



Federal Court of Australia

District Registry: Victoria Registry

Division: General

No: VID973/2024

**AUSTRALIAN COMPETITION AND CONSUMER COMMISSION**

Applicant

**COLES SUPERMARKETS AUSTRALIA PTY LTD (ACN 004 189 708)**

Respondent

**ORDER**

**JUDGE:** Justice O'Bryan

**DATE OF ORDER:** 13 November 2025

**WHERE MADE:** Sydney

**THE COURT ORDERS BY CONSENT THAT:**

**Discovery**

1. Pursuant to rules 20.13 and 20.15 of the *Federal Court Rules 2011* (Cth) (**Rules**), the Respondent is to give discovery of all documents (including all sources and attachments) in the categories set out in **Annexure D** to these orders (to be read together with **Annexures A, B and C**) by 12.00 pm on 27 November 2025.
2. Pursuant to rules 20.13(4), 20.15(1)(b) and (d), and 20.15(2)(b) of the Rules, the Respondent is to produce the discovered documents electronically:
  - (a) where the document contains text, in a text searchable document format;
  - (b) together with a load or MDB file; and
  - (c) in respect of each document, identify which of the categories set out in Annexure D to these orders applies to the document.

**Suppression or non-publication applications**

3. By 16 January 2026, the Respondent file and serve any application for suppression or non-publication orders under section 37AF of the *Federal Court of Australia Act 1976* (Cth) in respect of:
  - (a) the discovered documents; and



- (b) evidence filed or documents referred to in any tender list, together with submissions and supporting evidence.
- 4. By 30 January 2026, the Applicant file and serve any evidence and submissions in response to any application made pursuant to paragraph 3 above.
- 5. Any application made pursuant to paragraph 3 above be listed for hearing on a date to be fixed on or after 3 February 2026.

### **Evidence**

- 6. By 19 December 2025, the Applicant file and serve any documentary evidence in reply.

### **Court Book**

- 7. By 12 December 2025, the Applicant serve on the Respondent a draft index of the Court Book for the trial.
- 8. By 9 January 2026, the Respondent serve on the Applicant an amended version of the draft index of the Court Book setting out any further documents proposed to be included in the Court Book.
- 9. By 16 January 2026, the Applicant serve on the Respondent a proposed final index to the Court Book.
- 10. By 21 January 2026, the Applicant file and serve a copy of the agreed Court Book in electronic form, which:
  - (a) is produced in a text-recognised PDF format;
  - (b) is paginated sequentially throughout; and
  - (c) is divided into folders of documents such that each folder comprises a single PDF file and the file name of each PDF file is the folder number; and
  - (d) each folder (being a PDF file) contains electronic bookmarks to each document in that folder.
- 11. Subject to further order of the Court, a document included in the Court Book:
  - (a) shall not form part of the evidence at the trial unless specifically tendered and admitted into evidence; and
  - (b) shall be treated as tendered and admitted if referred to at the trial (including in written or oral submissions) and no objection is taken.



### **Written submissions**

12. By 16 January 2026, the Applicant file and serve a written outline of opening submissions.
13. By 6 February 2026, the Respondent file and serve a written outline of opening submissions.

### **Objections**

14. By 23 January 2026, the parties exchange lists of objections to evidence (and brief reasons for the objections).
15. By 2 February 2026, the parties exchange responses to the lists of objections to evidence (and brief reasons for the responses).
16. By 9 February 2026, the parties file and serve a joint list of any evidentiary objections which remain unresolved.

### **Joint bundle of authorities**

17. By 10 February 2026, the parties confer and agree a joint list of authorities and legislation on which the parties intend to rely.
18. By 11 February 2026, the Applicant file and serve joint bundle of the authorities and legislation on which the parties intend to rely in electronic form in text-recognised PDF format and containing electronic bookmarks to each authority in the bundle.

### **Trial schedule**

19. By 6 February 2026, the parties confer and agree on a trial schedule.

### **Other matters**

20. Costs be reserved.
21. There be liberty to apply.

Date orders authenticated: 14 November 2025

  
Registrar

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

This Order has been amended in accordance with r 39.05(g) of the *Federal Court Rules 2011*.





## **Annexure A – Defined terms**

For the purpose of Annexures C and D to these orders, the following words are defined.

- A. **Affected Products Schedule** means the schedule filed by the Applicant as particulars in this proceeding on 11 October 2024.
- B. **Annexure B Product(s)** means one or more of the products listed in Annexure B to these orders.
- C. **Annexure C Product(s)** means one or more of the products listed in Annexure C to these orders.
- D. **Concise Response** means the Concise Response filed in this proceeding by the Respondent on 29 November 2024.
- E. **Concise Statement** means the Concise Statement filed in this proceeding by the Applicant on 23 September 2024.
- F. **CPA** has the meaning given in paragraph 2 of the Concise Response.
- G. **CPA Request** means a request or proposal received from a supplier by the Respondent (whether formally or informally) for a CPA in respect of a product.
- H. **Decision-Maker** means a Senior Manager or Director of the Respondent, or any person who was a member of one of the following teams or held one of the following positions, during the period from August 2021 to May 2023:
  - (a) Merchandise Compliance Team (excluding graduates or junior staff);
  - (b) Pricing and Value Team (also known as the Value Team);
  - (c) Value Forum (also known as the Value and Trade Forum);
  - (d) Business Unit General Manager;
  - (e) Business Category Manager; and/or
  - (f) Category Manager.
- I. **Director** has the meaning given by section 9 of the *Corporations Act 2001* (Cth).



- J. **Document** means any document in the possession, power or custody of the Respondent contained in the mailboxes of the category managers or assistant category managers who were responsible for considering the CPA Requests or Supplier Funding Change Requests, approving the final outcome of that CPA Request or Supplier Funding Change Request, and approving the product being included or reincluded to the Down Down Program following the CPA or Supplier Funding Change Request.
- K. **'Down Down' price** has the meaning given in paragraph 9(c) of the Concise Statement.
- L. **Down Down Program** has the meaning given in paragraph 5 the Concise Statement.
- M. **Relevant Period** means the period from 1 January 2021 to 4 May 2023 (inclusive).
- N. **Senior Manager** has the meaning given by section 9 of the *Corporations Act 2001* (Cth).
- O. **Supplier Funding** means any discounts, rebates, offsets, allowances, adjustments, and/or funding agreed between the Respondent and the supplier and relating, in whole or in part, to a particular product.
- P. **Supplier Funding Change Request** means a request or proposal received from a supplier by the Respondent (whether formally or informally) to change any aspect of the Supplier Funding arrangement in place with respect to a product.
- Q. **Trade Plan** has the meaning given in paragraph 3 of the Concise Response.



**Annexure B – List of Annexure B Products for discovery orders**

1.	BRAGG SEASONING NUTRITIONAL YEAST PREMIUM QUALITY: 127 GRAM
2.	COLGATE TOTAL ORIGINAL TOOTHPASTE 200G :200 GRAM
3.	DANONE YOPRO YOGHURT: VANILLA: 700 GRAM
4.	KARICARE FOLLOW ON FORMULA: 900 GRAM
5.	LURPAK SLIGHTLY SALTED SPREADABLE TUB 250 GRAM: BUTTER: 250 GRAM
6.	REXONA ANTI PERSP DEODORANT: 250 ML



**Annexure C – List of Annexure C Products for discovery orders**

1.	ARNOTTS SHAPES MULTIPACK VARIETY 15 PACK: 375 GRAM
2.	CCA SOFT DRINK: COLA: 2 LITRE
3.	COLES FINEST QUINCE PASTE 100G: 100 GRAM
4.	NATURE'S GIFT ADULT ALL BREEDS WET DOG FOOD LOAF CHICKEN-RICE & VEGETABLES 1.2KG: CHICKEN VEGETABLE AND RICE: 1.2 KG
5.	PEDIGREE ADULT WET DOG FOOD WITH 5 KINDS OF MEAT LOAF 1.2KG CAN: FIVE KINDS MEAT: 1.2 KG
6.	VIVA PAPER TOWEL WHITE SELECT A SIZE 3 PACK: 3 PACK



## **Annexure D – Discovery categories**

### ***Interpretation***

1. The scope of each discovery category below is limited to:
  - (a) documents which have not already been provided to the Applicant by the Respondent during the Applicant’s investigation of this matter prior to the commencement of the proceeding on 23 September 2024; and
  - (b) except where otherwise stated, documents created, and communications sent or received, during the Relevant Period.
2. Defined terms have the meanings set out in Annexure A.

### ***Discovery categories***

1. All Documents, including Documents recording meetings or phone calls, that comprise or record communications between Coles and the supplier of an Annexure B Product that refer to the inclusion or re-inclusion of any Annexure B Product on the Down Down Program, including any such communications that occur when negotiating a CPA Request or Supplier Funding Change Request relating to the price change instances referred to in the Affected Products Schedule.
2. Documents sent to, sent from, or created by a Decision-Maker that refer to, consider, or record any decisions made regarding the inclusion or re-inclusion of any Annexure B Product on the Down Down Program following a CPA Request or a Supplier Funding Change Request relating to the price change instances referred to in the Affected Products Schedule, including such Documents sent or created prior to the effective date of any such price change instances.
3. All Trade Plans received by the Respondent from suppliers which relate to the price change instances listed in the Affected Products Schedule with respect to an Annexure B Product or an Annexure C Product, including any:
  - (a) draft Trade Plans;
  - (b) finalised or approved Trade Plans;



- (c) revised Trade Plans; and
  - (d) covering emails or other communications which accompanied such Trade Plans.
4. Any other documents referred to by the Respondent in its proposed evidence or tender list.