

## NOTICE OF FILING

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File Title: AUSTRALIAN COMPETITION AND CONSUMER COMMISSION v  
COLES SUPERMARKETS AUSTRALIA PTY LTD (ACN 004 189 708)  
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### Important Information

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Form 59

Rule 29.02(1)

**Affidavit**

No. VID 973 of 2024

Federal Court of Australia

District Registry: Victoria

Division: General

**Australian Competition and Consumer Commission**

Applicant

**Coles Supermarkets Australia Pty Ltd (ACN 004 189 708)**

Respondent

Affidavit of: Edward Matthew McCutchan

Address: 800 Toorak Road, Hawthorn East, Victoria

Occupation: Category Manager of Deli Entertainment

Date: 20 November 2025

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Filed on behalf of: Coles Supermarkets Australia Pty Ltd (ACN 004 189 708), the respondent

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[Version 3 form approved 02/05/2019]

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## A. INTRODUCTION

I, Edward Matthew McCutchan of 800 Toorak Road, Hawthorn East, Victoria, Category Manager, Deli Entertainment at Coles, affirm:

- 1 I am the Category Manager of Deli Entertainment at Coles Group Limited. I am authorised to make this affidavit on behalf of Coles Supermarkets Australia Pty Ltd (ACN 004 189 708) (**Coles**).
- 2 Shown to me at the time of affirming this affidavit and exhibited to this affidavit and marked **Exhibit EMM-1** is a consolidated set of documents. In this affidavit, I refer to each document by reference to the relevant tab number in Exhibit EMM-1 and where convenient by the document's identification number, stamped on the top right-hand corner of the first page. Where documents in Exhibit EMM-1 have attachments, the host document is numbered, for example, tab 1, with each of the attachments numbered tab 1.1 and tab 1.2 accordingly.

## B. ROLES AT COLES

- 3 I have been employed by Coles since August 2018 in the following roles:
  - (a) Buying and Trading Graduate from August 2018 to August 2020;
  - (b) Assistant Category Manager of Deli Continental and Meats from August 2020 to January 2022;
  - (c) Assistant Category Manager of Deli Cheese and Antipasto from January 2022 to March 2023;
  - (d) Category Manager of Deli Specialty and Dry Goods from March 2023 to July 2024; and
  - (e) Category Manager of Deli Entertainment from July 2024 (a role I currently hold).
- 4 Unless stated otherwise, the matters to which I refer in this affidavit concern the period when I was Assistant Category Manager of Deli Cheese and Antipasto.

## C. DELI CHEESE AND ANTIPASTO

- 5 As Assistant Category Manager of Deli Cheese and Antipasto, I reported to the Senior Category Manager of Deli, Smallgoods and Entertainment, Michaela Dimond.
- 6 During the period from May to August 2022 (which I discuss in detail at section F below), my direct reports were:
  - (a) Venetta Rippon, Business Category Coordinator; and
  - (b) Katy Vlahos, Business Category Coordinator.
- 7 My role as Assistant Category Manager of the Deli Cheese and Antipasto category sat within the Deli Entertainment business category and the broader Meat, Deli and Seafood Business Unit. Within the Deli Cheese category, I managed cut and wrapped cheese, cheese accompaniments and deli dry goods. Within the Antipasto category, I managed food behind the deli glass and food pre-packaged in the deli fridges.
- 8 As Assistant Category Manager of the Deli Cheese and Antipasto category, I was responsible for overseeing and helping to manage the end-to-end profit and loss of the category, including by contributing to the category strategy, making ranging and pricing decisions (including promotional planning) and managing supplier relationships. I was also responsible for ensuring regulatory and legal compliance within the category, collaborating with cross functional teams (eg, finance

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business partners) and managing the development of my direct reports and new and trainee Assistant Category Managers.

- 9 Part of my role as an Assistant Category Manager involved setting the retail prices for products in the Deli Cheese and Antipasto category.
- 10 When setting Coles' retail prices in this category, I had regard to the following:
- (a) the suppliers' recommended retail prices (RRP);
  - (b) whether the price was competitive. I expected the supplier to provide a competitive RRP that took into account other products within the Coles category and in other supermarkets;
  - (c) the margin that Coles was forecast to earn;
  - (d) the product's shelf life, and how to minimise waste. This was an important consideration in the Deli Cheese and Antipasto category because many of these products had a short shelf life;
  - (e) how similar products from other suppliers within the category were priced by comparison;
  - (f) where the product sat in Coles' 'good, better, best' hierarchy of products. The 'best' tier was premium quality, the 'better' tier was mid-range, and the 'good' tier ensured value for customers by representing value at a lower price point. The 'good, better, best' hierarchy also separately applied to Coles' Own Brand labels, with 'Coles Finest' Own Brand products typically sitting within the 'better' or 'best' tier of the Own Brand product hierarchy; and
  - (g) for products sold on promotion, the supplier's submitted proposal on the promotional price and any promotional funding to support sales of the product.
- 11 When setting prices for Own Brand products, Coles (through its Own Brand team) invited suppliers to tender for the supply of a particular Own Brand product. Once Coles had selected the supplier for an Own Brand product, Coles and the supplier usually entered into a contract for a specified duration (typically 12 months in my category) and often with a fixed cost price (although there were mechanisms for reviewing the price). The retail price was then determined from the fixed cost price, as well as consideration of the factors listed above.

#### **D. PROMOTIONS**

- 12 As Assistant Category Manager of Deli Cheese and Antipasto, I was responsible for planning and implementing promotional programs for the category, both for Own Brand (ie, private label) and proprietary (ie, supplier branded) products.
- 13 Promotions were geared towards commercial and customer objectives. Commercially, we aimed to meet our budget and sales targets. From a customer perspective, we wanted to attract more customers by offering value, and see our existing customer base trade up from products in the 'good' tier to more premium products in the 'better' or 'best' tiers, spend more and do more trips to the category.
- 14 Suppliers of proprietary products typically submitted to Coles proposed promotions for their products for the following six months, which were usually set out in a 'trade plan'. The trade plan included the products that were to be promoted, the promotional mechanic to be used (eg, Down Down, Specials, etc), and any funding that the supplier proposed to provide to Coles, as a contribution to the cost of the promotion.

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- 15 Once the supplier's trade plan was agreed between Coles and the supplier, the supplier completed a Promotional Advice Form (**PAF**) which recorded details of all of the relevant promotions for their products in the six month period.
- 16 Coles had business rules with which promotions had to comply, including how long a product could be price established for, which were called 'guardrails'.
- 17 The decision to promote Own Brand products was a matter for the relevant category team at Coles, although I typically engaged with the supplier in respect of any promotion to make sure they had sufficient stock to maintain supply during the promotion.

#### **E. COST PRICE ALTERATION REQUESTS**

- 18 From time to time, and with the involvement of my Senior Category Manager, I dealt with suppliers seeking to increase the list prices of their products, also known as cost price alteration (**CPA**) requests.
- 19 When receiving the CPA requests from suppliers, I worked with the Vendor Management Office (**VMO**) team at Coles who assessed the supplier's CPA requests and claimed increases in input costs and 'validated' them, so that I could then determine whether to accept, partially accept or reject a CPA request.
- 20 During the period that I was Assistant Category Manager in Deli Cheese and Antipasto (January 2022 to March 2023), I recall that many suppliers across my category made CPA requests. There were many more requests than I had experienced previously.

#### **F. COLES FINEST QUINCE PASTE**

- 21 One of the CPA requests that I received in Deli Cheese and Antipasto was from Island Berries Tasmania (**Island Berries**) in respect of two Own Brand products, being Coles Finest Quince Paste (**Quince Paste**) and Coles Finest Pepperberry Paste (**Pepperberry Paste**).
- 22 The Quince Paste was the most affordable quince paste product we ranged at the time, initially offered at \$3.00 on a Down Down ticket. The Quince Paste product sat within the 'good' tier of Coles' overall product hierarchy. Alternative products to the Quince Paste included Julianne's Kitchen Apple and Thyme Paste priced at \$7.00 and Maggie Beer Plum and Shiraz Paste priced at \$6.30 (both within the 'best' or premium tier of the overall product hierarchy), and OB Finest Quince Paste priced at \$5.00 (within the 'better' tier of the overall product hierarchy).
- 23 On 31 May 2022, Andre Richardson from Island Berries submitted a CPA request for a 4% increase across the Quince and Pepperberry Pastes. A copy of this email (COL.504.016.0547) is at **tab 1 of Exhibit EMM-1**.
- 24 The Island Berries CPA request was a straightforward negotiation because it was for a small cost price increase that did not have a major impact on Coles' bottom line, relative to the many other CPA requests that I was receiving at this time. A copy of an email (COL.504.018.7960) from the VMO team confirming the total value of the Island Berries CPA request is at **tab 2 of Exhibit EMM-1**.
- 25 On 2 June 2022, the VMO team confirmed that it had received the supplier's CPA request and that it had been added to the team's pipeline of requests to validate. A copy of this email (COL.504.016.0547) is at **tab 1 of Exhibit EMM-1**.
- 26 On 17 June 2022, at my request, Island Berries provided a completed CPA template submission form that broke down the cost increases according to the individual commodity inputs. In the populated CPA template submission, Island Berries requested a 5% cost price increase (rather

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than the 4% originally sought in the email I discuss in paragraph 23 above). A copy of this email (COL.511.001.0903) and its attachment (COL.511.001.0904) are at **tabs 3-3.1 of Exhibit EMM-1**.

- 27 On 20 June 2022, the VMO team confirmed that although it was not able to conduct a detailed analysis, it was able to validate the full 5% CPA request for both Island Berries products. A copy of this email (COL.504.018.7960) is at **tab 2 of Exhibit EMM-1**.
- 28 On 24 June 2022, I emailed Island Berries confirming that the VMO team had validated the full CPA request and that Coles accepted the increase in full. A copy of this email (COL.500.029.0704) is at **confidential tab 4 of Exhibit EMM-1**.
- 29 Because the Quince Paste was an Own Brand product, there was no trade plan in place with the supplier and the supplier did not fund any price reductions associated with the product. Instead Coles effectively funded any promotion through a reduction in its margin.
- 30 As an Own Brand product, the responsibility for setting both the white ticket price and the promotional price sat with me, and the supplier in this instance did not provide input or recommendations. The Quince Paste was already on Down Down when I became responsible for the category. I decided that the product should go back onto Down Down following the cost price increase because I wanted to deliver value to customers using a promotional mechanic and thought Down Down remained appropriate.
- 31 On 27 June 2022, a few days after I accepted the supplier's cost price increase, I emailed my Business Category Coordinator, Venetta Rippon, stating:
- Given these are on DD and I would like to keep them on DD, can we please remove the \$3 DD, keep at full price \$4.50 for 2 weeks, and move back on DD at \$3.15.*
- A copy of this email (COL.500.029.0704) is at **confidential tab 4 of Exhibit EMM-1**.
- 32 I referred to '2 weeks' in this email but this was an error because Coles' guardrails at this time required that a product be taken off any Down Down promotion for a period of at least 28 days after a CPA request was accepted.
- 33 On 29 June 2022, Venetta Rippon replied to my email of 27 June 2022. She sent an extract of Coles' promotional guardrails dated July 2022 and stated:
- For the 4wks it will be on a normal shelf edge ticket at normal price of \$4.50. After 4wks back on DD at \$3.15.*
- A copy of this email (COL.500.029.0704) is at **confidential tab 4 of Exhibit EMM-1**.
- 34 On 30 June 2022, Venetta Rippon sent me an email, confirming that Quince Paste was to be moved to a white ticket shelf price from 4 July 2022 for a period of four weeks (28 days):
- The DD is ending on Sunday COB 3/7/22. The CPI will take effective from Monday 4/7/22 at \$2.05. The items will revert to \$4.50 normal sell on a white shelf edge ticket from 4/7/22 for the next 4 weeks until 31/7/22.*
- A copy of this email (COL.500.029.0690) is at **confidential tab 5 of Exhibit EMM-1**.
- 35 I decided to price the Quince Paste at \$4.50 on a white ticket label, which was the same white ticket price that the product was sold at before it first went onto Down Down at \$3.00. This involved some reduction in Coles' margin for that period, but I considered at the time that an increase to \$4.80 was going to be too high for this product for the customer.
- 36 I set the new promotional price on Down Down at \$3.15, which took into account the higher cost price. Because I returned the product to the same white ticket shelf price as it was previously

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(\$4.50), the discount was slightly shallower, ie, the customer saving on a \$3.15 Down Down ticket was \$1.25 rather than \$1.50 when it was on a \$3.00 Down Down ticket. A copy of this email from the Pricing & Value team with the price change to \$3.15 (COL.500.025.2246) and its attachment (COL.500.025.2252) are at **tabs 6-6.1 of Exhibit EMM-1**, with Quince Paste appearing at Row 14 of **tab 6.1**.

Affirmed by the deponent  
at Hawthorn East  
in Victoria  
on 20 November 2025  
Before me:

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Signature of deponent

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Signature of witness

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