

Mr Darrell Channing

Director

Competition Exemptions

ACCC

09 August 2022

Via: [exemptions@acc.gov.au](mailto:exemptions@acc.gov.au)

Dear Mr Channing,

**RE: AA1000606 – Coles Group Limited – Submission**

Thank you for the detailed consideration of our submission regarding the Coles Group Limited – Application for re-authorisation AA1000606 – draft determination. We have reviewed the ACCC draft determination published 29 July 2022 and make the following comment.

In relation to the purpose for which the Proposed Conduct can be engaged in, we agree with the ACCC’s following reasoning,

*“The ACCC considers Coles’ amendment to the purpose for which the Proposed Conduct can be engaged in, ‘responding to...issues...exacerbated by the COVID-19 pandemic’, to be too broad. COVID-19 has, and will likely continue to, impact the supply chain for Retail Products in so many ways, that the breadth of supply issues that have been ‘exacerbated by’ COVID-19 is already very wide-ranging, and will only grow and become less predictable the longer the authorisation is on foot. This degree of uncertainty would make it more difficult for the ACCC to be satisfied that the likely public benefits resulting from the Proposed Conduct would outweigh the likely public detriments in the future.”*

In response, we support the reworded text of the Proposed Conduct suggested by Coles and agreed in principle by the ACCC to permit conduct only,

*“...while responding to issues arising from or significantly impacted by the COVID-19 pandemic”*

We are of the view that this creates some greater specificity to the parameters for discussions. Further, we support the ACCC’s following comment and reasoning,

*“If parties consider they need to collaborate in respect of other supply issues where COVID-19 is not the primary driving factor (such as in response to severe weather events), and they consider such collaboration would require authorisation, they should seek a separate authorisation if needed.”*

We further agree with the ACCC proposal and reasoning in relation to the extension permitted,

*“...to grant authorisation until 31 March 2023. This would mean that authorisation would be granted for approximately 1 year (inclusive of the period of the Interim Authorisation). The ACCC does not consider it appropriate to grant for the longer period requested by Coles. As noted above, there is now less clarity over the kinds of supply issues that may continue to arise as a result of the COVID-19 pandemic, and therefore the kinds of coordination that the Parties could seek to engage in in response. This makes it more difficult for the ACCC to be satisfied that the authorisation test would continue to be met over that longer period. The ACCC also notes that the proposed length is consistent with the length for which the Initial and Existing Authorisations were granted. This has enabled the ACCC to review the public benefits and detriments that have resulted after a suitable period.*

We note that the temporal aspects and limitation on scope of the Proposed Conduct made in our initial submission have not been integrated in the new draft determination in full. However, we are of the view that the ACCC’s reasoning strikes the right balance on conduct, timing, and scope.

We thank the commissioner’s consideration and are open to further discussion if required. To arrange a meeting please contact [REDACTED]

Kind Regards,

[REDACTED]

Samantha Blake

Director, Competitiveness and Growth

Australian Food and Grocery Council