

## NOTICE OF FILING

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*Sia Lagos*

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.

## Annexure A – Sample Product Chronologies

### 1. KARICARE FOLLOW ON FORMULA: 900 GRAM (1023271)

- 1 The first sample product is KARICARE FOLLOW ON FORMULA: 900 GRAM (1023271) (**Karicare Sample Product**). It was a milk substitute for babies aged 6 to 12 months within the Infant Formula product category, which in turn sat within the Health, Beauty and Baby business category. The supplier of the Karicare Sample Product was Nutricia Australia Pty Ltd (**Nutricia**), a subsidiary of Danone Murray Goulburn Pty Ltd (**Danone**).
- 2 On 12 December 2022, Nutricia submitted a cost price alteration (**CPA**) request to Coles for 23 products in the Infant Formula category, including the Karicare Sample Product.<sup>1</sup> Lauren Merlino (Senior Category Manager of Infant Formula) was responsible for the negotiations with Nutricia. She was assisted by Angus Whittaker (Assistant Category Manager of Infant Formula).
- 3 Nutricia requested an increase in the list price of the Karicare Sample Product from \$ [REDACTED] to \$ [REDACTED] and provided an increase in the recommended retail price (**RRP**) from \$22.00 to \$24.00.<sup>2</sup> At the time of the CPA request, the Karicare Sample Product was on the Down Down program and sold at a promotional price of \$18 (i.e., Price 1).<sup>3</sup>
- 4 On 15 December 2022, Nutricia provided a completed CPA template to Coles containing the commodity information for the Karicare Sample Product.<sup>4</sup>
- 5 Coles' Vendor Management Office (**VMO**) performed an average movement method analysis of the CPA request. 3.3% of the 16.7% CPA request for the Karicare Sample Product was validated.<sup>5</sup> On 5 January 2023, Coles asked Nutricia if they could provide further evidence to support the price movements in the CPA request.<sup>6</sup> Nutricia provided articles about CPI inflation and milk price surging.<sup>7</sup>
- 6 On 3 January 2023, Nutricia proposed a new trade plan for the products that were the subject of the CPA request.<sup>8</sup> Nutricia submitted several proposals to Coles during the course of the negotiations.<sup>9</sup> In each promotional plan, Nutricia proposed a Down Down price of \$21.00 off the recommended 'base price' of \$24.00.
- 7 Between January and March 2023, Coles and Nutricia engaged in negotiations with respect to Nutricia's CPA request.<sup>10</sup>
- 8 On 3 March 2023, a Nutricia employee told Coles that, in relation to the CPA request, "I would like to have this resolved today as the list prices are changing on Monday and I don't want Coles to be without stock".<sup>11</sup>
- 9 On 3 March 2023, Ms Merlino accepted Nutricia's CPA request and trade plan.<sup>12</sup> Nutricia provided to Coles a Promotional Advice Form (**PAF**) for the promotional price.<sup>13</sup>

<sup>1</sup> Exhibit 306, CB Tab 48 (p.1794); Exhibit 307, CB Tab 49 (p.1795).

<sup>2</sup> Exhibit 307, CB Tab 49 (p.1795).

<sup>3</sup> Amended Statement of Agreed Facts filed 20 February 2026 (**Amended Second SOAF**), Exhibit 2, 3SCB Tab 1056 (p.6703).

<sup>4</sup> Exhibit 308, CB Tab 51 (p.1798); Exhibit 309, CB Tab 52 (Excel) (row 41).

<sup>5</sup> Exhibit 310, CB Tab 59 (p.1813); Exhibit 311, CB Tab 60 (Excel) (row 15).

<sup>6</sup> Exhibit 314, CB Tab 63 (p.1826)

<sup>7</sup> Exhibit 314, CB Tab 63 (p.1825)

<sup>8</sup> Exhibit 312, CB Tab 61 (p.1819); Exhibit 313, CB Tab 62 (Excel) (Sheet entitled 'In\_New', row 10).

<sup>9</sup> Exhibit 315, CB Tab 65 (p.1831); Exhibit 316, CB Tab 66 (Excel) (Sheet entitled 'Promo', rows 4, 25, 50, 71); Exhibit 317, CB Tab 67 (p.1837); Exhibit 318, CB Tab 68 (Excel) (Sheet entitled 'Promo', rows 4, 25, 50, 71).

<sup>10</sup> Exhibit 314, CB Tab 63 (p.1824); Exhibit 34, CB Tab 64 (p.1830); Exhibit 315, CB Tab 65 (p.1831); Exhibit 316, CB Tab 66 (Excel) (Sheet entitled 'Promo', rows 4, 25, 50, 71); Exhibit 323, CB Tab 81 (p.1882).

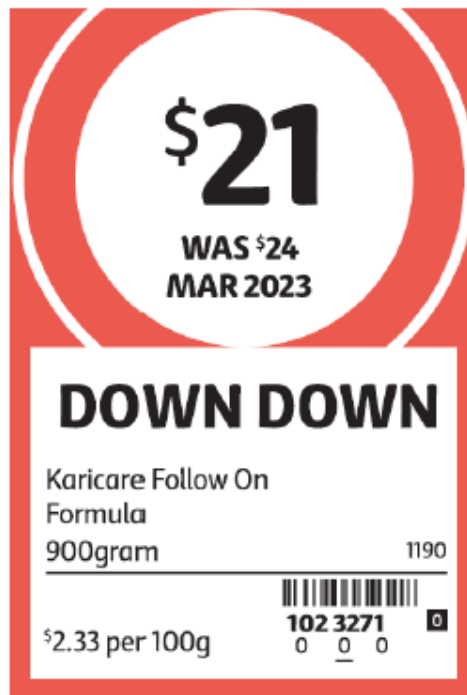
<sup>11</sup> Exhibit 323, CB Tab 81 (p.1882).

<sup>12</sup> Exhibit 317, CB Tab 67 (p.1837); Exhibit 318, CB Tab 68 (Excel) (Sheet entitled 'Promo', rows 4, 25, 50, 71).

<sup>13</sup> Exhibit 319, CB Tab 70 (p.1850); Exhibit 320, CB Tab 71 (Excel) (Sheet entitled 'PAF', row 14).

- 10 On 6 March 2023, Coles moved the Karicare Sample Product from \$18.00 on the Down Down program to a white ticket price of \$24.00 (i.e., Price 2).<sup>14</sup> The Karicare Sample Product was sold at \$24.00 from 6 March 2023 to 28 March 2023, being a period of 23 days.<sup>15</sup> During this period, a total of 8,573 units were sold, equating to an average of 2,609 units per week.<sup>16</sup>
- 11 From 29 March 2023, the Karicare Sample Product was offered on the Down Down program at a promotional price of \$21 (i.e. Price 3).<sup>17</sup> The promotional price of \$21 was Nutricia's PRRP for the product.<sup>18</sup> On the same day, Woolworths was also selling the Karicare Sample Product at this price.<sup>19</sup>
- 12 The promotion was jointly funded by Coles and Nutricia, with Nutricia agreeing to contribute \$ [REDACTED] per unit sold.<sup>20</sup>
- 13 Examples of the Down Down tickets that were used by Coles for this promotion appear at Figures 1 and 2. Each of these tickets referred to Price 2 and March 2023, being the month the Karicare Sample Product was last sold at Price 2.

Figure 1. Example ticket for Coles' physical stores (Statement of Agreed Facts filed 17 November 2025 (**Third SOAF**))<sup>21</sup>



<sup>14</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6703).

<sup>15</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6703).

<sup>16</sup> The weekly average calculated as total volume divided by number of weeks:  $(8,573/23) \times 7 = 2,609$ .

<sup>17</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6703).

<sup>18</sup> Exhibit 315, CB Tab 65 (p.1831); Exhibit 316, CB Tab 66 (Excel) (Sheet entitled 'Promo', rows 4, 25, 50, 71).

<sup>19</sup> Exhibit 324, CB Tab 85 (p.1907); Exhibit 325, CB Tab 86 (Excel) (Sheet entitled 'Daily Price Change', rows 16, 293, 564, 817, 1068, 1336).

<sup>20</sup> Amended Statement of Agreed Facts filed 15 February 2026 (**Amended Fourth SOAF**), Exhibit 4, 2SCB Tab 1032 (p.5276).

<sup>21</sup> Statement of Agreed Facts filed 17 November 2025 (**Third SOAF**), Exhibit 3, CB Tab 10 (p.218).

Figure 2. Example tickets for Coles Online and the Coles App (Third SOAF)<sup>22</sup>

The figure displays four screenshots of the Karicare Follow On product page on Coles Online and the Coles App. Each screenshot features a red 'DOWN DOWN' badge indicating a price reduction.

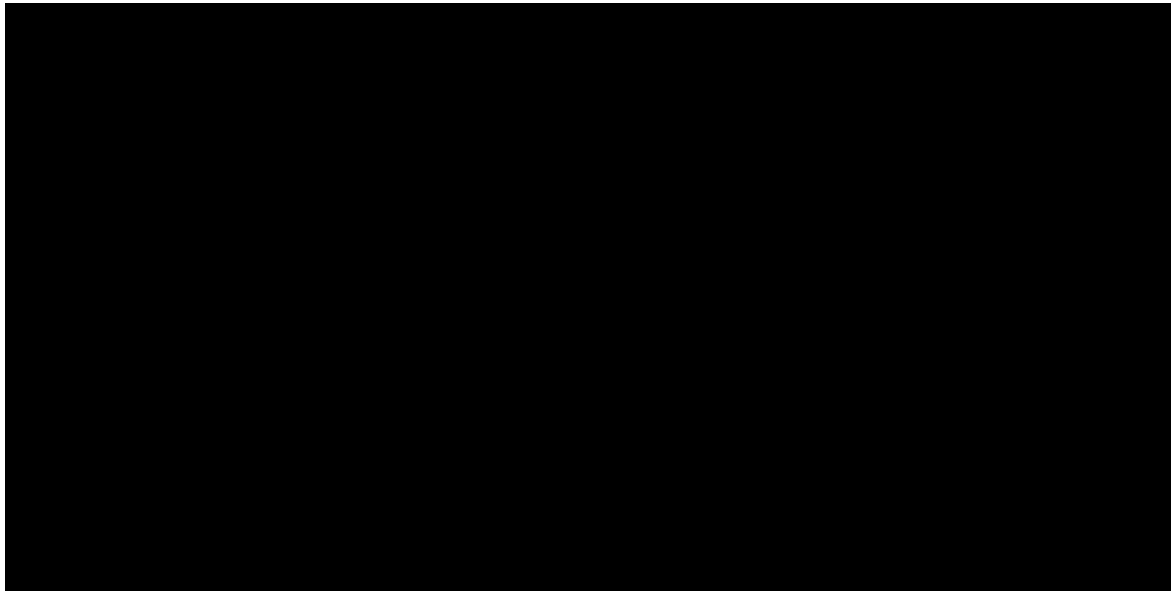
- Top Left (Coles Online):** Shows the product image, name 'Karicare Follow On | Formula', price '\$21.00' (was \$24.00 Mar 2022), and a quantity selector set to 'Add 1 for \$21.00'.
- Top Right (Coles App):** Shows the product image, name, price '\$21.00', and an 'Add' button.
- Bottom Left (Coles App):** Shows the product image, price '\$21.00 ea', unit price '\$2.33 per 100g | Was \$24.00 on Mar 2022', and an 'Add to trolley' button.
- Bottom Right (Coles App):** Shows a smaller product image, location 'Located in aisle Karicare Follow On | Formula | 900g', price '\$21.00 ea', and 'Add to list' and 'Add to trolley' buttons.

Navigation elements include a bottom bar with icons for Home, Favorites, Lists, Trolley, and More.

<sup>22</sup> Third SOAF, Exhibit 3, CB Tab 10 (p.227).

- 14 The below graph from the expert report of Dr Geoff Edwards dated 4 December 2025 (**Edwards Report**) compares the Karicare Sample Product's retail price with its cost price less total supplier funding, being Coles' cost to acquire the product, for the period from 1 January 2021 to 4 May 2023.<sup>23</sup>

*Figure 3. Extract of Edwards Report, Appendix C.9*



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<sup>23</sup> Expert report of Dr Geoff Edwards dated 4 December 2025 (**Edwards Report**), Exhibit 305, CB Tab 23 (p.1489).

## 2. CCA SOFT DRINK:COLA::2 LITRE (191736)

- 1 The second sample product is CCA SOFT DRINK:COLA::2 LITRE (191736) (**Coca-Cola 2L Sample Product**). It was a 2L bottle of Coca-Cola within the Soft Drinks product category, which in turn sat within the Beverages business category.<sup>24</sup> The supplier of the Coca-Cola 2L Sample Product was Coca-Cola Europacific Partners (**CCEP**), previously known as Coca-Cola Amatil (**CCA**).<sup>25</sup>
- 2 CCEP was one of Coles' largest suppliers in the Soft Drinks category and was responsible for approximately 60% of proprietary Soft Drinks sales and approximately 55% of Soft Drinks sales overall.<sup>26</sup> CCEP supplied a number of products that were popular and widely recognised by consumers, most notably Coca-Cola. If Coles did not offer CCEP products at a competitive price, or a significant supplier such as CCEP stopped supplying their products to Coles, there would be negative impacts on Coles, the customer and the supplier.<sup>27</sup> Foot traffic to Coles can be attracted or lost based on the price and availability of a product like Coca-Cola.<sup>28</sup>
- 3 On 29 October 2021, CCEP informed Coles that following a pricing review on its product range "there will be an increase in the standard wholesale pricing for some...products" effective from 31 January 2022.<sup>29</sup> On 7 December 2021, CCEP submitted its CPA request by providing its revised price list to Coles to take effect for deliveries from 31 January 2022 (CCEP's **CPA request**).<sup>30</sup> Consistent with its usual practice, CCEP did not provide any reasons for its CPA request.<sup>31</sup>
- 4 CCEP's CPA request impacted the list price of a large number of CCEP beverage products, including the Coca-Cola 2L Sample Product.<sup>32</sup> The Coca-Cola 2L Sample Product was subject to a 5% list price increase in Victoria, from \$ [REDACTED] to \$ [REDACTED] for a carton of eight bottles,<sup>33</sup> which equated to an increase from \$ [REDACTED] to \$ [REDACTED] per bottle.<sup>34</sup>
- 5 At the time of CCEP's CPA request, the Coca-Cola 2L Sample Product was on the Down Down program and sold at a promotional price of \$2.75 (i.e., Price 1).<sup>35</sup> Around 60% of sales in the Soft Drinks category occurred when a product was on promotion, compared to around 40% in Grocery more broadly.<sup>36</sup>
- 6 CCEP proposed that Coles increase the retail price of the Coca-Cola 2L Sample Product following the CPA to a "shelf RRP" or RRP of \$4.40 on 2 February 2022, before returning the product to Down Down at a promotional recommended retail price (**PRRP**) of \$3.50 in late April 2022.<sup>37</sup> CCEP also provided Coles with a document titled 'Value Chains', which provided a summary of the existing and proposed new promotional plan for the CCEP products impacted by the CPA request.<sup>38</sup>
- 7 Mr Cubbon, the Senior Category Manager of the Soft Drinks category, was involved in the negotiations with CCEP regarding its CPA request and trade plan on behalf of Coles.<sup>39</sup> Mr Cubbon sought additional information from CCEP to understand the impact of CCEP's CPA request and

<sup>24</sup> Cubbon [5]-[6], CB Tab 14 (p.787).

<sup>25</sup> Cubbon [8(e)], [10], CB Tab 14 (p.788-9).

<sup>26</sup> Cubbon [10], CB Tab 14 (p.789).

<sup>27</sup> Cubbon [10], CB Tab 14 (p.789).

<sup>28</sup> Cubbon [10], CB Tab 14 (p.789).

<sup>29</sup> Cubbon [17], CB Tab 14 (p.790); CB Tab 14.1 (p.795) (exhibited to Cubbon); CB Tab 14.2 (p.796) (exhibited to Cubbon).

<sup>30</sup> Cubbon [17], CB Tab 14 (p.790); CB Tab 14.3 (p.797) (exhibited to Cubbon); CB Tab 14.4 (Excel) (exhibited to Cubbon).

<sup>31</sup> Cubbon [21], CB Tab 14 (p.791).

<sup>32</sup> Cubbon [17]-[18], CB Tab 14 (p.790-1); CB Tab 14.4 (Excel) (exhibited to Cubbon).

<sup>33</sup> Cubbon [24], CB Tab 14 (p.791); CB Tab 14.4 (Excel) (cell U67:V67) (exhibited to Cubbon).

<sup>34</sup> The list price per bottle calculated by dividing the list price per carton by the number of bottles in a carton (8) and rounding to two decimal places: \$ [REDACTED] / 8 = \$ [REDACTED]. \$ [REDACTED] / 8 = \$ [REDACTED].

<sup>35</sup> Exhibit 2, 3SCB Tab 1056 (p.6705).

<sup>36</sup> Cubbon [13], CB Tab 14 (p.789).

<sup>37</sup> Cubbon [25(a)], CB Tab 14 (p.791); CB Tab 14.7 (p.804) (exhibited to Cubbon).

<sup>38</sup> Cubbon [25(b)], CB Tab 14 (p.792); CB Tab 14.12 (Excel) (exhibited to Cubbon).

<sup>39</sup> Cubbon [19], CB Tab 14 (p.791).

revised trade plan on supplier funding, sales and margin.<sup>40</sup> Coles ultimately accepted CCEP's CPA request in full on 12 January 2022.<sup>41</sup>

8 On 2 February 2022, Coles increased the price of the Coca-Cola 2L Sample Product to a non-promotional "white ticket" price of \$4.40 (i.e., Price 2).<sup>42</sup> When setting the white ticket price, Mr Cubbon's key consideration was CCEP's RRP.<sup>43</sup>

9 During the 42-day Price 2 period (2 February 2022 to 15 March 2022) significant volumes of the Coca-Cola 2L Sample Product were sold at the non-promotional price, either on a white ticket or at the single-unit price of \$4.40 (i.e., Price 2) during a Multi-save promotion (also referred to as a "Single Save Sale").<sup>44</sup> Figure 1 sets out the volumes of the Coca-Cola 2L Sample Product that were sold during the Price 2 period and the status of those sales. A total of 126,485 units of the Coca-Cola 2L Sample Product were sold at the non-promotional price during the Price 2 period,<sup>45</sup> equating to an average of 31,621 units per week.<sup>46</sup>

Figure 1. Volumes of Coca-Cola 2L Sample Product sold during Price 2 (Amended Statement of Agreed Facts filed 20 February 2026 (Amended Second SOAF))<sup>47</sup>

Start date	End date	Price	Status	Days	Volume
02/02/2022	02/02/2022	\$4.40	White ticket	1	9,561
03/02/2022	08/02/2022	1 for \$4.40	Single Buy Sale	6	29,206
		2 for \$7.00	Multi Save Sale		51,721
09/02/2022	15/02/2022	\$3.50	Special	7	130,928
16/02/2022	22/02/2022	1 for \$4.40	Single Buy Sale	7	29,277
		2 for \$7.00	Multi Save Sale		58,492
23/02/2022	01/03/2022	\$3.50	Special	7	123,263
02/03/2022	15/03/2022	1 for \$4.40	Single Buy Sale	14	58,441
		2 for \$7.00	Multi Save Sale		116,535
<b>Total sales at non-promotional price during the Price 2 period</b>				<b>28</b>	<b>126,485<sup>48</sup></b>
<b>Total sales during the Price 2 period</b>				<b>42</b>	<b>607,424<sup>49</sup></b>

10 From 16 March 2022, the Coca-Cola 2L Sample Product was offered on the Down Down program at a promotional price of \$3.50 (i.e. Price 3),<sup>50</sup> consistent with CCEP's PRRP.<sup>51</sup> The Down Down promotion was jointly funded by CCEP and Coles, with CCEP contributing promotional funding of

<sup>40</sup> Cubbon [25(c)], CB Tab 14 (p.792); CB Tab 14.14 (p.818) (exhibited to Cubbon); CB Tab 14.15 (Excel) (exhibited to Cubbon).

<sup>41</sup> Cubbon [23], CB Tab 14 (p.791); CB Tab 14.21 (p.830) (exhibited to Cubbon).

<sup>42</sup> Exhibit 2, 3SCB Tab 1056 (p.6705).

<sup>43</sup> Cubbon [29], CB Tab 14 (p.792-3) (exhibited to Cubbon).

<sup>44</sup> Cubbon [31], CB Tab 14 (p.793); Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6705-6).

<sup>45</sup> Total units sold at the non-promotional price during the Price 2 period calculated by adding together White ticket and Single Buy Sales between 2 February 2022 and 15 March 2022 as recorded in the Amended Second SOAF.

<sup>46</sup> The weekly average calculated as total volumes divided by total days and then multiplied by 7:  $(126,485/28) \times 7 = 31,621$ .

<sup>47</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6705-6).

<sup>48</sup> Total units sold at the non-promotional price during the Price 2 period calculated by adding together White ticket and Single Buy Sales between 2 February 2022 and 15 March 2022 as recorded in the Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6705-6).

<sup>49</sup> Total sales during the Price 2 period calculated by adding together all sales between 2 February 2022 and 15 March 2022 as recorded in the Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6705-6).

<sup>50</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6706).

<sup>51</sup> Cubbon [37], CB Tab 14 (p.794); CB 14.7 (p.804) (exhibited to Cubbon).

\$█ per unit.<sup>52</sup> Examples of the Down Down tickets that were used by Coles for this promotion appear at Figures 2 and 3. Each of these tickets referred to Price 2 and March 2022, being the month the Coca-Cola 2L Sample Product was last sold at Price 2.

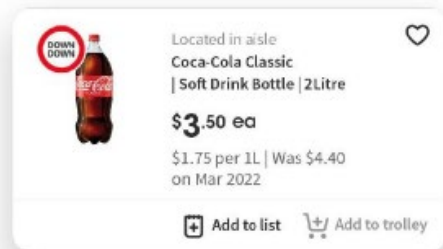
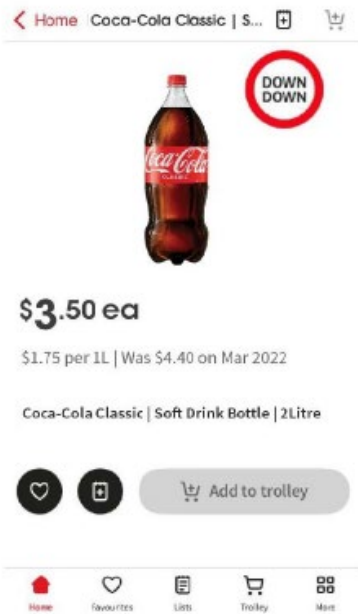
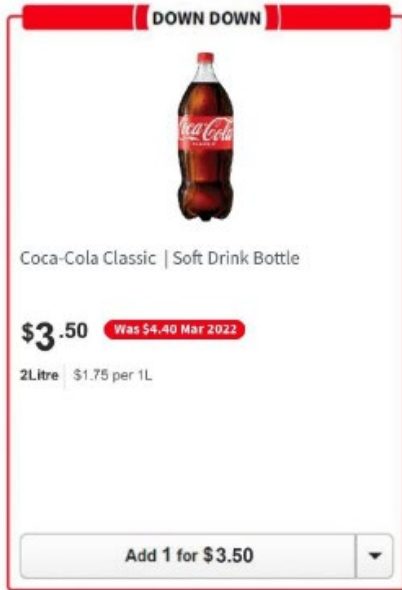
Figure 2. Example ticket for Coles' physical stores (Third SOAF)<sup>53</sup>



<sup>52</sup> Cubbon [36(d)], CB Tab 14 (p.794).

<sup>53</sup> Third SOAF, Exhibit 3, CB Tab 10 (p.217).

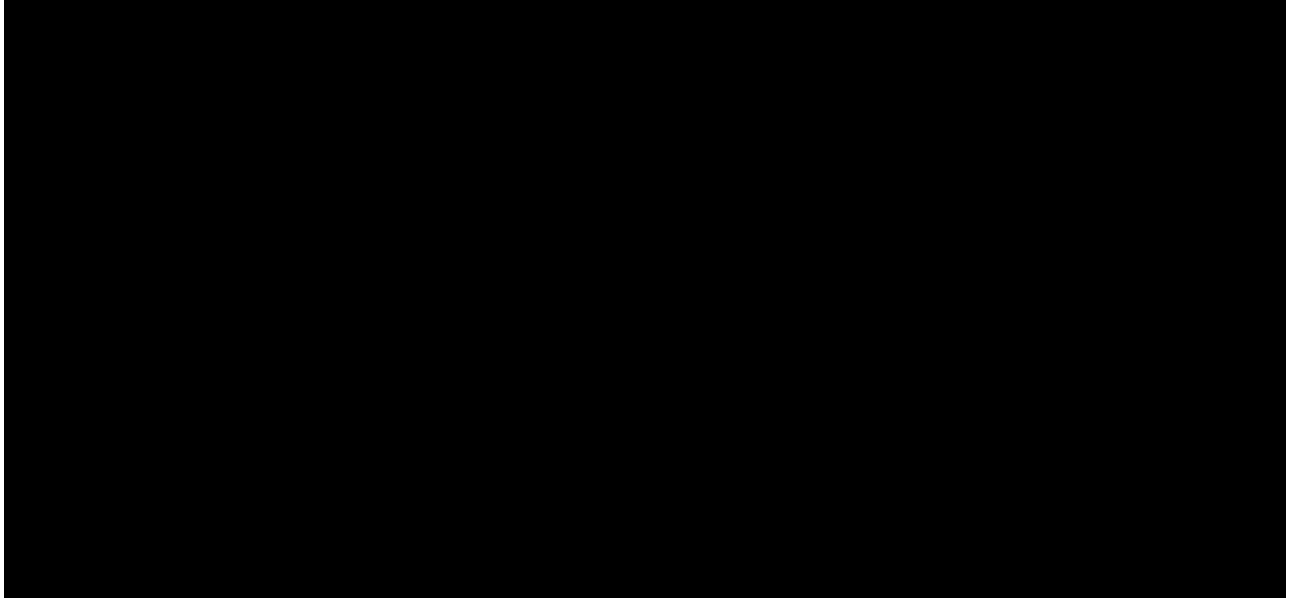
Figure 3. Example tickets for Coles Online and the Coles App (Third SOAF)<sup>54</sup>



<sup>54</sup> Third SOAF, Exhibit 3, CB Tab 10 (p.223).

- 11 The below graph from the Edwards Report compares the Coca-Cola 2L Sample Product's retail price with its cost price less total supplier funding, being Coles' cost to acquire the product, for the period from 1 January 2021 to 4 May 2023.<sup>55</sup>

*Figure 4. Extract of Edwards Report, Appendix C.3*



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<sup>55</sup> Edwards Report, Exhibit 305, CB Tab 23 (p.1483).

### 3. PEDIGREE 1.2KG 5 KINDS OF MEAT LOAF (255409)

- 1 The third sample product is PEDIGREE ADULT WET DOG FOOD WITH 5 KINDS OF MEAT LOAF 1.2KG CAN:FIVE KINDS MEAT::1.2 KG (255409) (**Pedigree Sample Product**), being a large format wet dog food product within the Pet Food product category, which in turn sat within the Homecare business category.<sup>56</sup> The supplier of the Pedigree Sample Product was Mars Petcare (**Mars**).<sup>57</sup>
- 2 On 17 June 2022, Mars informed Coles of a CPA for 206 products in the Treats, Wet Pet Food (Dog and Cat), Dry Pet Food (Dog and Cat) and Cat Litter sub-categories, including the Pedigree Sample Product.<sup>58</sup> Paul Carroll (Senior Category Manager of Pet) was responsible for the negotiations with Mars at the time.<sup>59</sup>
- 3 Mars intended to impose a 20.1% increase in the list price of the Pedigree Sample Product from \$ [REDACTED] to \$ [REDACTED] per carton.<sup>60</sup> At the time of the CPA, the Pedigree Sample Product was sold on a non-promotional white ticket at \$4.50 (i.e., Price 1).<sup>61</sup> This was higher than Mars' previous RRP of \$4.30, as Mr Carroll had decided to price above Mars' RRP to respond to market movements following the previous CPA in early 2022.<sup>62</sup> At the time of the previous CPA, Mars had also proposed that the product be sold on a Down Down Ticket at \$4.00. However, Mars and Coles were unable to reach agreement on the promotional plan and Coles ultimately kept the Pedigree sample product at its white ticket price of \$4.50.<sup>63</sup>
- 4 Coles' VMO team assessed the Mars' overall CPA as representing a 13.8% increase in Coles' costs, and a 20.1% increase in respect of the Pedigree Sample Product.<sup>64</sup> The VMO team were not able to validate Mars' CPA in full:
  - (a) Using the average movement methodology, the VMO team validated a 6.1% increase, being approximately half (in percentage terms) of Mars' CPA concerning all 206 products.<sup>65</sup>
  - (b) With the alternative point-to-point (**P2P**) methodology, the VMO team's analysis supported an increase of 9.5% against the 13.8% increase across all 206 products.<sup>66</sup>For the Pedigree Sample Product specifically, the VMO team found that an 8.1% increase in Mars' costs for the Pedigree Sample Product,<sup>67</sup> and an 11.3% increase in its costs using the P2P methodology could be justified.<sup>68</sup>
- 5 On 8 July 2022, Mars proposed a new trade plan for the products that were the subject of the CPA, in which Mars proposed a 'base' white ticket price for the Pedigree Sample Product of \$5.50 (which reflected Mars' RRP) and a promotional price of \$4.50.<sup>69</sup>

<sup>56</sup> Carroll [8], CB Tab 11 (p.236).

<sup>57</sup> Carroll [60], CB Tab 11 (p.244).

<sup>58</sup> Carroll XXN (T281:26-32); Carroll [60]-[61], CB Tab 11 (p.244); CB Tab 11.102 (p.443) (exhibited to Carroll); CB Tab 11.103 (Excel) (exhibited to Carroll); CB Tab 11.104 (p.445) (exhibited to Carroll).

<sup>59</sup> Carroll [10], CB Tab 11 (p.237).

<sup>60</sup> Carroll [61]-[62], CB Tab 11 (p.244); CB Tab 11.103 (Excel) (Sheet entitled 'Wet Can', cells F53, G53) (exhibited to Carroll).

<sup>61</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6710).

<sup>62</sup> Carroll [68(b)], CB Tab 11 (p.245); CB Tab 11.114 (p.458) (exhibited to Carroll).

<sup>63</sup> Carroll [68(b)], CB Tab 11 (p.245); CB Tab 11.114 (p.458) (exhibited to Carroll).

<sup>64</sup> Carroll [62], CB Tab 11 (p.244); CB Tab 11.105 (p.446) (exhibited to Carroll); CB Tab 11.106 (Excel) (cells E209, E70) (exhibited to Carroll).

<sup>65</sup> Carroll [66], CB Tab 11 (p.245); CB Tab 11.105 (p.446) (exhibited to Carroll); CB Tab 11.106 (Excel) (cells E209, G209) (exhibited to Carroll).

<sup>66</sup> Carroll [66], CB Tab 11 (p.245); CB Tab 11.110 (p.452) (exhibited to Carroll); CB Tab 11.111 (Excel) (cells E209, G209) (exhibited to Carroll).

<sup>67</sup> Carroll [66], CB Tab 11 (p.245); CB Tab 11.106 (Excel) (cells E70, G70) (exhibited to Carroll).

<sup>68</sup> Carroll [66], CB Tab 11 (p.245); CB Tab 11.110 (p.452) (exhibited to Carroll); CB Tab 11.111 (Excel) (cells E70, G70) (exhibited to Carroll).

<sup>69</sup> Carroll [67], CB Tab 11 (p.245); CB Tab 11.112 (p.454) (exhibited to Carroll); CB Tab 11.113 (Excel) (Sheet entitled 'Trade Plan – Data Info', cells X251-X252) (exhibited to Carroll).

- 6 Mr Carroll provided the VMO's assessment (average movement) to Mars on 15 July 2022.<sup>70</sup> Coles and Mars subsequently engaged in negotiations with respect to Mars' CPA and proposed trade plan. During the course of these negotiations, Mars sent through two further trade plans. In each plan, Mars proposed the new 'base price' of \$5.50 and a promotional Down Down price of \$4.50 for the Pedigree Sample Product.<sup>71</sup> Mr Carroll's focus throughout the negotiations was to not only obtain improved commercial terms but to ensure Coles could continue to return added value to customers by securing additional trade incentives and supplier promotional funding.<sup>72</sup> Mr Carroll was also concerned that Mars may choose to 'stop supplying' to Coles if the CPA could not be agreed.<sup>73</sup>
- 7 On 8 September 2022, Mr Carroll accepted Mars' CPA in full and also agreed the final promotional plan.<sup>74</sup> The plan provided that the Pedigree Sample Product would be sold at an increased white ticket price of \$5.50 commencing on 12 September 2022, and then on Down Down at a promotional price of \$4.50 from 10 October 2022.<sup>75</sup>
- 8 The white ticket price of \$5.50 was Mars' RRP for the product and was appropriate in Mr Carroll's view given his experience in the grocery industry – in the sense of being competitive, logical in terms of the unit price and communicating value to customers.<sup>76</sup>
- 9 On 12 September 2022, Coles increased the white ticket price for the Pedigree Sample Product from \$4.50 to \$5.50 (i.e., Price 2).<sup>77</sup> The Pedigree Sample Product was sold at \$5.50 from 12 September 2022 to 9 October 2022, being a period of 28 days.<sup>78</sup> During this period, a total of 31,758 units were sold,<sup>79</sup> equating to an average of 7,940 units per week.<sup>80</sup>
- 10 From 10 October 2022, the Pedigree Sample Product was offered on the Down Down program at a promotional price of \$4.50 (i.e., Price 3).<sup>81</sup> On or around 15 September 2022, Woolworths lowered the price of the Pedigree Sample Product from \$5.20 to \$4.50 on a 'Low Prices' ticket.<sup>82</sup>
- 11 Examples of the Down Down tickets that were used by Coles for this promotion appear at Figures 1 and 2. Each of these tickets referred to Price 2 and the month the Pedigree Sample Product was last sold at Price 2.

<sup>70</sup> Carroll [69], CB Tab 11 (p.245); CB Tab 11.115 (p.459) (exhibited to Carroll); Exhibit 326, CB Tab 170 (p.1942).

<sup>71</sup> Carroll XXN (T281:34-T283:26); Carroll [70], CB Tab 11 (p.245); CB Tab 11.117 (p.465) (exhibited to Carroll); CB Tab 11.118 (Excel) (Sheet entitled 'Trade Plan – Data Info', cells X252, AD252) (exhibited to Carroll); CB Tab 11.119 (p.468) (exhibited to Carroll); CB Tab 11.120 (Excel) (Sheet entitled 'Trade Plan – Data Info', cells X258, AD258) (exhibited to Carroll).

<sup>72</sup> Carroll XXN (T283:28-T284:13); Carroll [71], CB Tab 11 (p.245-6); CB Tab 11.121 (p.473) (exhibited to Carroll); CB Tab 11.122 (p.476) (exhibited to Carroll); CB Tab 11.123 (p.487) (exhibited to Carroll); CB Tab 11.124 (Excel) (Sheet entitled 'Trade Plan – Data Info', rows 252-253) (exhibited to Carroll); CB Tab 11.125 (p.493) (exhibited to Carroll); CB Tab 11.126 (p.500) (exhibited to Carroll); CB Tab 11.127 (Excel) (Sheet entitled 'Trade Plan – Data Info', rows 152-153) (exhibited to Carroll); CB Tab 11.128 (p.510) (exhibited to Carroll); CB Tab 11.129 (p.514) (exhibited to Carroll); CB Tab 11.130 (p.523) (exhibited to Carroll); CB Tab 11.131 (Excel) (Sheet entitled 'Trade Plan – Data Info', rows 262-263) (exhibited to Carroll); CB Tab 11.132 (p.526) (exhibited to Carroll).

<sup>73</sup> Carroll [72], CB Tab 11 (p.246).

<sup>74</sup> Carroll XXN (T284:15-33); Carroll [73], CB Tab 11 (p.246); CB Tab 11.133 (p.537) (exhibited to Carroll); CB Tab 11.134 (p.539) (exhibited to Carroll); CB Tab 11.135 (p.541) (exhibited to Carroll); CB Tab 11.136 (Excel) (Sheet entitled 'Trade Plan – Data Info', rows 257-258) (exhibited to Carroll).

<sup>75</sup> Carroll XXN (T284:35-285:2); Carroll [74]-[75] (p.246); CB Tab 11.138 (Excel) (Sheet entitled 'RRP form', row 69) (exhibited to Carroll); CB Tab 11.141 (Excel) (Sheet entitled 'PAF', row 17) (exhibited to Carroll); CB Tab 11.144 (Excel) (Sheet entitled 'Trade Plan – Data Info', rows 261-262) (exhibited to Carroll).

<sup>76</sup> Carroll [52] (p.243).

<sup>77</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6710).

<sup>78</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6710).

<sup>79</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6710).

<sup>80</sup> The weekly average calculated as total volume for the period divided by the number of days, and multiplied by 7:  $(31,758/28) \times 7 = 7,940$ .

<sup>81</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6710).

<sup>82</sup> Carroll [76], CB Tab 11 (p.246); CB Tab 11.145 (p.558) (exhibited to Carroll); CB Tab 11.146 (Excel) (Sheet entitled 'Summary', row 54) (exhibited to Carroll).


Figure 1. Example ticket for Coles' physical stores (Third SOAF)<sup>83</sup>



<sup>83</sup> Third SOAF, Exhibit 3, CB Tab 10 (p.219).

Figure 2. Example tickets for Coles Online and the Coles App (Third SOAF)<sup>84</sup>

**DOWN DOWN**




Pedigree Wet Dog Food | Loaf Five Kinds

**\$4.50** Was \$5.50 Oct 2022

1.2Kg | \$3.75 per 1KG

Add 1 for \$4.50

**DOWN DOWN**




Pedigree Wet Dog Food  
| Loaf Five Kinds | 1.2Kg

**\$4.50**  
\$3.75 per 1kg | Was \$5.50 on  
Oct 2022

☆☆☆☆ 0.0 (0)

Add

Home Pedigree Wet Dog Food...



**DOWN DOWN**


**\$4.50 ea**  
\$3.75 per 1kg | Was \$5.50 on Oct 2022

Pedigree Wet Dog Food | Loaf Five Kinds  
| 1.2Kg

Heart Share Add to trolley

Home Favourites Lists Trolley More

**DOWN DOWN**



Located in aisle  
Pedigree Wet Dog Food  
| Loaf Five Kinds | 1.2Kg

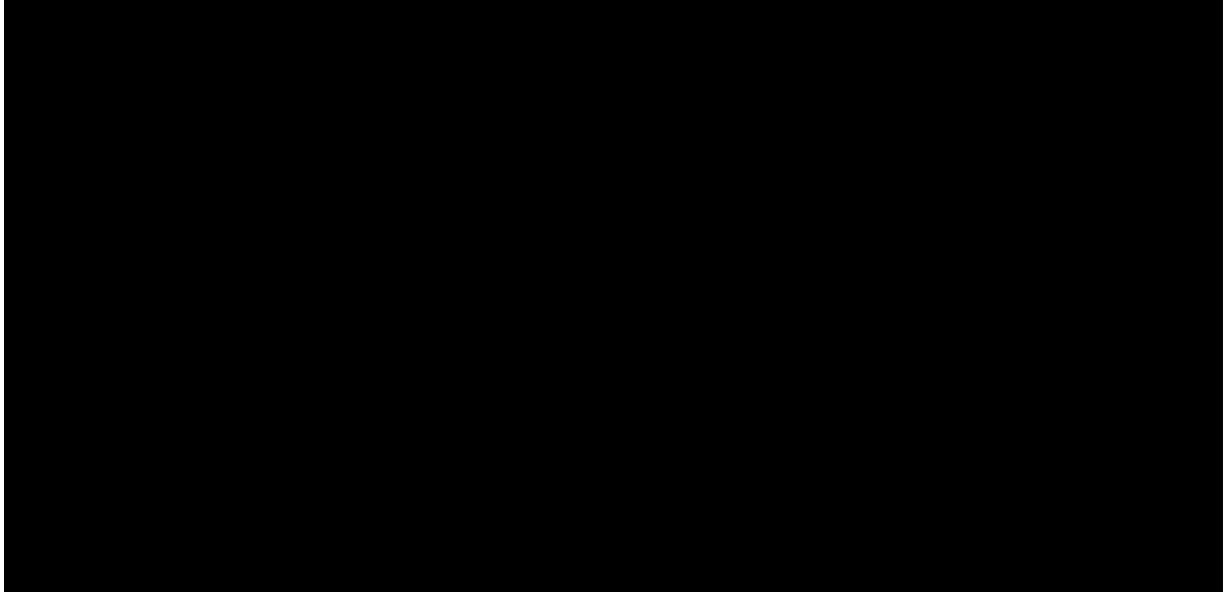
**\$4.50 ea**  
\$3.75 per 1kg | Was \$5.50  
on Oct 2022

Heart Add to list Add to trolley

<sup>84</sup> Third SOAF, Exhibit 3, CB Tab 10 (p.231).

- 12 The below graph from the Edwards Report compares the Pedigree Sample Product's retail price with its cost price less total supplier funding, being Coles' cost to acquire the product, for the period from 1 January 2021 to 4 May 2023.<sup>85</sup>

*Figure 3. Extract of Edwards Report, Appendix C.5*



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<sup>85</sup> Edwards Report, Exhibit 305, CB Tab 23 (p.1485).

#### 4. ARNOTTS SHAPES MULTIPACK VARIETY 15 PACK:375 GRAM (2992180)

- 1 The fourth sample product is ARNOTTS SHAPES MULTIPACK VARIETY 15 PACK:375 GRAM (2992180) (**Arnott's Sample Product**). It sat within the Biscuits and Cookies product category, which in turn sat within the Grocery business category.<sup>86</sup> The supplier of the Arnott's Sample Product was Arnott's Biscuits Limited (**Arnott's**).
- 2 On 17 February 2022, Arnott's submitted a CPA request to Coles for 77 products in the Biscuits and Cookies category, including the Arnott's Sample Product. Arnott's provided Coles with a 'National Wholesale Price List' providing the increased list prices and new RRP's for the products, stating that the "price changes will apply to all orders delivered on or after 12 May 2022".<sup>87</sup> Rebecca Thompson (Senior Category Manager of Biscuits and Cookies at the relevant time) was responsible for negotiating the CPA request with Arnott's.<sup>88</sup>
- 3 Arnott's requested a 10.02% increase in the list price of the Arnott's Sample Product and provided an increased RRP of \$6.50 (from \$5.50).<sup>89</sup> At the time of the CPA request, the Arnott's Sample Product was on the Down Down program and sold at a promotional price of \$5.00 (i.e., Price 1).<sup>90</sup> Arnott's also proposed a new trade plan for the products that were the subject of the CPA request.<sup>91</sup>
- 4 Coles and Arnott's subsequently engaged in negotiations with respect to the Arnott's CPA request and proposed trade plan. Ms Thompson's focus throughout the negotiations was to balance the validation (whether full or partial) of the CPA request with a strong promotional plan and promotional funding to ensure there was a strong customer value offer and that Coles' prices were competitive, and to support Coles' financial performance in the Biscuits and Cookies category.<sup>92</sup>
- 5 On 9 March 2022, Arnott's first proposed a PRRP for the Arnott's Sample Product off its proposed RRP of \$6.50. Arnott's recommended that Coles promote the Arnott's Sample Product on a Down Down mechanic at \$5.50.<sup>93</sup>
- 6 On 10 March 2022, Arnott's presented a 'Cost Recovery Plan' to Coles explaining the basis for the CPA and the rationale for the proposed RRP and promotional plan.<sup>94</sup> This plan had regard to the historical RRP and PRRPs for bundles of products pre CPA,<sup>95</sup> and assessed the impact of the CPA across the category as a whole. Arnott's proposed new pricing strategies to account for the CPA and create value for customers, Coles and Arnott's.<sup>96</sup> Arnott's strategy for the Arnott's Sample Product was considered in conjunction with other products in its savoury portfolio and reflected an assessment by Arnott's that:
  - (a) the baseline price per kilogram of Arnott's savoury products was below competitors;<sup>97</sup>
  - (b) Arnott's products in the savoury portfolio were highly elastic and expandable with a significant portion sold on promotion;<sup>98</sup> and
  - (c) the RRP adjustments (including some promotional prices) be limited to \$0.50 or less to align with Arnott's shelf price tiering across the savoury portfolio.<sup>99</sup>

<sup>86</sup> Thompson [7], CB Tab 19, (p.1128).

<sup>87</sup> Thompson [25], CB Tab 19, (p.1132); CB Tab 19.1 (p.577) (exhibited to Thompson); CB Tab 19.2 (p.578) (exhibited to Thompson); CB Tab 19.3 (p.579) (exhibited to Thompson).

<sup>88</sup> Thompson [33]-[34], CB Tab 19 (p.1133). See also Thompson [20], CB Tab 19 (p.1131); Lavdas [44], CB Tab 12 (p.569).

<sup>89</sup> Thompson [25], [27], CB Tab 19 (p.1132); CB Tab 19.3 (p.582) (exhibited to Thompson).

<sup>90</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6710).

<sup>91</sup> Thompson [32], CB Tab 19 (p.1133); CB Tab 19.8 (p.1137) (exhibited to Thompson); CB Tab 19.9 (p.1140) (exhibited to Thompson).

<sup>92</sup> Thompson [34], CB Tab 19 (p.1133) (exhibited to Thompson).

<sup>93</sup> CB Tab 19.9 (Excel) (Sheet entitled 'CPI Promo Tactics', cells I245, I248) (exhibited to Thompson).

<sup>94</sup> CB Tab 19.15 (p.592) (exhibited to Thompson); CB Tab 19.19 (p.624) (exhibited to Thompson); CB Tab 19.32 (p.1177) (exhibited to Thompson).

<sup>95</sup> CB Tab 19.15 (p.609, p.614) (exhibited to Thompson).

<sup>96</sup> CB Tab 19.15 (p.592) (exhibited to Thompson).

<sup>97</sup> CB Tab 19.15 (p.611) (exhibited to Thompson).

<sup>98</sup> CB Tab 19.15 (p.612) (exhibited to Thompson).

<sup>99</sup> CB Tab 19.15 (p.613-4) (exhibited to Thompson).

- 7 In the negotiations that ensued, Coles provided feedback to Arnott's to improve the promotional plan and provide value to the customer.<sup>100</sup>
- 8 On 6 May 2022, Ms Thompson accepted the Arnott's CPA request on the basis that it was fully validated by Coles' VMO on a P2P methodology and Arnott's had agreed to a strong revised trade plan.<sup>101</sup> The revised trade plan provided that the Arnott's Sample Product would be sold at a recommended promotional price of \$5.50 on the Down Down program, supported by promotional funding from Arnott's.<sup>102</sup>
- 9 Ms Thompson set the white ticket price for the Arnott's Sample Product at \$6.50 (i.e., Price 2).<sup>103</sup> The white ticket price of \$6.50 was Arnott's RRP for the product,<sup>104</sup> reflected the Arnott's Sample Product's positioning within Coles' pricing hierarchy and the category as a whole,<sup>105</sup> and was less than the percentage change increase in list price accepted by Coles to allow for a rounded price point.<sup>106</sup>
- 10 On 18 May 2022, Coles moved the Arnott's Sample Product from \$5.00 on the Down Down program to a white ticket price of \$6.50.<sup>107</sup> On this day, Woolworths was also offering the Arnott's Sample Product for sale at the same price of \$6.50.<sup>108</sup>
- 11 The Arnott's Sample Product was offered for sale by Coles at \$6.50 for seven days (from 18 to 24 May 2022).<sup>109</sup> It was then sold on a seven-day Special promotion as part of the biannual Masterbrand event on all Arnott's white ticket products at \$4.55 (from 25 May to 31 May 2022), before being sold on a white ticket price of \$6.50 for a further 14 days (from 1 to 14 June 2022).<sup>110</sup> A total of 56,107 units were sold at Price 2,<sup>111</sup> equating to an average of 18,702 per week.<sup>112</sup> During the week of the Masterbrand event, a further 29,864 units of the Arnott's Sample Product were sold.<sup>113</sup>
- 12 Ms Thompson included the Arnott's Sample Product in the Masterbrand event because she considered it would be confusing for customers if a small number of Arnott's products (i.e., products which, prior to the CPA request, were planned to be on Down Down at Price 1 during the Masterbrand event but which were now going to be on a white ticket at Price 2) were excluded from a Special promotion for all Arnott's white ticket products.<sup>114</sup> In this context, Ms Thompson asked the Pricing and Value team when the Arnott's Sample Product could be placed on Down Down in compliance with the promotional guardrails having regard to the Masterbrand event.<sup>115</sup> When Ms Thompson's request is understood in this way, the Pricing and Value team member made a mistake in telling Ms Thompson that it could go on Down Down on 15 June 2022.<sup>116</sup> Ms Thompson was firm with Arnott's that the relevant products, including the Arnott's Sample Product, could only return to Down Down from a date that was in compliance with Coles' policies.<sup>117</sup>

<sup>100</sup> Thompson [33]-[36], CB Tab 19 (p.1133-4); Lavdas [47]-[48], CB Tab 12 (p.569). See also Thompson XXN (T180:14-19); Lavdas XXN (T200:3-21).

<sup>101</sup> Thompson [35], [37], CB Tab 19 (p.1134); CB Tab 19.36 (p.640) (exhibited to Thompson). See Lavdas [51], CB Tab 12 (p.569).

<sup>102</sup> Thompson [35], [46], [48], CB Tab 19 (p.1134, p.1136); CB Tab 19.44 (Excel) (Sheet entitled 'CPI Promo Tactics', cells I243, I245, I254) (exhibited to Thompson).

<sup>103</sup> Thompson [41], CB Tab 19 (p.1134-5). See also Lavdas [50], CB Tab 12 (p.569).

<sup>104</sup> Thompson [41], CB Tab 19, (p.1134-5); See also Lavdas XXN (T207:10-17).

<sup>105</sup> Thompson [41], CB Tab 19, (p.1134-5); CB Tab 19.15 (p.609, 613-4) (exhibited to Thompson).

<sup>106</sup> Thompson [41], CB Tab 19 (p.1134-5); see also Thompson [14], CB Tab 19 (p.1130-1).

<sup>107</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6711).

<sup>108</sup> Thompson [42], CB Tab 19 (p.1135); CB Tab 19.46 (p.653) (exhibited to Thompson); CB Tab 19.47 (Excel) (Sheet entitled 'Summary', cell AH149) (exhibited to Thompson).

<sup>109</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6711).

<sup>110</sup> Thompson [43], CB Tab 19 (p.1135); Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6711).

<sup>111</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6711).

<sup>112</sup> The weekly average calculated as total volumes divided by total days and then multiplied by 7: (56,107/21) x 7 = 18,702.

<sup>113</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6711).

<sup>114</sup> Thompson [44], CB Tab 19 (p.1135); CB Tab 19.50 (p.1218) (exhibited to Thompson); Thompson XXN (T189:1-13).

<sup>115</sup> CB Tab 19.50 (p.1218) (exhibited to Thompson).

<sup>116</sup> Thompson [44]-[45], CB Tab 19 (p.1135-6); CB Tab 19.50 (p.1218) (exhibited to Thompson); Thompson XXN (T195:30-37).

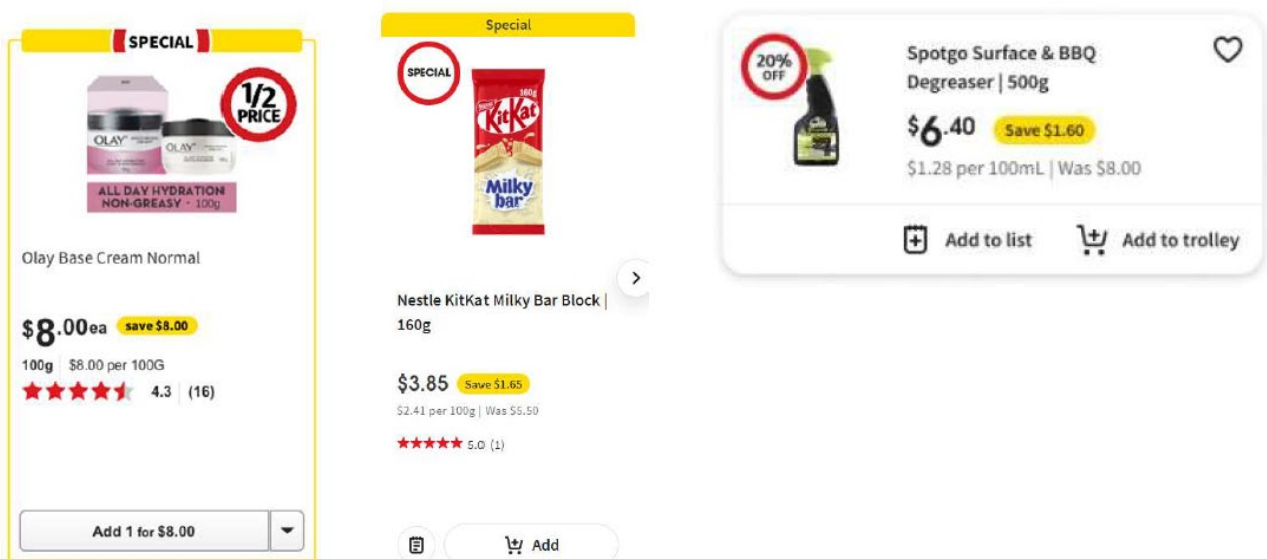
<sup>117</sup> CB Tab 19.48 (p.1214-5) (exhibited to Thompson).

- 13 When the Arnott's Sample Product was sold on Special, the ticket would have displayed Price 2 as the WAS price. Examples of the Special ticket generally used by Coles during the Relevant Period appears at Figures 1 and 2.

Figure 1. Example ticket for Coles' physical stores (Bailey affidavit)<sup>118</sup>



Figure 2. Example ticket for Coles Online and the Coles App (Bailey affidavit)<sup>119</sup>



- 14 From 15 June 2022, the Arnott's Sample Product was offered on the Down Down program at a promotional price of \$5.50 (i.e., Price 3).<sup>120</sup> The promotion was jointly funded by Arnott's and Coles with Arnott's contributing funding of \$█ per unit.<sup>121</sup> Examples of the Down Down tickets that were used by Coles for this promotion appear at Figures 3 and 4. Each of these tickets referred to Price 2 and June 2022, being the month the Arnott's Sample Product was last sold at Price 2.

<sup>118</sup> Bailey [37(a)], CB Tab 17 (p.1076).

<sup>119</sup> Bailey [37(a)], CB Tab 17 (p.1076).

<sup>120</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6711).

<sup>121</sup> Thompson [46], [48], CB Tab 19 (p.1136); Galle [44], CB Tab 18 (p.1114); MFI#C.

Figure 3. Example ticket for Coles' physical stores (Third SOAF)<sup>122</sup>

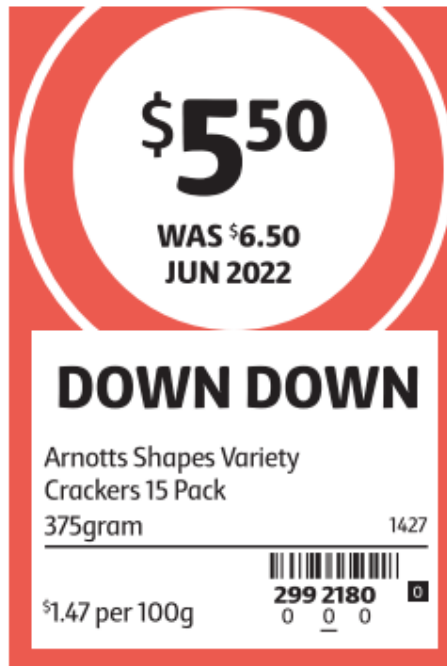
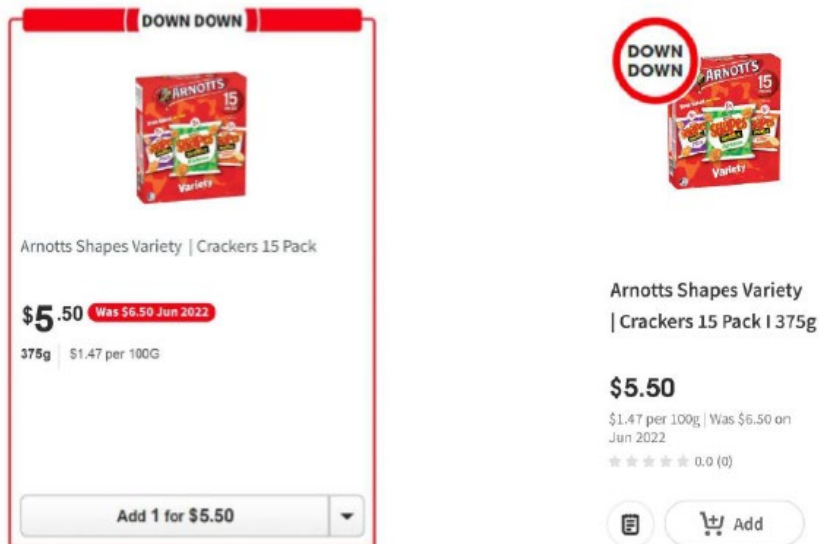
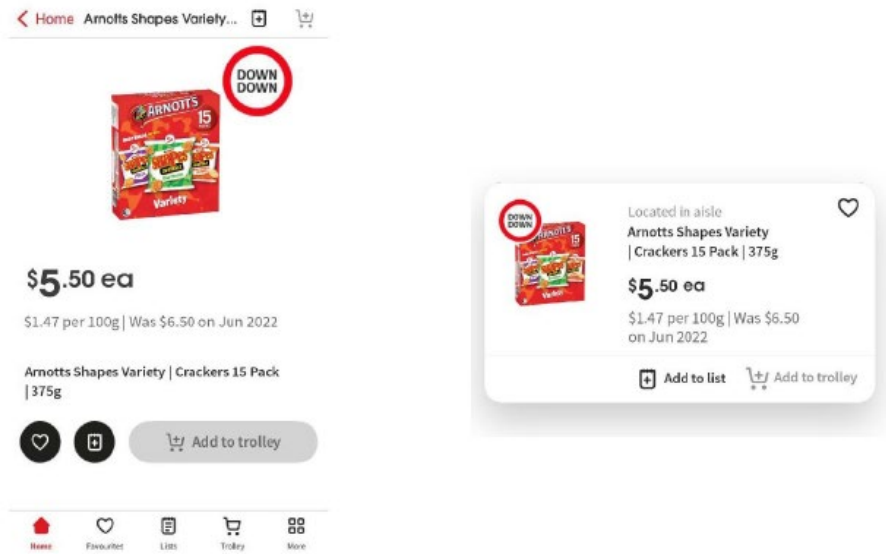


Figure 4. Example tickets for Coles Online and the Coles App (Third SOAF)<sup>123</sup>



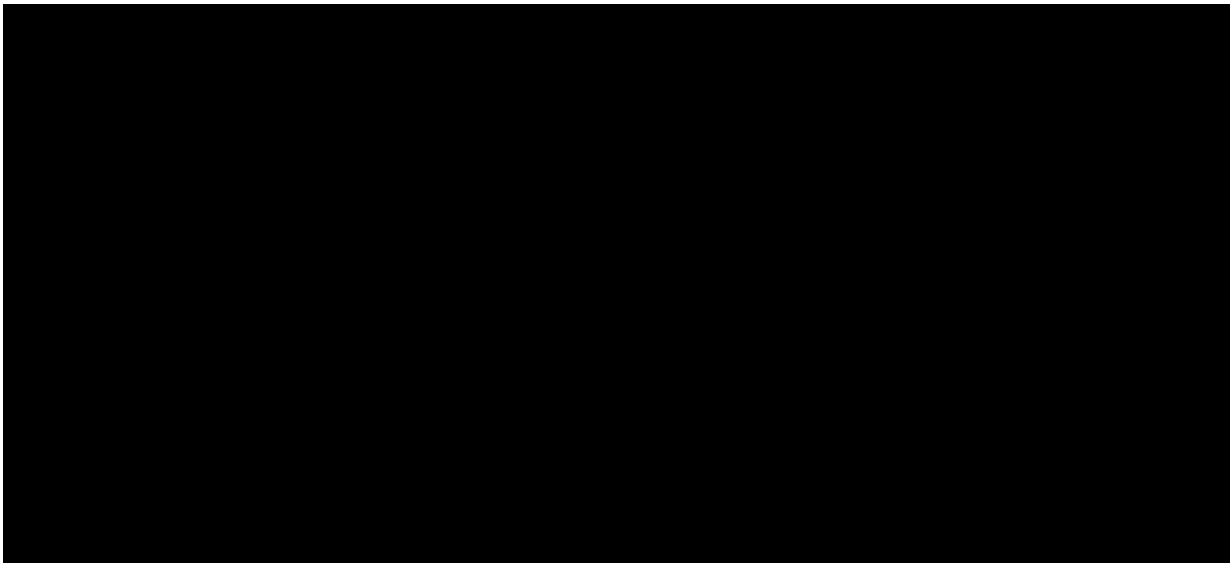
<sup>122</sup> Third SOAF, Exhibit 3, CB Tab 10 (p.217).

<sup>123</sup> Third SOAF, Exhibit 3, CB Tab 10 (p.221).



- 15 The below graph from the Edwards Report compares the Arnott's Sample Product's retail price with its cost price less total supplier funding, being Coles' cost to acquire the product, for the period from 1 January 2021 to 4 May 2023.<sup>124</sup>

Figure 5. Extract of Edwards Report, Appendix C.2



<sup>124</sup> Edwards Report, Exhibit 305, CB Tab 23 (p.1482).

## 5. BRAGG SEASONING NUTRITIONAL YEAST PREMIUM QUALITY 127G (3139426)

- 1 The fifth sample product is BRAGG SEASONING NUTRITIONAL YEAST PREMIUM QUALITY:127 GRAM (3139426) (**Bragg Sample Product**). It was a vegan cheese substitute within the Health Foods product category, which in turn sat within the Breakfast and Health business category.<sup>125</sup> The supplier of the Bragg Sample Product was Unique Health Products.<sup>126</sup>
- 2 On 28 March 2022, Coles rejected an existing CPA proposal from Unique Health Products to increase the list price of the Bragg Sample Product by 24.4%. Coles rejected the proposal on the basis that its VMO had only validated 2% of the 24.4% request.<sup>127</sup>
- 3 On 7 April 2022, Coles and Unique Health Products began negotiations with respect to the CPA.<sup>128</sup> Following Unique Health Products providing Coles with additional costs information,<sup>129</sup> the VMO validated 17.1% of the CPA proposal.<sup>130</sup> On 17 July 2022, Mr Jorgensen, the Senior Category Manager of Health Foods, informed Unique Health Products that Coles would accept a 17.1% increase to the list price of the Bragg Sample Product.<sup>131</sup>
- 4 Following correspondence regarding the need for a new trade plan,<sup>132</sup> on 28 July 2022, Unique Health Products informed Mr Jorgensen that the price of the Bragg Sample Product had 'reset to \$18.95 (following the rollout of our price rise to our retailer customers across Australia)' and submitted a trade plan which provided a new RRP of \$18.95 with two alternate promotional options, as set out below.
  - (a) Option 1: Coles accepts a CPA of 17%. The product is sold at its new RRP of \$18.95 for four weeks then at an Every Day Low Price (**EDLP**) of \$16.50 for 48 weeks. Under this proposal, the list price for the Bragg Sample Product would be \$██████████ and there would be ██████████.
  - (b) Option 2: Coles accepts the full CPA proposal of 24%. The product is sold at its new RRP of \$18.95 for 40 weeks and on a promotion at \$15 for 12 weeks of the next 12 month period. Under this proposal, the list price for the Bragg Sample Product would be \$██████████ and there would be supplier funding of \$██████████ for promotions.<sup>133</sup>
- 5 In his evidence, Mr Jorgensen explained that suppliers would sometimes use 'EDLP' to refer to either the Every Day or Down Down mechanic.<sup>134</sup> In the trade plan submitted by Unique Health Products, the EDLP promotional option involved selling the Bragg Sample Product at \$18.95 for four weeks before moving to \$16.50.<sup>135</sup> This timing was consistent with Coles' internal requirements for the Down Down program (as set out in the promotional guardrails), which required four weeks of price establishment at the white ticket price before a Down Down promotion.<sup>136</sup>
- 6 On 27 August 2022, Mr Jorgensen informed Unique Health Products that the EDLP strategy would be a good option for the Bragg Sample Product.<sup>137</sup>

<sup>125</sup> Jorgensen [6], [7], [18], CB Tab 13 (p.664, 666).

<sup>126</sup> Jorgensen [18], CB Tab 13 (p.666).

<sup>127</sup> Jorgensen [20], CB Tab 13 (p.666); CB Tab 13.1 (p.668) (exhibited to Jorgensen); CB Tab 13.2 (Excel) (Sheet entitled 'Summary', cell G4) (exhibited to Jorgensen).

<sup>128</sup> CB Tab 13.3 (p.670) (exhibited to Jorgensen).

<sup>129</sup> Jorgensen [20], CB Tab 13 (p.666); CB Tab 13.5 (p.673) (exhibited to Jorgensen); CB Tab 13.6 (p.685) (exhibited to Jorgensen).

<sup>130</sup> Jorgensen [20], CB Tab 13 (p.666); CB Tab 13.7 (p.689) (exhibited to Jorgensen).

<sup>131</sup> Jorgensen [20], CB Tab 13 (p.666); CB Tab 13.8 (p.705) (exhibited to Jorgensen).

<sup>132</sup> Jorgensen [21], CB Tab 13 (p.666); CB Tab 13.9 (p.721) (exhibited to Jorgensen); CB Tab 13.10 (p.735) (exhibited to Jorgensen).

<sup>133</sup> Jorgensen [21]-[22], CB Tab 13 (p.666); CB Tab 13.11 (p.750) (exhibited to Jorgensen); CB Tab 13.12 (Excel) (Sheet entitled 'Deal proposal (1)', rows 29-30, 67-68) (exhibited to Jorgensen).

<sup>134</sup> Jorgensen [23], CB Tab 13 (p.666-7).

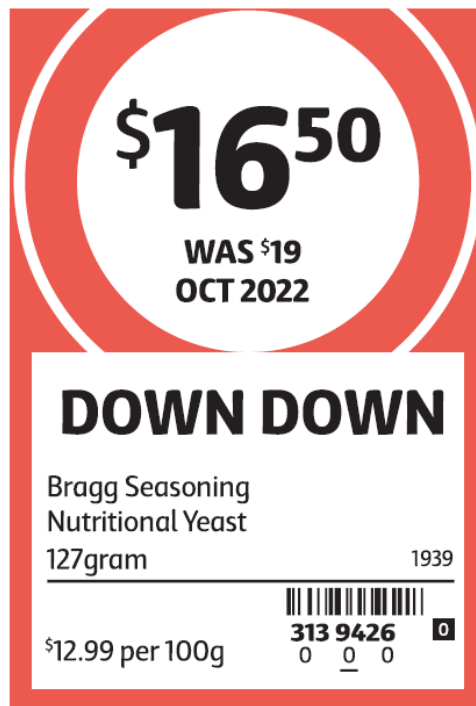
<sup>135</sup> Jorgensen [26], CB Tab 13 (p.667); CB Tab 13.12 (Excel) (Sheet entitled 'Deal proposal (1)', cells G29-G30) (exhibited to Jorgensen).

<sup>136</sup> Jorgensen [26], CB Tab 13 (p.667).

<sup>137</sup> Jorgensen [23], CB Tab 13 (p.666-7); CB Tab 13.13 (p.768) (exhibited to Jorgensen).

- 7 On 29 September 2022, Coles moved the Bragg Sample Product from a \$13.20 white ticket (i.e., Price 1) to a \$19.00 white ticket (i.e., Price 2).<sup>138</sup> The Bragg Sample Product was sold at \$19.00 from 29 September 2022 to 25 October 2022, being a period of 27 days.<sup>139</sup> During this period, a total of 5,114 units were sold,<sup>140</sup> equating to an average of 1,325 units per week.<sup>141</sup>
- 8 From 26 October 2022, the Bragg Sample Product was offered on the Down Down program at a promotional price of \$16.50 (i.e., Price 3).<sup>142</sup> Examples of the Down Down tickets that were used by Coles for this promotion appear at Figures 1 and 2. Each of these tickets referred to Price 2 and October 2022, being the month the Bragg Sample Product was last sold at Price 2.

Figure 1. Example ticket for Coles' physical stores (Third SOAF)<sup>143</sup>



<sup>138</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6715).

<sup>139</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6715).

<sup>140</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6715).

<sup>141</sup> The weekly average calculated as total volumes divided by total days and then multiplied by 7:  $(5,114/27) \times 7 = 1,325$ .

<sup>142</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6715).

<sup>143</sup> Third SOAF, Exhibit 3, CB Tab 10 (p.217).

Figure 2. Example tickets for Coles Online and the Coles App (Third SOAF)<sup>144</sup>

**DOWN DOWN**

Bragg Seasoning | Nutritional Yeast

**\$16.50** Was \$19.00 Oct 2022

127g \$12.99 per 100G

Add 1 for \$16.50

**DOWN DOWN**

Bragg Seasoning  
| Nutritional Yeast | 127g

**\$16.50**

\$12.99 per 100g | Was \$19.00 on  
Oct 2022

★ ★ ★ ★ ★ 0.0 (0)

Add Add

Home Bragg Seasoning | Nutr ...

**DOWN DOWN**

**\$16.50 ea**

\$12.99 per 100g | Was \$19.00 on Oct 2022

Bragg Seasoning | Nutritional Yeast | 127g

Add to trolley

**DOWN DOWN**

Located in aisle  
Bragg Seasoning  
| Nutritional Yeast | 127g

**\$16.50 ea**

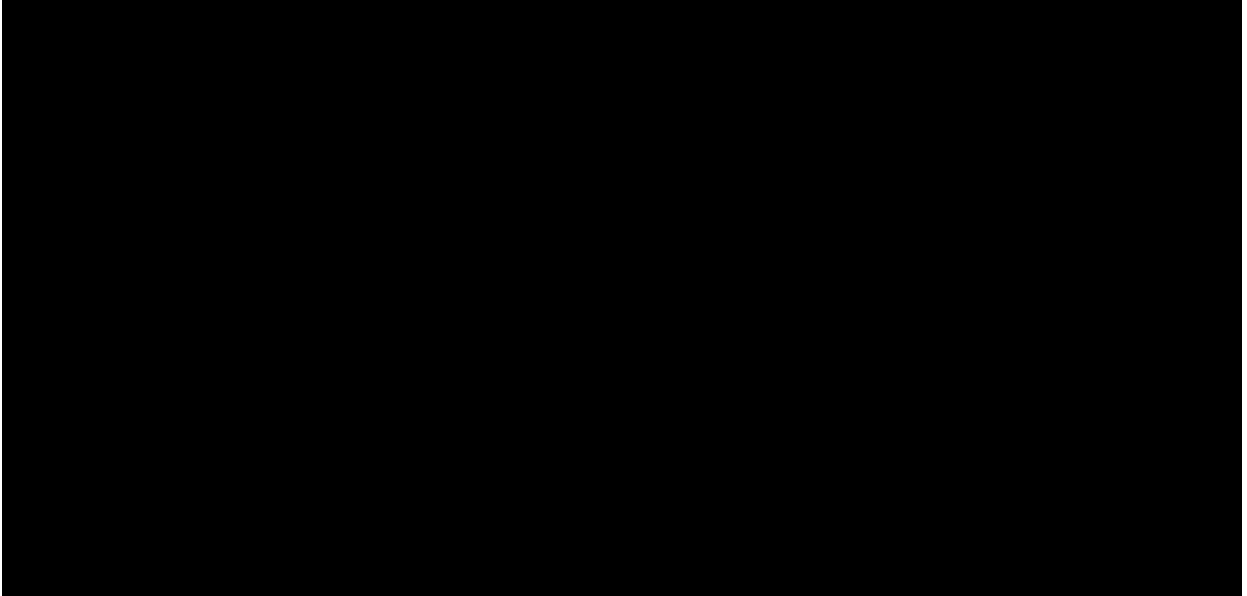
\$12.99 per 100g | Was \$19.00  
on Oct 2022

Add to list Add to trolley

<sup>144</sup> Third SOAF, Exhibit 3, CB Tab 10 (p.222).

- 9 The below graph from the Edwards Report compares the Bragg Sample Product's retail price with its cost price less total supplier funding, being Coles' cost to acquire the product, for the period from 1 January 2021 to 4 May 2023.<sup>145</sup>

*Figure 3. Extract of Edwards Report, Appendix C.11*



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<sup>145</sup> Edwards Report, Exhibit 305, CB Tab 23 (p.1491).

## 6. DANONE YOPRO YOGHURT: VANILLA 700 GRAM (3246914)

- 1 The sixth sample product is DANONE YOPRO YOGHURT:VANILLA 700 GRAM (3246914) (**Danone Sample Product**). It was a high-protein yoghurt within the Chilled Desserts product category, which in turn sat within the Dairy business category.<sup>146</sup> The supplier of the Danone Sample Product was Danone Murray Goulburn.<sup>147</sup>
- 2 On 8 July 2022, Danone submitted a CPA request to Coles for 39 products in the Chilled Desserts category, including the Danone Sample Product.<sup>148</sup> Massimo Palmisciano (Senior Category Manager of Chilled Desserts and Chilled Spreads) was responsible for the negotiations with Danone.<sup>149</sup>
- 3 Danone informed Coles that it sought an increase in the list price of the Danone Sample Product from \$█ to \$█ and proposed an increase in the RRP from \$7.00 to \$7.80.<sup>150</sup> At the time of the CPA request, the Danone Sample Product was on the Down Down program and sold at a promotional price of \$6.00 (i.e., Price 1).<sup>151</sup> Coles' VMO partially validated the CPA request.<sup>152</sup>
- 4 Danone also proposed a new trade plan for the products that were the subject of the CPA request.<sup>153</sup> The plan took into account the historical and proposed RRPs, and recommended promotional prices for each bundle of products the subject of the CPA.<sup>154</sup>
- 5 Coles and Danone subsequently engaged in negotiations with respect to Danone's CPA request and proposed trade plan. Mr Palmisciano's focus throughout the negotiations was to ensure Coles could continue to provide value to customers including via securing supplier promotional funding so that Coles would not have to materially reduce the depth of promotional discounts.<sup>155</sup> Mr Palmisciano also sought to limit the CPA's impact to the category's sales and volumes.<sup>156</sup>
- 6 Ultimately, on 9 September 2022, Mr Palmisciano accepted Danone's CPA request and revised trade plan.<sup>157</sup> The revised trade plan provided that the Danone Sample Product would be removed from the Down Down program and sold at a white ticket price of \$7.80, and then at a promotional price of \$6.70.<sup>158</sup> The white ticket price of \$7.80 was Danone's RRP for the product, reflected the Danone Sample Product's positioning within Coles' hierarchy of high-protein yoghurts, and was proportionate to the increase in list price accepted by Coles.<sup>159</sup> Later that day, Danone sent to Mr Palmisciano a PAF with the planned promotional activity and funding for the products the subject of the CPA request — while the PAF referred to 'EDV' (being 'Every Day Value' (**EDV**)), Mr Palmisciano's evidence (which is unchallenged), is that Danone and Coles intended that the \$6.70 promotional price be a Down Down price.<sup>160</sup>
- 7 On 12 September 2022, Coles moved the Danone Sample Product from \$6.00 on the Down Down program to a white ticket price of \$7.80 (i.e., Price 2).<sup>161</sup>

<sup>146</sup> Palmisciano [6], [26], CB Tab 20 (p.1224, p.1227).

<sup>147</sup> Palmisciano [25]-[27], CB Tab 20 (p.1227).

<sup>148</sup> Palmisciano [27], CB Tab 20 (p.1227).

<sup>149</sup> Palmisciano [28], CB Tab 20 (p.1227).

<sup>150</sup> Palmisciano [27], CB Tab 20 (p.1227); CB Tab 20.2 (p.1234) (exhibited to Palmisciano).

<sup>151</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6716).

<sup>152</sup> Palmisciano [29], CB Tab 20 (p.1227).

<sup>153</sup> Palmisciano [29], [31], [34], CB Tab 20 (p.1227-8). See also at [18] (p.1226). See, eg, CB Tab 20.5 (Excel) (Sheet entitled 'Trade Plan – Data Info') (exhibited to Palmisciano) which contains a copy of Danone's first proposed trade plan.

<sup>154</sup> CB Tab 20.5 (Excel) (Sheet entitled 'Trade Plan – Data Info') (exhibited to Palmisciano).

<sup>155</sup> Palmisciano [35], CB Tab 20 (p.1228). See also at [9] (p.1225).

<sup>156</sup> Palmisciano [35], CB Tab 20 (p.1228).

<sup>157</sup> Palmisciano [37], CB Tab 20 (p.1228-9).

<sup>158</sup> Palmisciano [37], CB Tab 20 (p.1228-9); CB Tab 20.15 (Excel) (Sheet entitled 'Trade Plan – Data Info', row 14) (exhibited to Palmisciano).

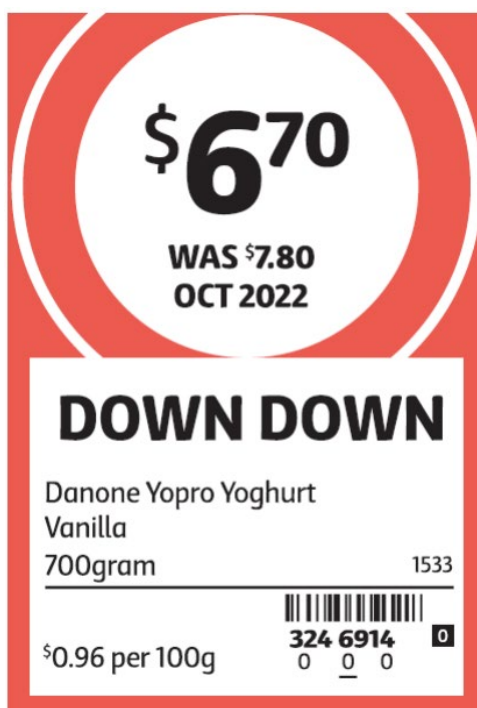
<sup>159</sup> Palmisciano [39], CB Tab 20 (p.1229). See also at [10] (p.1225).

<sup>160</sup> Palmisciano [38], [41], CB Tab 20 (p.1229); CB Tab 20.20 (Excel) (Sheet entitled 'PAF', cell W226) (exhibited to Palmisciano).

<sup>161</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6716).

- 8 The Danone Sample Product was sold at \$7.80 from 12 September 2022 to 9 October 2022, being a period of 28 days.<sup>162</sup> During this period, a total of 59,985 units were sold,<sup>163</sup> equating to an average of 14,996 units per week.<sup>164</sup>
- 9 From 10 October 2022, the Danone Sample Product was offered on the Down Down program at a promotional price of \$6.70 (i.e., Price 3).<sup>165</sup> The promotion was jointly funded by Coles and Danone, with Danone contributing \$█ per unit toward the promotional price.<sup>166</sup> Examples of the Down Down tickets that were used by Coles for this promotion appear at Figures 1 and 2. Each of these tickets referred to Price 2 and October 2022, being the month the Danone Sample Product was last sold at Price 2.

Figure 1. Example ticket for Coles' physical stores (Third SOAF)<sup>167</sup>



<sup>162</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6716).

<sup>163</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6716).

<sup>164</sup> The weekly average calculated as total volume divided by number of weeks:  $(59,985 \div 28) \times 7 = 14,996$ .

<sup>165</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6716).

<sup>166</sup> Palmisciano [31], CB Tab 20 (p.1228); CB Tab 20.20 (Excel) (Sheet entitled 'PAF', cells M226:R226) (exhibited to Palmisciano).

<sup>167</sup> Third SOAF, Exhibit 3, CB Tab 10 (p.218).

Figure 2. Example tickets for Coles Online and the Coles App (Third SOAF)<sup>168</sup>

**DOWN DOWN**

**YoPRO**  
WITH REAL VANILLA  
**PROTEIN 15.9**  
VANILLA YOGHURT

Danone YoPro Yoghurt | Vanilla

**\$6.70** Was \$7.80 Oct 2022

700g | \$0.96 per 100G

Add 1 for \$6.70

**DOWN DOWN**

**YoPRO**  
WITH REAL VANILLA  
**PROTEIN 15.9**  
VANILLA YOGHURT

Danone YoPro Yoghurt  
| Vanilla | 700g

**\$6.70**  
\$0.96 per 100g | Was \$7.80 on  
Oct 2022

★★★★★ 0.0 (0)

Add

Home Danone YoPro Yoghurt...

**DOWN DOWN**

**YoPRO**  
WITH REAL VANILLA  
**PROTEIN 15.9**  
VANILLA YOGHURT

**\$6.70 ea**  
\$0.96 per 100g | Was \$7.80 on Oct 2022

Danone YoPro Yoghurt | Vanilla | 700g

Add to trolley

Home Favourites Lists Trolley More

**DOWN DOWN**

Located in Dairy

**YoPRO**  
WITH REAL VANILLA  
**PROTEIN 15.9**  
VANILLA YOGHURT

Danone YoPro Yoghurt  
| Vanilla | 700g

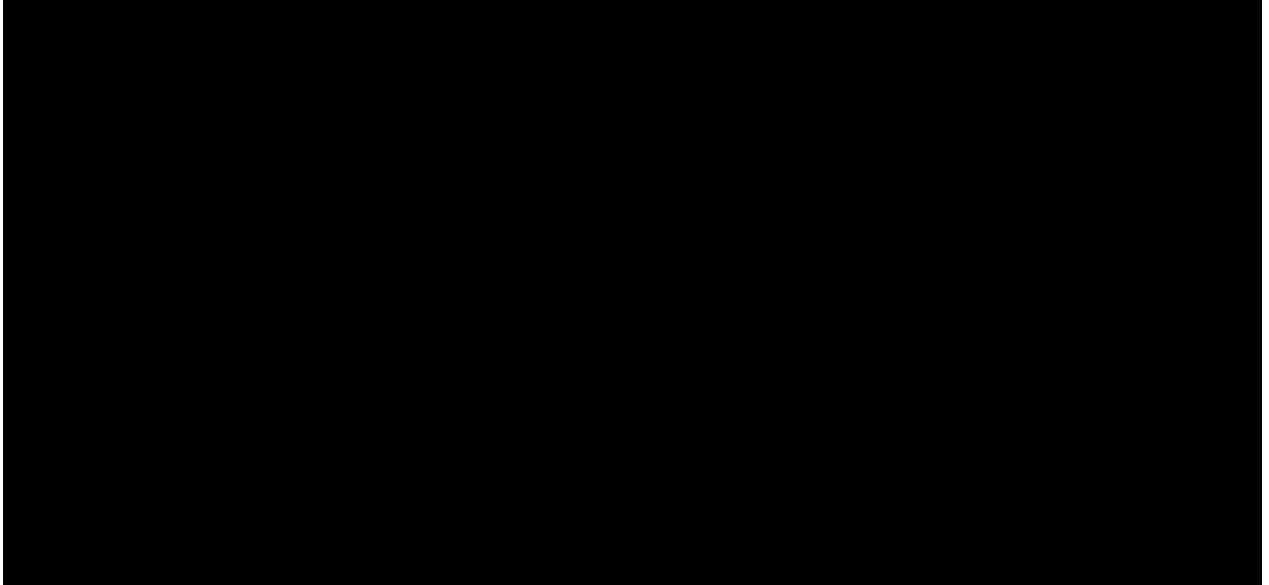
**\$6.70 ea**  
\$0.96 per 100g | Was \$7.80  
on Oct 2022

Add to list Add to trolley

<sup>168</sup> Third SOAF, Exhibit 3, CB Tab 10 (p.226).

- 10 The below graph from the Edwards Report compares the Danone Sample Product's retail price with its cost price less total supplier funding, being Coles' cost to acquire the product, for the period from 1 January 2021 to 4 May 2023.

*Figure 3. Extract of Edwards Report, Appendix C.1<sup>169</sup>*



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<sup>169</sup> Edwards Report, Exhibit 305, CB Tab 23 (p.1481).

## 7. COLGATE TOTAL ORIGINAL TOOTHPASTE 200G:200 GRAM (3401074)

- 1 The seventh sample product is COLGATE TOTAL ORIGINAL TOOTHPASTE 200G:200 GRAM (3401074) (**Colgate Sample Product**). It was a toothpaste within the Dental Health product category, which in turn sat within the Health, Beauty and Baby business category.<sup>170</sup> The supplier of the Colgate Sample Product was Colgate-Palmolive Pty Ltd (**Colgate**).<sup>171</sup> Colgate was an important supplier to Coles and represented nearly 45% of the Dental Health category.<sup>172</sup>
- 2 On 3 December 2021, Colgate submitted a CPA request to Coles for 57 products across the Soaps and Body Wash and the Dental Health categories.<sup>173</sup> This included the Colgate Sample Product.
- 3 Colgate informed Coles that it sought an increase in the list price of the Colgate Sample Product from \$ [REDACTED] to \$ [REDACTED] (being an 11.4% increase) per case of 48 units.<sup>174</sup> At the time of the CPA request, the Colgate Sample Product was on the Down Down program and sold at a promotional price of \$5.50 (i.e., Price 1) with pulsing to \$4.95.<sup>175</sup> Colgate also proposed a revised promotional plan for the products that were the subject of the CPA request.<sup>176</sup> The promotional plan provided for the Colgate Sample Product to be sold on a Down Down promotion at \$6.00.<sup>177</sup>
- 4 Jack Jessiman (Assistant Category Manager of the Personal Care category, which at the time, included the Dental Health category) had most of the discussions and negotiations with Colgate regarding the CPA request and revised promotional plan. Matthew Hankin (Business Category Manager of Health, Beauty and Baby) provided guidance to Mr Jessiman at various points in the negotiations, including because there was no Category Manager or Senior Category Manager in the Personal Care category at the time.<sup>178</sup>
- 5 Coles and Colgate subsequently engaged in negotiations with respect to Colgate's CPA request and proposed trade plan.<sup>179</sup> Mr Hankin's focus in providing guidance to Mr Jessiman throughout the negotiations was to provide additional value to customers, to protect customer value through a secure and stable product offering, and to reduce the risk of being in a situation where Colgate and Coles could not agree on the CPA request and, as a result, Colgate ceased supplying products the subject of the CPA request to Coles.<sup>180</sup> Mr Hankin was also concerned with properly understanding the costs that Colgate were incurring.<sup>181</sup>
- 6 Mr Hankin was prepared to agree to Colgate's CPA request despite Coles' VMO's partial validation of the CPA request. He understood that Coles did not have full visibility of Colgate's costs, and he was concerned by the risk of empty shelves in stores if Colgate ceased supply.<sup>182</sup>
- 7 By 1 March 2022, Coles and Colgate were yet to reach agreement on the CPA request and proposed trade plan.<sup>183</sup> Colgate indicated to Coles that it would cease supplying products the subject of the CPA request.<sup>184</sup> Coles had minimal stock coverage (i.e., less than one or two weeks) for a number of those products.<sup>185</sup>

<sup>170</sup> Hankin [6]-[7], CB Tab 16 (p.883-4).

<sup>171</sup> Hankin [11], CB Tab 16 (p.885).

<sup>172</sup> Hankin [25], CB Tab 16 (p.886).

<sup>173</sup> Hankin [12]-[13], CB Tab 16 (p.885).

<sup>174</sup> Hankin [13], CB Tab 16 (p.885); CB Tab 16.4 (Excel) (row 39) (exhibited to Hankin). As to the 48 unit case configuration, see CB Tab 16.10 (Excel) (Sheet entitled 'Bundle Funding', cells F1:F4) (exhibited to Hankin).

<sup>175</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6718). See also Figure 3 which demonstrates pulsing to \$4.95.

<sup>176</sup> Hankin [14], [27], CB Tab 16 (p.885, 887).

<sup>177</sup> CB Tab 16.9 (p.900) (exhibited to Hankin); CB Tab 16.10 (Excel) (Sheet entitled 'Bundle Funding', cell F28) (exhibited to Hankin).

<sup>178</sup> Hankin [15]-[16], CB Tab 16 (p.885). See also at [10] (p.884).

<sup>179</sup> See, eg, Exhibit 327, CB Tab 357 (p.2110); Exhibit 328, CB Tab 368 (p.2129); Exhibit 329, CB Tab 369 (p.2132) (Excel); Exhibit 330, CB Tab 380 (p.2142); CB Tab 16.26 (p.930) (exhibited to Hankin); CB Tab 16.27 (p.932) (exhibited to Hankin).

<sup>180</sup> Hankin [25]-[26], CB Tab 16 (p.886-7).

<sup>181</sup> See CB Tab 16.16 (p.909) (exhibited to Hankin); CB Tab 16.17 (p.912) (exhibited to Hankin); Exhibit 331, CB Tab 386 (p.2147); CB Tab 16.23 (p.923) (exhibited to Hankin).

<sup>182</sup> Hankin [25]-[26], CB Tab 16 (p.886-7).

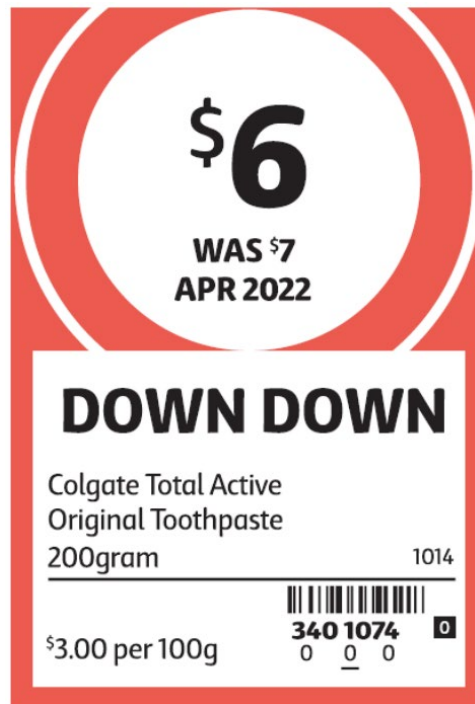
<sup>183</sup> Hankin [31], CB Tab 16 (p.887).

<sup>184</sup> Exhibit 133, CB Tab 402 (p.2154).

<sup>185</sup> Exhibit 133, CB Tab 402 (p.2152).

- 8 During the period Coles was negotiating the CPA with Colgate, the price of the Colgate Sample Product increased at Woolworths. On 2 March 2022, the Colgate Sample Product was offered for sale at Woolworths at a \$7.00 white ticket price.<sup>186</sup>
- 9 Coles reached agreement with Colgate on the CPA request and revised promotional plan by no later than 9 March 2022.<sup>187</sup> On that date, Coles moved the Colgate Sample Product from \$5.50 on the Down Down program to a white ticket price of \$7.00 (i.e., Price 2), being the price that Woolworths were charging for the product.<sup>188</sup> The Colgate Sample Product was sold at \$7.00 from 9 March 2022 to 5 April 2022, being a period of 28 days.<sup>189</sup> During this period, a total of 14,124 units were sold,<sup>190</sup> equating to an average of 3,531 units per week.<sup>191</sup>
- 10 From 6 April 2022, the Colgate Sample Product was offered on the Down Down program at a promotional price of \$6.00 (i.e., Price 3) and with pulsing to \$5.50.<sup>192</sup> The promotions were jointly funded by Coles and Colgate, with Colgate contributing ██████ per unit toward the \$6.00 promotional price, and \$█████ towards the \$5.50 pulse price.<sup>193</sup> Examples of the Down Down tickets that were used by Coles for this promotion appear at Figures 1 and 2. Each of these tickets referred to Price 2 and April 2022, being the month the Colgate Sample Product was last sold at Price 2.

Figure 1. Example ticket for Coles' physical stores (Third SOAF)<sup>194</sup>



<sup>186</sup> Hankin [30], CB Tab 16 (p.887).

<sup>187</sup> See Exhibit 332, CB Tab 405 (p.2157); Exhibit 333, CB Tab 406 (p.2158) (Excel).

<sup>188</sup> Hankin [32], CB Tab 16 (p.887); CB Tab 16.34 (p.947) (exhibited to Hankin); CB Tab 16.35 (Excel) (Sheet entitled 'Summary', row 375) (exhibited to Hankin).

<sup>189</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6719).

<sup>190</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6719).

<sup>191</sup> The weekly average calculated as total volume divided by number of weeks:  $(14,124/28) \times 7 = 3,531$ .

<sup>192</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6719-20). See also Figure 3.

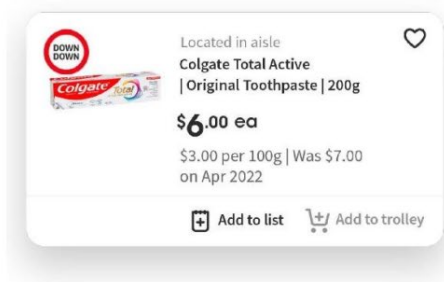
<sup>193</sup> CB Tab 16.28 (Excel) (Sheet entitled 'Bundle Funding', cells F111:F112) (exhibited to Hankin); Hankin [33], CB Tab 16 (p.888)

<sup>194</sup> Third SOAF, Exhibit 3, CB Tab 10 (p.218).

Figure 2. Example tickets for Coles Online and the Coles App (Third SOAF)<sup>195</sup>



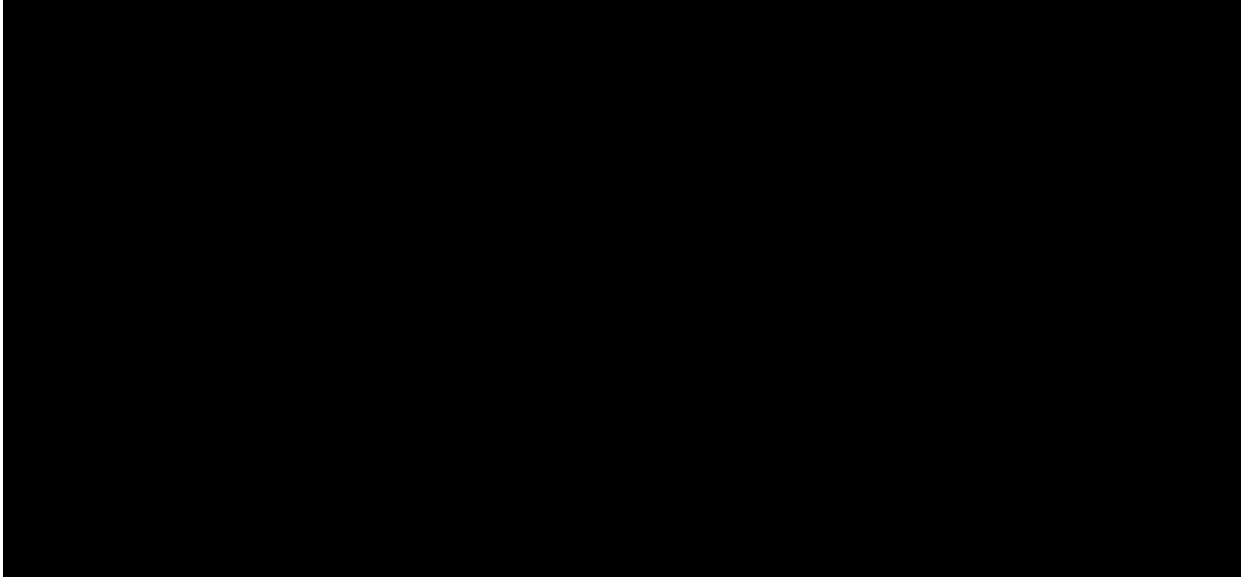
< Home Colgate Total Active |... + 🛒



<sup>195</sup> Third SOAF, Exhibit 3, CB Tab 10 (p.225).

- 11 The below graph from the Edwards Report compares the Colgate Sample Product's retail price with its cost price less total supplier funding, being Coles' cost to acquire the product, for the period from 1 January 2021 to 4 May 2023.<sup>196</sup>

*Figure 3. Extract of Edwards Report, Appendix C.7*



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<sup>196</sup> Edwards Report, Exhibit 305, CB Tab 23 (p.1487).

## 8. COLES FINEST QUINCE PASTE 100G: 100 GRAM (3609315)

- 1 The eighth sample product is COLES FINEST QUINCE PASTE 100G: 100 GRAM (3609315) (**Quince Paste Sample Product**). The Quince Paste Sample Product sat within the Deli Cheese and Antipasto product category, which was in turn part of the Meat, Deli and Seafood business unit.<sup>197</sup> Island Berries Tasmania (**Island Berries**) supplied the Quince Paste Sample Product.<sup>198</sup>
- 2 On 31 May 2022, Island Berries submitted a CPA request to Coles for two products in the Deli Cheese and Antipasto category, including the Quince Paste Sample Product.<sup>199</sup> Edward McCutchan (Assistant Category Manager of Deli Cheese and Antipasto) was responsible for the negotiations with Island Berries.<sup>200</sup>
- 3 Island Berries requested an increase in the list price of the Quince Paste Sample Product from \$ [REDACTED] to \$ [REDACTED].<sup>201</sup> At the time of the CPA request, the Quince Paste Sample Product was on the Down Down program and was sold at a promotional price of \$3.00 (i.e., Price 1).<sup>202</sup> Because the Quince Paste Sample Product was an Own Brand product, (i) Island Berries did not provide a RRP; (ii) there was no trade plan in place; and (iii) Island Berries did not provide promotional funding.<sup>203</sup> The discount was funded entirely by Coles.
- 4 The negotiations with Island Berries were straightforward because Island Berries' CPA request did not have a major impact on Coles' bottom line relative to the other CPA requests that Mr McCutchan was receiving at the time.<sup>204</sup>
- 5 On 20 June 2022, Coles' VMO confirmed that although it was not able to conduct a detailed analysis due to the large number of other CPA requests at the time, it was able to validate the full 5% CPA request for the Quince Paste Sample Product using a P2P analysis.<sup>205</sup>
- 6 On 24 June 2022, Mr McCutchan accepted Island Berries' CPA request in full.<sup>206</sup> Because the Quince Paste Sample product was an Own Brand product, Mr McCutchan was responsible for setting its promotional and white ticket prices without any supplier input.<sup>207</sup> On 27 June 2022, Mr McCutchan decided that the Quince Paste Sample Product would be removed from the Down Down program and sold at a white ticket price of \$4.50 (i.e., Price 2) for 28 days,<sup>208</sup> and then at a promotional price of \$3.15 (i.e., Price 3).<sup>209</sup>
- 7 During Relevant Period, the Quince Paste Sample product had previously been sold at \$4.50 on both a white ticket and EDV ticket.<sup>210</sup> In setting Price 2, Mr McCutchan determined that the product should revert back to its "full price"<sup>211</sup> of \$4.50. While this involved some reduction in Coles' margin for the Price 2 period, Mr McCutchan considered a white ticket price of \$4.80 (i.e., what the white ticket price would be if Island Berries' cost price increase of 5% was fully taken into account) to be too high for this product and for the customer.<sup>212</sup>

<sup>197</sup> McCutchan [7], CB 15 (p.856).

<sup>198</sup> McCutchan [21], CB Tab 15 (p.858).

<sup>199</sup> McCutchan [23], CB Tab 15 (p.858).

<sup>200</sup> McCutchan [8], [24], CB Tab 15 (p.856, 858).

<sup>201</sup> McCutchan [26], CB Tab 15 (p.858-9).

<sup>202</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6721).

<sup>203</sup> McCutchan [29]-[30], CB Tab 15 (p.859).

<sup>204</sup> McCutchan [24], CB Tab 15 (p.858).

<sup>205</sup> McCutchan [27], CB Tab 15 (p.859).

<sup>206</sup> McCutchan [28], CB Tab 15 (p.859).

<sup>207</sup> McCutchan [30], CB Tab 15 (p.859).

<sup>208</sup> McCutchan [24], CB Tab 15 (p.858).

<sup>209</sup> McCutchan [31], CB Tab 15 (p.859).

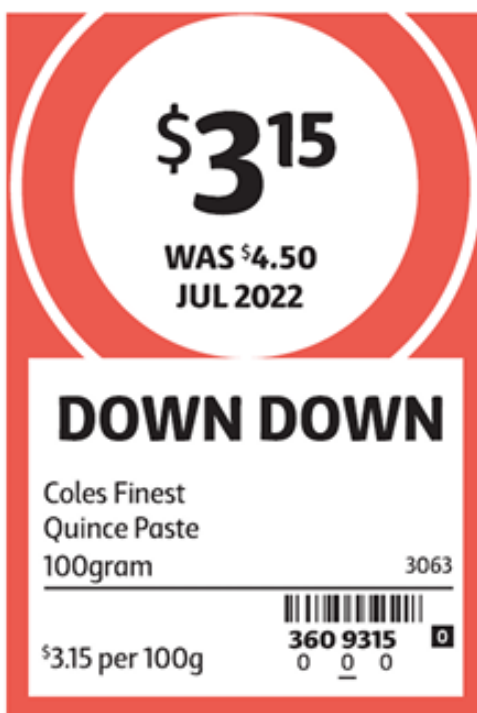
<sup>210</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6721).

<sup>211</sup> CB Tab 15.6 (p.872) (exhibited to McCutchan).

<sup>212</sup> McCutchan [35], CB Tab 15 (p.859).

- 8 On 4 July 2022, Coles moved the Quince Paste Sample Product from a promotional price of \$3.00 on the Down Down program to a white ticket price of \$4.50 (i.e., Price 2).<sup>213</sup> Because Coles returned the product to the same white ticket shelf price as it was previously, the discount was slightly shallower than it had been before the cost price increase request.<sup>214</sup> The Quince Paste Sample Product was sold at \$4.50 from 4 July 2022 to 31 July 2022, being a period of 28 days.<sup>215</sup> During this period, a total of 3,204 units were sold,<sup>216</sup> equating to an average of 801 units per week.<sup>217</sup>
- 9 From 1 August 2022, the Quince Paste Sample Product was offered on the Down Down program at a promotional price of \$3.15 (i.e., Price 3).<sup>218</sup> Examples of the Down Down tickets that were used by Coles for this promotion appear at Figures 1 and 2.<sup>219</sup> Each of these tickets referred to Price 2 and July 2022, being the month the Quince Paste Sample Product was last sold at Price 2.

Figure 1. Example ticket for Coles' physical stores (Third SOAF)



<sup>213</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6721).

<sup>214</sup> McCutchan [36], CB Tab 15 (p.859-60).

<sup>215</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6721).

<sup>216</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6721).

<sup>217</sup> The weekly average calculated as total volumes divided by total days and then multiplied by 7:  $(3,204/28) \times 7 = 801$ .

<sup>218</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6721).

<sup>219</sup> Third SOAF, Exhibit 3, CB Tab 10 (p.217, 224).

Figure 2. Example tickets for Coles Online and the Coles App (Third SOAF)

**DOWN DOWN**

Coles Finest | Quince Paste

**\$3.15** Was \$4.50 Jul 2022

100g | \$3.15 per 100G

Add 1 for \$3.15



Coles Finest  
| Quince Paste | 100g

**\$3.15**  
\$3.15 per 100g | Was \$4.50 on Jul 2022  
★★★★★ 0.0 (0)

Add

< Home Coles Finest | Quince P...



**\$3.15 ea**

\$3.15 per 100g | Was \$4.50 on Jul 2022

Coles Finest | Quince Paste | 100g

Add to trolley

Home Favourites Lists Trolley More

Located in Deli & Seafood

Coles Finest | Quince Paste | 100g

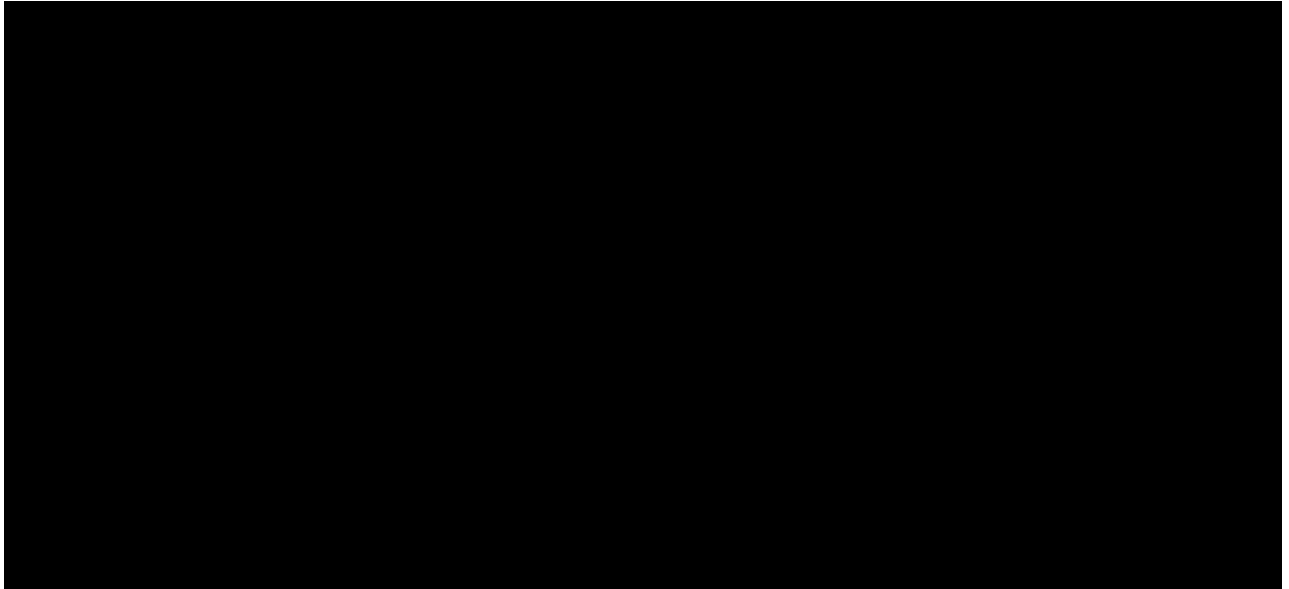
**\$3.15 ea**

\$3.15 per 100g | Was \$4.50 on Jul 2022

Add to list Add to trolley

- 10 The below graph from the Edwards Report compares the Quince Paste Sample Product's retail price with its cost price less total supplier funding, being Coles' cost to acquire the product, for the period from 1 January 2021 to 4 May 2023.<sup>220</sup>

*Figure 3. Extract of Edwards Report, Appendix C.12*



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<sup>220</sup> Edwards Report, Exhibit 305, CB Tab 23 (p.1492).

## 9. REXONA ANTI PERSP DEODORANT:250 ML (5079187)

- 1 The ninth sample product is REXONA ANTI PERSP DEODORANT:250 ML (5079187) (**Rexona Sample Product**). It was a deodorant within the Women's Deodorants and Grooming product category, which in turn sat within the Health, Beauty and Baby business category.<sup>221</sup> The supplier of the Rexona Sample Product was Unilever Australia Limited (**Unilever**).<sup>222</sup> Unilever was a major supplier to Coles.<sup>223</sup>
- 2 On 4 January 2021, Unilever submitted a CPA request to Coles for 138 products across the Skin Care, Hair Care, Soaps and Body Wash and Deodorants and Grooming categories. This included the Rexona Sample Product.<sup>224</sup> Matthew Hankin (Business Category Manager of Health, Beauty and Baby) was responsible for the negotiations with Unilever at the time.<sup>225</sup>
- 3 At the time of the CPA request, the Rexona Sample Product was on the Down Down program and sold at a promotional price of \$5.00 (i.e., Price 1).<sup>226</sup> Prior to that time, it had been sold at a \$7.00 white ticket price.<sup>227</sup>
- 4 Unilever requested an increase in the list price of the Rexona Sample Product from \$ [REDACTED] to \$ [REDACTED] per case of 48 units (being a 20% increase) and proposed a RRP of \$6.00.<sup>228</sup> During the negotiations, Unilever also proposed a new promotional strategy for various products the subject of the CPA request.<sup>229</sup>
- 5 Coles and Unilever engaged in negotiations with respect to Unilever's CPA request and proposed promotional strategy. In these negotiations, Mr Hankin was mindful of reducing the risk of being in a situation where Unilever and Coles could not agree on the CPA request and, as a result, Unilever ceased supplying products the subject of the CPA request to Coles.<sup>230</sup>
- 6 For that reason, and because Coles did not have full visibility of Unilever's actual costs, Mr Hankin was willing to agree to the CPA request despite it being partially validated by Coles' VMO.<sup>231</sup>
- 7 On 7 April 2022, Mr Hankin approved the balance of Unilever's CPA request (which included the Rexona Sample Product), having accepted part of it on 1 April 2022.<sup>232</sup> At this time, Mr Hankin and his team were aligned with Unilever's proposal to place the product onto a \$6.00 EDV ticket following the CPA on the basis that they expected Woolworths would also move to this price point.<sup>233</sup>
- 8 The following day, 8 April 2022, Mr Hankin was informed that Woolworths had in fact increased the price of the Rexona Sample Product to \$6.50.<sup>234</sup> In light of this, Coles decided to move to a white ticket price followed by a Down Down mechanic.<sup>235</sup>
- 9 On 18 April 2022, Coles moved the Rexona Sample Product from \$5.00 on the Down Down program to a white ticket price of \$6.50 (i.e., Price 2).<sup>236</sup> Had Coles moved to a \$6.00 EDV ticket, Mr Hankin

<sup>221</sup> Hankin [6]-[7], CB Tab 16 (p.883-4).

<sup>222</sup> See, eg, CB 16.43 (p.961) (exhibited to Hankin).

<sup>223</sup> Hankin [48], CB Tab 16 (p.889).

<sup>224</sup> Hankin [36], CB Tab 16 (p.888). See also CB Tab 16.43 (p.961) (exhibited to Hankin); CB Tab 16.45 (p.966) (exhibited to Hankin).

<sup>225</sup> Hankin [38], CB Tab 16 (p.888). See also at [10] (p.884).

<sup>226</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6721).

<sup>227</sup> Hankin [37], CB Tab 16 (p.888).

<sup>228</sup> Hankin [37], CB Tab 16 (p.888); CB Tab 16.43 (p.961) (exhibited to Hankin).

<sup>229</sup> Hankin [44]-[45], CB Tab 16 (p.889-90); CB Tab 16.67 (p.1008) (exhibited to Hankin); CB Tab 16.70 (p.1023) (exhibited to Hankin).

<sup>230</sup> Hankin [48], CB Tab 16 (p.889). See also at [25] (p.886).

<sup>231</sup> Hankin [48], CB Tab 16 (p.889).

<sup>232</sup> Hankin [49], [52], CB Tab 16 (p.889-90); CB Tab 16.83 (p.1051) (exhibited to Hankin). Mr Hankin had approved the CPA request for a subset of the products on 1 April 2022: Hankin [49], CB Tab 16 (p.889); CB Tab 16.78 (p.1041) (exhibited to Hankin).

<sup>233</sup> Hankin [46], CB Tab 16 (p.889). See also CB Tab 16.83 (p.1051) (exhibited to Hankin); Exhibit 334, CB Tab 492 (p.2201) requesting 'no retail changes until market has moved once again'.

<sup>234</sup> Hankin [53], CB Tab 16 (p.890).

<sup>235</sup> Hankin [54], CB Tab 16 (p.890). See also Exhibit 336, CB Tab 494 (p.2204); Exhibit 334, CB Tab 492 (p.2201); Exhibit 335, CB Tab 493 (Excel).

<sup>236</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6721).

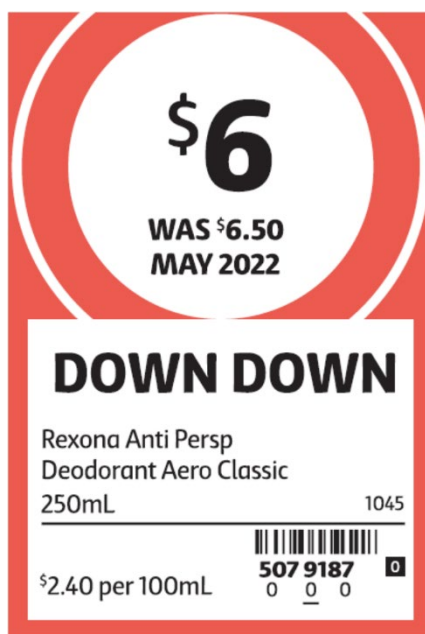
understood the EDV price would need to be held for at least six months.<sup>237</sup> A white ticket followed by Down Down afforded Coles the flexibility to respond to competition as Coles would be permitted to pulse off the Down Down price,<sup>238</sup> allowed Coles to more clearly communicate the value it was providing to consumers<sup>239</sup> and to be competitive with Woolworths' 'Prices Dropped' ticket.<sup>240</sup> In addition, once the minimum 12 week execution period for Down Down had concluded, Coles could assess whether it wanted to change to any other promotional mechanic.<sup>241</sup>

10 Coles and Unilever subsequently agreed that the Down Down price for the Rexona Sample Product would be \$6.00.<sup>242</sup> By 17 May 2022, Coles and Unilever agreed that the Down Down promotion would be supported by increased supplier promotional funding compared to Unilever's EDV proposal.<sup>243</sup>

11 The Rexona Sample Product was sold on a white ticket at \$6.50 from 18 April 2022 to 17 May 2022, being a period of 30 days.<sup>244</sup> During this period, a total of 9,727 units were sold,<sup>245</sup> equating to an average of 2,270 units per week.<sup>246</sup> The \$6.50 price point was lower than the previous \$7.00 white ticket price.

12 From 18 May 2022, the Rexona Sample Product was offered on the Down Down program at a promotional price of \$6.00 (i.e., Price 3).<sup>247</sup> This promotion was jointly funded, with Unilever contributing \$█ per unit.<sup>248</sup> Examples of the Down Down tickets that were used by Coles for this promotion appear at Figures 1 and 2. Each of these tickets referred to Price 2 and May 2022, being the month the Rexona Sample Product was last sold at Price 2.

Figure 1. Example ticket for Coles' physical stores (Third SOAF)<sup>249</sup>



<sup>237</sup> Hankin XXN (T308.3-6). See also CB Tab 18.3 (p.1126) (exhibited to First Galle).

<sup>238</sup> Hankin XXN (T308.1-9, 308.46-309.13).

<sup>239</sup> Hankin XXN (T307.47-308.33).

<sup>240</sup> Hankin XXN (T307.47-308.33, 309.21-25).

<sup>241</sup> Hankin XXN (T309.5-13, 309.36-40).

<sup>242</sup> Hankin XXN (T306:24-27).

<sup>243</sup> Hankin [55], CB Tab 16 (p.890); CB Tab 16.88 (p.1064) (exhibited to Hankin); CB Tab 16.89 (p.1066) (Excel) (exhibited to Hankin). See also CB Tab 16.86 (p.1060) (exhibited to Hankin); Unilever's EDV proposal at CB Tab 16.80 (p.1048) (Excel) (exhibited to Hankin).

<sup>244</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6721).

<sup>245</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6721).

<sup>246</sup> The weekly average calculated as total volume divided by number of weeks: (9,727/30) x 7 = 2,269.63.

<sup>247</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6722).

<sup>248</sup> Hankin [55], CB Tab 16 (p.890).

<sup>249</sup> Third SOAF, Exhibit 3, CB Tab 10 (p.219).

Figure 2. Example tickets for Coles Online and the Coles App (Third SOAF)<sup>250</sup>

**DOWN DOWN**

Rexona Anti Persp | Deodorant Aero Classic

**\$6.00** Was \$6.50 May 2022

250mL | \$2.40 per 100mL

Add 1 for \$6.00

**DOWN DOWN**

Rexona Anti Persp  
| Deodorant Aero Classic  
| 250mL

**\$6.00**  
\$2.40 per 100mL | Was \$6.50 on  
May 2022

★ ★ ★ ★ ★ 0.0 (0)

Add

< Home Rexona Anti Persp | De...

**\$6.00 ea**  
\$2.40 per 100mL | Was \$6.50 on May 2022

Rexona Anti Persp  
| Deodorant Aero Classic | 250mL

Add to trolley

**DOWN DOWN**

Located in aisle

Rexona Anti Persp  
| Deodorant Aero Classic | 250mL

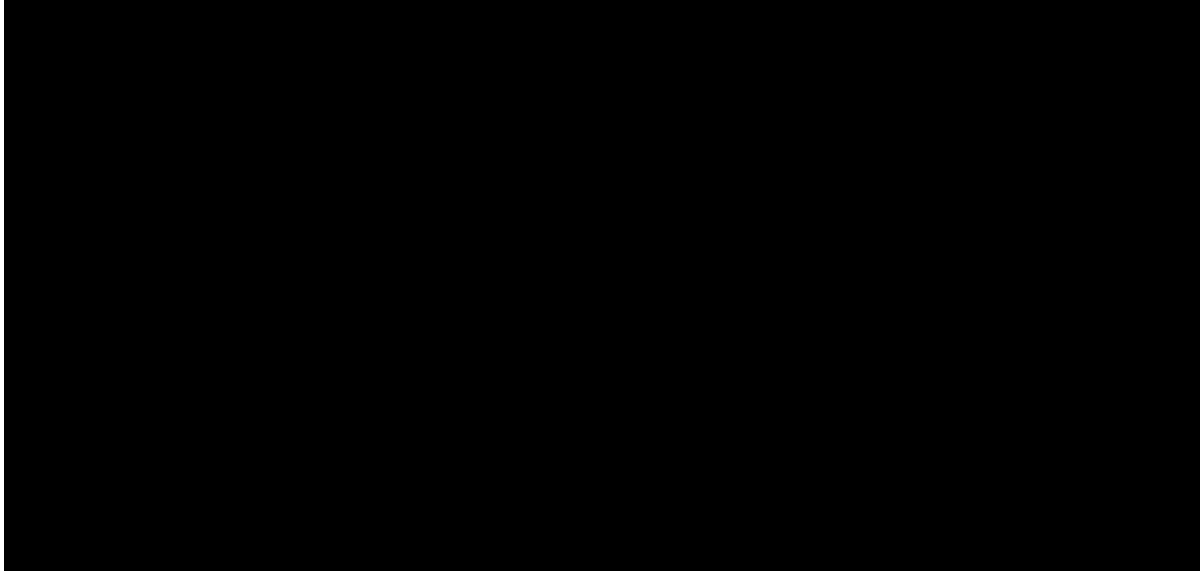
**\$6.00 ea**  
\$2.40 per 100mL | Was \$6.50  
on May 2022

Add to list Add to trolley

<sup>250</sup> Third SOAF, Exhibit 3, CB Tab 10 (p.232).

- 13 The below graph from the Edwards Report compares the Rexona Sample Product's retail price with its cost price less total supplier funding, being Coles' cost to acquire the product, for the period from 1 January 2021 to 4 May 2023.<sup>251</sup>

*Figure 3. Extract of Edwards Report, Appendix C.8*



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<sup>251</sup> Edwards Report, Exhibit 305, CB Tab 23 (p.1488).

## 10. LUPRAK SLIGHTLY SALTED SPREADABLE TUB BUTTER 250 GRAM (5393910)

- 1 The tenth sample product is LURPAK SLIGHTLY SALTED SPREADABLE TUB BUTTER 250 GRAM (5393910) (**Lurpak Sample Product**). It was a butter product within the Chilled Spreads product category, which sat within the Dairy business category. The supplier of the Lurpak Sample Product was Arla Foods Mayer Australia (**Arla**), a joint venture between Arla Foods amba and F Mayer Imports Pty Ltd (trading as Mayers Fine Food).
- 2 As at February 2022, the Lurpak Sample Product was being sold by Coles on the Down Down program at a promotional price of \$5.00 (i.e., Price 1).<sup>252</sup>
- 3 On 24 February 2022, Arla informed Coles that, due to cost increases it was incurring, it proposed to withdraw promotional funding for four Lurpak-branded products, including the Lurpak Sample Product.<sup>253</sup> At the time, it was providing funding for the Lurpak Sample Product of \$█ per unit sold.<sup>254</sup> Arla said that "[t]his would move the RRP to \$6.00 per unit".<sup>255</sup> Arla also indicated that once the cost pressures it was facing had abated, it would "want to engage with [Coles] in a conversation about moving to a DD program".<sup>256</sup>
- 4 On 28 February 2022, Coles asked Arla to provide "plans to mitigate profit and volume for us to review along with the new trade plan" and indicated that it was confused by the strategy of moving to a \$6.00 price point without promotions on the Lurpak Sample Product (250g) given the 400g Lurpak SKU was going to be at a white ticket price of \$6.50.<sup>257</sup> On 3 March 2022, Arla provided information to Coles in response to that request.<sup>258</sup>
- 5 By 15 March 2022, Coles' VMO had analysed Arla's proposal. The VMO team validated an increase in Arla's costs of 10.8% and assessed that the effect of Arla withdrawing funding in respect of the four Lurpak-branded products would be to increase Coles' cost of goods sold in respect of those products by 22.7%.<sup>259</sup>
- 6 Arla and Coles subsequently engaged in negotiations with respect to the pricing and promotional strategy for the Lurpak Sample Product (and the other Lurpak products).
- 7 On 12 April 2022, Mr Turner of Arla sent an email to Coles in which he said that he was "confirming ... [a] discussion from yesterday" and that, in respect of the Lurpak Sample Product, "[w]e will remove the deal that is now in place. The new RRP will [be] \$6.00. Promoted 12 times per annum @ \$5.00" (i.e., on Special).<sup>260</sup> Mr Turner also enquired about the potential to move the Lurpak 250g products (including the Lurpak Sample Product) to the Down Down program in the future.<sup>261</sup> On 19 April 2022, Coles responded that the product could revert to a Down Down ticket if it was offered for 4 weeks at a white ticket with no promotions.<sup>262</sup>
- 8 By 21 April 2022, Coles and Arla had agreed that the Lurpak Sample Product would be placed on a Down Down promotion rather than on Special 12 times per year.<sup>263</sup> On 3 May 2022, Arla provided to Coles a trade plan for the Lurpak Sample Product and two PAFs.<sup>264</sup> The PAFs provided for the existing Down Down funding deal to be cancelled and a new Down Down funding deal from 13 July

<sup>252</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6724).

<sup>253</sup> Exhibit 337, CB Tab 519 (p.2240); Exhibit 338, CB Tab 520 (Excel) (row 29); Exhibit 339, CB Tab 521 (p.2243); Exhibit 340, CB Tab 522 (p.2246).

<sup>254</sup> Exhibit 337, CB Tab 519 (p.2240).

<sup>255</sup> Exhibit 337, CB Tab 519 (p.2240).

<sup>256</sup> Exhibit 337, CB Tab 519 (p.2240).

<sup>257</sup> Exhibit 341, CB Tab 523 (p.2247).

<sup>258</sup> Exhibit 341, CB Tab 523 (p.2247); Exhibit 342, CB Tab 524 (Excel) (rows 3, 4, 18, 19, 33, 34).

<sup>259</sup> Exhibit 343, CB Tab 527 (p.2253); Exhibit 344, CB Tab 528 (Excel) (row 3).

<sup>260</sup> Exhibit 346, CB Tab 537 (p.2268).

<sup>261</sup> Exhibit 346, CB Tab 537 (p.2268).

<sup>262</sup> Exhibit 346, CB Tab 537 (p.2268).

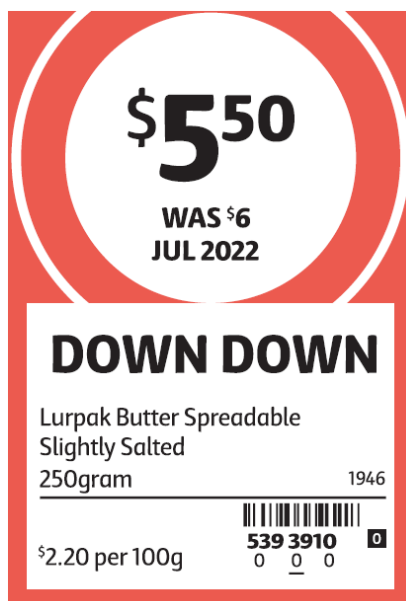
<sup>263</sup> Exhibit 346, CB Tab 537 (p.2267-8).

<sup>264</sup> Exhibit 346, CB Tab 537 (p.2267); Exhibit 347, CB Tab 538 (Excel) (rows 3, 9); Exhibit 348, CB Tab 539 (Excel) (Sheet entitled 'PAF', row 17); Exhibit 349, CB Tab 540 (Excel) (Sheet entitled 'PAF', row 17).

2022.<sup>265</sup> The PAF for the new Down Down promotion proposed a Down Down price of \$5.50 (i.e., Price 3).<sup>266</sup> The promotion was jointly funded by Coles and the supplier, with Arla contributing \$ [REDACTED] per unit for the Lurpak Sample Product.<sup>267</sup>

- 9 On the same day, the Coles team responsible for keying PAFs was asked to "action" them.<sup>268</sup> The request stated that "[t]he Current \$5.00 DD will end and the white ticket will revert to \$6.00 as it was pre-down down. The price will then drop back onto a DD ticket to \$5.50".<sup>269</sup>
- 10 On 13 May 2022, Arla sent a further PAF to Coles which provided for a \$4.90 'Special' promotion to run between July and December 2022 for the Lurpak Sample Product.<sup>270</sup> This promotion was jointly funded by Coles and the supplier, with Arla funding \$ [REDACTED] per unit.<sup>271</sup>
- 11 On 15 June 2022, Coles moved the Lurpak Sample Product from \$5.00 on the Down Down program to a white ticket price of \$6.00 (i.e., Price 2).<sup>272</sup> The Lurpak Sample Product was sold at \$6.00 from 15 June 2022 to 12 July 2022, being a period of 28 days.<sup>273</sup> During this period, a total of 85,572 units were sold,<sup>274</sup> equating to an average of 21,393 units per week.<sup>275</sup>
- 12 On 30 June 2022, the price of the Lurpak Sample Product at Woolworths moved from \$5.00 to \$6.00.<sup>276</sup>
- 13 From 13 July 2022, the Lurpak Sample Product was offered on the Down Down program at a promotional price of \$5.50 (i.e., Price 3).<sup>277</sup> Examples of the Down Down tickets that were used by Coles for this promotion appear at Figures 1 and 2. Each of these tickets referred to Price 2 and July 2022, being the month the Lurpak Sample Product was last sold at Price 2.

Figure 1. Example ticket for Coles' physical stores (Third SOAF)<sup>278</sup>



<sup>265</sup> Exhibit 346, CB Tab 537 (p.2267); Exhibit 348, CB Tab 539 (Excel) (Sheet entitled 'PAF', row 17); Exhibit 349, CB Tab 540 (Excel) (Sheet entitled 'PAF', row 17).

<sup>266</sup> Exhibit 349, CB Tab 540 (Excel) (Sheet entitled 'PAF', row 17).

<sup>267</sup> Exhibit 349, CB Tab 540 (Excel) (Sheet entitled 'PAF', row 17).

<sup>268</sup> Exhibit 345, CB Tab 534 (p.2264).

<sup>269</sup> Exhibit 345, CB Tab 534 (p.2264).

<sup>270</sup> Exhibit 350, CB Tab 544 (p.2282); Exhibit 351, CB Tab 545 (Excel) (Sheet entitled 'PAF', rows 19, 27, 38, 46, 51).

<sup>271</sup> Exhibit 531, CB Tab 545 (Excel) (Sheet entitled 'PAF', rows 19, 27, 38, 46, 51).

<sup>272</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6725).

<sup>273</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6725).

<sup>274</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6725).

<sup>275</sup> The weekly average calculated as total volume divided by total days and then multiplied by 7:  $(85,572/28) \times 7 = 21,393$ .

<sup>276</sup> Exhibit 352, CB Tab 554 (p.2309); Exhibit 353, CB Tab 555 (Excel) (Sheet entitled 'Summary', cells AF112, AG112).

<sup>277</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6725-26).

<sup>278</sup> Third SOAF, Exhibit 3, CB Tab 10 (p.218)

Figure 2. Example tickets for Coles Online and the Coles App (Third SOAF)<sup>279</sup>

The figure displays four examples of product listings for Lurpak Butter Spreadable (Slightly Salted, 250g) on Coles Online and the Coles App. Each listing features a red 'DOWN DOWN' badge in the top left corner, indicating a price reduction. The product image shows a tub of Lurpak Butter Spreadable. The text below the image includes the product name, price (\$5.50), and unit information (\$2.20 per 100g). A red banner indicates the original price was \$6.00 on July 2022. The bottom of each listing includes an 'Add' button with a shopping cart icon.

Top-left screenshot (Coles Online): Shows the product listing with a red 'DOWN DOWN' badge at the top. The price is \$5.50, and the unit is \$2.20 per 100g. A red banner indicates the original price was \$6.00 on Jul 2022. The bottom button says 'Add 1 for \$ 5.50'.

Top-right screenshot (Coles App): Shows the product listing with a red 'DOWN DOWN' badge at the top. The price is \$5.50, and the unit is \$2.20 per 100g. A red banner indicates the original price was \$6.00 on Jul 2022. The bottom button says 'Add'.

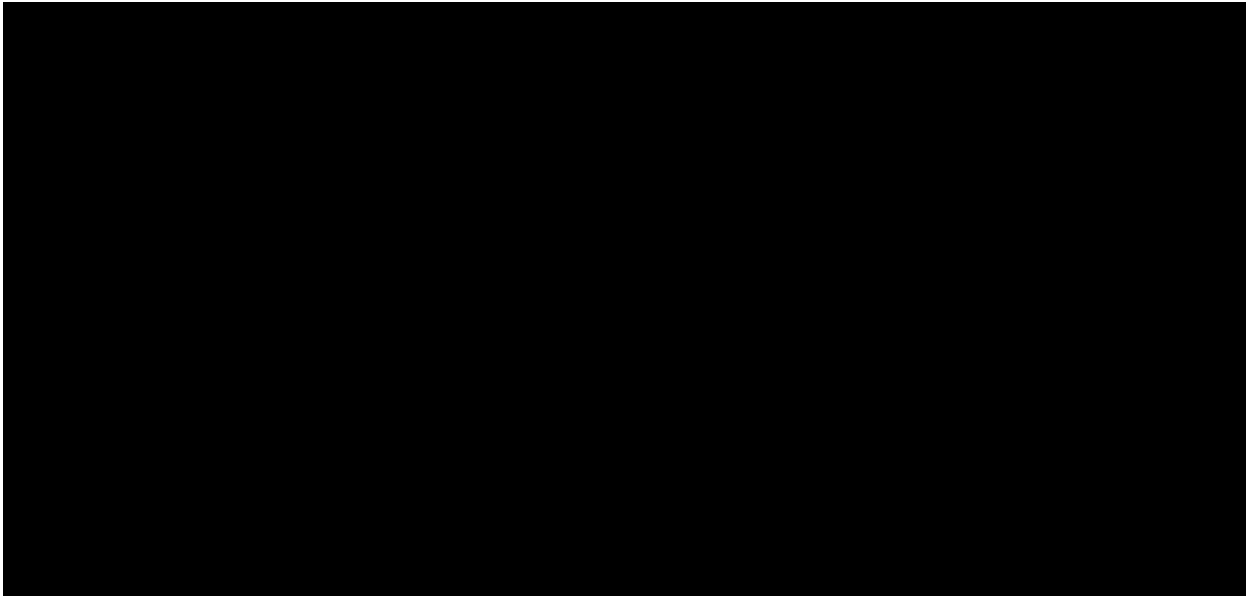
Bottom-left screenshot (Coles App): Shows the product listing with a red 'DOWN DOWN' badge at the top. The price is \$5.50 ea, and the unit is \$2.20 per 100g. A red banner indicates the original price was \$6.00 on Jul 2022. The bottom button says 'Add to trolley'.

Bottom-right screenshot (Coles App): Shows the product listing with a red 'DOWN DOWN' badge at the top. The price is \$5.50 ea, and the unit is \$2.20 per 100g. A red banner indicates the original price was \$6.00 on Jul 2022. The bottom buttons say 'Add to list' and 'Add to trolley'.

<sup>279</sup> Third SOAF, Exhibit 3, CB Tab 10 (p.228)

- 14 The below graph from the Edwards Report compares the Lurpak Sample Product's retail price with its cost price less total supplier funding, being Coles' cost to acquire the product, for the period from 1 January 2021 to 4 May 2023.<sup>280</sup>

*Figure 3. Extract of Edwards Report, Appendix C.4*



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<sup>280</sup> Edwards Report, Exhibit 305, CB Tab 23 (p.1484).

## 11. NATURE'S GIFT 1.2KG CHICKEN, RICE & VEGETABLES (3589976)

1 The eleventh sample product is NATURE'S GIFT ADULT ALL BREEDS WET DOG FOOD LOAF CHICKEN- RICE & VEGETABLES 1.2KG:CHICKEN VEGETABLE AND RICE::1.2 KG) (3589976) (**Nature's Gift Sample Product**). The Nature's Gift Sample Product was a large format wet dog food product within the Pet Food product category, which in turn sat within the Homecare business category.<sup>281</sup> The supplier of the Nature's Gift Sample Product was Real Pet Food (**RPF**).<sup>282</sup>

2 RPF submitted two CPAs in relation to the Nature's Gift Sample product during the Relevant Period.

### Real Pet Food's First CPA

3 On 15 November 2021, RPF informed Coles of an impending CPA for 70 products, including the Nature's Gift Sample Product (**First CPA**).<sup>283</sup> The First CPA was one of several taken over by Paul Carroll when he commenced the role of Senior Category Manager of Pet in December 2021. Mr Carroll was responsible for the negotiations with Real Pet Food.<sup>284</sup>

4 The First CPA would increase the list price and the RRP of the Nature's Gift Sample Product from \$█ to \$█ and from \$4.80 to \$5.50 respectively.<sup>285</sup> This represented an approximate 14.6% increase in the costs borne by Coles in respect of the Nature's Gift Sample Product, and a 14.7% increase in the costs borne by Coles across all 70 products included in the CPA.<sup>286</sup> At the time of the First CPA, the Nature's Gift Sample Product was sold on a Down Down ticket at \$3.50 (i.e., Price 1) and was further promoted to \$3 (pulsed) from time to time.<sup>287</sup>

5 Coles' VMO team's initial assessment found that of the 14.7% overall increase in costs claimed by RPF:

(a) 8.5% could be validated using the average movement methodology,<sup>288</sup> and 12.8% using the alternative P2P approach.<sup>289</sup>

(b) In relation to the Nature's Gift Sample Product, the VMO team validated a 2.4% increase using the average movement methodology,<sup>290</sup> and a 14.6% increase in its costs using the P2P methodology.<sup>291</sup>

6 Coles and RPF subsequently engaged in negotiations with respect to the First CPA.<sup>292</sup> On 25 January 2022, Coles offered to accept 8.8% after RPF provided additional information regarding kangaroo pricing.<sup>293</sup> After the VMO then took an expanded period of time into account, the VMO increased its validation using the average movement methodology to 10% and 3.2% for the portfolio of products and the Nature's Gift Sample Product respectively.<sup>294</sup>

7 During the negotiations, Mr Carroll was particularly concerned with avoiding a 'stop supply' situation, which meant that RPF could refuse to continue supplying Coles at the current list prices if agreement

<sup>281</sup> Carroll [8], CB Tab 11 (p.236).

<sup>282</sup> Carroll [23], CB Tab 11 (p.239).

<sup>283</sup> Carroll [23]-[24], CB Tab 11 (p.239); Exhibit 254, CB Tab 560 (p.2323); Exhibit 355, CB Tab 561 (p.2324); Exhibit 356, CB Tab 562 (p.2326); Exhibit 357, CB Tab 566 (Excel) (row 32); CB Tab 11.1 (p.248) (exhibited to Carroll); CB Tab 11.2 (p.252) (exhibited to Carroll); CB Tab 11.3 (p.253) (exhibited to Carroll).

<sup>284</sup> Carroll [10], [23], CB Tab 11 (p.237, p.239).

<sup>285</sup> Carroll [24], CB Tab 11 (p.239); CB Tab 11.3 (p.254) (exhibited to Carroll); CB Tab 11.17 (Excel) (row 17) (exhibited to Carroll).

<sup>286</sup> Carroll [25]-[26], CB Tab 11 (p.239); CB Tab 11.4 (p.255) (exhibited to Carroll); CB Tab 11.5 (Excel) (cell E59) (exhibited to Carroll).

<sup>287</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6728-29)

<sup>288</sup> Carroll [28], CB Tab 11 (p.240); CB Tab 11.4 (p.255) (exhibited to Carroll); CB Tab 11.5 (Excel) (cell G73) (exhibited to Carroll).

<sup>289</sup> Carroll [28], CB Tab 11 (p.240); CB Tab 11.6 (p.258) (exhibited to Carroll); CB Tab 11.8 (Excel) (cell G73) (exhibited to Carroll).

<sup>290</sup> Carroll [28], CB Tab 11 (p.240); CB Tab 11.4 (p.255) (exhibited to Carroll); CB Tab 11.5 (Excel) (cell G59) (exhibited to Carroll).

<sup>291</sup> Carroll [28], CB Tab 11 (p.240); CB Tab 11.6 (p.258) (exhibited to Carroll); CB Tab 11.8 (Excel) (cell G59) (exhibited to Carroll).

<sup>292</sup> Carroll [29]-[30], CB Tab 11 (p.240).

<sup>293</sup> Carroll [29], CB Tab 11 (p.240); CB Tab 11.13 (p.274) (exhibited to Carroll).

<sup>294</sup> Carroll [29], CB Tab 11 (p.240); CB Tab 11.19 (p.289) (exhibited to Carroll); CB Tab 11.20 (Excel) (cells G59, G73) (exhibited to Carroll); CB Tab 11.21 (p.294) (exhibited to Carroll).

on the First CPA was not reached before 7 February 2022.<sup>295</sup> This was especially important to Mr Carroll as there were considerable stock issues pervading the pet food market at the time.<sup>296</sup>

- 8 After RPF proposed some promotional activity in relation to other products the subject of the First CPA (not the Nature's Gift Sample Product), Mr Carroll approved the First CPA for all products on 10 February 2022, and on 14 February 2022, the First CPA took effect.<sup>297</sup>
- 9 On 14 February 2022, Mr Carroll determined that the Nature's Gift Sample Product would move to a white ticket price of \$5.50 (which was the RRP that remained unchanged throughout the negotiations) and requested Ms Emini, his Business Category Coordinator, to enter the changes into Coles' systems.<sup>298</sup> At this point in time, the promotional strategy for the Nature's Gift Sample Product had not yet been agreed.<sup>299</sup>
- 10 Mr Carroll considered the white ticket price of \$5.50 to be an appropriate price point given his experience in the grocery industry: he considered that RPF would recommend a competitive price point, that the pricing made sense in light of the unit price, and that it communicated value to customers.<sup>300</sup>
- 11 Between 9 February and 13 April 2022, RPF provided Coles with several promotional strategies for the products subject to the First CPA, and promotional plans were negotiated by the parties for several months. In relation to the Nature's Gift Sample Product, the first promotional plan was proposed on 21 February 2022, in which RPF initially suggested a Down Down discount of \$4.00.<sup>301</sup> Subsequent plans considered an EDV and Hi Lo proposal both based on the same baseline white ticket price of \$5.50.<sup>302</sup>
- 12 Mr Carroll ultimately decided to place the Nature's Gift Sample Product on a Down Down promotional program.<sup>303</sup> Mr Carroll preferred Down Down to a Hi Lo promotion because it would have been a consistently competitive price with Woolworths.<sup>304</sup> Mr Carroll preferred Down Down to an EDV because it was a more flexible pricing mechanic the Down Down program would have allowed Mr Carroll to negotiate further with RPF to offer further limited discounts.<sup>305</sup> The promotional plan was finalised on 12 April 2022.<sup>306</sup>
- 13 On 9 March 2022, the Nature's Gift Sample Product moved to a \$5.50 white ticket (i.e., Price 2).<sup>307</sup> The Nature's Gift Sample Product was sold at \$5.50 from 9 March 2022 to 17 April 2022, being a period of 40 days.<sup>308</sup> During this period, a total of 16,729 units were sold,<sup>309</sup> equating to an average of 2,928 units per week.<sup>310</sup>

<sup>295</sup> Carroll XXN (T239:39-T240:23, T242:8-40); Carroll [30], CB Tab 11 (p.240); Proposed Exhibit 447, CB Tab 590 (p.2334).

<sup>296</sup> Carroll XXN (T234:43-T235:14); Carroll [31], CB Tab 11 (p.240).

<sup>297</sup> Carroll [31]-[32], CB Tab 11 (p.240); CB Tab 11.27 (p.303) (exhibited to Carroll); CB 11.28 (p.305) (exhibited to Carroll); CB Tab 11.29 (Excel) (row 27) (exhibited to Carroll); CB Tab 11.30 (p.312) (exhibited to Carroll).

<sup>298</sup> Carroll [33]-[34], CB Tab 11 (p.240); CB Tab 11.31 (p.319) (exhibited to Carroll); CB Tab 11.32 (Excel) (Sheet entitled 'Sheet 1', row 27) (exhibited to Carroll); CB Tab 11.33 (p.321) (exhibited to Carroll); CB Tab 11.34 (Excel) (row 27) (exhibited to Carroll).

<sup>299</sup> CB Tab 11.31 (p.319) (exhibited to Carroll).

<sup>300</sup> Carroll XXN (T246:25-T247:3); Carroll [12]-[13], [34], CB Tab 11 (p.237-8, p.240).

<sup>301</sup> Carroll XXN (T243:26-T244:41); Carroll [36], CB Tab 11 (p.241); CB Tab 11.37 (p.332) (exhibited to Carroll).

<sup>302</sup> Carroll XXN (T245:35-T246:23, T247:18-T248:47, T253:31-T254:40, T256:20-T258:15); Carroll [36], CB Tab 11 (p.241); CB Tab 11.38 (p.333) (exhibited to Carroll); CB Tab 11.43 (p.343) (exhibited to Carroll); CB Tab 11.44 (p.344) (exhibited to Carroll); CB Tab 11.45 (Excel) (Sheet entitled 'PAF', row 16) (exhibited to Carroll); CB Tab 11.50 (p.356) (exhibited to Carroll); CB Tab 11.51 (p.357) (exhibited to Carroll); CB Tab 11.52 (Excel) (Sheet entitled 'PAF', row 15) (exhibited to Carroll).

<sup>303</sup> Carroll [38], CB Tab 11 (p.241).

<sup>304</sup> Carroll XXN (T258:17-T259:27); Carroll [38], CB Tab 11 (p.241).

<sup>305</sup> Carroll XXN (T250:1-21, T258:31-T259:36).

<sup>306</sup> Carroll [42], CB Tab 11 (p.242); CB Tab 11.51 (p.357) (exhibited to Carroll); CB Tab 11.52 (Excel) (Sheet entitled 'PAF', row 15) (exhibited to Carroll); CB Tab 11.53 (p.359) (exhibited to Carroll); CB Tab 11.54 (Excel) (Sheet entitled 'PAF', row 25) (exhibited to Carroll).

<sup>307</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6729).

<sup>308</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6729).

<sup>309</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6729).

<sup>310</sup> The weekly average calculated as total volume for the period divided by the number of days, and multiplied by 7: (16,729/40) x 7 = 2,928.

- 14 From 18 April 2022, the Nature's Gift Sample Product was offered on the Down Down program at a promotional price of \$4.00 (i.e., Price 3).<sup>311</sup> The Down Down promotion was jointly funded by Coles and RPF, with RPF providing promotional funding of \$ [REDACTED] per unit.<sup>312</sup>
- 15 Examples of the Down Down tickets that were used by Coles for this promotion appear at Figures 1 and 2. Each of these tickets referred to Price 2 and the month the Nature's Gift Sample Product was last sold at Price 2.

Figure 1. Example ticket for Coles' physical stores (Third SOAF)<sup>313</sup>

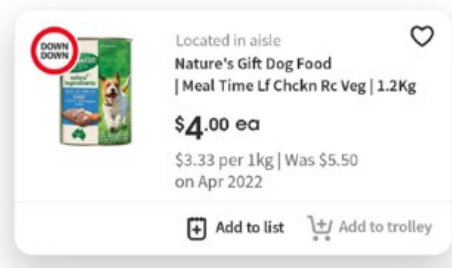
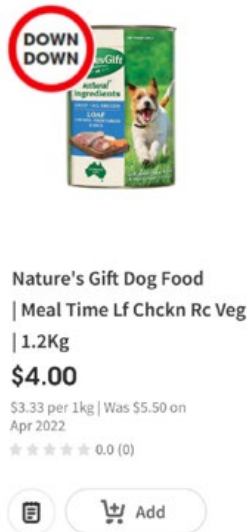
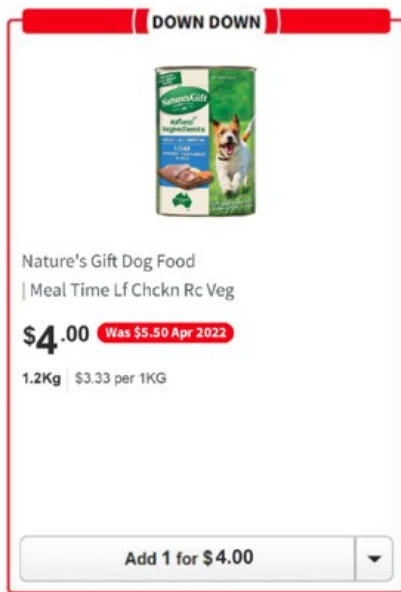


<sup>311</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6729).

<sup>312</sup> CB Tab 11.54 (Excel) (row 25) (exhibited to Carroll).

<sup>313</sup> Third SOAF, Exhibit 3, CB Tab 10 (p.219).

Figure 2. Example tickets for Coles Online and the Coles App (Third SOAF)<sup>314</sup>



### Real Pet Food's Second CPA

- 16 On 14 November 2022, RPF notified Coles of a cost price increase for 23 groups of products, including the Nature's Gift Sample Product (**Second CPA**). RPF stated that it would increase the list price and RRP for the Nature's Gift Sample Product from \$█ to \$█ (a 9.0% increase) and \$5.50 to \$6.00 (a 9.1% increase) respectively.<sup>315</sup> At the time of the Second CPA, the Nature's Gift Sample Product was sold on a Down Down ticket at \$4.00 (i.e., Price 1).<sup>316</sup>

<sup>314</sup> Third SOAF, Exhibit 3, CB Tab 10 (p.229).

<sup>315</sup> Carroll [43]-[44], CB Tab 11 (p.242); CB Tab 11.55 (p.363) (exhibited to Carroll); CB Tab 11.56 (p.364-365) (exhibited to Carroll); CB Tab 11.57 (p.366) (exhibited to Carroll); Tab 11.58 (Excel) (row 71) (exhibited to Carroll); CB Tab 11.59 (p.369) (exhibited to Carroll); CB Tab 11.60 (Excel) (row 66) (exhibited to Carroll).

<sup>316</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6729)

- 17 Across the range of 85 product SKUs, Coles' VMO team assessed the costs borne by Coles as increasing by 10.6% if the Second CPA were agreed.<sup>317</sup>
- (a) Of the overall 10.6% increase, 7.7% was validated using the average movement methodology and 8.3% using the P2P approach.<sup>318</sup>
  - (b) In relation to the Nature's Gift sample product, Coles' VMO team validated a 9% increase in RPF's costs using both the average movement and P2P methodologies.<sup>319</sup>

Mr Carroll agreed to partially accept (7.7% of the 10.6% claimed increase) RPF's Second CPA on the basis of the VMO team's analyses.<sup>320</sup>

- 18 Between 12 December 2022 and 3 February 2023, Mr Carroll engaged in negotiations with RPF regarding the Second CPA, RPF's proposed trade plan and promotional strategy.<sup>321</sup> The initial plan proposed that the Nature's Gift Sample Product would be sold at an increased white ticket price of \$6.00, before transitioning to Down Down at \$4.50.<sup>322</sup> This strategy remained the proposed approach for the Nature's Gift Sample Product throughout the negotiations, with each plan referring to the pre-existing 'base' and promotional prices of \$5.50 and \$4.00 respectively.<sup>323</sup> RPF had proposed other promotional mechanics (eg, EDV) in relation to other products the subject of the CPA, however in respect of the Nature's Gift Sample Product, the only mechanic considered was Down Down.<sup>324</sup>
- 19 On 3 February 2023, Mr Carroll accepted the Second CPA and agreed to RPF's trade plan for the Nature's Gift Sample Product.<sup>325</sup> Mr Carroll considered RPF's RRP of \$6.00 to be an appropriate white ticket price having considered whether the price set a 'value message' to customers, whether the price made sense having regard to the unit price and how the price compared to prices of other products in the category.<sup>326</sup>
- 20 On 8 February 2023, Coles increased the white ticket price for the Nature's Gift Sample Product from \$5.50 to \$6.00 (i.e., Price 2).<sup>327</sup> Mr Carroll intended for the Nature's Gift Sample Product to remain at the \$6.00 white ticket price for a period of 28 days. However, shortly after the price increase occurred on 8 February 2023, Coles became aware that Woolworths had reduced the price of the Nature's Gift Sample Product to \$4.50.<sup>328</sup>
- 21 Coles' internal guidelines prevented the Nature's Gift Sample Product from moving onto the planned Down Down promotion sooner than 8 March 2023 and so Mr Carroll sought guidance from the Pricing and Value team as to whether certain planned Down Down promotions (including the Nature's Gift Sample Product) could be expedited.<sup>329</sup> The advice from the Pricing and Value team

<sup>317</sup> Carroll [45]-[46], CB Tab 11 (p.242) (exhibited to Carroll); CB Tab 11.61 (p.371) (exhibited to Carroll).

<sup>318</sup> Carroll [45]-[46], CB Tab 11 (p.242) (exhibited to Carroll); CB Tab 11.61 (p.371) (exhibited to Carroll); CB Tab 11.64 (Excel) (cell H89) (exhibited to Carroll); CB Tab 11.66 (p.378) (exhibited to Carroll); CB Tab 11.67 (Excel) (cell H89) (exhibited to Carroll).

<sup>319</sup> Carroll [45]-[46], CB Tab 11 (p.242); CB Tab 11.61 (p.371) (exhibited to Carroll); CB Tab 11.64 (Excel) (cell H41) (exhibited to Carroll); CB Tab 11.66 (p.378) (exhibited to Carroll); CB Tab 11.67 (Excel) (cell H41) (exhibited to Carroll).

<sup>320</sup> Carroll XXN (T263:20-21); Carroll [47], CB Tab 11 (p.242); CB Tab 11.68 (p.383) (exhibited to Carroll).

<sup>321</sup> Carroll XXN (T263:22-T267:7); Carroll [48]-[49], CB Tab 11 (p.242).

<sup>322</sup> Carroll XXN (T263:23-T264:4); CB Tab 11.70 (p.388) (exhibited to Carroll); CB 11.71 (Excel) (Sheet entitled 'In\_New') (exhibited to Carroll); CB Tab 11.72 (Excel) (Sheet entitled 'CPI Trade Plan', rows 282-293) (exhibited to Carroll).

<sup>323</sup> Carroll [48]-[50] (p.242-243); CB Tab 11.73 (p.391) (exhibited to Carroll); CB 11.74 (Excel) (Sheet entitled 'CPI Trade Plan', rows 282-293) (exhibited to Carroll); CB Tab 11.75 (p.395) (exhibited to Carroll); CB Tab 11.76 (Excel) (Sheet entitled 'CPI Trade Plan', rows 282-293) (exhibited to Carroll); CB Tab 11.77 (p.397) (exhibited to Carroll); CB Tab 11.78 (Excel) (Sheet entitled 'CPI Trade Plan', rows 267-279) (exhibited to Carroll); CB Tab 11.79 (p.399) (exhibited to Carroll); CB Tab 11.80 (Excel) (Sheet entitled 'Coles CPI Trade Plan', rows 267-279) (exhibited to Carroll); CB Tab 11.86 (p.410) (exhibited to Carroll); CB Tab 11.87 (p.412) (exhibited to Carroll); CB Tab 11.88 (p.414) (exhibited to Carroll); CB Tab 11.89 (Excel) (row 37) (exhibited to Carroll).

<sup>324</sup> CB 11.73 (p.391) (exhibited to Carroll); CB 11.74 (Excel) (Sheet entitled 'Offer 2', row 30-32) (exhibited to Carroll).

<sup>325</sup> Carroll XXN (T266:44-T267:4); Carroll [51], CB Tab 11 (p.243); CB Tab 11.87 (p.412) (exhibited to Carroll); CB Tab 11.88 (p.414) (exhibited to Carroll); CB Tab 11.89 (Excel) (row 37) (exhibited to Carroll).

<sup>326</sup> Carroll XXN (T270:10-11).

<sup>327</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6729).

<sup>328</sup> Carroll [53], CB Tab 11 (p.243); CB Tab 11.92 (p.424) (exhibited to Carroll); CB Tab 11.93 (Excel) (Sheet entitled 'Summary', row 23) (exhibited to Carroll).

<sup>329</sup> Carroll [54], CB Tab 11 (p.243); CB Tab 11.94 (p.431) (exhibited to Carroll).

was that Mr Carroll could only drop the price early on a standard white ticket (not a Down Down ticket).<sup>330</sup> Mr Carroll subsequently wrote to RFP requesting funding to support a lower white ticket price.<sup>331</sup> On 13 February 2023, the supplier sent a PAF to Coles which provided for the Nature's Gift Sample Product to be sold at \$4.50 on a Down Down ticket from 15 February 2023 and that Real Pet Food would provide funding of \$ [REDACTED] per unit.<sup>332</sup> Mr Carroll subsequently asked his BCC to load the PAF onto Coles' system.<sup>333</sup>

- 22 During this period, Mr Carroll had concluded his role as Senior Category Manager of Pet at Coles and commenced his new role at Swaggle on 30 January 2023.<sup>334</sup> While the PAF provided for the Nature's Gift Sample Product to be sold on a Down Down ticket, it did not reflect Mr Carroll's intention as to what would occur (which was that the price would be reduced on a white ticket in line with the advice Mr Carroll had received from the Pricing and Value team).<sup>335</sup> Approving the PAF in this form was an oversight<sup>336</sup> on Mr Carroll's part as he did not check the PAF in sufficient detail.<sup>337</sup>
- 23 From 15 February 2023, the Nature's Gift Sample Product was offered on a Down Down ticket at a promotional price of \$4.50 (i.e., Price 3).<sup>338</sup> The Down Down promotion was jointly funded by Coles and RPF, with RPF providing promotional funding of \$ [REDACTED] per unit.<sup>339</sup>
- 24 Examples of the Down Down tickets that were used by Coles for this promotion appear at Figures 1 and 2. Each of these tickets did not display Price 2 nor the month the Nature's Gift Sample Product was last sold at Price 2.

Figure 3. Example ticket for Coles' physical stores (Third SOAF)<sup>340</sup>



<sup>330</sup> Carroll [55], CB Tab 11 (p.243); CB Tab 11.94 (p.431) (exhibited to Carroll).

<sup>331</sup> Carroll [55], CB Tab 11 (p.243); CB Tab 11.94 (p.431) (exhibited to Carroll).

<sup>332</sup> CB 11.96 (p.434) (exhibited to Carroll); CB 11.97 (Excel) (Sheet titled 'PAF', row 25) (exhibited to Carroll)

<sup>333</sup> CB 11.98 (p.436) (exhibited to Carroll); CB 11.99 (Excel) (Sheet titled 'PAF', row 25) (exhibited to Carroll)

<sup>334</sup> Carroll XXN (T278:9-17); Carroll [4], CB Tab 11 (p.236).

<sup>335</sup> Carroll [57], CB Tab 11 (p.243).

<sup>336</sup> Carroll XXN (T276:16-19, T281:5-9); Carroll [57], CB Tab 11 (p.243).

<sup>337</sup> Carroll XXN (T280:10-11).

<sup>338</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6729).

<sup>339</sup> CB Tab 11.99 (Excel) (rows 20, 25) (exhibited to Carroll).

<sup>340</sup> Third SOAF, Exhibit 3, CB Tab 10 (p.219).

Figure 4. Example tickets for Coles Online and the Coles App (Third SOAF)<sup>341</sup>

**DOWN DOWN**

Nature's Gift Dog Food  
| Meal Time Lf Chckn Rc Veg

**\$4.50**  
1.2Kg | \$3.75 per 1KG

Add 1 for \$4.50

< Home Nature's Gift Dog Food...

**DOWN DOWN**

**\$4.50 ea**  
\$3.75 per 1kg

Nature's Gift Dog Food  
| Meal Time Lf Chckn Rc Veg | 1.2Kg

**DOWN DOWN**

Nature's Gift Dog Food  
| Meal Time Lf Chckn Rc Veg  
| 1.2Kg

**\$4.50**  
\$3.75 per 1kg

☆☆☆☆ 0.0 (0)

**DOWN DOWN**

Located in aisle

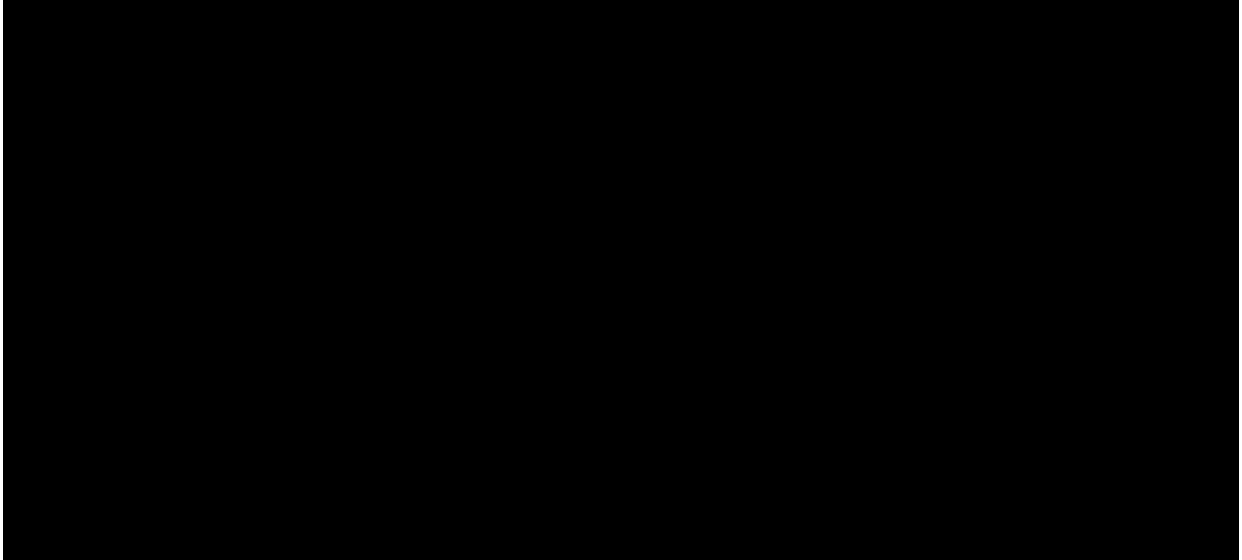
Nature's Gift Dog Food  
| Meal Time Lf Chckn Rc Veg | 1.2Kg

**\$4.50 ea**  
\$3.75 per 1kg

<sup>341</sup> Third SOAF, Exhibit 3, CB Tab 10 (p.230).

25 The below graph from the Edwards Report compares the Nature's Gift Sample Product's retail price with its cost price less total supplier funding, being Coles' cost to acquire the product, for the period from 1 January 2021 to 4 May 2023.

*Figure 5. Extract of Edwards Report, Appendix C.6<sup>342</sup>*



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<sup>342</sup> Edwards Report, CB Tab 23 (p.1486).

## 12. VIVA PAPER TOWEL WHITE SELECT A SIZE 3 PACK:3 PACK (3823600)

- 1 The twelfth sample product is VIVA PAPER TOWEL WHITE SELECT A SIZE 3 PACK:3 PACK (3823600) (**Viva Sample Product**). The Viva Sample Product sat within the Paper Towels product category, which in turn sat within the Homecare business category. The supplier of the Viva Sample Product was Kimberly-Clark Australia Pty Ltd (**KCA**).
- 2 KCA submitted two CPA requests in respect of the Viva Sample Product during the Relevant Period.

### First CPA request

- 3 On 31 January 2022, KCA notified Coles of a CPA request for 8 products in the Paper Towel category and 18 products in the Facial Tissue category (**CPA 1**), including the Viva Sample Product.<sup>343</sup> KCA informed Coles that the CPA would come into effect for all orders placed on or after 2 May 2022.<sup>344</sup>
- 4 KCA informed Coles that the list price of the Viva Sample Product would increase from \$[REDACTED] to \$[REDACTED] and provided an increase in the RRP from \$4.89 to \$5.50.<sup>345</sup> At the time of the CPA 1 request, the Viva Sample Product was on the Down Down program and sold at a promotional price of \$4.00.<sup>346</sup>
- 5 Rebecca Graham (Category Manager of Paper & Kitchen Needs) was responsible for negotiations with KCA in respect of CPA 1 until March 2022. Jack Jessiman (Category Manager of Paper & Kitchen Needs) was responsible for negotiations with KCA in respect of CPA 1 from March 2022 onwards.
- 6 Ms Graham and Mr Jessiman received from Coles' VMO and provided to KCA two rounds of analysis in respect of the CPA 1 request.
  - (a) Initially, the VMO validated a 3.9% cost increase across the total portfolio of products which were the subject of the CPA request (compared to KCA's request of 10.8%) using an average movement methodology.<sup>347</sup> In respect of the Viva Sample Product, the VMO validated an 8.6% cost increase (compared to KCA's request of 12.5%).<sup>348</sup>
  - (b) The VMO's subsequent average movement analysis, based on additional information provided by KCA, validated a 4.1% cost increase across the total portfolio of products which were the subject of the CPA request and a 8.4% cost increase in respect of the Viva Sample Product.<sup>349</sup>
- 7 On 9 and 10 March 2022, KCA proposed new and revised promotional plans for the products that were the subject of the CPA 1 request.<sup>350</sup> The first proposal suggested an EDLP promotional strategy for the Viva Sample Product with a white ticket price of \$5.50 (which reflected Viva's RRP), an EDLP price of \$4.50 and a 'pulse' of \$3.50.<sup>351</sup> The second proposal specified that the proposed EDLP strategy for the Viva Sample Product was a Down Down mechanic.<sup>352</sup>
- 8 Between March and April 2022, Coles and KCA engaged in negotiations with respect to KCA's proposed promotional plan.<sup>353</sup>

<sup>343</sup> Exhibit 358, CB Tab 696 (p.2372); Exhibit 359, CB Tab 697 (p.2373); Exhibit 360, CB Tab 698 (p.2375).

<sup>344</sup> Exhibit 358, CB Tab 696 (p.2372).

<sup>345</sup> Exhibit 359, CB Tab 697 (p.2373).

<sup>346</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6730).

<sup>347</sup> Exhibit 361, CB Tab 700 (p.2379); Exhibit 362, CB Tab 701 (Excel) (row 29).

<sup>348</sup> Exhibit 362, CB Tab 701 (Excel) (row 24).

<sup>349</sup> Exhibit 411, CB Tab 930 (p.3377); Exhibit 412, CB Tab 931 (Excel) (rows 24, 29); Exhibit 369, CB Tab 732 (p.2431); Exhibit 370, CB Tab 733 (Excel) (rows 24, 29).

<sup>350</sup> Exhibit 363, CB Tab 704 (p.2384); Exhibit 364, CB Tab 705 (p.2385); Exhibit 365, CB Tab 706 (p.2387); Exhibit 366, CB Tab 707 (p.2388).

<sup>351</sup> Exhibit 364, CB Tab 705 (p.2385).

<sup>352</sup> Exhibit 366, CB Tab 707 (p.2388).

<sup>353</sup> Exhibit 367, CB Tab 708 (p.2390); Exhibit 368, CB Tab 709 (p.2391); Exhibit 372, CB Tab 756 (p.2469).

- 9 On 28 April 2022, Mr Jessiman accepted KCA's CPA 1 request and revised promotional plan and asked his BCC Jenny Kearney to key the changes once shared by the supplier.<sup>354</sup> The revised promotional plan provided that the Viva Sample Product would be removed from the Down Down program and sold at a white ticket price of \$5.50, and then at a promotional price of \$4.50.<sup>355</sup> The white ticket price of \$5.50 was KCA's RRP,<sup>356</sup> and the Down Down price of \$4.50 was KCA's PRRP.<sup>357</sup>
- 10 In finalising the promotional plan with KCA, Mr Jessiman emailed Ms Kearney to confirm her understanding of the price establishment period for Down Down products for the purpose of the CPA 1 pricing changes.<sup>358</sup> Ms Kearney confirmed that the product could not go back onto Down Down unless the new retail price had been established for four weeks.<sup>359</sup> Mr Jessiman agreed with Ms Kearney's understanding of the rules and asked Ms Kearney to increase (Mr Jessiman used the term 'inflate') the white ticket price in line with the recommended price the supplier had already provided.<sup>360</sup>
- 11 On 29 April 2022, Coles moved the Viva Sample Product from \$4.00 on the Down Down program to a white ticket at the same price of \$4.00.<sup>361</sup>
- 12 On 2 May 2022, CPA 1 became effective and the cost price of the Viva Sample Product increased from \$ [REDACTED] to \$ [REDACTED].<sup>362</sup>
- 13 On 4 May 2022, Coles increased the white ticket price of the Viva Sample Product from \$4.00 to \$5.50, which matched Woolworths' price of \$5.50.<sup>363</sup> The Viva Sample Product was sold at \$5.50 from 4 May 2022 to 29 May 2022, being a period of 26 days.<sup>364</sup> During this period, a total of 67,616 units were sold,<sup>365</sup> equating to an average of 18,204 units per week.<sup>366</sup>
- 14 From 30 May 2022 to 22 January 2023, the Viva Sample Product was offered on the Down Down program at a promotional price of \$4.50.<sup>367</sup> On 30 May 2022, Woolworths was also offering the Viva Sample Product for sale at \$4.50.<sup>368</sup>
- 15 The promotion was jointly funded by Coles and KCA, with KCA agreeing to contribute \$ [REDACTED] per unit sold.<sup>369</sup> KCA also agreed to provide supplier non-promotional funding for the duration of CPA 1 Price 2.<sup>370</sup>
- 16 Examples of the Down Down tickets that were used by Coles for this promotion appear at Figures 1 and 2. Each of these tickets referred to CPA 1 Price 2 and May 2022, being the month the Viva Sample Product was last sold at CPA 1 Price 2.

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<sup>354</sup> Exhibit 209, CB Tab 748 (p.2460).

<sup>355</sup> Exhibit 371, CB Tab 742 (p.2449).

<sup>356</sup> Exhibit 359, CB Tab 697 (p.2373).

<sup>357</sup> Exhibit 366, CB Tab 707 (p.2388).

<sup>358</sup> Exhibit 207, CB Tab 746 (p.2454).

<sup>359</sup> Exhibit 207, CB Tab 746 (p.2454).

<sup>360</sup> Exhibit 207, CB Tab 746 (p.2454).

<sup>361</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056, Annexure 1 (p.6730).

<sup>362</sup> Exhibit 358, CB Tab 696 (p.2372); Exhibit 359, CB Tab 697 (p.2373).

<sup>363</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6730); Exhibit 373, CB Tab 757 (p.2475); Exhibit 374, CB Tab 758 (p.2482).

<sup>364</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6730).

<sup>365</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6730).

<sup>366</sup> The weekly average calculated as total volume divided by total days and then multiplied by 7:  $(67,616/26) \times 7 = 18,204$ .

<sup>367</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6730).

<sup>368</sup> Exhibit 375, CB Tab 768 (p.2493); Exhibit 376, CB Tab 769 (Excel) (Sheet entitled 'Summary', cell AH12).

<sup>369</sup> Amended Fourth SOAF, Exhibit 4, 2SCB Tab 1032 (p.5277); Edwards Report, Exhibit 305, CB Tab 23, Appendix B (Excel) (cells J8208-J8443).

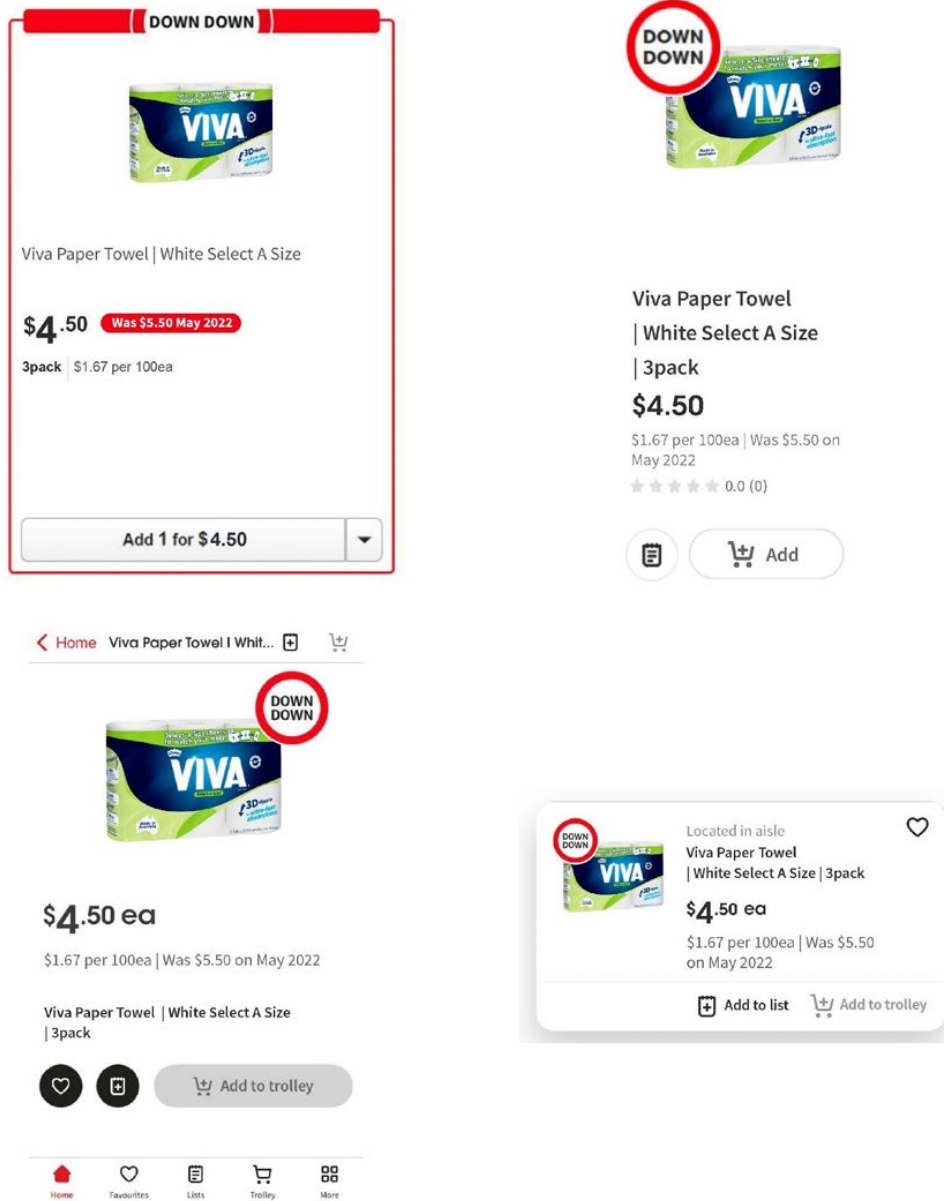
<sup>370</sup> Amended Fourth SOAF, Exhibit 4, 2SCB Tab 1032 (p.5277).

Figure 1. Example ticket for Coles' physical stores (Third SOAF)<sup>371</sup>



<sup>371</sup> Third SOAF, Exhibit 3, CB Tab 10 (p.220).

Figure 2. Example tickets for Coles Online and the Coles App (Third SOAF)<sup>372</sup>



**Second CPA request**

- 17 On 7 November 2022, KCA notified Coles of a CPA request for 8 products in the Paper Towel category and 18 products in the Facial Tissue category (**CPA 2**), including the Viva Sample Product.<sup>373</sup> KCA informed Coles that the CPA would come into effect for all orders placed on or after 6 February 2023.<sup>374</sup>
- 18 KCA requested an increase in the list price of the Viva Sample Product from \$█ to \$█ and provided an increase in the RRP from \$5.50 to \$6.50.<sup>375</sup> At the time of the CPA 2 request, the Viva Sample Product was on the Down Down program and sold at a promotional price of \$4.50.<sup>376</sup>

<sup>372</sup> Third SOAF, Exhibit 3, CB Tab 10 (p.233).

<sup>373</sup> Exhibit 377, CB Tab 803 (p.2577); Exhibit 378, CB Tab 804 (p.2578); Exhibit 379, CB Tab 805 (Excel).

<sup>374</sup> Exhibit 377, CB Tab 803 (p.2577).

<sup>375</sup> Exhibit 379, CB Tab 805 (Excel) (row 7).

<sup>376</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6730).

- 19 Emma Bates (Category Manager of Paper & Kitchen Needs) was responsible for negotiations with KCA in respect of CPA 2.
- 20 Ms Bates received from Coles' VMO and provided to KCA three rounds of VMO analysis in respect of the CPA 2 request.
- (a) The VMO's initial point to point analysis validated a 5.2% cost increase in respect of the Viva Sample Product (compared to KCA's request of 18.2%).<sup>377</sup>
  - (b) The VMO's subsequent point to point analysis based on additional information provided by KCA validated a 5.7% cost increase in respect of the Viva Sample Product.<sup>378</sup>
  - (c) The VMO's final analysis based on further additional information provided by KCA validated an 11.2% cost increase in respect of the Viva Sample Product.<sup>379</sup>
- 21 On 20 December 2022, KCA proposed a new promotional plan for the products that were the subject of the CPA 2 request.<sup>380</sup> KCA submitted several proposals to Coles during the course of the negotiations.<sup>381</sup> In each promotional plan, KCA proposed a Down Down price of \$5.50 off the recommended white ticket price of \$6.50 and a pulse of \$4.40.
- 22 Between November 2022 and February 2023, Coles and KCA engaged in negotiations with respect to KCA's CPA 2 request and proposed promotional plan.<sup>382</sup>
- 23 On 23 January 2023, Coles moved the Viva Sample Product from \$4.50 on the Down Down Program to a white ticket at the same price of \$4.50.<sup>383</sup>
- 24 On 3 February 2023, Ms Bates accepted KCA's CPA 2 request and revised promotional plan.<sup>384</sup>
- 25 On 6 February 2023, CPA 2 became effective and the cost price of the Viva Sample Product increased from \$[REDACTED] to \$[REDACTED].<sup>385</sup>
- 26 On 7 February 2023, Coles increased the white ticket price of the Viva Sample Product from \$4.50 to \$6.50, which matched Woolworths' price of \$6.50.<sup>386</sup> The Viva Sample Product was sold at \$6.50 from 7 February 2023 to 5 March 2023, being a period of 27 days.<sup>387</sup> During this period, a total of 35,116 units were sold,<sup>388</sup> equating to an average of 9,104 units per week.<sup>389</sup>
- 27 From 6 March 2023, the Viva Sample Product was offered on the Down Down program at a promotional price of \$5.50 (i.e., CPA 2 Price 3).<sup>390</sup>
- 28 The promotion was jointly funded by Coles and KCA, with KCA agreeing to contribute \$[REDACTED] per unit sold.<sup>391</sup> KCA also agreed to provide supplier non-promotional funding for the duration of CPA 2 Price 2.<sup>392</sup>

<sup>377</sup> Exhibit 380, CB Tab 807 (p.2581); Exhibit 381, CB Tab 808 (Excel) (row 6); Exhibit 382, CB Tab 809 (p.2584); Exhibit 383, CB Tab 810 (Excel) (row 6); Exhibit 384, CB Tab 811 (p.2587); Exhibit 385, CB Tab 812 (Excel) (row 6).

<sup>378</sup> Exhibit 388, CB Tab 817 (p.2599); Exhibit 389, CB Tab 818 (Excel) (row 6); Exhibit 413, CB Tab 972 (p.4127).

<sup>379</sup> Exhibit 391, CB Tab 828 (p.2634); Exhibit 392, CB Tab 829 (Excel) (row 6); Exhibit 393, CB Tab 830 (Excel) (row 6); Exhibit 397, CB Tab 848 (p.2689); Exhibit 398, CB Tab 849 (Excel) (row 6).

<sup>380</sup> Exhibit 220, CB Tab 821 (p.2606); Exhibit 221, CB Tab 822 (Excel) (Sheet entitled 'In\_New', row 12).

<sup>381</sup> Exhibit 226, CB Tab 850 (p.2697); Exhibit 227, CB Tab 851 (p.2705); Exhibit 228, CB Tab 852 (Excel) (Sheet entitled 'In\_New'); Exhibit 403, CB Tab 865 (p.2756); Exhibit 404, CB Tab 866 (Excel) (Sheet entitled 'In\_New', row 12).

<sup>382</sup> Exhibit 386, CB Tab 813 (p.2590); Exhibit 387, CB Tab 814 (Excel); Exhibit 396, CB Tab 846 (p.2674); Exhibit 402, CB Tab 862 (p.2734); Exhibit 406, CB Tab 872 (p.2805).

<sup>383</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6730).

<sup>384</sup> Exhibit 406, CB Tab 872 (p.2805).

<sup>385</sup> Exhibit 406, CB Tab 872 (p.2805).

<sup>386</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6730); Exhibit 407, CB Tab 876 (p.2821); Exhibit 408, CB Tab 877 (Excel) (Sheet entitled 'Summary', cell AH54).

<sup>387</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6730).

<sup>388</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6730).

<sup>389</sup> The weekly average calculated as total volume divided by total days and then multiplied by 7: (35,116/27) x 7 = 9,104.

<sup>390</sup> Amended Second SOAF, Exhibit 2, 3SCB Tab 1056 (p.6730).

<sup>391</sup> Edwards Report, Exhibit 305, CB Tab 23, Appendix B (Excel) (cells J8486-J8545).

<sup>392</sup> Edwards Report, Exhibit 305, CB Tab 23, Appendix B (Excel) (cells I8459-I8485).

29 Examples of the Down Down tickets that were used by Coles for this promotion appear at Figures 3 and 4. Each of these tickets referred to CPA 2 Price 2 and March 2023, being the month the Viva Sample Product was last sold at CPA 2 Price 2

Figure 3. Example ticket for Coles' physical stores (Third SOAF)<sup>393</sup>



<sup>393</sup> Third SOAF, Exhibit 3, CB Tab 10 (p.220).

Figure 4. Example tickets for Coles Online and the Coles App (Third SOAF)<sup>394</sup>

**DOWN DOWN**



Viva Paper Towel | White Select A Size

**\$5.50** Was \$6.50 Mar 2023

3pack | \$2.04 per 100ea

Add 1 for \$5.50



Viva Paper Towel  
| White Select A Size  
| 3pack  
**\$5.50**  
\$2.04 per 100ea | Was \$6.50 on  
Mar 2023  
★★★★★ 0.0 (0)

Add

[Home](#) Viva Paper Towel | Whit...



**\$5.50 ea**  
\$2.04 per 100ea | Was \$6.50 on Mar 2023

Viva Paper Towel | White Select A Size  
| 3pack

Add to trolley

Home Favourites Lists Trolley More

**DOWN DOWN**

Located in aisle  
Viva Paper Towel  
| White Select A Size | 3pack

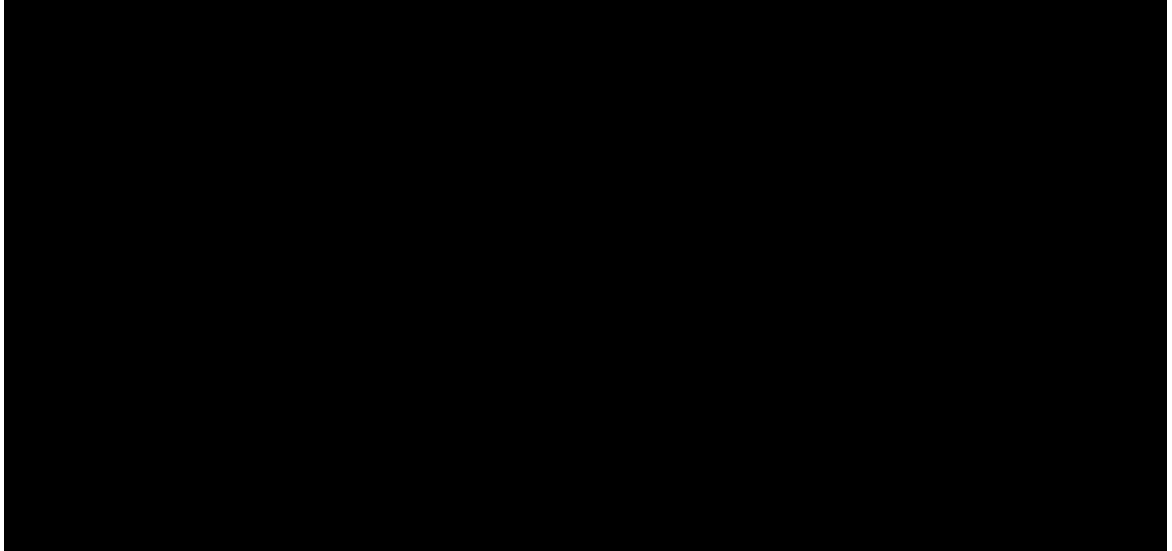
**\$5.50 ea**  
\$2.04 per 100ea | Was \$6.50  
on Mar 2023

Add to list Add to trolley

<sup>394</sup> Third SOAF, Exhibit 3, CB Tab 10 (p.234).

30 The below graph from the Edwards Report compares the Viva Sample Product's retail price with its cost price less total supplier funding, being Coles' cost to acquire the product, for the period from 1 January 2021 to 4 May 2023.<sup>395</sup>

*Figure 5. Extract of Edwards Report, Appendix C.10*



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<sup>395</sup> Edwards Report, Exhibit 305, CB Tab 23 (p.1490).