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CONFIDENTIAL

24 FEBRUARY 2026

Dear Colleagues

Australian Competition and Consumer Commission (Applicant) v Woolworths Group Limited (Respondent), Federal Court of Australia Proceedings No. VID 974 of 2024 (Proceedings)

This letter relates to the Statement of Agreed Facts agreed and filed by the parties in this Proceeding on 16 June 2025 (SOAF).

For the reasons articulated in further detail below, it has become apparent that certain factual matters agreed in Annexures B and C to the SOAF in June 2025 require correction for precision and accuracy. Woolworths invites the ACCC to consider and confer with Woolworths in relation to the **enclosed** draft Amended Statement of Agreed Facts (**Amended SOAF**).

In addition to particular factual amendments proposed in respect of Annexures B and C to the SOAF, Woolworths has also proposed that the parties agree to a revised version of Annexure A for the purposes of the Supplementary SOAF so that agreed ticket mockups are before the Court for all 12 of the agreed sample Affected Products (**Sample Products**).

Woolworths considers that conferral by the parties to address these matters is consistent with the parties' obligations in accordance with section 37M of the *Federal Court of Australia Act (Cth) 1976* and will assist the parties to further narrow the issues in dispute at the initial trial on liability scheduled to commence on Tuesday, 21 April 2026.

Woolworths has identified 3 forms of correction to the SOAF. These are limited, factual amendments that align the SOAF with the underlying documents and data served in this Proceeding.

Further to the corrections to the SOAF identified herein, the Amended SOAF incorporates the separate amendments agreed to in our letter dated 18 July 2025 to address the minor issues identified in your letter dated 3 July 2025.



Proposed Additions to Annexure A of the SOAF

- 1 Annexure A to the SOAF filed on 13 June 2025 only included representative examples of Prices Dropped Tickets for 6 of the 12 Agreed Sample Products.
- 2 For completeness, Woolworths has proposed that the parties agree to a revised version of Annexure A in the enclosed draft Supplementary SOAF which follows the same fields and format and is based on the data in Annexures B to C of the SOAF, as for the existing ticket mocks ups. Woolworths proposes agreement on the revised Annexure A to ensure the record is complete.

Proposed Corrections to Rows 8, 9 & 11 of Annexures B and C of the SOAF

- 3 Rows 8, 9 and 11 of Annexures B and C of the SOAF record agreed facts in relation to the pricing and promotional movements of the following Affected Products (with the products at rows 9 and 11 being within the same product family, as noted in Annexure D to the SOAF):
 - (a) at row 8, Arnotts Biscuits Fmly Assorted 500g (36016-EA) (**Arnotts Biscuits 500g**);
 - (b) at row 9, Arnotts Shapes Variety 15pk 375g (641532-EA) (**Arnotts Shapes 15pk**); and
 - (c) at row 11, Arnotts Tiny Teddy Variety 15pk 375g (641532-EA) (**Arnotts Tiny Teddy Sample Product**),

(together, the **Arnotts 375/500g Affected Products**).
- 4 The agreed facts contained in Annexures B and C for each of the Arnotts 375g/500g Affected Products are as follows:
 - (a) from 1 January 2021 to 10 May 2022 (being 495 days) (the **P1 Period**), the Arnotts 375g/500g Affected Products were part of the Prices Dropped Program and were sold at a Prices Dropped P1 Price of:
 - (i) for Arnotts Biscuits 500g, \$4.00; and
 - (ii) for Arnotts Shapes 15pk and Arnotts Tiny Teddy Sample Product, \$5.00;
 - (b) from 11 May 2022 to 17 May 2022, the Arnotts 375g/500g Affected Products were placed on a short-term, yellow ticket promotional special (**Special**) at a price of:
 - (i) for Arnotts Biscuits 500g, \$4.00; and
 - (ii) for Arnotts Shapes 15pk and Arnotts Tiny Teddy Sample Product, \$5.00;
 - (c) from 18 May 2022 to 1 June 2022 (being 15 days) (the **P2 Period**), the Arnotts 375g/500g Affected Products were sold at a white ticket P2 Price of:
 - (i) for Arnotts Biscuits 500g, \$5.20; and
 - (ii) for Arnotts Shapes 15pk and Arnotts Tiny Teddy Sample Product, \$6.50; and
 - (d) no admission was made by either the ACCC or Woolworths that the above Specials occurred outside of either the P1 Period or P2 Period of the respective Arnotts 375/500g Affected Product.



- 5 Woolworths has now served evidence relating to the Tiny Teddy Sample Product in respect of the Special referred to at subparagraph 3(b) which contradicts the facts agreed in Annexures B and C of the SOAF in June 2025. In particular, Woolworths has identified that:
- (a) On 11 May 2022, the Arnotts 375/500g Affected Products were removed from the Prices Dropped Program (as noted in Annexure B of the SOAF).
 - (b) Shortly thereafter, overlapping data within Woolworths' promotional slotting system caused the Arnotts 375/500g Affected Products to be inadvertently placed on the Special.
 - (c) However, on 12 May 2022, Zoe Pipan and Michelle Nevoa (being the Category Manager and Assistant Category Manager for Biscuits at the time) identified this error and arranged to have it rectified. See the Google Chat exchange recorded in MPL.0095.0001.0009 at T6:56-7:05 (UTC +10:00) (and the associated family documents at MPL.0080.0001.2613 and MPL.0080.0001.2614) in which Ms Pipan and Ms Nevoa query why the Arnotts Biscuits 500g, Arnotts Shapes 15pk and '12/15pks' had been placed on Special and Michelle advises that she is '*getting it fixed*'.
 - (d) Later that day, Michelle Nevoa submitted a ticket to Woolworths' Business Support Services (BSS) team via Woolworths' ServiceWOW system asking that the following promotional offer ID codes '*be end-dated ASAP*':
 - (i) 12710109;
 - (ii) 12751092;
 - (iii) 12751159; and
 - (iv) 12788331.

We are instructed that this ticket relates to the short-term Special referred to in subparagraph 3(b). A copy of this ticket which is marked 'Completed' is contained in MPL.0081.0001.0024.
 - (e) After submitting the ticket, Michelle Nevoa and Zoe Pipan exchanged further Google Chat messages to confirm that the promotional offers would be removed. A copy of this Google Chat exchange is contained in MPL.0095.0001.0009 at T10:45-11:04 (UTC +10:00).
 - (f) Although Woolworths' systems do not retain historical ticketing information, an internal weekly pricing report circulated by the Pricing Operations Team on 13 May 2022 confirms that:
 - (i) 'ArntsVartySncksPacks12 15pk240 375g', which includes the Tiny Teddy Sample Product and Arnotts Shapes Variety 15Pk 375g (641532-EA), moved to a Shelf Price of \$6.50 in Woolworths Supermarkets (being the same as the P2 Price listed in rows 9 and 11 of Annexure B); and
 - (ii) 'Arnotts Biscuits Fmly Assorted 500g', which includes Arnotts Biscuits Fmly Assorted 500g (36016-EA), moved to a Shelf Price of \$5.20 in Woolworths Supermarkets (being the same as the P2 Price listed in row 8 of Annexure B).

A copy of this weekly pricing report is contained in MPL.0094.0001.0006 and a copy of the email dated 13 May 2022 circulating this report is contained in MPL.0002.0027.5080. See also paragraph 52 of the Affidavit of Cormac Peter Deery sworn on 15 December 2025.



- 6 Woolworths understands that the removal of the short-term Special on 13 May 2022 was not captured in the pricing and promotional data produced by Woolworths in response to various notices issued by the ACCC pursuant to s155(1)(a) and (b) of the *Competition and Consumer Act 2010* (Cth) (**s 155 Notice**) because:
 - (a) as explained in Attachment 1 to Woolworths' response dated 30 June 2023 to Items 12-14 of Schedule 1 to the s 155 Notice issued on 5 May 2023 (as varied on 9 June 2023), the promotional data was extracted from weekly data sets which do not capture changes to promotional activity that occur in the middle of Woolworths' promotional week (being Tuesday through to the Wednesday of the following week); and
 - (b) the short-term Special was removed on Friday, 13 May 2022 and therefore, was not captured in the weekly data sets until the following Wednesday, being 18 May 2022.
- 7 Woolworths has set out its proposed amendments to rows 8, 9 and 11 of Annexures B and C to reflect the removal of the Special on 12 May 2022 and consequently, the longer P2 Period of 13 May 2022 to 1 June 2022 (being 20 days) in the enclosed draft Amended SOAF.

Proposed Corrections to Rows 233, 234, 235 & 238 of Annexures B and C of the SOAF

- 8 Rows 233, 234, 235 and 238 of Annexures B and C of the SOAF record agreed facts in relation to the pricing and promotional movements of the following Affected Products that are within the same product family (as noted in Annexure D to the SOAF):
 - (a) at row 233, Stayfree Pad Ultra Thin Wng Night 10pk (44861-EA) (**Stayfree Sample Product**);
 - (b) at row 234, Stayfree Pads Ultr Thin Wing Sup 12pk (58657-EA);
 - (c) at row 235, Stayfree Pads Ultra Thin Wing Light 16pk (233495-EA); and
 - (d) at row 238, Stayfree Ultra Thn Wing Regular 14pk (370631-EA).

(together, as the '**Stayfree Ultra Thin Affected Products** ').
- 9 The agreed facts contained in Annexures B and C for each of the Stayfree Ultra Thin Affected Products include:
 - (a) that each was placed on a white ticket with a price of \$4.80 from 4 April 2022 to 3 May 2022;
 - (b) that each was subsequently placed on a Prices Dropped ticket with a price of \$4.80 from 4 May 2022 to 30 August 2022;
 - (c) that the duration of the P3 Period for each was therefore 4 May 2022 to 30 August 2022, when the Prices Dropped ticket was applied with a price of \$4.80.



- 10 Woolworths has now served evidence that, in respect of the Stayfree Sample Product:
- (a) between 4 April 2022 and 6 September 2022, the Stayfree Sample Product was placed onto the Prices Dropped Program and offered to customers at Woolworths Supermarkets and Woolworths Online at \$4.80. See the affidavit of Timothy Charles Moffatt affirmed 21 November 2025 (**Moffatt affidavit**) at [17(c)];
 - (b) a white ticket was applied to the Stayfree Sample Product with the \$4.80 price from 4 April 2022: see Moffatt affidavit at [17(d)];
 - (c) by 29 April 2022 (in the case of Woolworths Online) and 4 May 2022 (in the case of Woolworths Supermarkets), a Prices Dropped ticket was applied to the Stayfree Sample Product with the \$4.80 price: see Moffatt affidavit at [17(d)]; and
 - (d) that it was Mr Moffatt's understanding that the application of a white ticket during the period of 4 April 2022 and 4 May 2022 was a system error and that a Price Dropped ticket should have been applied during this time: see Moffatt affidavit at [17(d)].
- 11 We refer also to MPL.0050.0007.4677, exhibited to the Moffatt affidavit at paragraph [63], which records screenshots provided by Jade Caton (the National Account Manager - Woolworths at Johnson & Johnson Pacific Pty Ltd) of the Stayfree Ultra Thin Products on Woolworths Online with a Prices Dropped ticket applied at \$4.80 on 29 April 2022. This change was in the middle of the promotional week and as such was not captured in the promotional data.
- 12 Woolworths does not store historic ticketing print data in its ticketing systems, and Woolworths cannot confirm with certainty that the Prices Dropped tickets were also implemented in-store on 29 April 2022. However, as set out in Woolworths' August 2022 RFI response at item 3, pricing is generally aligned between in-store and online (with the exception of Online Only Specials), price movements typically move together. On this basis, has set out its proposed amendments to rows 233, 234, 235 and 238 of Annexures B and C in the enclosed draft Amended SOAF for the ACCC's consideration.

Once the ACCC has had the opportunity to consider the matters raised above, we would welcome the opportunity to confer with the ACCC in conference if that would assist to finalise the Amended SOAF in an efficient manner.

We look forward to hearing from you.

Yours sincerely

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Partner profile