

## NOTICE OF FILING

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

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Form 59

Rule 29.02(1)

## Affidavit

No. VID 973 of 2024

Federal Court of Australia

District Registry: Victoria

Division: General

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

Affidavit of: Massimo Palmisciano

Address: 800 Toorak Road, Hawthorn East, Victoria

Occupation: Senior Category Manager – Chilled Desserts and Chilled Spreads

Date: 24 November 2025

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

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[Version 3 form approved 02/05/2019]

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I, Massimo Palmisciano of 800 Toorak Road, Hawthorn East, Victoria, Senior Category Manager, affirm:

- 1 I am the Senior Category Manager for the Chilled Desserts and Chilled Spreads categories at Coles Supermarkets Australia Pty Ltd (ACN 004 189 708) (**Coles**).
- 2 Exhibited to me and marked Exhibit MP-1 is a bundle of documents. In this affidavit, I refer to each document by reference to the relevant tab number in Exhibit MP-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 MP-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.

#### **A. ROLES AT COLES**

- 3 I have been employed by Coles since approximately April 2020 in the following roles:
  - (a) Category Manager – Milk and Eggs, from 6 April 2020 to 1 October 2020;
  - (b) Category Manager – Cheese and Entertainment, from 2 October 2020 to 3 July 2022; and
  - (c) Senior Category Manager – Chilled Desserts and Chilled Spreads, from 4 July 2022 to present.
- 4 The matters to which I refer in this affidavit concern the period July 2022 to May 2023 when I was Senior Category Manager – Chilled Desserts and Chilled Spreads, unless otherwise stated.

#### **B. CHILLED DESSERTS AND CHILLED SPREADS**

- 5 Chilled Desserts and Chilled Spreads were distinct categories. Chilled Desserts comprised four sub-categories: Yoghurt, Cream, Custards and Dairy Desserts. Chilled Spreads also comprised four sub-categories: Butter, Margarine, Blends and Alternative Spreads.
- 6 The Chilled Desserts and Chilled Spreads categories sat within Coles' Dairy business category, which in turn sat within a broader business unit known (at the time) as Freezer, Dairy and Convenience.
- 7 I reported to the Business Category Manager for the Dairy business category, Ben Appleby. Two people reported to me with respect to Chilled Desserts: Charlotte (Lottie) Stanbury – Assistant Category Manager and Samantha Tenace – Business Category Coordinator.
- 8 My responsibilities included:
  - (a) determining the products that Coles ranged in the categories and engaging with suppliers with respect to range reviews (which typically occurred annually);
  - (b) as explained further below, setting the retail prices and promotional programs for those products;
  - (c) working with suppliers, including negotiating and agreeing the prices Coles paid for ranged products, the promotional plan for those products and promotional funding;
  - (d) managing profit and loss for the categories, including by regularly monitoring the financial performance of the categories;
  - (e) working with internal stakeholders including Coles' Supply Chain, Vendor Management Office, Pricing and Value, Trade Planning, Operations and Compliance teams; and
  - (f) managing my direct reports.

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- 9 One of my goals which underlay the responsibilities described above was to provide a compelling product offering to customers in the categories, at prices that offered value to customers. That was always an overriding consideration for me when carrying out my role in respect of product ranging, pricing and promotional planning.
- 10 When setting Coles' retail prices I had regard to the following matters:
- (a) the supplier's recommended retail price (**RRP**), or the promotional recommended retail price (**PRRP**) if setting a promotional price for a product. The supplier RRP provided a helpful starting point when I was considering how to price a product, as it took into account factors such as the cost price, category dynamics, expected sales volumes and margins for the product. The supplier PRRP also took into account those factors, as well as the amount of supplier funding contribution that would be provided for the product. While the RRP and PRRP were important factors taken into consideration, setting the retail price was ultimately a matter for Coles;
  - (b) competitors' prices for the same or equivalent products, as it was important that Coles could offer prices to customers that were competitive with other retailers. Coles' competitors could vary from one product to the next but, for the products for which I was responsible, this usually included Woolworths, Aldi and IGA. My team received regular reports from Coles' Pricing and Value team regarding Coles' pricing of like-for-like proprietary products compared to Woolworths and Aldi. My team also received pricing updates for private label products sold at Woolworths and Aldi that had a comparable Own Brand product ranged at Coles;
  - (c) the price of the product relative to the prices of other similar products that Coles ranged, including by reference to Coles' 'good', 'better' and 'best' framework (a framework Coles used to rank products by reference to quality and price). Coles sought to offer customers product choice at a range of different price points within a category;
  - (d) the margin that Coles would earn, being the profit margin earned by Coles for a product based on a new price (compared to the previous margin earned) and the implications of the new margin of a product to the overall category's margin; and
  - (e) for products sold on promotion, suppliers' proposed promotions and any funding the supplier proposed to provide.
- 11 While my title was Senior Category Manager – Chilled Desserts and Chilled Spreads I used the title 'Senior Category Manager – Butter, Cream and Yoghurt' in my email signature. I considered that this more clearly identified to suppliers the products for which I was responsible.

### C. PROMOTIONS

- 12 Products within the Chilled Desserts and Chilled Spreads categories were often sold on promotion, and promotions played an important role in being able to offer value to customers in the categories. Coles had certain rules with which promotions had to comply, which were referred to as promotional guardrails.
- 13 Suppliers proposed to Coles promotions for their products in documents known as trade plans (or promotional plans) which recorded matters such as the products the supplier proposed for promotion, the promotional mechanics that would be used, the frequency and/or duration of the promotions, and any funding the supplier would provide. By 'funding' I mean the amount suppliers contributed towards supporting a promotion (as described in paragraph 14 below).

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- 14 The funding contribution from suppliers was an important aspect in trade planning. That was because the amount of supplier funding contribution (and any change to that contribution) directly impacted the depth of promotional discount that Coles would be able to offer to customers. In the vast majority of cases for proprietary products, funding for promotions (including for products on the Down Down program) was provided by both the supplier and Coles. In some cases funding of promotions was provided either entirely by Coles or entirely by the supplier, but that was less common.
- 15 Trade plans usually covered a six-month period. My team usually began working with suppliers on trade plans six months before the start of that period. For example, in about January we started working with suppliers on the trade plan for the period from July to December of that year. That allowed time for the plan to be negotiated and agreed, and for steps such as demand planning (i.e., ensuring that Coles ordered and the supplier made available sufficient quantities of the product) as well as creation and publication of any marketing materials (e.g., catalogues) to occur.
- 16 Once a trade plan was agreed with a supplier, the supplier completed a Promotional Advice Form (PAF) which recorded details of the relevant promotions, including the level of associated funding and proposed timings. My team members then entered the relevant details into Coles' systems.

#### **D. COST PRICE INCREASES**

- 17 From time-to-time, suppliers sought to increase the list prices of their products. I referred to those requests as Cost Price Increase (CPI) requests. They were also known within Coles as Cost Price Alteration requests.
- 18 When a supplier requested a CPI for a product that, at the time, Coles sold on promotion, I required the supplier to submit a revised trade plan together with the CPI request. I did so because a change in list price for the product altered the financial assumptions that underpinned its existing trade plan.
- 19 Generally, I managed CPI requests for the Chilled Desserts category and Ms Stanbury managed CPI requests for the Chilled Spreads category with my oversight.
- 20 The process for assessing a CPI request from a supplier generally involved the following steps. My understanding of these steps is based on my regular engagement with Coles' Vendor Management Office (VMO) team in relation to CPI requests.
- (a) The supplier submitted a CPI request to me and the VMO team in the form of a CPI request template via email. Suppliers were asked to provide 12 weeks' notice for a CPI to allow time to assess the request and minimise disruption to the category. However, it was not uncommon for suppliers to provide less than 12 weeks' notice, especially during periods of heightened inflation that raised the price of key inputs for suppliers.
  - (b) Coles also asked the supplier to complete an updated trade plan that reflected the CPI request and the proposed changes to the promotional program for the relevant products. The trade plan set out the supplier's revised cost price and RRP, the promotional program and supplier funding contribution, and updated sales forecasts for the products. It was necessary to review the CPI with an updated trade plan to get a more complete picture of the ramifications of the price increase and to renegotiate the promotional program and supplier funding accordingly.
  - (c) The VMO team then conducted an analysis of the CPI request to determine the proportion of the CPI request that could be validated based on Coles' understanding of

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supplier cost movements. If the VMO team did not fully validate a CPI request, I relayed the VMO team's analysis to the supplier and then worked with the supplier to seek further information on their costs.

- 21 A separate commercial team also assisted me by analysing the supplier's updated trade plan against the existing trade plan, to determine how the overall financial profile of the product had changed having regard to the interaction between the proposed CPI and the new promotional plan.
- 22 After considering the VMO team's analysis of the CPI and the commercial team's analysis of the trade plan, I then decided to accept, partially accept or decline the CPI request and convey that outcome to the supplier for further negotiation (if necessary). I also decided whether to convey any feedback Coles had on adjustments to the trade plan needed as a result of the CPI.
- 23 Once the CPI was agreed and the trade plan was finalised, the CPI request was completed.
- 24 From July 2022 through to late 2023, there was a substantial increase in the number of CPI requests that my team received from a range of different suppliers. Coles ranged approximately 500 Chilled Desserts and Chilled Spreads products. The vast majority were the subject of a CPI request in this period. Some were the subject of multiple CPI requests.

**E. DANONE YOPRO VANILLA YOGHURT 700G (3246914)**

- 25 One of Coles' suppliers of Chilled Desserts products was Danone Murray Goulburn (**Danone**).
- 26 Danone YoPro Vanilla Yoghurt 700g (3246914) (**YoPro Vanilla 700g**) sat within the 'Large Protein' product class, as it was a larger volume product with a high protein content per serving. Within the Yoghurt sub-category, YoPro Vanilla 700g was a premium product that fit within the 'best' classification referred to in paragraph 10(c) above.
- 27 On 8 July 2022, Danone submitted a CPI request for 39 products, including YoPro Vanilla 700g which, at the time, was on a Down Down promotion. The request was sent to my Business Category Manager Ben Appleby, and my predecessor Caroline Wallace, although I was subsequently forwarded a copy. This email (COL.501.060.4752) and its attachment (COL.501.060.4753) appears at **tabs 1-1.1 of Exhibit MP-1**. Danone requested an increase in the list price for YoPro Vanilla 700g from \$RE to \$RE (approximately 11.5%) and proposed an increase in the RRP for YoPro Vanilla 700g from \$7.00 to \$7.80 (approximately 11.5%).
- 28 I was on leave from mid-July 2022 (shortly after I commenced in my role as Senior Category Manager – Chilled Desserts and Chilled Spreads) to around 15 August 2022. Ms Stanbury and Ioanna Yiappos (the outgoing Assistant Category Manager of Chilled Desserts) managed the CPI request while I was on leave. I then managed the CPI request when I returned from leave.
- 29 The VMO team only partially validated the CPI request following its analysis. Separately, Mildred Wong (of the commercial team) conducted analysis which showed that Danone's proposed trade plan (which had been submitted by Danone when I was on leave) did not maintain Danone's promotional contribution at the same level as previous trade plans, which resulted in negative margin changes to the product lines of approximately R basis points. The recommendation from Ms Wong to Ms Yiappos and Ms Stanbury was to revisit the entire trade plan. A copy of the email chain containing Ms Wong's recommendation (COL.501.060.8770) and its attachments, including the trade plan (COL.501.060.8771 and COL.501.060.8772), appears at **confidential tabs 2-2.2 of Exhibit MP-1**. Further, a copy of VMO team's analysis is contained in the email chain (COL.501.062.7108) which appears at **confidential tab 3 of Exhibit MP-1**.

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- 30 Danone indicated to me that additional promotional funding would be provided on the condition that Danone's CPI request was accepted in full in relation to all products that were the subject of the CPI request, including YoPro Vanilla 700g. A copy of the email from Danone (COL.501.062.7108) and attached PAF (COL.501.062.7109) appears at **confidential tabs 3-3.1 of Exhibit MP-1**, with the YoPro Vanilla 700g product appearing at row 234 of confidential tab 3.1.
- 31 Danone provided a revised trade plan on 31 August 2022. In relation to the YoPro Vanilla 700g product, the trade plan noted, amongst other things, that the current promotional price was \$6.00 (cell AE69), the new proposed promotional price was \$6.70 (cell AE14) and the amount of proposed promotional funding per unit was **R** cents (cell AH14). A copy of the email (COL.501.061.8716) and revised trade plan (COL.501.061.8717) appears at **confidential tabs 4-4.1 of Exhibit MP-1**.
- 32 There was a shift in volume assumptions between the revised trade plan compared to the first trade plan proposed by Danone, so I queried this shift with Danone on 1 September 2022. Danone responded a few days later explaining the anticipated uplift in sales (and volume), including because it had initially expected volume decline due to increased prices but had not seen this occur in the market for competing products that had increased prices, and because of new product development in the Danone YoPro 700g and 150g products. A copy of this email chain (COL.501.065.0225) appears at **confidential tab 5 of Exhibit MP-1**.
- 33 Ms Wong's analysis of the revised trade plan demonstrated that even with increased supplier funding for promotional activity, negative impacts on the overall margin for the products subject to the CPI (but not including YoPro Vanilla 700g) remained. A copy of the email correspondence that sets out this analysis (COL.501.063.4097) and its attachments (COL.501.063.4098 and COL.501.063.4099) appears at **confidential tabs 6-6.2 of Exhibit MP-1**.
- 34 Danone submitted a further revised (now a third) trade plan on 8 September 2022 which addressed further promotional contributions from them for other Danone products as part of the same CPI request (but not YoPro Vanilla 700g). A copy of my email correspondence with Danone (COL.501.066.0505) and a copy of the further revised trade plan (COL.501.066.0506) appears at **confidential tabs 7-7.1 of Exhibit MP-1**, with the YoPro Vanilla 700g product appearing at rows 14 and 69 of confidential tab 7.1.
- 35 My focus throughout the negotiation was on the ability for Coles to continue to provide value to customers, and on limiting the CPI's impact to the category's sales and volume targets. I considered it to be important to secure at least as much or more promotional funding from Danone as it provided under its existing trade plan, so that Coles would not have to materially reduce the depth of promotional discount offered to customers and so that the overall position of the impacted products was not worse off than the pre-CPI position.
- 36 By 8 September 2022, Danone had submitted a trade plan that I was satisfied with, being the third trade plan that addressed the concerns I had raised such as about the level of promotional funding for products affected by the CPI request, and the improvement to the impact on Coles' margin (i.e., being negative **R** basis points compared to negative **R** basis points in the first trade plan across the products affected by the CPI request). A copy of Ms Wong's analysis of the further revised trade plan (COL.501.060.9492) and its attachments (COL.501.060.9493 and COL.501.060.9494) appears at **confidential tabs 8-8.2 of Exhibit MP-1**.
- 37 I communicated to Danone that I accepted the CPI on 9 September 2022. The further revised trade plan provided for YoPro Vanilla 700g to be sold at a white ticket price of \$7.80, which was

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Danone's RRP, and then a promotional price of \$6.70. A copy of that email (COL.501.065.0604) appears at **confidential tab 9 of Exhibit MP-1**.

- 38 Later that day, Danone sent to me a PAF with the planned promotional activity and funding for the products the subject of the CPI (including YoPro Vanilla 700g). A copy of the email (COL.501.065.0604) and PAF (COL.501.065.0605) appears at **confidential tabs 9-9.1 of Exhibit MP-1**, with the YoPro Vanilla 700g product appearing at row 226 of confidential tab 9.1. The PAF stated that the promotional price for YoPro Vanilla 700g of \$6.70 would be an 'EDV' price. The reference to an 'EDV' price referred to the Down Down program rather than the 'Every Day' program, for the reasons set out in paragraph 41 below.
- 39 I considered that a white ticket price of \$7.80 was appropriate. It was Danone's RRP for the product and aligned with the product's position within the hierarchy of high-protein yoghurt Coles offered at the time, reflecting both its premium positioning and value to customers at that price point. Further, the increase in white ticket price to \$7.80 was proportionate to the increase in list price accepted by Coles.
- 40 Ultimately, following the CPI, Coles sold YoPro Vanilla 700g at a white ticket price of \$7.80 for 28 days from 12 September 2022 to 9 October 2022 in accordance with the relevant promotional guardrails that applied at the time, and was then offered on a Down Down promotion at \$6.70.
- 41 In my experience when suppliers proposed trade plans or PAFs they sometimes inadvertently referred to Every Day when they intended to refer to Down Down, as both Every Day and Down Down were longer-term pricing mechanics implemented by Coles.

Affirmed by the deponent  
at Hawthorn East  
in Victoria  
on 24 November 2025  
Before me:

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Signature of deponent

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Signature of witness

**JEREMY PETER RICH**  
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