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File Number: VID974/2024
File Title: AUSTRALIAN COMPETITION AND CONSUMER COMMISSION v
WOOLWORTHS GROUP LIMITED (ACN 000 014 675)
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

Form 59
Rule 29.02(1)

Affidavit

No VID 974 of 2024

Federal Court of Australia
District Registry: Victoria
Division: General

Australian Competition and Consumer Commission

Applicant

Woolworths Group Limited (ACN 000 014 675)

Respondent

Affidavit of: **Barry O'Leary**
Address: 1 Woolworths Way Bella Vista NSW 2153
Occupation: Merchandise Manager - Impulse, Beverage & Tobacco, Woolworths Group Limited
Date: 15 December 2025

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Signed:

Taken by:

Filed on behalf of [REDACTED], the Respondent

Prepared by Peta Stevenson
Law firm **KING & WOOD MALLESONS**
Tel +61 2 9296 2492
Email peta.stevenson@au.kwm.com

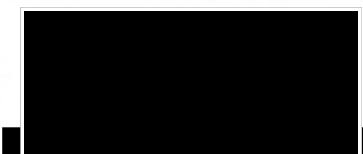
Address for service

Level 61, Governor Phillip Tower
1 Farrer Place, Sydney NSW 2000, Australia
Ref: P Stevenson:602-0051665

I, BARRY O'LEARY, of 1 Woolworths Way Bella Vista NSW 2153, Merchandise Manager (Impulse, Beverage & Tobacco) of Woolworths Group Limited (**Woolworths**), say on oath:

- 1 I have been employed at Woolworths, the Respondent in this proceeding, since around June 2014.
- 2 Between June 2014 and July 2020, I was employed by Woolworths in various financial reporting and finance manager roles.
- 3 Between July 2020 and July 2022, I was Merchandise Manager (Frozen Foods).
- 4 I became the Merchandise Manager (Impulse, Beverage & Tobacco) in late July 2022.
- 5 In this affidavit, I address the cost price and retail price journey of Arnott's Tim Tam Original Fam Pk 365g (84628-EA) (**Tim Tam Sample Product**) and Oreo Family Pack Original 370g (73032-EA) (**Oreo Sample Product**). In paragraphs 82 to 85 below, I also refer to Sakata Rice Cracker Plain 100g (41814-EA) (**Sakata Sample Product**). The Tim Tam Sample Product, Oreo Sample Product and Sakata Sample Product were all sold in Woolworths Supermarkets and Woolworths Online between September 2021 and May 2023.
- 6 In preparing this affidavit, I have been provided with a copy of the Affected Product Pricing and Sales Data schedules (at Annexure C of the Statement of Agreed Facts filed on 13 June 2025 (referred to as Annexure C), and the Agreed Sample List (filed 13 June 2025). Based on my review of the APS and the Agreed Sample List, I have identified that:
 - (a) the Tim Tam Sample Product is referred to at item 10 of Annexure C and item 1 of the Agreed Sample List dated 13 June 2025;
 - (b) the Oreo Sample Product is referred to at item 188 of Annexure C and at item 10 of the Agreed Sample List; and
 - (c) the Sakata Sample Product is referred to at item 209 of Annexure C and at item 11 of the Agreed Sample List.
- 7 Unless otherwise stated, this affidavit is based on my own knowledge.
- 8 Shown to me at the time of swearing this affidavit is an electronic bundle of documents marked '**Confidential Exhibit BOL-1**'. The documents are sourced from Woolworths' books and records. References to a document identifier in this affidavit are references to documents by that number in '**Confidential Exhibit BOL-1**'.

Signed:



Taken by:



Role as Merchandise Manager (Impulse, Beverage & Tobacco)

- 9 As the Merchandise Manager (Impulse, Beverage & Tobacco), I was responsible for overseeing the management of the Biscuits Category which included the Tim Tams Sample Product and the Oreo Sample Product.
- 10 As a Merchandise Manager, I was responsible for the overall management of my portfolio. This involved overseeing the work of Category Managers for each of the product categories within my portfolio and managing the broader relationships with key suppliers.
- 11 Between July 2022 and May 2023 (**Relevant Period**), Zoe Pipan was the Category Manager responsible for Biscuits, which included the Tim Tams Sample Product and the Oreo Sample Product. She was assisted by Assistant Category Manager, Michelle Nevoa.
- 12 During the Relevant Period, I reported to the Commercial Director (Grocery Food), who was Ewan Shearer.

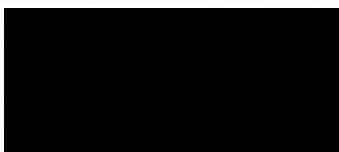
CPI requests

- 13 Part of my role as Merchandise Manager (Impulse, Beverage & Tobacco) was to assist Category Managers to respond to requests from suppliers for cost price increases (**CPIs**). The level of my involvement in any particular CPI request would depend upon the product and the supplier and the expected financial impact of the CPI, if it were approved. Where CPI requests were complex, involved a significant supplier relationship or were financially significant, typically the Category Manager responsible for managing those CPI requests would consult with me to make sure I agreed with their intended approach to the negotiations. CPI requests that were particularly commercially significant might also be raised with the Commercial Director.

Tim Tams Sample Product Cost Price and Retail Price Journey

- 14 I have been shown an email from Zoe Pipan to Cormac Deery (who was Merchandise Manager (Impulse, Beverages & Tobacco) before me) dated 13 July 2022, forwarding an email from Sophie Scott (Arnott's) of the same date, attaching Arnott's deal sheets for products including the Tim Tam Sample Product. A copy of this email is at **[MPL.0003.0028.9581] of Confidential Exhibit BOL-1** and a copy of the attachment is at **[MPL.0003.0028.9582] of Confidential Exhibit BOL-1**. I was not copied to this correspondence and am unlikely to have seen it at the time because I only became the Merchandise Manager (Impulse, Beverage and Tobacco) in late July 2025.

Signed:



Taken by:



- 15 During the Relevant Period, suppliers typically provided deal sheets in this format as part of the process of seeking a CPI. Through my roles as Merchandise Manager, I am familiar with the deal sheet template and how to read completed deal sheets.
- 16 The deal sheets sent by Zoe Pipan to Cormac Deery on 13 July 2022, indicate that Arnott's was proposing the following in relation to the Tim Tam Sample Product:
- (a) in relation to the cost structure:
- (i) an increase to the First Cost per unit from \$ [REDACTED] to \$ [REDACTED]
 - (ii) a decrease to the Deferred deal from [REDACTED] to [REDACTED]%; and
 - (iii) a resulting increase in the Net Cost per unit from \$ [REDACTED] to [REDACTED]
- (b) in relation to the sales and promotional plan:
- (i) a Shelf price of \$6.00 for 4 weeks with forecast sales of 35,000 per week; and
 - (ii) a Promo Level 1 price of \$5.50 for 48 weeks with forecast sales of 55,000 per week.
- 17 Arnott's 13 July deal sheet does not explicitly state that the Promo Level 1 price was to be a Prices Dropped price. Nevertheless, the fact that the deal sheet proposed a period of 4 weeks on the Shelf price followed by 48 weeks at a promotional price suggests to me that it was envisaged that the Tim Tam Sample Product would be subject to a price establishment period at the Shelf price of \$6.00 on a white ticket for 4 weeks, and then placed on the Prices Dropped Program for 48 weeks.
- 18 On 15 July 2022, Zoe Pipan forwarded me an email from Tracey Tran (an employee in Woolworths' Pricing and Customer Value Team) which contained an assessment of the impact of a CPI request from Arnott's across the Biscuits Category and a Google Drive share link to a "CPI Promotional Simulator" (a **Simulator**). A copy of this email is at [MPL.0002.0002.5386] and a copy of the Simulator is at [MPL.0095.0001.0003] of **Confidential Exhibit BOL-1**. I believe I received this email ahead of commencing as Merchandise Manager (Impulse, Beverage & Tobacco) and before I received a copy of Arnott's CPI request.
- 19 The Simulator was a Google Sheet spreadsheet prepared by Woolworths using a supplier's CPI proposal and historical sales data to model the impact of a proposed cost

Signed:

[REDACTED]

Taken by:

[REDACTED]

price increase on sales and gross profit in respect of the supplier's range of products in a category. In my experience, the Simulator was initially populated by Woolworths' Pricing and Customer Value Team and then sent to the Category Manager.

- 20 On 18 July 2022, I received a "handover" email from Cormac Deery setting out recent developments in relation to the Impulse, Beverage & Tobacco portfolio of product categories. A copy of this email is at [MPL.0023.0006.5020] of Confidential Exhibit BOL-1. In relation to Arnott's, Mr Deery stated:

Arnott's have submitted a CPI on choc biscuit which is a joke but it's literally just the starting phase so no time

Pressure to get up to speed on it.

I think this one they designed to negotiate on but I'd be looking for mir [REDACTED] percent margin progression and no counterparts given the laughable nature of it.

We can chat more on it, plenty of time.

- 21 I understood [REDACTED] percent margin progression" to mean that Mr Deery was suggesting Woolworths should seek to improve its trading gross profit by [REDACTED] % across the group of products the subject of Arnott's CPI. While this was Mr Deery's suggestion at the time, it was not a suggestion that ultimately influenced the negotiation with Arnott's. I did not seek to achieve a [REDACTED] % gross profit improvement in negotiating the CPI with Arnott's or direct Ms Pipan to do so.
- 22 I understood Mr Deery's statement that there should be "no counterparts" to mean that Mr Deery would not be inclined to agree to any proposal from Arnotts which "gave" Arnott's something in addition to an increase in the net cost of the product (such as associated sell off-locations displays, catalogue features or exclusive participation in a particular campaigns). As with Mr Deery's other recommendation, I cannot recall placing any weight on this suggestion.
- 23 I had several discussions with Ms Pipan about the Arnott's CPI request and associated deal sheets in the weeks after I became Merchandise Manager (Impulse, Beverage & Tobacco). My recollection is that, during these meetings, Ms Pipan and I would typically review a Simulator spreadsheet reflecting the current Arnott's and Woolworths' proposals that Ms Pipan would send through to me in advance.

Signed:

[REDACTED]

Taken by:

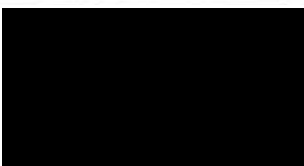
[REDACTED]

- 24 I no longer recall the detail of these meetings with Ms Pipan, however, Ms Pipan maintained a working document that contained her proposed agenda items for those discussions, which she sent to me. A copy is at **[MPL.0081.0001.0016] of Confidential Exhibit BOL-1**. In paragraphs 25, 28, 29, 32, 33, 38, 39, 40 and 43 below, I state that I met with Ms Pipan on certain dates. In giving that evidence, I have relied on Ms Pipan's notes and my calendar entries for those dates. I do not have any specific recollection of those meetings.
- 25 On 20 July 2022, at about 11:30am. I had a meeting with Ms Pipan. The Google Calendar entry for that meeting is at **[MPL.0081.0001.0009] of Confidential Exhibit BOL-1**. In her document (referred to at paragraph 24 above), Ms Pipan identifies a list of the current open CPIs, including the CPI request from Arnott's relating to chocolate biscuits (which included the Tim Tam Sample Product). On that basis, it is likely that we discussed the Arnott's CPI on that date.
- 26 On 27 July 2022, Ms Pipan sent me a Google Drive link to a document titled "Arnott's Biscuits Limited Cost Assessment (Manual Sub) – effective 3/10/22", a copy of which is **[MPL.0003.0028.3985]** and **[MPL.0095.0001.0001] of Confidential Exhibit BOL-1**. From the title, I believe this document is a Simulator in respect of the Arnott's CPI.
- 27 I have been shown an email dated 28 July 2022 from Ms Pipan to Shannon Mills at Arnott's attaching Arnott's deal sheets. A copy of this email is at **[MPL.0003.0028.7070] of Confidential Exhibit BOL-1** and a copy of the attachment is at **[MPL.0003.0028.7071] of Confidential Exhibit BOL-1**. From my review, those deal sheets appear to be identical to those sent by Arnott's on 13 July 2022 (see paragraph 14 above). I do not know why Ms Pipan sent these back to Arnott's. That said, that could happen, on occasion, such as where a Category Manager was seeking to confirm that they were working from the correct deal sheets or that the data in the deal sheets was accurate.
- 28 On 1 August 2022, I had a meeting with Ms Pipan. This is recorded in my diary as "Arnott's CPI catch up". I do not recall the specific matters discussed at that meeting.
- 29 On 3 August 2022, I had a meeting with Ms Pipan. This is recorded in my diary as "One to one Barry/Zoe". Ms Pipan's document records at _0019 the following agenda items in relation to Arnott's:

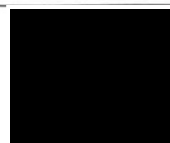
Arnott's SIW Terms Issue. Refer to email 'Fwd: Trading Terms – SIW.

...

Signed:



Taken by:



Action items

- Barry to send through a through a template for *PRICES DROPPED & LOW PRICE*
- Barry to follow up with Clare on Arnott's SIW Terms
- Work out the reversal impact. You're being difficult, we didn't ask for a cost increase. Can more [sic] to a white ticket? Quote the value of the business with them.

30 From reviewing Ms Pipan's document, I believe one aspect of our conversation on 3 August 2022 concerned negotiations with Arnott's about an administrative issue that arose in relation to Statewide Independent Wholesalers (referred to as "SIW") in Tasmania. That issue did not relate to Arnott's CPI request. I believe the reference to me sending Ms Pipan a template for Prices Dropped and Low Price was a different topic, but I do not recall what it related to. I do not recall any "template" that would meet the description in Ms Pipan's document.

31 I have been shown an email from Ms Pipan to Shannon Mills dated 11 August 2025 confirming Woolworths' initial response to the CPI request was "Acceptance – Amount not Agreed". A copy of this email is at **[MPL.0003.0028.2151] of Confidential Exhibit BOL-1**.

32 On 11 August 2022, I had another one to one meeting with Ms Pipan. My calendar record of this meeting is at **[MPL.0081.0001.0008] of Confidential Exhibit BOL-1**. Ms Pipan's agenda items for this meeting record at _0019:

- *Arnott's CPI*
- ...
- *Arnott's SIW Terms Issue. Refer to email "Fwd: Trading Terms – SIW"*

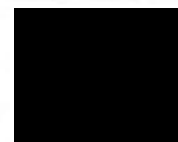
33 My calendar records that I had a meeting with Ms Pipan at 1pm on 19 August 2022. My calendar record of this meeting is at **[MPL.0081.0001.0008] of Confidential Exhibit BOL-1**. Ms Pipan's agenda items of this meeting include at _0018:

- *Arnott's CPI update*

Signed:



Taken by:



I have no specific recollection of this meeting, but having regard to the email referred to in paragraph 34 below, I expect that Ms Pipan and I discussed the appropriate response to Arnott's CPI and that I approved the counterproposal Ms Pipan sent to Arnott's the same day.

34 I have been shown an email dated 19 August 2022 at around 2:15pm from Zoe Pipan to Shannon Mills at Arnott's attaching Woolworths' response to Arnott's CPI request. A copy of this email is at **[MPL.0002.0002.5568] of Confidential Exhibit BOL-1** and a copy of the attachment is at **[MPL.0002.0002.5569] of Confidential Exhibit BOL-1**. Woolworths proposed:

(a) in relation to the cost structure:

- (i) An increase in the First Cost from \$ [REDACTED] to \$ [REDACTED] per unit;
- (ii) Maintenance of the Deferred Deal of [REDACTED] %; and
- (iii) a resulting increase in Net Cost from \$ [REDACTED] to \$ [REDACTED] per unit.

(b) in relation to the retail pricing plan:

- (i) a Shelf price of \$6.00 (reflecting the supplier's RRP) for 4 weeks with forecast sales of 35,000 per week; and
- (ii) a subsequently lower Promo Level 1 price of \$5.50 for 48 weeks with forecast sales of 48,000 per week.

35 The 19 August 2022 deal sheet does not explicitly state that the Promo Level 1 price was to be a Prices Dropped price. Nevertheless, I interpret that the proposed retail pricing plan as including a four-week price establishment period followed by the product being placed on a long term Prices Dropped Program. I have checked the proposed retail pricing plan as against the Simulator I refer to in paragraph 26. The deal sheet attached to Ms Pipan's email in paragraph 34 above is consistent with that Simulator.

36 Later on 19 August 2022, I received an email from Ewan Shearer forwarding an email from James Hepworth, who was the Commercial Director – Everyday Needs. A copy of this email is at **[MPL.0002.0002.3349] of Confidential Exhibit BOL-1**. Mr Hepworth's email provided guidance on the price establishment policy that applied in the case of short-term yellow ticket promotions or Specials. It said:

Hi Team,

Signed:

[REDACTED]

Taken by:

[REDACTED]

As you know we are currently reviewing our Price Establishment Policy to ensure it meets our expectations and helps to build price trust with our customers.

As an interim measure, prior to sharing our revised policy, please follow the below guidance when using the Specials mechanic.

In order to represent a save using a special ticket from a new 'standard' price, the price must be established for a period of no less than 3 weeks. This establishment period should be continuous and free from any discounts or promotions.

The establishment of a new standard price is required in circumstances such as launching new products or after price increases (i.e post CPI or coming off of a RED mechanic).

The above guidance is relevant when representing a save, with a Special ticket, after establishing a new shelf price. The existing 'Prices Dropped' price establishment rule still applies when moving a product onto a Prices Dropped mechanic (the greater of 3 weeks or the IPI, up to a maximum of 6 weeks. Continuous and free from any discounts).

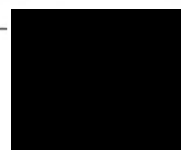
If you have any questions, please let me know as soon as possible.

- 37 I understand this email as relating to the price establishment period for yellow ticket Specials, rather than the price establishment period relevant to the Prices Dropped Program. Mr Hepworth's email states that the "*The existing 'Prices Dropped' price establishment rule still applies when moving a product onto a Prices Dropped mechanic (the greater of 3 weeks or the IPI, up to a maximum of 6 weeks. Continuous and free from any discounts)*". I read that statement as indicating that there was no change at this time to Woolworths' existing policy at the time regarding the price establishment period applicable for moving a product on to the Prices Dropped Program. I do not recall there being any change in Woolworths' policy regarding the price establishment period for red ticket programs at or around this time.
- 38 On 23 August 2022, I had another meeting with Ms Pipan. This is recorded in my calendar as "Arnott's – CPI – Zoe".
- 39 On 25 August 2022, I had another one to one meeting with Ms Pipan. My calendar record of this meeting is at **[MPL.0081.0001.0008] of Confidential Exhibit BOL-1**. Ms Pipan's agenda items for the meeting include at _0017:

Signed:



Taken by:



- *Arnott's CPI Update – No update as yet, early next week*

40 On 1 September 2022, I had another one to one meeting with Ms Pipan. My calendar record of this meeting is at **[MPL.0081.0001.0012] of Confidential Exhibit BOL-1**. Ms Pipan's agenda items for the meeting include at _0017:

- *Arnott's CPI Update – Zoe/Shannon reviewed Thursday 01/09/2022. Arnott's share deal sheets by 9am Friday 02/9/2022.*

41 On 2 September 2022, I received an email from Shannon Mills (Arnott's) attaching Arnott's' proposed deal sheets recording CPI requests for the Tim Tam Sample Product and other Arnott's chocolate biscuits. A copy of this email is at **[MPL.0002.0015.5525] of Confidential Exhibit BOL-1**. I have been shown a copy of a further email exchange which occurred on 5 September 2022 between Ms Pipan and Ms Mills. A copy of this email is also at **[MPL.0002.0015.5525] of Confidential Exhibit BOL-1** attaching a minor correction to the deal sheets that I was sent. The corrected deal sheets are at **[MPL.0002.0015.5526] of Confidential Exhibit BOL-1**.

42 In relation to the Tim Tam Sample Product, the 2 September 2022 deal sheets described the following proposal:

(a) in relation to the cost structure:

- (i) an increase to the First Cost per unit from \$ [REDACTED] to \$ [REDACTED]
- (ii) a decrease to the Deferred deal from [REDACTED] % to [REDACTED] %; and
- (iii) a resulting increase in the Net Cost per unit from [REDACTED] to [REDACTED]

(b) in relation to the sales and promotional plan:

- (i) a Shelf price of \$6.00 for 4 weeks with forecast sales of 35,556 per week;
- (ii) a Promo Level 1 price of \$5.50 for 48 weeks with forecast sales of 55,080 per week.

43 On 8 September 2022, I had another one-to-one meeting with Ms Pipan. My calendar record of this meeting is at **[MPL.0081.0001.0012] of Confidential Exhibit BOL-1**. Ms Pipan's agenda items for the meeting include at _0016:

- *Arnott's CPI – Effective 3/10/2022 – Resting period – HP or 30% of [sic] Masterbrand*

Signed:

[REDACTED]

Taken by:

[REDACTED]

I interpret the reference to “Resting period” here as relating to the “resting period” applicable before Specials, rather than that applicable to a product being placed on the Prices Dropped Program. I say that because “HP” is a common abbreviation within Woolworths for “half price”. I interpret Ms Pipan’s note as referring to the resting period relevant to the proposed half price and 30% Masterbrand promotions. Of their nature, promotions of that kind are yellow ticket specials. I do not think that the affected products would be on the Prices Dropped Program because products on the Prices Dropped Program (and other red ticket programs) were typically excluded from Masterbrand promotions.

44 On 9 September 2022, I sent an email to Clare Darroch at Arnott’s. A copy of this email is at **[MPL.0003.0027.9261] of Confidential Exhibit BOL-1**. The email stated:

Zoe will go back directly to Shannon on the cost increase which I have been through in detail and we have aligned with Ewan. I believe we are in a good position to solve quickly; providing a reasonable outcome to all stakeholders, so we can focus on continuing to deliver topline growth for both businesses. A few points I would ask for close consideration:

- 1. Timely response and engagement over the coming weeks are critical, we don’t need more decks (which have been helpful to date) but should focus on the deal sheets.*
- 2. To ensure price trust, appropriate resting periods before we recommence promotions will need to be adhered to. Michelle will lead.*
- 3. Please take all Zoe’s feedback on board, as the sum of the parts is what works for us.*
- 4. The costing of the “Arnotts Choc Value Pk” does not make sense when reviewed at a piece or 100g basis and will need review.*
- 5. Maintaining logical price hierarchies are very important to us, as we have experienced ranges (some even within the biscuit aisle) fail as we have confused the shopper.*

45 Later on 9 September 2022, Clare Darroch sent me an email. A copy of this email is at **[MPL.0003.0027.6448] of Confidential Exhibit BOL-1**. The email said:

Signed

Taken by:

I hear from the team today that Woolworths are recommending we cancel our 12/10 30% off Masterbrand promotion due to the chocolate cost recovery program. I understand the reasons for price establishment, however this has caused another challenge for us:

- 1. We have already printed our POS for the event.*
- 2. Our forecast submission is already resulting in supply planning across the total portfolio.*
- 3. Tim Tam Deluxe as you know has had supply challenges, and Woolworths was the only exception to the no activity recovery plan for this Masterbrand activation.*
- 4. In our price increase that went live in May, there was a requirement for 1 week price establishment only. Our plans were based on this precedent.*

Please can you clarify the potential to keep the 30% off Masterbrand in its current planned week.

I read Ms Darroch's email as referring to the cancellation of a yellow ticket Masterbrand promotion and the price establishment period applicable before launching a yellow ticket promotion. I do not believe her email related to the Prices Dropped Program. Again, that is because products on the Prices Dropped Program (and other red ticket programs) were typically excluded from Masterbrand promotions.

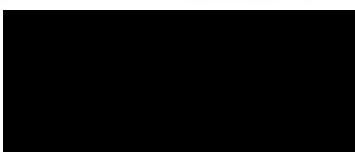
46 In my response to Ms Darroch, I said:

Updated pricing policy is that there is a three week wait period post changes to RRP before promotions are run. This only became policy in the past three weeks so the team could not have advised. Unfortunately there is no exception to this. We could agree optimal timing for changes in cost and RRP to avoid any implications.

Hope this clarifies and thank you for your understanding as we continue to protect price trust.

The policy that I referred to in my email to Ms Darroch was the guidance received from James Hepworth referred to above at paragraph 36. It was the policy relating to the price establishment period applicable to yellow ticket Specials specifically. As I state in paragraph 37 above, I do not recall there being any change in Woolworths' policy regarding the price establishment period for red ticket programs at or around this time.

Signed:



Taken by:



47 On 16 September 2022, Shannon Mills sent an email to me and Zoe Pipan attaching revised deal sheets. A copy of this email is at **[MPL.0003.0027.6620] of Confidential Exhibit BOL-1** and a copy of the attachment is at **[MPL.0003.0027.6621] of Confidential Exhibit BOL-1**. In relation to the Tim Tams Sample Product, the revised deal sheets proposed:

(a) In relation to the cost structure:

- (i) an increase in the First cost from [REDACTED] to \$ [REDACTED];
- (ii) a decreased Deferred Deal from [REDACTED] to [REDACTED]%; and
- (iii) resulting in an increased Net-cost per unit from [REDACTED] to \$ [REDACTED]

(b) in relation to the promotional plan:

- (i) a Shelf price of \$6.00 for 4 weeks, with forecast sales of 35,000 per week; and
- (ii) a Promo Level 1 price of \$5.50 for 48 weeks with forecast unit sales of 48,000 per week.

48 The revised deal sheets also stated in relation to the Tim Tams Sample Product "*Deferred deal offered to achieve EDLP of \$5.50*". By "EDLP", I understand Arnott's to have been proposing funding for the purposes of placing the Tim Tams Sample Product on a red ticket pricing program. I believe that the supplier inadvertently referred to "EDLP" ("Everyday Low Price") instead of the Prices Dropped program in this instance because the deal sheets show a proposed drop in price after the four week period at the new shelf price. That structure appears to me to reflect an intention to place the product on the Prices Dropped Program after a four week price establishment period.

49 On 20 September 2022 I met with Zoe Pipan. In the working document that contained Zoe's proposed agenda items for those discussions (as referred to at paragraph 24 above), she listed the Arnott's CPI, noting "Reviewing proposal sent Friday 16/09/2022." A copy of that note is on page _0014 of **[MPL.0081.0001.0016] of Confidential Exhibit BOL-1**. On that basis, it is likely that we discussed the revised deal sheets on that date.

50 On 23 September 2022, I was copied into an email from Zoe Pipan to Arnott's which outlined Woolworths' concerns regarding Arnott's' CPI proposal. A copy of this email is at **[MPL.0003.0027.7208] of Confidential Exhibit BOL-1**. In relation to the Tim Tams Sample Product, the email states, "*The cost of the Family Pack is still either the same or*

Signed:

[REDACTED]

Taken by:

[REDACTED]

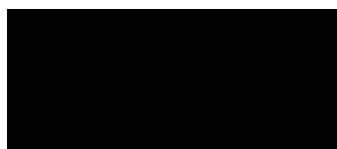
higher than the core skus". One of the concerns was that Arnott's CPI proposal would result in a situation where the proposed cost of the Arnott's Family Pack (Tim Tam Sample Product) meant that the cost per biscuit in that product was higher than the cost per biscuit in the Tim Tam core pack (being the Arnott's range of single pack size Tim Tam products). That was in circumstances where the biscuits in question were identical. The email also stated:

Some other points to ensure we are aligned on are:

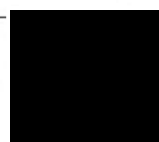
-Price establishment period post a cost increase. We need to ensure post an RRP increase, that we are allowing time for the new price to be established to ensure we are not misleading customers. A minimum of 3 weeks baseline is needed to meet this.

- 51 The reference to the "price establishment period" in this email applied equally to yellow ticket promotions and red ticket pricing programs. That was because, at this time, under Woolworths' policies a three week price establishment period applied to both promotions and the red ticket program for products in the biscuits subcategory.
- 52 On 27 September 2022, I attended a meeting regarding the CPI negotiations with Clare Darroch and Shannon Mills and subsequently emailed a summary of that discussion to them and Ms Pipan. A copy of this email is at **[MPL.0003.0027.5780] of Confidential Exhibit BOL-1**. During this meeting and in my email, I reiterated that Woolworths would not accept a situation where it was paying more per biscuit for the Arnott's Family Pack product range (being the Tim Tam Sample Product) compared to the Tim Tam core product range, and advised that Woolworths was not aligned with Arnott's' overall CPI ask of Woolworths.
- 53 Later on 27 September 2022, I received an email from Clare Darroch responding to my email of the same day. A copy of this email is at **[MPL.0002.0015.1396] of Confidential Exhibit BOL-1**. In this email, Clare Darroch said that the only reason cost per unit in the Tim Tam core product range was acceptable to Arnott's was because Arnott's was "*investing from Family Pack to drive the core portfolio*". By this, I understood Arnott's to be suggesting that they were seeking to generate a higher price in the Family Pack that could be used to fund Special promotions in its Core Portfolio.
- 54 The following day, on 28 September 2022, I responded to Clare Darroch via email and advised that Woolworths' feedback on the Tim Tams Sample Product proposal had been consistent throughout negotiations and that despite Woolworths having worked

Signed:



Taken by:



collaboratively to address Arnott's' cost pressures, Arnott's had failed to address our feedback to date. By this, I meant that Arnott's had failed to bring the proposed cost of the Tim Tam Sample Product per biscuit down so that it was no more than the cost per biscuit of the Tim Tam core range. A copy of this email is at **[MPL.0002.0015.1399] of Confidential Exhibit BOL-1.**

55 On 30 September 2022, Shannon Mills circulated a further revised deal sheet. A copy of this email is at **[MPL.0003.0027.6069] of Confidential Exhibit BOL-1**, and a copy of the attachments is at **[MPL.0003.0027.6070 (presentation)]** and **[MPL.0003.0027.6071 (deal sheet)] of Confidential Exhibit BOL-1.** In Shannon Mills' email, she noted that the revised proposal was specifically targeted at addressing Woolworths' feedback on Arnott's' "Family Pack" proposals (which I understood to refer to the Tim Tams Sample Product). In relation to the Tim Tam Sample Product, the revised deal sheets proposed:

- (a) an increase in the First cost from \$ [REDACTED] to [REDACTED]
- (b) a decrease in the Deferred deal from [REDACTED] % to [REDACTED] % (instead of [REDACTED] % as Arnott's proposed on 16 September 2022); and
- (c) a resulting increase in Net cost per unit from \$ [REDACTED] to \$ [REDACTED] (instead of \$ [REDACTED] as Arnott's proposed on 16 September 2022).

56 The promotional plan in the revised deal sheets remained the same as in Arnott's previous version.

57 I was not satisfied that Arnott's revised deal sheets addressed my previous concerns about the appropriate Net Cost of the Tim Tam Sample Product.

58 Because of this, on 30 September 2022, I emailed Ian Dunn (the Head of Trade Relations at Woolworths at this time) and Ewan Shearer (the Commercial Director to whom I reported at this time) to seek their view on Arnott's proposal. A copy of this email is at **[MPL.0002.0002.5183] of Confidential Exhibit BOL-1.**

59 Mr Dunn responded on the same day **[MPL.0002.0002.5182] of Confidential Exhibit BOL-1** and said that "*I agree the supplier is being unreasonable but they have substantial countervailing bargaining power so I think you need to keep working constructively as you have been to finalise*". In relation to the Tim Tam Sample Product, Mr Dunn said:

2] There is nothing wrong with saying in writing or verbally, as you have done, that the value pack position does not make sense. You can legitimately point out that

Signed:

[REDACTED]

Taken by:

[REDACTED]

the line has been marginal for some time as evidenced by the previous B prefix. Obviously if enough customers have not seen 'value' in the sku in the past to make its ranging problematic the new pricing is likely to make it even more problematic... that is a statement of commercial logic, not of intent. The line will get proper consideration at future reviews without any pre-determined outcome now, you are just stating the obvious.

60 Having regard to Mr Dunn's advice, I advised Ms Pipan to accept Arnott's most recent proposal.

CPI Agreement and Subsequent Retail Price Increase

61 I recall that Woolworths subsequently accepted Arnott's proposal and while I do not recall the precise date that it was accepted, I do recall that it was accepted before the effective date for the cost price increase which was 3 October 2022.

62 From my review of Annexure C, I understand that on:

- (a) 6 October 2022, the Tim Tams Sample Product was offered for sale to consumers at Woolworths Supermarkets and Woolworths Online for \$6.00, with a white ticket placed on the product.
- (b) 27 October 2022, the Tim Tams Sample Product was placed on the Prices Dropped Program at the price of \$5.50 and a red Prices Dropped Ticket was applied to the product in Woolworths Supermarkets and Woolworths Online.

63 About six months later, on 17 April 2023, I sent an email to Clare Darroch foreshadowing a change in the retail pricing of the Tim Tams Sample Product. A copy of this email is at **[MPL.0002.0015.0578] of Confidential Exhibit BOL-1**. The email stated:

Arnott's Tim Tam Original Family Pack Chocolate 365gram

- *Currently on prices dropped at \$5.50*
- *Effective Wednesday 19/4 move to Low Price of \$5.00 – needs to be low price so as not to attract the 30% masterbrand activation*
- *End date to be discussed but the prices dropped mechanic cannot be used going forward.*
- *Once completed, Zoe will discuss funding with Shannon.*

Signed:



Taken by:



- 64 I sent this email because I learned that Aldi had offered the Tim Tams Sample Product for sale at a retail price of \$5.00 (being 50 cents less than Woolworths' Prices Dropped price at the time). I formed the view that Woolworths had to meet the Aldi price, but this required Woolworths to remove the product from the Prices Dropped Program.
- 65 On 18 April 2023, I received a response from Ms Darroch, suggesting that the Tim Tams Sample Product be sold at \$5 for one week. A copy of this email is at **[MPL.0002.0015.0578] of Confidential Exhibit BOL-1.**
- 66 I declined Ms Darroch's 18 April 2023 proposal in writing on 19 April 2023. A copy of this email is at **[MPL.0002.0015.0574] of Confidential Exhibit BOL-1.** It was my view that a one week promotion would not redress the situation because Woolworths needed to be price competitive with Aldi for this product on an ongoing basis. I therefore proceeded with my proposal to remove the Tim Tam Sample Product from the Prices Dropped Program.

Oreo Sample Product Cost Price and Retail Price Journey

Prices Dropped Program Placement

- 67 From my review of Annexure C, I understand that from at least September 2021 until 27 November 2022, the Oreo Sample Product was sold in Woolworths Supermarkets as part of the Prices Dropped Program and was offered to customers using a Prices Dropped Ticket with the following features:
- (a) Prices Dropped Price of \$3.50;
 - (b) Range Was Price of \$4.50; and
 - (c) Range Was Date of 9 September 2020.

CPI Request Notification and Negotiations

- 68 On 2 September 2022, Ms Pipan forwarded me an email she had received from Michael Higginbotham at Mondelez Australia (Foods) Ltd (**Mondelez**) which attached a letter formally notifying Woolworths of a CPI on certain Mondelez products in the Biscuits Category. A copy of this email is at **[MPL.0002.0002.5456] of Confidential Exhibit BOL-1** and a copy of this attachment is at **[MPL.0002.0002.5457] of Confidential Exhibit BOL-1.**

Signed:



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69 In the letter, Mondelez advised that the CPI was a result of “*rising transport and commodity costs*”. The letter also contained details of the proposed increases, including an increase to the List price from \$ [REDACTED] to \$ [REDACTED] per 5 units in respect of the Oreo Sample Product.

70 After receiving Ms Pipan’s email regarding Mondelez’s CPI notification, I emailed her to remind of the need to ensure that any plans agreed with Mondelez adhered to existing price establishment rules and the Christmas Price Freeze. A copy of this email is at [MPL.0003.0027.8519] of Confidential Exhibit BOL-1. The Christmas Price Freeze refers to a Woolworths policy not to permit changes in retail price to take effect over the Christmas period, because of the additional work created by those increases (such as manually updating tickets instore) at a busy time of the year when store team members are busy attending to customers.

71 On 23 September 2022, I received an email linking a copy of a CPI Simulator setting out Mondelez’s CPI proposal from Ms Pipan and her proposed response. A copy of this email is at [MPL.0003.0027.4586] of Confidential Exhibit BOL-1 and a copy of the attachment is at [MPL.0062.0001.0013] of Confidential exhibit BOL-1. In relation to the cost structure, the respective proposals were as follows:

Article	73032	Supplier initial ask		Supplier counter proposal / final outcome		Woolworths counter proposal	
		Variance vs. Current	Proposed Cost	Variance vs. Current	Proposed Cost	Variance vs. Current	Proposed Cost
Product Cost	Current Cost						
First cost \$/unit	[REDACTED]						
Allowances %	[REDACTED]						
Off invoice deal %	[REDACTED]						
Off invoice deal \$/unit	[REDACTED]						
CDS fee (if applicable)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Invoice cost \$/unit	[REDACTED]						
Volume spend %	[REDACTED]						
Deferred deal %	[REDACTED]						
Deferred deal \$/unit	[REDACTED]						
CDS fee (if applicable)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
On Cost (Landed Costs)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Net cost \$/unit	[REDACTED]						
Absolute Net Cost per	[REDACTED]						
GST applicable	Yes						

Signed:

[REDACTED]

Taken by:

[REDACTED]

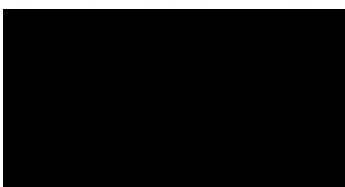
72 In relation to the promotional plan, the respective proposals were as follows:

Current Plan	Sell Price (inc GST)	Promo Frequency	Sales Quantity per Week	Total Sales Quantity
Standard Shelf	\$3.50	52	17,568	913,536
Promotion Level 1				0
Promotion Level 2				0
Promotion Level 3				0
Promotion Level 4				0
Promotion Level 5				0
Totals/Averages	\$3.50	52	17,568	913,536

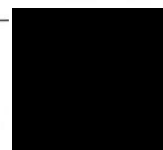
Supplier Proposed Plan	Sell Price (inc GST)	Promo Frequency	Sales Quantity per Week	Total Sales Quantity
Standard Shelf	\$4.50	52	17,568	913,536
Promotion Level 1				0
Promotion Level 2				0
Promotion Level 3				0
Promotion Level 4				0
Promotion Level 5				0
Totals/Averages	\$4.50	52	17,568	913,536

Woolworths Proposed Plan	Sell Price (inc GST)	Promo Frequency	Sales Quantity per Week	Total Sales Quantity
Standard Shelf	\$5.00	4	12,000	48,000
Promotion Level 1	\$4.50	48	15,800	758,400
Promotion Level 2				0
Promotion Level 3				0
Promotion Level 4				0
Promotion Level 5				0
Totals/Averages	\$4.53	52	15,508	806,400

Signed:



Taken by:



- 73 On 6 October 2022, Ms Pipan shared with me a Google Drive link to a Google Slides presentation pack. A copy of the email is at [MPL.0003.0027.2998] of Confidential Exhibit BOL-1 and a copy of the slide pack is at [MPL.0094.0001.0008] of Confidential Exhibit BOL-1. The presentation pack contained modelling on the impact of Mondelez's CPI proposal on the sales and gross profit of the products (including the Oreo Sample Product). It also included the following statement:

Starting again to ensure we are compiling [sic] with the pricing policy. Mondelez has been spoken to.

- 74 On 17 November 2022, Ms Pipan shared with me Google Drive links to further versions of the Google Sheet spreadsheet Simulator and the Google Slides presentation. Both documents set out Mondelez's and Woolworths' respective proposals in relation to Mondelez's CPI. A copy of the emails (and their attachments) are at [MPL.0003.0031.9032] (email) and [MPL.0094.0001.0007] (slidedeck) and; [MPL.0003.0031.9013] (email) and [MPL.0095.0001.0004] (spreadsheet) of Confidential Exhibit BOL-1. In relation to the cost structure, the respective proposals were the same as the September proposal:

Article	73032	Supplier initial ask		Supplier counter proposal / final outcome		Woolworths counter proposal	
		Variance vs. Current	Proposed Cost	Variance vs. Current	Proposed Cost	Variance vs. Current	Proposed Cost
Product Cost	Current Cost						
First cost \$/unit							
Allowances %							
Off invoice deal %							
Off invoice deal \$/unit							
CDS fee (if applicable)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Invoice cost \$/unit							
Volume spend %							
Deferred deal %							
Deferred deal \$/unit							
CDS fee (if applicable)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
On Cost (Landed Cost)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Net cost \$/unit							
Absolute Net Cost per							
GST applicable	Yes						

Signed

Taken by:

75 In relation to the promotional plan, the respective proposals were as follows:

Current Plan	Sell Price (inc GST)	Promo Frequency	Sales Quantity per Week	Total Sales Quantity
Standard Shelf	\$3.50	52	17,568	913,536
Promotion Level 1				0
Promotion Level 2				0
Promotion Level 3				0
Promotion Level 4				0
Promotion Level 5				0
Totals/Averages	\$3.50	52	17,568	913,536


Supplier Proposed Plan	Sell Price (inc GST)	Promo Frequency	Sales Quantity per Week	Total Sales Quantity
Standard Shelf	\$4.50	52	17,568	913,536
Promotion Level 1				0
Promotion Level 2				0
Promotion Level 3				0
Promotion Level 4				0
Promotion Level 5				0
Totals/Averages	\$4.50	52	17,568	913,536

Woolworths Proposed Plan	Sell Price (inc GST)	Promo Frequency	Sales Quantity per Week	Total Sales Quantity
Standard Shelf	\$5.00	4	12,000	48,000
Promotion Level 1	\$4.50	48	17,568	843,264
Promotion Level 2				0
Promotion Level 3				0
Promotion Level 4				0
Promotion Level 5				0
Totals/Averages	\$4.53	52	17,140	891,264

Signed



Taken by:



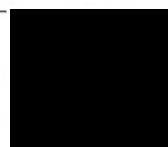
CPI Agreement and Subsequent Retail Price Increase

- 76 I have been shown an email from Ms Pipan dated 17 November 2022 to Michael Higginbotham stating that Ms Pipan had reviewed and accepted Mondelez' revised CPI proposal and summarised the agreed proposal. A copy of this email is at **[MPL.0002.0002.5293] of Confidential Exhibit BOL-1**. In relation to the Oreo Sample Product, the agreed proposal aligned with Woolworths' counterproposal in the CPI Simulator I received from Zoe Pipan earlier on 17 November 2022.
- 77 I have been shown an email dated 18 November 2022 from Zoe Pipan to Michelle Nevoa and Stefanie Chiddo (a Category Assistant within the Biscuits Category) requesting that they:
- (a) implement the agreed retail pricing proposal by removing the Oreo Sample Product from its existing Prices Dropped Ticket and increasing the Shelf Price to \$5.00 on 28 November 2022; and
 - (b) liaise with Woolworths' Better Buying Team to confirm the process for placing the Oreo Sample Product on Prices Dropped after 3 weeks as the Prices Dropped placement would occur within the change freeze period (which I understand to refer to the Christmas Price Freeze).
- A copy of this email is at **[MPL.0002.0015.0931] of Confidential Exhibit BOL-1**.
- 78 I have been shown an email exchange between Ms Pipan, Ms Chiddo and Ms Nevoa later on the 18 November 2022, in which Stefanie Chiddo confirmed to Zoe Pipan that the agreed retail pricing plan had been implemented for the Oreo Sample Product and Michelle Nevoa sent an email to the Buying Support Team regarding the process for placing the product on Prices Dropped. A copy of Stephanie's email is at **[MPL.0002.0015.0931] of Confidential Exhibit BOL-1** and a copy of Michelle's email is at **[MPL.0002.0002.5291] of Confidential Exhibit BOL-1**.
- 79 I have been shown the response from the Buying Support Team on 22 November 2022, advising that approval for the Prices Dropped placement would need to be obtained from the Merchandise Manager and Justin Riley (National Trade and Event Activation Manager at Woolworths). A copy of this email is at **[MPL.0002.0002.5291] of Confidential Exhibit BOL-1**.
- 80 On 21 November 2022, Michelle Nevoa emailed Justin Riley and me jointly to seek our approvals for the Oreo Sample Product's Prices Dropped placement. In the email,

Signed:



Taken by:



Ms Nevoa noted that the Oreo Sample Product could be placed on the Prices Dropped Program 21 days after the Shelf Price increase occurred and that this would fall within the Christmas freeze period. In response, both Justin Riley and I replied and provided our approval via email. A copy of this email is at **[MPL.0002.0002.5164]** of **Confidential Exhibit BOL-1**.

81 On 24 November 2022, Zoe Pipan shared with me a copy of the CPI Simulator for the Mondelez CPI. A copy of this email is at **[MPL.0003.0031.8304]** of **Confidential Exhibit BOL-1** and a copy of the attachment is at **[MPL.0094.0001.0009]** of **Confidential Exhibit BOL-1**.

82 From my review of Annexure C, I understand that:

- (a) on 28 November 2022, the Oreo Sample Product was offered for sale to consumers at Woolworths Supermarkets and Woolworths Online for \$5.00, with a white ticket placed on the product.
- (b) on 20 December 2022, the Oreo Sample Product was placed on the Prices Dropped Program at the price of \$4.50 and a red Prices Dropped ticket applied to the product in Woolworths Supermarkets and on Woolworths Online.

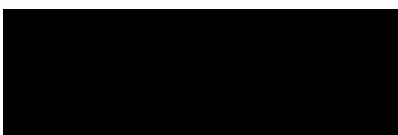
Sakata Sample Product

83 As referred to in paragraph 20, I took over from Cormac Deery of the role of Merchandise Manager (Impulse, Beverage & Tobacco) in July 2022. This portfolio included the Sakata Sample Product.

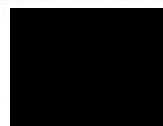
84 I have been shown a copy of a Google Chat dated 23 August 2022 recording a discussion between myself, Zoe Pipan and Richard Lowe from the Pricing team. The Google Chat records that the Sakata Sample Product was erroneously launched on Prices Dropped on 22 August 2022 and reversed on 23 August 2022 as it had not received formal approval for inclusion on the Prices Dropped program. A copy of that chat record is **[MPL.0071.0001.2805]** of **Confidential Exhibit BOL-1**.

85 On 29 August 2022, I received an email from Richard Lowe to Paul Harker, Chief Commercial Officer of Woolworths Supermarket, seeking approval for the Sakata Sample Product to be added to the Prices Dropped Program. Paul replied with his approval the same day. A copy of that email is **[MPL.0002.0002.5478]** of **Confidential Exhibit BOL-1**.

Signed:



Taken by:



No VID 974 of 2024


Federal Court of Australia
District Registry: Victoria
Division: General

Australian Competition and Consumer Commission
Applicant

Woolworths Group Limited (ACN 000 014 675)
Respondent

Certificate identifying Confidential Exhibit BOL-1

This is **Confidential Exhibit BOL-1** to the affidavit of **Barry O'Leary** sworn at 1 Woolworths Way, Bella Vista, Sydney, NSW on 15 December 2025 before me:


.....
Signature of witness

Australian Legal Practitioner

Filed on behalf of Woolworths Group Limited, the Respondent

Prepared by Peta Stevenson
Law firm **KING & WOOD MALLESONS**
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