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2 May 2022

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By Email

Dear Mr Channing and Ms Kolacz

Application for revocation and substitution by Coles Group Limited – AA1000606

We refer to your emails dated 4, 13 and 14 April 2022 in relation to application for revocation and substitution AA1000606 (*Application*).


Coles Group Limited (*Coles*) provides, in Annexure A to this letter, its responses to your requests for further information and the submissions of interested parties received to date.

Coles also provides a revised section 5.2 of the Application in Annexure B to this letter, which contains amendments to the description of the Proposed Conduct and proposed conditions of authorisation in accordance with the ACCC's comments.

We confirm that Coles is content with this letter and its Annexures being placed on the public register.

Please let us know if you have any questions in relation to the information provided in this letter.

Yours sincerely


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Annexure A – Coles' response to ACCC information request

1 Proposed additional 'purpose' wording

Consistent with the two previous authorisations¹ granted by the ACCC, paragraph 5.2(1)(b) of the Application provides that the Proposed Conduct must have the **purpose** of:

'ensuring the supply and fair and equitable distribution of Retail Products to Australian consumers during the COVID-19 pandemic...'

In addition, conduct is only permitted where it occurs at, in preparation for or arises out of **Authorised Meetings** or **Urgent Measures** discussions. This limitation is significant because:

- Authorised Meetings are meetings of specified working groups or taskforces convened for the purposes of responding to the COVID-19 pandemic (eg, the Supermarket Taskforce, the COVID-19 Food Security Working Group). While there is a mechanism to bring new working groups and taskforces under the auspices of the authorisation through notification to the ACCC, this can only be done where the objective of the relevant taskforce or working group is to respond to the COVID-19 pandemic;
- Urgent Measures must be undertaken within 24 hours of a government COVID-19 direction or response and concern urgent measures to ensure a safe operating environment. Urgent Measures must also be tabled at an Authorised Meeting.

Taken together, these provisions mean that authorisation is restricted to conduct **which has the purpose of responding to the COVID-19 pandemic**. This will generally be where COVID-19 issues are the primary driver of actual or anticipated grocery supply constraints but other issues (such as a natural disaster) may also play a role.

Although the proposed conduct is, in effect, already limited to conduct which has the purpose of responding to the COVID-19 pandemic, the ACCC is considering whether to amend the wording in paragraph 5.2(1)(b) of the Application to tie the Proposed Conduct more explicitly to addressing the effects of the COVID-19 pandemic. Coles is supportive of the ACCC's proposed wording (underlined below) but has also proposed some additional wording (in bold and underlined):

*...the purpose of ensuring the supply and fair and equitable distribution of Retail Products to Australian consumers while responding to issues arising from **or exacerbated by the COVID-19 pandemic**.*

The ACCC has raised preliminary concerns with Coles' additional wording and has requested further information about what limitations Coles proposes to address the breadth that the proposed words might introduce.

Coles submits that its proposed wording is **not** intended to increase the breadth of conduct to be protected under the authorisation. Rather, it is intended to ensure that coordination to ensure ongoing grocery supply would not lose protection under the authorisation simply because other non-COVID-19 related factors were also contributing to supply issues. As noted by the Department of Infrastructure, Transport, Regional Development and Communications in its submission supporting the Application, there may be multiple concurrent supply chain shocks which have a compounding effect on the food and grocery supply chain.² Provided that COVID-19 issues are a substantial driving factor of the supply issue, Coles submits that it is appropriate that coordination be permitted under the authorisation. An example of such a scenario is discussed in more detail below, where

¹ See ACCC Final Determination A1000546 granted 25 August 2021 (**2021 Authorisation**) and ACCC Final Determination AA1000477 granted 3 September 2020 (**2020 Authorisation**).

² Submission, Department of Infrastructure, Transport, Regional Development and Communications, 8 April 2022, at p2.

supply chain strains arose in Western Australia in early 2022 due to COVID-19 related panic buying, COVID-19 related shortages of freight industry staff and supply chain interruptions due to flooding.

Coles submits that its proposed wording is appropriately framed and does not require additional limitations for the following reasons:

- a) As noted above, there is an important overriding restriction on any conduct engaged in under the authorisation. That is, authorisation is restricted to conduct arising from Authorised Meetings or Urgent Measures discussions, both of which must have the purpose of responding to the COVID-19 pandemic. As noted by the ACCC in paragraph 4.32 of the 2021 Authorisation, this reduces the risk of competitively sensitive information being exchanged for purposes unrelated to responding to the pandemic;
- b) there is a high level of government oversight. Government representatives must be present at Authorised Meetings and the ACCC notified of Authorised Meetings. In practice, ACCC representatives have attended Authorised Meetings held since March 2020 and not raised any concerns in relation to the nature of any discussions it has observed;³
- c) the Participating Supermarkets have engaged in limited collaboration for the purposes of responding to the COVID-19 pandemic for over two years now. The public benefits of that collaboration have been demonstrated and there has been no evidence of any detriment. This suggests that the Proposed Conduct is appropriately framed and not too broad (even without the proposed wording above).

While Coles considers that its proposed wording is appropriately framed, if the ACCC is not minded to adopt it, Coles submits that the following alternative formulation would address the ACCC's concerns:

...the purpose of ensuring the supply and fair and equitable distribution of Retail Products to Australian consumers while responding to issues arising from or significantly impacted by the COVID-19 pandemic

2 Public benefit claims

The ACCC has asked Coles to provide additional supporting evidence to assist the ACCC to assess whether public benefits have arisen and are likely to arise from the Proposed Conduct.

In summary, the 2020 Authorisation and the 2021 Authorisation have resulted in the following public benefits:

- they enabled the Participating Supermarkets to respond to supply issues as they emerged in different forms during the pandemic, thereby facilitating customer access to Retail Products, reducing stockpiling behaviour and other strains on the supply chain and promoting a safe operating environment for customers and staff; and
- they facilitated the successful functioning of the Supermarkets Taskforce and other government working groups by creating efficiencies and ensuring that the Participating Supermarkets and government could communicate openly, effectively and in a timely manner to address pandemic related grocery supply issues.

These public benefits will continue to be realised if the Proposed Conduct is authorised. While the pandemic is now at a different stage to when Coles first sought authorisation in March 2020, there is still considerable uncertainty regarding the emergence of new variants and potentially also the

³ See, e.g., 2021 Authorisation at [4.11], [4.36] and [4.42].

effectiveness of existing vaccines to those variants.⁴ For example, the World Health Organisation is currently monitoring two new COVID-19 variants,⁵ Omicron BA.4 and BA.5, with relevant detections occurring recently in New South Wales and Victoria.⁶ This means that there is still a continued need for authorisation to enable targeted collaboration between the Participating Supermarkets as new issues emerge.

Importantly, the Proposed Conduct only permits cooperation in the context of government led working groups established to respond to the COVID-19 pandemic and the ACCC is invited to attend all meetings. There is no (or very limited) potential for public detriment to arise where industry collaboration occurs in this narrow context with a high degree of government and ACCC oversight.

(a) Ability to respond to emerging supply issues during the pandemic

The 2020 Authorisation and the 2021 Authorisation enabled the Participating Supermarkets to respond to grocery supply issues as they emerged over the course of the pandemic to date. The topics of collaboration and agreement varied over time as different stages of the pandemic raised different risks to grocery supply.

During the initial stages of the pandemic, there was a continued surge in demand for certain Retail Products as consumers sought to stockpile goods ('Panic buying'). At this time, the Participating Supermarkets engaged in discussions and limited coordinated activities directed at curbing stockpiling behaviour, ameliorating community concerns about availability of Retail Products and ensuring a safe operating environment for customers and staff.

Specifically, the 2020 Authorisation facilitated discussions between Participating Supermarkets on topics such as:

- the safety aspects of trading during the pandemic;
- availability of key product lines for customers;
- trading hours, including public holiday opening hours;
- customs clearance and border closures;
- use of hand sanitiser and masks;
- customer numbers and security in supermarkets and shopping centres;
- supply to vulnerable customers, including through online channels;
- access to grocery supplies by remote and indigenous communities; and
- cleaning and hygiene measures undertaken to protect team members and customer

These discussions led to the Participating Supermarkets entering into a limited number of agreements to:

- temporarily impose retail liquor limits;
- temporarily adjust trading hours, including to facilitate restocking, prevent crowding during public holiday periods, and improve access by vulnerable persons; and
- limit customer numbers in store for social distancing reasons to protect customer and team safety.

⁴ See, e.g. ATAGI statement on recommendations on a winter booster dose of COVID-19 vaccine, 25 March 2022 <<https://www.health.gov.au/news/atagi-statement-on-recommendations-on-a-winter-booster-dose-of-covid-19-vaccine>>

⁵ See, WHO Director-General's opening remarks at the WHO press conference – 13 April 2022, <<https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-who-press-conference-13-April-2022>>

⁶ Relevantly, Variant BA.4 has recently been detected in New South Wales (see [NSW Covid-19 Weekly Data Overview Epidemiological week 16 ending 23 April 2022](https://www.health.nsw.gov.au/Infectious/covid-19/Documents/weekly-covid-overview-20220423.pdf) <<https://www.health.nsw.gov.au/Infectious/covid-19/Documents/weekly-covid-overview-20220423.pdf>>) and either variant BA.4 or BA.5 has been detected in Victoria (See Coronavirus update for Victoria – 15 April 2022 <<https://www.health.vic.gov.au/media-releases/coronavirus-update-for-victoria-15-april-2022>>).

As the pandemic progressed, further COVID-19 outbreaks occurred and lockdowns and restrictions were implemented by governments on a more localised basis. The 2021 Authorisation enabled Participating Supermarkets and government to continue to co-operate on critical issues to facilitate access to groceries during this time, including on topics such as safety of workers, access to supermarkets by vulnerable customers and further strategies to prevent panic buying and ensuring fair and equitable access to grocery supply.

Following the commencement of Australia's vaccination rollout and the easing of government restrictions, consultation and cooperation among the Participating Supermarkets has been directed to a greater extent on matters relating to vaccination and the impacts of isolation requirements on supermarket and distribution centre work forces. For example, more recent collaboration between the Participating Supermarkets and government since the 2021 Authorisation was granted has related to matters such as:

- **Staff vaccinations.** The Participating Supermarkets worked closely with Government to develop a prioritisation process for distribution centre and store staff to access vaccinations. This program facilitated the provision of a safe operating environment for staff and customers by minimising the risk of staff becoming infected or spreading the virus and enhanced the ability of Participating Supermarkets to maintain ongoing supply of Retail Products by reducing staff absences that would otherwise have occurred without vaccination. The effective implementation of this program was supported by the Participating Supermarkets' ability to share information about, for example, the numbers of distribution centre and store staff in particular areas to enable their collective needs to be communicated to Government, and for vaccination slots to be allocated according to each party's needs.
- **'Close contacts' protocols.** As noted by the Department of Infrastructure, Transport, Regional Development and Communications in their submission in support of the Application, during the peak of the Omicron outbreak in January 2022 the food and grocery sector reported up to 40% absenteeism due to COVID-19 positive cases and 'close contacts' protocols.⁷ The 2021 Authorisation enabled the Participating Supermarkets to work closely with the Department of Home Affairs through the National Coordination Mechanism to develop updated safety protocols in relation to 'close contacts' which enabled the Participating Supermarkets to address staffing shortages and ensure ongoing operations and grocery supply. More recently, arising out of meetings of the Supermarkets Taskforce, Coles has been able to discuss proposed industry changes to 'close contacts' protocols to ensure a safe working environment in light of proposed changes to Government requirements. Coles anticipates further consultation between Government and the Participating Supermarkets as COVID-19 restrictions and 'close contacts' protocols continue to evolve, given the potential for these restrictions to affect supermarket workforces, particularly in regional and remote areas.
- **Supply chain strains due to logistical issues.** Participating Supermarkets were able to work closely with Government to address shortages of Retail Products resulting from supply chain strains experienced in Western Australia in early 2022. These strains arose due to COVID-19 related panic buying, COVID-19 related shortages of freight industry staff and supply chain interruptions due to flooding. Participating Supermarkets were able to engage in frank and open discussions about potential options for collaboration to resolve the supply chain strains. For example, after flooding impacted the East-West rail link and with stock on hand substantially diminished by COVID-19 impacts, the Participating Supermarkets worked collaboratively to facilitate the delivery of Retail Products to Western Australia by sea, including by obtaining an exemption to cabotage laws that otherwise prevent the domestic

⁷ Submission, Department of Infrastructure, Transport, Regional Development and Communications, 8 April 2022, at p1.

transportation of stock on foreign vessels. This enabled material volumes of stock to be delivered through an additional supply route, thereby easing supply chain strains and shortfalls of Retail Products. The Participating Supermarkets also collaborated with Government and the National Heavy Vehicle Regulator for the purpose of obtaining approval for additional road transportation capacity and alternative routes to the Northern Territory and Western Australia.

For the reasons discussed in section 5.6 of the Application, it is difficult to predict how long the pandemic is likely to continue and what issues may arise having regard to the ongoing nature of the vaccination roll out and the likelihood of future waves of COVID-19, especially in winter. However, the evolution of the virus⁸ together with changes in how the pandemic is managed in the community mean that there are likely to be further challenges for the Participating Supermarkets to manage together with government. For example, notwithstanding current proposals to relax restrictions, the emergence of a future wave of COVID-19 may see a reintroduction of certain restrictions as has occurred previously.

Authorising the Proposed Conduct will mean that targeted collaboration among the Participating Supermarkets can continue to occur, as necessary, in the context of government led working groups and taskforces. This means that the public benefits outlined above will continue to be realised if the Proposed Conduct is authorised.

(b) Successful operation of Supermarkets Taskforce and other working groups

While in practice only a small number of agreements have been reached in reliance on the previous authorisations, they have enabled open, frank and timely discussions between Participating Supermarkets and the government on topics affecting the supply and fair and equitable distribution of Retail Products during the pandemic. This has been critical to the functioning of the Supermarket Taskforce and other working groups established for the purposes of responding to the COVID-19 pandemic. Had the Participating Supermarkets not been able to engage with each other and with government in an open and collaborative manner, it is likely that COVID-19 related supply chain impacts would have had a greater detrimental impact on Australian consumers. Coles submits that the 2020 and 2021 Authorisations have therefore resulted in public benefits in the form of enhanced and more efficient government administration and crisis management related to ongoing grocery supply during the COVID-19 pandemic and that these benefits will continue to be realised if the Proposed Conduct is authorised. These benefits will be realised whether the relevant forum for collaboration among Participating Supermarkets remains the Supermarket Taskforce or there is a transition to an alternative government forum (see further section 4 below).

3 Other approved parties

In response to the ACCC's query, Coles confirms that it intends to ask the chair of the Supermarket Taskforce (or its successor) to remind participants, whether at each meeting or periodically, that an attendee's participation will only be protected from the risk of breaching the Act if they are either Participating Supermarkets or have been approved by the ACCC as Other Approved Supermarkets.

4 Food and Grocery Sector Group on the Trusted Information Sharing Network

The ACCC has sought clarification as to how a proposed transition from the Supermarket Taskforce back to the Food and Grocery Sector Group (part of the critical infrastructure Trusted Information Sharing Network (*TISN*)) will affect the Application, including whether Coles still considers that it requires an ongoing re-authorisation.

⁸ See, World Health Organisation, SARS-CoV-2 variants, working definitions and actions taken, <<https://www.who.int/en/activities/tracking-SARS-CoV-2-variants/>>

Coles considers that the proposal does not have any impact on the Application nor the ongoing need for re-authorisation. Coles understands that the proposal relates to a government led mechanism for engagement between critical infrastructure providers, food and grocery industry participants and all levels of Government including potentially in relation to COVID-19 related issues.

Coles anticipates that collaboration under any authorisation between Participating Supermarkets and Other Approved Supermarkets will still occur primarily through the Supermarkets Taskforce, which can be re-enlivened as required. Coles notes that interim authorisation was granted in June 2020 on a similar basis where at that stage the Supermarkets Taskforce was suspended but it could be re-enlivened to deal with any issues as they arise.

Nevertheless, it is possible that relevant collaboration may also occur through the Government-led Food and Grocery Sector Group under TISN, subject to satisfaction of relevant notification and approval requirements under the interim authorisation (and any final reauthorisation).

Coles submits that the proposal does not detract from the ongoing need for authorisation as outlined in the Application and this further response. There is still significant uncertainty with respect to new COVID-19 variants and further waves of infection, particularly as Australia approaches another winter. Authorising the Proposed Conduct will ensure that the Participating Supermarkets and government can continue to quickly respond to supply issues as they emerge. Whether the forum for that collaboration is the Supermarket Taskforce or another government forum does not alter this conclusion.

5 Response to interested party submissions

Coles notes that the submissions from interested parties support reauthorisation of the Proposed Conduct. In particular, the Department of Infrastructure, Transport, Regional Development and Communications observed the impacts that the pandemic has caused, including most recently during the Omicron outbreak in January 2022. The Department's submission also refers to the importance of having ongoing cooperation mechanisms that can be activated in times of disruption, which supports Coles' position that the Proposed Conduct would be likely to result in ongoing public benefits and that there is a strong ongoing need for reauthorisation.⁹ The Master Grocers Association also notes its support of authorisation continuing.¹⁰

The Australian Food and Grocery Council (**AFGC**) refers to the importance of the 2020 and 2021 Authorisations in mitigating the worst of critical shortages and supply chain constraints during the height of the pandemic. However, the AFGC recommends that the description of the purpose element of the Proposed Conduct include a reference to 'short-term or immediate issues' and be limited to issues that arise from 'the COVID-19 pandemic public health response'.

Coles refers to its submissions in section 1 above, and further submits that:

- a) the suggested inclusion of 'short term or immediate issues' is unnecessary, as measures directed at addressing issues caused or exacerbated by COVID-19 are inherently short term in nature. The additional of this suggested wording would only, if anything, increase the potential for confusion as to whether a legitimate proposed measure would meet the criteria for protection under any authorisation;
- b) the suggested limitation of authorisation to issues arising from public health responses is unduly narrow and would significantly curtail legitimate collaboration. Public health orders, such as those which limit the mobility and proximity of individuals and workers, may be one cause of supply issues related to the COVID-19 pandemic. However, issues related to the pandemic have and may arise

⁹ Submission, Department of Infrastructure, Transport, Regional Development and Communications, 8 April 2022.

¹⁰ Submission, Master Grocers Association, 28 March 2022.

independently of any public health orders or at least in circumstances where a causal connection may be unclear. For example, staff absences may arise due to COVID-19 positive cases irrespective of whether there is a government mandate that such individuals self-isolate.

Accordingly, Coles submits that the wording proposed by AFGC should not be accepted.

Annexure B – Coles' proposed revised section 5.2 of the Application

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 while responding to issues arising from or exacerbated by during the COVID-19 pandemic by:
 - (A) facilitating or ensuring the acquisition and/or supply of Retail Products in Australia (especially of those Retail Products in short supply);
 - (B) ensuring fairer access to Retail Products among the general public;
 - (C) 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);
 - (D) facilitating access to Retail Products in remote or rural areas; or
 - (E) 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;¹¹ 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 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 the proposed Condition 1 below is satisfied.
 - ~~(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

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

¹¹ As of the date of this application, this has included the Safety of Staff and Customers Working Group and the Food Supply Working Group.

- 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 of agency.

Proposed conditions of authorisation

The Participating Supermarkets propose that authorisation of the Proposed Conduct be subject to the following conditions.

Condition 1: Authorised Meetings

For the purposes of paragraph (1)(c)(i) above, any 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 will only constitute an Authorised Meeting where:

- (a) the ACCC is notified by a Participating Supermarket in writing to exemptions@acc.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; and
- (b) 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.

Condition 2: Other parties wishing to engage in Proposed Conduct

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@acc.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.