

NOTICE OF FILING

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

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Form 59

Rule 29.02(1)

Affidavit

No. VID 973 of 2024

Federal Court of Australia

District Registry: Victoria

Division: General

Australian Competition and Consumer Commission

Applicant

Coles Supermarkets Australia Pty Ltd (ACN 004 189 708)

Respondent

Affidavit of: James Andrew Cubbon

Address: 800 Toorak Road, Hawthorn East, Victoria

Occupation: Commercial Development Manager, BU Strategy and Commercial at Coles

Date: 20 November 2025

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[Version 3 form approved 02/05/2019]

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I, James Andrew Cubbon of 800 Toorak Road, Hawthorn East, Victoria, Commercial Development Manager, BU Strategy and Commercial at Coles, affirm:

A. INTRODUCTION

- 1 I am the Commercial Development Manager, BU Strategy and Commercial at Coles Supermarkets Australia Pty Ltd (**Coles**).
- 2 Shown to me at the time of affirming this affidavit and exhibited to this affidavit and marked **Exhibit JC-1** is a consolidated set of documents. In this affidavit, I refer to each document by reference to the relevant tab number in Exhibit JC-1 and where convenient by the document's identification number, stamped on the top right-hand corner of the first page. Where documents in Exhibit JC-1 have attachments, the host document is numbered, for example, tab 1, with each of the attachments numbered tab 1.1 and tab 1.2 accordingly.

B. EMPLOYMENT HISTORY

- 3 I have been employed by Coles since April 2011 in the following roles:
- (a) Category Demand Planner from 11 April 2011 to 11 December 2011;
 - (b) Replenishment Manager from 12 December 2011 to 16 February 2014;
 - (c) Category Manager – BBQ Chicken and Salads from 17 February 2014 to 21 August 2016;
 - (d) Category Manager – Sliced Meats and Smallgoods from 22 August 2016 to 12 November 2017;
 - (e) Profit Optimisation Manager from 13 November 2017 to 5 January 2020;
 - (f) Tobacco Buyer from 6 January 2020 to 14 February 2021;
 - (g) Senior Category Manager – Soft Drinks, Cold Drinks, Energy and Sports from 15 February 2021 to 28 September 2022;
 - (h) Category Manager – Pasta, Rice and Noodles from 29 September 2022 to 5 October 2025; and
 - (i) Commercial Development Manager, BU Strategy and Commercial since 6 October 2025.
- 4 Unless stated otherwise, the matters to which I refer in this affidavit concern the period from February 2021 to September 2022 when I was Senior Category Manager of Soft Drinks, Cold Drinks, Energy and Sports.

C. THE SOFT DRINKS, COLD DRINKS, ENERGY AND SPORTS CATEGORIES

- 5 The role of Senior Category Manager of Soft Drinks, Cold Drinks, Energy and Sports sat within the Beverages business category and the broader Grocery business unit. I reported to the Business Category Manager (**BCM**) of Beverages, John Andrew.
- 6 The Beverages business category comprises six categories. I had responsibility for three of these categories:
- (a) Soft Drinks;
 - (b) Cold Drinks; and
 - (c) Energy, Sport & Iced Tea (which was generally referred to simply as Energy and Sports).

- 7 These categories cover products including carbonated and non-carbonated soft drinks, energy drinks, sports drinks and iced tea. The remaining categories within the Beverages business category (Juices & Cordials, Better For You and Water) were managed by a different Category Manager reporting to the BCM of Beverages.
- 8 As Senior Category Manager of Soft Drinks, Cold Drinks, Energy and Sports, my responsibilities included:
- (a) Developing and delivering upon a category plan, which set out the overarching strategy, priorities and financial targets for the category (including sales and margin growth targets).
 - (b) Making decisions about the types and varieties of products that were ranged in my categories. This involved conducting annual range reviews to assess the performance of different product lines, updating our range to meet customer preferences (including adding new products and removing under-performing products) and optimising layout to improve sales.
 - (c) Setting and reviewing non-promotional and promotional retail prices in my categories, sometimes with input from the BCM of Beverages and/or the Pricing and Value team. I discuss setting retail prices in more detail at Section D below.
 - (d) Monitoring budgets, financial targets and market share, including tracking progress against our category budget and monitoring our performance compared to competitors such as Woolworths and Aldi. The Soft Drinks category generally operated at a lower margin than other categories within the Beverages business unit in percentage terms, but generated more sales in absolute dollar terms.
 - (e) Frequent engagement with suppliers and management of supplier relationships. In the Soft Drinks category, the two major suppliers were Asahi Beverages and Coca-Cola Europacific Partners (formerly Coca-Cola Amatil) (**CCEP**), and there were also a range of smaller suppliers, including Bundaberg Brewed Drinks, CAPI and Nexba.
 - (f) Ensuring regulatory and legal compliance in my categories. In the Soft Drinks category, this included compliance with state and territory container deposit schemes as well as compliance with Coles' internal policies, such as the promotional guardrails and the Cost Price Alteration (**CPA**) policy.
 - (g) Managing a category team and my direct reports. During the period from October 2021 to January 2022 (which I discuss in detail in sections E and F below), my direct reports were:
 - (i) Sam Hamza, Assistant Category Manager (**ACM**), whose responsibilities included trade and promotional planning, as well as handling smaller negotiations with suppliers; and
 - (ii) Jenny Burns, Business Category Coordinator (**BCC**), whose responsibilities included actioning or 'keying' promotions and changes to supplier funding, cost prices and retail prices.
- 9 In my categories, I used the 'good, better, best' framework to ensure Coles stocked products for customers at a variety of price points. For example, in the Soft Drinks category, Coles ranged a 'good' tonic water (Coles' own brand product), a 'better' tonic water (Schweppes), and a 'best' tonic water (Capi or Fever Tree). In the 2L Cola range, Coles sold a 'good' product (LA Ice cola-flavoured soft drink) and a 'better' product (Coca-Cola or Pepsi).

- 10 As Senior Category Manager of Soft Drinks, I considered CCEP to be a very important supplier relationship. CCEP was one of our largest suppliers and was responsible for approximately 60% of proprietary Soft Drinks sales and approximately 55% of Soft Drinks sales overall. Optimising our relationship with CCEP was critical for the success of the Soft Drinks category and the Beverages business unit as a whole. 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. In my experience, foot traffic to Coles (i.e. entire baskets of goods) can be attracted or lost based on the price and availability of a product like Coca-Cola, so I would generally discuss price changes for Coca-Cola products with my BCM and the Pricing and Value team in advance.

D. RETAIL PRICES AND PROMOTIONS

- 11 My aim when setting retail prices was to offer the product for sale at the optimal price, being a price that would communicate the value that the customer would receive, drive sales volumes and help me to reach my sales and profit targets for the category. Communicating value to customers could mean offering the product at a competitive price that would appeal to customers. This could mean matching or beating a competitor's price on a white ticket, or it could mean offering the product for sale at a promotional price that matched or was lower than a competitor's price.
- 12 When setting prices for products, I typically considered the following factors:
- (a) The supplier's recommended retail price (**RRP**) and promotional recommended retail price (**PRRP**), in the context of the supplier's promotional plan. While retail pricing is ultimately a decision for the retailer, I placed a lot of weight on supplier recommendations. I generally would not set retail prices higher than the supplier's recommended price, because I understood that suppliers provided recommended pricing across the market and setting the price higher than the recommended price would likely be uncompetitive.
 - (b) Pricing of competitors such as Woolworths and Aldi. I received regular reporting from the Coles Pricing and Value team about the prices of comparable products at Woolworths and Aldi.
 - (c) Where the product fit into the broader range. I would typically apply the overarching principle of 'bigger pack, better value'. I also considered the pricing of comparable lines in the category. For example, I would expect the pricing of Coca-Cola to be broadly similar to the pricing of Pepsi.
 - (d) Container Deposit Schemes (**CDS**). During my time as Senior Category Manager of Soft Drinks, Cold Drinks, Energy and Sports, some Australian states and territories operated CDS to increase recycling and reduce litter. A small deposit was added to the retail price of eligible beverage products in those states and territories, which was refunded to the consumer when they returned the empty container to a collection point. Between 1 January 2021 and 4 May 2023, Victoria did not have a CDS. For this reason, references to specific prices in this affidavit are non-CDS prices. However, the documents contained in Exhibit JC-1 contain references to CDS pricing outside of Victoria.
- 13 Compared to the broader Grocery business unit, Soft Drinks over-indexed in promotional participation. Around 60% of sales in the Soft Drinks category occurred when a product was on promotion, compared to around 40% in Grocery more broadly. Supplier funding allowed Coles to offer Soft Drinks products for sale to customers at a discounted promotional price. Without

supplier funding, offering products like Coca-Cola, Fanta and Sprite at a promotional price would have required Coles to sell the products at a price below cost.

- 14 Planning and executing promotions was a detailed process that required significant planning ahead of time. Generally, promotional planning for me and my team involved the following steps:
- (a) A promotional plan was typically agreed with the supplier more than six months before the start of the financial year. The promotional plan would set out the promotions scheduled for each of the supplier's products on a week-by-week basis across the financial year, including the promotional mechanic (e.g. Special, Down Down), depth (e.g. half price, 30% off) and PRRP for each promotion. In my experience, promotional plans were set by reference to the nature of each product, its position in the supplier's range and the broader category (including other promotional activity), and the P&L implications. For example, Coca-Cola 24 pack and 30 pack cans were typically on a Hi-Lo strategy on alternating weeks, reflecting the fact that these are bulk products and customers can wait to buy them on sale, while Coca-Cola 2L bottles were on a Down Down strategy.
 - (b) Once a promotional plan had been agreed, my category team would request a Promotional Advice Form (PAF) from the supplier. The PAF contained all of the details needed to run the promotion, including the product name and SKU, the type of promotion, promotional start and end dates, supplier funding and, in most cases, the supplier's PRRP.
 - (c) Once we received a PAF, it would be keyed by a member of the category team (usually the BCC). 'Keying' describes the process of inputting the details of a promotion from a PAF into Coles' promotional management system. Our aim was to key promotions into Coles' system six months in advance to allow time for the promotion to be executed effectively, for example, to ensure availability of adequate stock and affix promotional tickets in-store. However, it was sometimes necessary to make late changes for reasons like stock availability or to respond to pricing changes in the market.
 - (d) 20 weeks out from implementation, each category team was required to nominate products to be featured in the catalogue or on aisle ends.

E. CCEP's CPA REQUEST

- 15 From time-to-time, suppliers engaged with me in relation to requests for increases to the list price of their products, which were known within Coles as CPA requests. Most suppliers submitted an updated promotional plan and promotional funding proposal alongside their CPA request. This was typical because the cost and retail prices were inputs into the promotional plan. If the underlying cost and retail prices changed, promotional planning and promotional funding also needed to be renegotiated.
- 16 I started in the role of Senior Category Manager of Soft Drinks, Cold Drinks, Energy and Sports in February 2021. By February 2022, there had been 14 CPA requests in the Soft Drinks category. Based on my experience, this was an unusually high number of CPA requests.
- 17 One of the CPA requests that I was involved in around this time was foreshadowed by CCEP on 29 October 2021 and submitted on 7 December 2021. A copy of the 29 October 2021 email (COL.500.008.1332) and its attachment (COL.500.008.1333) is at **tabs 1 to 1.1 of Exhibit JC-1**. A copy of the 7 December email (COL.500.008.1357) and its attachment (COL.500.008.1359) is at **confidential tab 2 and tab 2.1 of Exhibit JC-1**.

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- 18 CCEP's CPA request impacted a large number of CCEP beverage products, including CCA Soft Drink: Cola: 2 Litre (the **Coca-Cola 2L Product**) and other Coca-Cola and flavoured soft drink products in various pack sizes. The inclusion of 10, 24 and 30 pack cans of Coca-Cola in this CPA request was particularly significant, as bulk can products were responsible for the majority of sales in the Soft Drinks category and had been subject to a CPA in July 2021, only some months earlier.
- 19 I was involved in negotiating CCEP's CPA request between December 2021 and January 2022, after the 7 December 2021 CPA request had been submitted. The CPA negotiations were primarily conducted with Brooke Nicol (Senior National Business Manager for Coles Supermarkets at CCEP) and Nick Hatzioannou (National Business Manager for Coles Supermarkets at CCEP). Written communications that I sent, received or was copied to in relation to CCEP's CPA request include those at **tabs 1, 3 to 5, 9 and 11 to 19 (including any attachments, some of which are confidential) and confidential tabs 2, 6 to 8 and 10 of Exhibit JC-1.**
- 20 While CPA requests are generally managed at the Category Manager level, BCMs may take a more hands-on role in CPA negotiations with particularly large or influential suppliers. Given CCEP's size and importance in the Beverages business category, I worked with the BCM of Beverages, John Andrew, to negotiate CCEP's CPA request.
- 21 CCEP did not provide any reasons for its CPA request. Generally, I would expect suppliers to provide some detail about how they reached the quantum of their CPA request. However, this was not unusual for CCEP. Historically, CCEP has not shared this information with Coles.
- 22 I was aware from CPA requests made by other suppliers in 2021 that Soft Drinks suppliers were facing higher costs for packaging (including glass and plastic) and distribution, particularly the cost of international shipping. Suppliers that manufactured their products in Australia still felt the flow-on effect of cost increases in international shipping from suppliers of cost inputs like packaging.
- 23 Coles agreed to accept CCEP's 2.2% CPA request in full (including a CPA of 5% for the Coca-Cola 2L Product) on 12 January 2022. A copy of my email to CCEP accepting their CPA request (COL.500.008.1339) is at **confidential tab 10 of Exhibit JC-1.**

F. THE PRICE INCREASE FOR THE COCA-COLA 2L PRODUCT

- 24 As part of its CPA request, CCEP proposed to increase the list price for a carton of eight bottles of the Coca-Cola 2L Product from \$**RED** to \$**RED** in Victoria, an increase of \$1.40 or 5%. This is shown at cells U67:Y67 of the 'Coles Supermarket Price List' attached to CCEP's CPA request email. A copy of the email (COL.500.008.1357) and its attachment (COL.500.008.1359) is at **confidential tab 2 and tab 2.1 of Exhibit JC-1.**
- 25 Shortly after submitting its CPA request, CCEP provided me with several documents containing updated RRP's, PRRP's, recommended promotional mechanics and sales and volume projections for the products impacted by its CPA request. In particular:
- (a) On 8 December 2021, the day after its CPA request, CCEP sent me an email which attached a document containing new RRP's, PRRP's and recommended promotional mechanics for the products impacted by its CPA request. A copy of the email (COL.500.028.0653) and its attachment (COL.500.028.0655 (at .0657)) is at **tabs 3 and 3.2 of Exhibit JC-1.** The attachment at **tab 3.2** shows that CCEP recommended that Coles increase the retail price of the Coca-Cola 2L Product to a 'shelf RRP' of \$4.40 on 2 February 2022 before returning the product to Down Down at a price of \$3.50 in late April.

- (b) On 20 December 2021, CCEP sent me another email which attached a document titled 'Coles CCEP Value Chains Jan 31 2022 Price Rise'. 'Value Chains' was a specific term used by CCEP. The Value Chains document provided a summary of certain aspects of CCEP's existing and new promotional plan for the products impacted by the CPA request, including the recommended promotional mechanics for each product and the recommended prices and supplier funding applicable to each promotional mechanic. For example, the Value Chains document shows that CCEP recommended a Down Down price of \$3.50 for the Coca-Cola 2L Product following the CPA (cells CR3:CR5), with supplier funding of \$RE per unit (cell CR46). A copy of the email (COL.500.028.0189) and its attachment (COL.500.028.0197) is at **tab 5 and confidential tab 5.3 of Exhibit JC-1**.
- (c) On 20 December 2021, I requested that CCEP provide additional information about the impact of the CPA request on supplier funding, sales and Coles' margin. On 21 December 2021, CCEP responded to my email and provided me with a document titled 'Coles CCEP Price Rise Summary', which contained volume, sales and margin projections for the products impacted by the CPA request. A copy of this email (COL.500.028.0171) and its attachment (COL.500.028.0174) is at **confidential tabs 6 and 6.1 of Exhibit JC-1**. The column in the attachment titled 'Variance' shows that, for the Coca-Cola 2L Product, sales volumes were projected to decrease by approximately 460,000 units (cell AH9), sales dollars were projected to increase by \$2.11 million (cell AH11) and retailer margin was projected to increase by approximately \$REDA or RE% (cells AH20:AH21) under the 'New – Post Price Rise' promotional plan compared to the 'Current' promotional plan.
- 26 On 11 January 2022, the day before I accepted CCEP's CPA request, I wrote to the Coles Pricing and Value team to outline my planned price changes for the Coca-Cola 2L Product. My email (COL.500.011.0292) and its attachment (COL.500.011.0317) are at **tabs 9 and 9.1 of Exhibit JC-1**. The attachment shows my planned price changes for the Coca-Cola 2L Product at a high level in the row titled 'CCA 2ltr' (COL.500.011.0317 (at .0317)). I planned to increase the price of the Coca-Cola 2L Product to \$4.40 on 2 February 2022 and return the Coca-Cola 2L Product to Down Down at a price of \$3.50 following a price establishment period of 12 weeks. I considered Down Down was the right strategy for the Coca-Cola 2L Product, as it offered customers consistent value on the largest bottle of Coca-Cola. When planning for these pricing movements, I had regard to CCEP's recommendations and Coles' promotional guardrails (about which I had received training from the Pricing and Value team).
- 27 The Coca-Cola 2L Product moved from a \$2.75 Down Down ticket to a \$2.75 white ticket on 12 January 2022. At the time, Coles' promotional guardrails required the Down Down price to be "honoured" on a white ticket (i.e. the price would stay the same but the ticket would change from a Down Down ticket to a white ticket) for at least two weeks when a product was removed from Down Down.
- 28 On 26 January 2022, the Coca-Cola 2L Product moved onto a multi-save ticket for 7 days as part of a pre-arranged promotion. A copy of the email arranging this promotion (COL.500.028.0541) and the attached PAF (COL.500.028.0549) is at **tab 13 and confidential tab 13.1 of JC-1**. During this time, and as shown in row 60 of the attached PAF, the product was sold for \$2.75 or two for \$5.00, with supplier funding of \$RE per unit in Victoria.
- 29 On 2 February 2022, the Coca-Cola 2L Product moved to the higher white ticket price of \$4.40, in line with CCEP's recommendation. When setting the new white ticket price, CCEP's RRP was my key consideration. Consistent with my general approach outlined at paragraph 12(a) above, I was

guided by this RRP. I did not consider setting the white ticket price higher than this RRP, as doing so would likely make Coles uncompetitive in the market.

- 30 The promotional guardrails policy that applied at Coles in February 2022 required the new white ticket price to be held for a total of 12 weeks before the product could return to Down Down. Hi-Lo promotions were permitted during this time, subject to Coles' standard price establishment rules. Coles and CCEP had planned to commence Hi-Lo promotions for the Coca-Cola 2L Product in March 2022, but in late January it was decided that these promotions should be brought forward. I cannot recall the reason for this decision, but a copy of an email that refers to bringing the Hi-Lo promotions forward (COL.500.008.1479) and its attachment (COL.500.008.1481) is at **tab 14 and confidential tab 14.1 of Exhibit JC-1**. The Coca-Cola 2L Product is referred to at rows 36 and 44 of the attachment. Consistent with this PAF, the Coca-Cola 2L Product was sold on Special for \$3.50 during two 7-day periods beginning 9 February 2022 and 23 February 2022.
- 31 Between 3 February 2022 and 15 March 2022, other than when it was on Special, the Coca-Cola 2L Product was offered for sale on a yellow multi-save ticket. During these times, customers could choose to purchase the product at the non-promotional price of \$4.40 or purchase two units for \$7. Both the non-promotional price and the "two for \$7" price were displayed on the multi-save ticket. CCEP provided supplier funding of \$RE per unit to support the multi-save promotions. The correspondence and PAFs relating to these promotions (COL.528.001.0032, COL.528.001.0033, COL.501.045.5111 and COL.501.045.5112) are at **tabs 15 and 16 and confidential tabs 15.1 and 16.1 of Exhibit JC-1**. I considered that multi-save promotions were a way to provide value to customers and drive sales volumes while offering the product to customers at the non-promotional single-unit price. My recollection is that a significant number of customers purchased the product at the single-unit price during this period.
- 32 While it was always intended that the Coca-Cola 2L Product would return to Down Down, it was decided in March 2022 to return the Coca-Cola 2L Product to Down Down earlier than originally planned (as detailed below). Coles' promotional guardrails policy was amended in March 2022, reducing the price establishment period from 12 weeks to 4 weeks. I considered the \$3.50 Down Down price offered customers the best value, and the sooner we could return the Coca-Cola 2L Product to a lower promotional price, the better for both Coles and its customers.
- 33 On 8 March 2022, CCEP agreed to bring forward the Down Down implementation date for the Coca-Cola 2L Product from 27 April 2022 (being 12 weeks after the product had moved to the \$4.40 white ticket price) to 23 March 2022. A copy of an email setting out the minutes from the meeting where this was agreed (COL.500.028.0635) is at **tab 17 of Exhibit JC-1**.
- 34 The next day, on 9 March 2022, CCEP provided Coles with a PAF for the Down Down promotion to start on 23 March 2022. A copy of the email (COL.500.028.0175) and the attached PAF (COL.500.028.0177) is at **tab 18 and confidential tab 18.1 of Exhibit JC-1**. This PAF was superseded by a further PAF on 10 March 2022.
- 35 Around this time, it was decided by John Andrew, the BCM of Beverages, that the Down Down start date should be brought forward again to 16 March 2022. I do not have a specific recollection as to why this decision was made.
- 36 On 10 March 2022, CCEP provided Coles with the new PAF to start the Down Down promotion on 16 March 2022. A copy of this email (COL.500.028.0154) and the attached PAF (COL.500.028.0156) is at **tab 19 and confidential tab 19.1 of Exhibit JC-1**. The PAF shows the following information:
- (a) the dates and duration of the promotion, being 16 March 2022 to 14 March 2023, or 364 days (cells J12:L12);

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- (b) the PRRP for Victoria, being \$3.50 (cell V12);
- (c) the relevant promotional mechanic, being Down Down (cell W12); and
- (d) the promotional funding offered by CCEP to support the Down Down discount in Victoria, being \$RE, per unit (cell N12).

37 Consistent with the PAF, the price of the Coca-Cola 2L Product decreased from \$4.40 on a white ticket (the supplier's RRP) to \$3.50 on a Down Down ticket (the supplier's PRRP) on 16 March 2022.

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

) **REDACTED - PII**
)
) Signature of deponent
)
)

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Signature of witness

STEVEN DONGHOON LEE
 of 101 Collins Street, Melbourne
 Victoria 3000
 An Australian Legal Practitioner
 within the meaning of the
 Legal Profession Uniform Law (Victoria)

This affidavit was signed and affirmed by the deponent by audio visual link and the authorised affidavit taker has used a scanned or electronic copy of the affidavit and not the original in completing the jurat requirements under section 27(1) of the *Oaths and Affirmations Act 2018* (Vic).