

## NOTICE OF FILING

### Details of Filing

Document Lodged: Statement of Agreed Facts  
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)  
Date of Lodgment: 15/02/2026 5:04:56 PM AEDT  
Date Accepted for Filing: 17/02/2026 9:44:52 AM AEDT  
File Number: VID973/2024  
File Title: AUSTRALIAN COMPETITION AND CONSUMER COMMISSION v  
COLES SUPERMARKETS AUSTRALIA PTY LTD (ACN 004 189 708)  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



*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.



## **Amended Fourth Statement of Agreed Facts**

No. VID 973 of 2024

Federal Court of Australia

District Registry: Victoria

Division: General

Commercial and Corporations National Practice Area (Regulator and Consumer Protection)

### **AUSTRALIAN COMPETITION AND CONSUMER COMMISSION**

Applicant

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

Respondent

#### **A. INTRODUCTION**

1. This statement of agreed facts (**Fourth SOAF**) is made for the purposes of s 191 of the *Evidence Act 1995* (Cth) jointly by the applicant, the Australian Competition and Consumer Commission (**ACCC**), and the respondent, Coles Supermarkets Australia Pty Ltd (**Coles**).
2. The Fourth SOAF is made further to the first statement of agreed facts filed on 13 June 2025 (**First SOAF**), the second statement of agreed facts filed on 21 August 2025 (**Second SOAF**) and the third statement of agreed facts filed on 17 November 2025 (**Third SOAF**).
3. Dollar amounts are exclusive of GST.

#### **B. Karicare Follow On Formula**

4. On or around 11 June 2023, Coles repaid the supplier non-promotional funding it had received from Nutricia Australia Pty Limited (**Nutricia**) in respect of KARICARE FOLLOW ON FORMULA:900 GRAM (1023271) (**Karicare Follow On Formula**) for the period of 6 March to 26 March 2023 (inclusive). The amount that was received and repaid by Coles was [REDACTED] per unit sold per day. The net effect was that Nutricia [REDACTED] supplier non-promotional funding in respect of Karicare Follow On Formula for the period of 6 March to 26 March 2023 (inclusive).
5. On or around 11 June 2023, Coles also repaid part of the supplier non-promotional funding it had received from Nutricia in respect of Karicare Follow On Formula for the period of 29 March to 30 April 2023 (inclusive). The amount that was repaid by Coles was [REDACTED] per unit sold per day. The net effect was that Nutricia provided supplier non-promotional funding of [REDACTED] per unit sold per day in respect of Karicare Follow On Formula for the period of 27 March to 30 April 2023 (inclusive).

**C. Viva Paper Towel**

6. On or around 19 June 2022, Coles repaid part of the supplier non-promotional funding it had received from Kimberly-Clark Australia Pty Ltd (**KCA**) in respect of VIVA PAPER TOWEL WHITE SELECT A SIZE 3 PACK:3 PACK (3823600) (**Viva Paper Towel**) for the period of 2 to 29 May 2022 (inclusive). The amount that was repaid by Coles was [REDACTED] per unit sold per day. The net effect was that KCA provided supplier non-promotional funding of [REDACTED] per unit sold per day in respect of Viva Paper Towel for the period of 2 to 29 May 2022 (inclusive).
7. On or around 10 June 2022, Coles claimed supplier non-promotional funding from KCA in respect of Viva Paper Towel for 31 May 2022. The amount that was received by Coles was [REDACTED] per unit sold on 31 May 2022.
8. On or around 26 June 2022, Coles claimed additional supplier non-promotional funding from KCA in respect of Viva Paper Towel for 30 and 31 May 2022. The amount that was received by Coles was [REDACTED] per unit sold on 30 May 2022 and [REDACTED] per unit sold on ~~30 and~~ 31 May 2022.
9. The net effect of Coles' claims at paragraphs [7] and [8] was that KCA provided supplier non-promotional funding of [REDACTED] per unit sold on 30 May 2022 and [REDACTED] per unit sold on 31 May 2022 in respect of Viva Paper Towel.



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Signed by: James Love  
Solicitor for the Applicant



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Signed by: Belinda Thompson  
Solicitor for the Respondent