

NOTICE OF LODGMENT
AUSTRALIAN COMPETITION TRIBUNAL

This document was lodged electronically in the AUSTRALIAN COMPETITION TRIBUNAL and has been accepted for lodgment pursuant to the Practice Direction dated 13 July 2026. Filing details follow and important additional information about these are set out below.

Lodgment and Details

Document Lodged:	Application for Leave to Intervene
File Number:	ACT 1 of 2026
File Title:	APPLICATION BY COLES SUPERMARKETS AUSTRALIA PTY LTD
Registry:	VICTORIA – AUSTRALIAN COMPETITION TRIBUNAL



REGISTRAR

Dated: 20/07/2026 11:45 AM

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 Tribunal and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

Commonwealth of Australia
Competition and Consumer Act 2010

In the Australian Competition Tribunal

File No: ACT 1 of 2026

RE: Coles Supermarkets Australia Pty Limited Application for Review of Australian Competition and Consumer Commission Determination under subsection 51ABZE(1) of the *Competition and Consumer Act 2010* (MN-01068)

**APPLICATION BY O'CONNOR FRESH IGA
FOR LEAVE TO INTERVENE**

A Introduction

1. O'Connor Fresh Pty Ltd ATF O'Connor Fresh Trust trading as O'Connor Fresh (**O'Connor Fresh IGA**) applies under s 109(2) of the *Competition and Consumer Act 2010* (Cth) (**CCA**) for leave to intervene in the above proceedings.
2. The proceedings concern a proposal by Coles Supermarkets Australia Pty Ltd (**Coles**) to acquire a leasehold interest over land at lots 95-106 Great Eastern Highway, Somerville, WA for the purposes of opening a supermarket and liquor store (**Proposed Acquisition**). The Australian Competition and Consumer Commission (**ACCC**) has determined in its Phase 2 Determination dated 30 June 2026 that the Proposed Acquisition must not be put into effect. By its application dated 15 July 2026, Coles now seeks a review of the determination and to have it set aside (**Application**).
3. For the reasons outlined below, O'Connor Fresh IGA submits that:
 - a. it will be materially affected by the outcome of the Application, and therefore has the necessary connection and interest in the subject matter of the proceedings; and
 - b. it will usefully and relevantly add to and supplement the submissions of Coles and the ACCC,

such that the Tribunal should permit O'Connor Fresh IGA to intervene in these proceedings.

B Applicable principles

4. The Tribunal has an express power to permit a party to intervene in the proceedings under s 109(2) of the CCA. A proposed intervenor must show some connection with, or interest in, the subject matter of the proceeding which extends beyond being “merely an officious bystander”: *Application by New South Wales Minerals Council* [2021] ACompT 2 at [69]. The interest need not be shown to be a “sufficient” or “real and substantial”: *Re Fortescue Metals Group Ltd* [2006] ACompT 6 at [30].
5. The Tribunal has previously considered that in assessing an application under s 109(2) it will be important to consider how the proposed intervenor might be affected by the outcome and the extent to which the proposed intervenor can usefully or relevantly add to, or supplement, the submissions of the parties to the application: *Application by Independent Contractors Australia* [2015] ACompT 1 at [28].

C O’Connor Fresh IGA’s interest in the outcome of the Application

6. O’Connor Fresh IGA is a full-line supermarket offering fresh produce, packaged groceries, dairy, meat, bakery and essential household goods. It is located at 1 Maguire Street, Somerville, which is a suburb of Kalgoorlie-Boulder (**Kalgoorlie**). Of the six supermarkets in Kalgoorlie, O’Connor Fresh IGA is located closest to the Proposed Acquisition site.
7. In its Phase 2 Determination Statement of Reasons dated 30 June 2026 (**Reasons**), the ACCC found that the establishment of Coles’ proposed supermarket is likely, in time, to lead to the exit of an independent supermarket from the Kalgoorlie market: Reasons at [1.8], [1.13], [6.3], [8.6]. The ACCC found that the exit of the independent supermarket would remove a material competitive constraint on Kalgoorlie’s remaining supermarkets: Reasons at [1.8], [1.14], [1.15], [8.8]. On this basis, the ACCC concluded that the Proposed Acquisition, if put into effect, would likely have the effect of substantially lessening competition in the retail supply of groceries by supermarkets in Kalgoorlie: Reasons at [1.16], [8.10].
8. The independent supermarket referred to in these reasons is O’Connor Fresh IGA (referred to in the Reasons as the “Relevant Independent”).
9. O’Connor Fresh IGA’s commercial position and its continuation in the market is directly and materially affected by whether the determination is upheld or set aside. Its circumstances, financial position, conduct and differentiated offering are also central to the proper assessment of the likely state of competition in the retail supply

of groceries in Kalgoorlie with and without the Proposed Acquisition.

10. In view of the significant impact the Proposed Acquisition would have on O'Connor Fresh IGA's business, and in turn on competition in the retail supply of groceries in Kalgoorlie, O'Connor Fresh IGA was an active participant in the ACCC's assessment of the Proposed Acquisition. O'Connor Fresh IGA responded to the ACCC's voluntary requests for information, complied with compulsory notices issued under s 155(1) of the CCA, commissioned independent analysis of consumer travel patterns, and made several rounds of submissions to the ACCC.
11. The Reasons record the ACCC's significant reliance upon the evidence and submissions provided by O'Connor Fresh IGA in its assessment of the Proposed Acquisition. By way of example:
 - a. Section 6 of the Reasons (competition assessment) sets out the ACCC's comparison of the likely future state of competition with and without the Proposed Acquisition (Reasons at [6.1]-[6.3]). The central question, being whether the loss of sales occasioned by the proposed supermarket is likely to render O'Connor Fresh IGA's operations non-viable and lead to its exit, was assessed by express reference to the evidence and submissions of O'Connor Fresh IGA (Reasons at [6.56], [6.61], [6.85]-[6.87], [6.101], [6.119], [6.131]-[6.132]).
 - b. Section 7 of the Reasons (competitive effects in the retail supply of groceries in Kalgoorlie) details the ACCC's assessment of the competitive effects of the Proposed Acquisition. Material aspects of that assessment turned on the evidence and submissions of O'Connor Fresh IGA, including as to the loss of a differentiated offering and competitive rivalry (Reasons at [7.25]-[7.27], [7.30]).

D O'Connor Fresh IGA's intervention will usefully and relevantly add to the submissions of Coles and the ACCC

12. O'Connor Fresh IGA submits that its intervention will usefully and relevantly add to and supplement the submissions of Coles and the ACCC. Critical factual matters requiring consideration by the Tribunal, including whether the Proposed Acquisition is likely to lead to the exit of O'Connor Fresh IGA and the consequences of any such exit for competition, are ones on which O'Connor Fresh IGA is well-positioned to provide assistance.

E Address for service

13. O'Connor Fresh IGA's address for service for the purpose of regulation 21 of the *Competition and Consumer Regulations* 2010 (Cth) is:

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Date: 20 July 2026

Norton Rose Fulbright



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Claire Forster, Partner

Signed on behalf of O'Connor Fresh IGA