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2 April 2026

Peta Stevenson
Partner
King & Wood Mallesons
Level 61, Governor Phillip Tower
1 Farrer Place
SYDNEY NSW 2000

BY EMAIL: peta.stevenson@au.kwm.com

Dear Peta

ACCC v Woolworths Group Limited (Woolworths) – Federal Court proceeding VID 974 of 2024

- 1 We refer to:
- (a) your letter dated 24 February 2026, enclosing a proposed amended statement of agreed facts (**Proposed Amended SOAF**);
 - (a) our email dated 3 March 2026; and
 - (b) your email dated 20 March 2026.
- 2 Your letter dated 24 February 2026 suggests that the Proposed Amended SOAF should incorporate minor corrections identified in our correspondence dated 3 July 2025 and your response dated 18 July 2025. Those matters are uncontentious and do not relate to Sample Products. Prior to your 24 February 2026 letter, they were not said to warrant an amendment to the Statement of Agreed Facts filed 13 June 2025 (**SOAF**). That remains the position: it would not be an efficient use of the parties' or the Court's resources to revisit them as part of any proposed amended statement of agreed facts.
- 3 Your letter dated 24 February 2026 also proposes including, for 6 of the 12 Sample Products, additional Prices Dropped ticket "mock-ups" in Annexure A to the existing SOAF. But Annexure A to the existing SOAF already includes example tickets. We do not consider it strictly necessary to set out additional ticket examples in the existing SOAF. If your client wishes to tender examples for the remaining 6 Sample Products not referred to in Annexure A to the existing SOAF, the ACCC will review and consider those examples. Alternatively, if your client wishes to propose a second statement of agreed facts, which merely provides "mock-ups" of the relevant tickets for those 6 Sample Products, our client would be open to considering that as well.

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- 4 For the following reasons, the ACCC does not consent to the proposed amendments to the data as set out in Annexures B and C to your client's Proposed Amended SOAF:
- (a) *First*, in relation to the Tiny Teddy Sample Product and other Arnott's lines (Rows 8, 9 and 11), the material relied upon in your 24 February 2026 letter does not demonstrate an error in the SOAF or establish that, by 13 May 2022, Woolworths ceased advertising these products on Special in-store and online. At most, it shows internal steps were taken with the objective of removing the products from Special at the relevant time. That does not mean that objective was achieved. No amendment to the SOAF is warranted.
 - (b) *Second*, in relation to the Stayfree Sample Product and other Stayfree lines (Rows 233, 234, 235 and 238), your 24 February 2026 letter concedes that Woolworths cannot confirm that the relevant Prices Dropped tickets were implemented in-store at the suggested time. While MPL.0050.0007.4677 provides some support for the proposition the Prices Dropped tickets were implemented online as at 29 April 2022, this would appear to be a relatively minor matter, and is something contemplated by the agreed note at the beginning of Annexure B to the SOAF. Accordingly, the ACCC is not persuaded as to the need to amend the SOAF at this stage.
- 5 In addition, your email of 20 March 2026 (6:59 pm) states that "Woolworths' position is that it is the responsibility of the ACCC to identify and object to any aspects of Woolworths' evidence that [the ACCC] alleges are inconsistent with the SOAF". That position is incorrect. Section 191(2)(b) of the *Evidence Act 1995* (Cth) provides that "evidence may not be adduced to contradict or qualify an agreed fact". The provision operates on the party seeking to adduce the evidence — here, Woolworths. It is therefore not for the ACCC to identify inconsistencies between Woolworths' evidence and the SOAF.
- 6 This is particularly so in circumstances where, as explained above, it is the ACCC's position that the evidence identified in your correspondence is not necessarily inconsistent with the SOAF because it is insufficient to establish the particular conclusions which Woolworths appears to now be seeking to draw, contrary to the facts which have been agreed. Accordingly, whether Woolworths requires leave to adduce this evidence will necessarily depend upon whether the evidence is being adduced "to contradict or qualify an agreed fact" (per s 191(2)(b)), being an inquiry about Woolworths' *purpose* in adducing that evidence. These are matters uniquely within the knowledge of Woolworths, not the ACCC.
- 7 Having regard to the matters set out above, the ACCC does not consent to the Proposed Amended SOAF referred to in your 24 February 2026 letter, nor does it presently consider there is a need for other amendments to the existing SOAF.

Yours sincerely



James Love
Partner