines may be required to respond to future waves.⁵
- The emergence of further COVID-19 waves is very likely, especially during the winter months. As Chief Medical Officer Professor Paul Kelly remarked, "*[Australia] will have another wave of Omicron in Winter*" as "*we have seen COVID waves in every winter in the Northern and Southern Hemisphere throughout the pandemic from the beginning of 2020*".⁶ Accordingly, the pandemic will continue to impact the Australian workforce and the supply and demand levels of Retail Products during 2022 and likely extend into 2023.
- Given probable COVID-19 waves in the winter months (June, July and August) in 2022 and likely in 2023, authorisation for the proposed term would enable Participating Supermarkets and/or Other Approved Supermarkets to cooperate through these winter periods and a short period while the effects of any such winter COVID-19 waves dissipate in 2023.
- The Proposed Conduct has been authorised for approximately two years and demonstrated to generate significant public benefits through two authorisation processes. In circumstances where the Proposed Conduct and its benefits are well understood, and the need for cooperation is likely to continue into at least 2023, it is appropriate for authorisation to be granted until the end of 2023.

Ultimately, the ACCC can, on the application of the Participating Supermarkets or on its own initiative, revoke the authorisation under section 91B of the CCA should there be a material change in circumstances (e.g. the vaccination schedule is completed, the effects of the pandemic have subsided such that no Authorised Meetings are expected to be required or to take place in the foreseeable future).

5.7 Persons who may be directly impacted by the Proposed Conduct

The persons who would be directly impacted by the Proposed Conduct include customers, suppliers, and staff of the Participating Supermarkets and Other Approved Supermarkets.

6 Counterfactual

In the absence of the Proposed Conduct, there may be material limitations on the ability of the Participating Supermarkets to effectively address risks associated with the COVID-19 pandemic including risks to the health of consumers and employees, any anomalies in consumer demand, and

³ See COVID-19 vaccine rollout update 20 February 2022, *Australian Government Department of Health*, <<https://www.health.gov.au/resources/publications/covid-19-vaccine-rollout-update-20-february-2022>>. While over 94% of adults have received two doses of a COVID-19 vaccine, the booster program and the childhood vaccination program are ongoing as at the date of the application.

⁴ Coronavirus disease (COVID-19): Vaccines, *World Health Organisation (updated 24 January 2022)* <[https://www.who.int/news-room/questions-and-answers/item/coronavirus-disease-\(covid-19\)-vaccines](https://www.who.int/news-room/questions-and-answers/item/coronavirus-disease-(covid-19)-vaccines)>. *Australian Government Department of Health*, <<https://www.health.gov.au/initiatives-and-programs/covid-19-vaccines/is-it-true/is-it-true-are-covid-19-vaccines-not-effective>>.

⁵ Vaccine manufacturers such as Pfizer are currently undergoing research regarding the effectiveness of variant-specific COVID-19 vaccine. See *'Pfizer and BioNTech Initiate Study to Evaluate Omicron-Based COVID-19 Vaccine in Adults 18 to 55 Years of Age'*, 25 January 2022 <<https://www.pfizer.com/news/press-release/press-release-detail/pfizer-and-biontech-initiate-study-evaluate-omicron-based>>.

⁶ Select Committee on COVID-19. Senate Committee, 2 February 2022 <https://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/25633/toc_pdf/COVID-19%20Select%20Committee_2022_02_02.pdf;fileType=application%2Fpdf#search=%22committees/commsen/25633/0000%22>

disruptions to supply chains that may arise in the event of further coronavirus clusters and lockdowns.

Participating Supermarkets would likely seek to address these issues unilaterally, but in a substantially less effective and timely manner than if they were permitted to engage in certain limited coordination.

7 Public benefits

In its Final Determination concerning the Existing Authorisation,⁷ the ACCC accepted that coordination permitted by previous interim and final authorisations had given rise to significant public benefits which were likely to continue under the Existing Authorisation, namely:

- (a) **Consumer access to Retail Products (paragraphs 4.12 – 4.17):** The ACCC considered that the co-operation permitted by the authorisations had enabled authorised retailers to respond proactively to anticipated or expected impediments to the continued availability of Retail Products across Australia during the period of the COVID-19 pandemic. The ACCC also considered that allowing for Urgent Measures discussions and agreements helped maximise the likelihood of consumers continuing to have a fair and reasonable access to Retail Products at times of unexpected shortages resulting from the COVID-19 pandemic.
- (b) **Reducing community concerns and stockpiling behaviour (paragraphs 4.18 – 4.21):** The ACCC considered that by enabling discussions and co-ordination between the authorised retailers (including uniform or similar purchase limits and public messaging), the authorisations had been effective in addressing consumer concerns about the need to stockpile essential household goods, resulting in public benefits associated with consumers returning to normal shopping patterns in many areas.
- (c) **Reducing strain on the Retail Products supply chain (paragraph 4.22):** The ACCC considered that the co-operation permitted by the authorisations had been effective to reduce strain on retail product supply chain resulting from the COVID-19 pandemic, by facilitating discussions intended to address supply chain strains.
- (d) **Promoting a safe operating environment for consumers, employees and contractors and other third parties (paragraphs 4.23 – 4.26):** The ACCC considered that by allowing the co-operation permitted by the authorisations, Participating Supermarkets and Other Approved Supermarkets were able to implement measures to ensure the safety of customers and staff.

The Participating Supermarkets submit that the significant public benefits identified by the ACCC in its final determination relating to the Existing Authorisation have continued since the Existing Authorisation was granted and will continue to be realised if the Proposed Conduct is authorised.

8 Public detriment

The Participating Supermarkets submit that the Proposed Conduct is not likely to result in any public detriment, including from any lessening of competition, and will therefore result in a significant net public benefit. In particular:

- a) The Proposed Conduct will continue to facilitate consistent and more predictable levels of supply for consumers in the event of future outbreaks.

⁷ Determination, Application for authorisation AA1000546, lodged by Coles Group Limited, 12 March 2021.

- b) The authorisation is subject to conditions which narrowly restrict its use to conduct occurring at, arising from, or in preparation for Authorised Meetings (or in the event of urgent measures, to conduct tabled at a subsequent Authorised Meeting).
- c) There is a high level of government oversight. Government representatives must be present at Authorised Meetings and the ACCC notified of Authorised Meetings (with the ACCC consistently attending Authorised Meetings).
- d) The Proposed Conduct does not extend to any agreement or coordination on the retail price of Retail Products.
- e) The Proposed Conduct does not change the Participating Supermarkets' and Other Approved Supermarkets' incentives to compete during or after the period of authorisation.

9 Contact details of relevant market participants

See sections 2 and 4 above.

10 Declaration by applicant

The undersigned declares that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertakes to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned is aware that giving false or misleading information is a serious offence and is aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).



David Brewster
Chief Legal & Safety Officer, Coles Group Limited
This 24⁹th day of March 2022

Annexure 1: Other Approved Supermarkets

The Other Approved Supermarkets referred to on the ACCC public register for the Initial Authorisation and the Existing Authorisation are:

- Amazon Australia, 7-Eleven Australia, Harris Farm, Arnhem Land Progress Aboriginal Corporation, Outback Stores, Community Enterprises Queensland, Endeavour Group Limited and Loscam Australia Pty Ltd who each have protection of the Existing Authorisation on the same terms as the Participating Supermarkets.
- Specified current and future members of Retail Drinks Australia, who have protection limited to implementing recommendations of the Supermarket Taskforce, or the main working sub-committee of the Supermarket Taskforce, that have been approved by the Minister for Home Affairs. This covers Hotel & Tourism Management Pty Ltd, Top Cellars Group, Beer Cartel, Liquor Marketing Group, Wine Depot, Diageo Australia, Red Bottle Group, Vantage Group, Liquor Stax and all current and future members of Retail Drinks that are classed as 'Liquor Store Members' and 'Digital and Online Members'.
- Master Grocers Australia and the Australasian Association of Convenience Stores, who have protection limited to discussions held or arrangements made during a meeting of the Supermarkets Taskforce, the Food Supply working group or one of the Taskforce's other working groups, or in any directly related side-meetings to continue discussions.