

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:	Affidavit
File Number:	ACT 1 of 2026
File Title:	APPLICATION BY COLES SUPERMARKETS AUSTRALIA PTY LTD
Registry:	VICTORIA – AUSTRALIAN COMPETITION TRIBUNAL



REGISTRAR

Dated: 4/09/2026 5:23 PM

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.

This document contains confidential information which is indicated as follows:

1. [Confidential and governed by confidentiality Regime made by Justice O'Bryan on 21 July 2026]

IN THE AUSTRALIAN COMPETITION TRIBUNAL
APPLICATION BY COLES SUPERMARKETS AUSTRALIA PTY LTD
ACT 1 OF 2026

Affidavit

Affidavit of: Linda Catherine Evans
 Re: Application under section 100S(2)(b) of the *Competition and Consumer Act 2010* (Cth) (**CCA**).
 Address: Level 34, 161 Castlereagh Street, Sydney, NSW 2000
 Occupation: Solicitor
 Date: 4 September 2026

I, Linda Catherine Evans, of Level 34, 161 Castlereagh Street, Sydney, NSW 2000, partner at Herbert Smith Freehills Kramer (**HSFK**) say on oath:

1. I am involved in the conduct of this matter on behalf of Coles Supermarkets Australia Pty Ltd (the **Applicant**). Unless stated otherwise, I make this affidavit from my own knowledge and from my review of certain records of, or otherwise in the possession of, the Applicant.
2. I make this affidavit in support of the Applicant's application under section 100S(2)(b) of the *Competition and Consumer Act 2010* (Cth) (**CCA**) to be allowed to provide new information, documents and evidence to the Tribunal for the purpose of its review of of the acquisition determination made by the Australian Competition and Consumer Commission (**ACCC**) under subsection 51ABZE(1) of the CCA in relation to the Applicant's proposed acquisition of a leasehold interest in Lots 95-106 Great Eastern Highway, Somerville, Kalgoorlie for the purposes of developing a supermarket and liquor store (the **Proposed Acquisition**).
3. In making this affidavit, I am not instructed, nor do I intend to, waive legal professional privilege on behalf of the Applicant in relation to any subject referred to in this affidavit. Nothing in affidavit ought to be construed as constituting a waiver of legal professional privilege.
4. Exhibited to me at the time of swearing this affidavit and marked "LCE-1" is an electronic bundle of documents, separated by virtual tab numbers.

Relevant experience

5. I have practised in competition law for over 25 years. That experience has included acting in relation to merger control matters including:
 - a. acting for Suncorp on Applications by Australia and New Zealand Banking Group Limited and Suncorp Group Limited [2024] ACompT 1;
 - b. acting for Optus on Applications by Telstra Corporation Limited and TPG Telecom Limited (No 2) [2023] ACompT 2;
 - c. acting for Pacific National on ACCC v Pacific National Pty Limited (No 2) [2020] FCAFC 98;
 - d. acting for Origin on Brookfield LP and MidOcean proposed acquisition of

Filed on behalf of (name & role of party) Coles Supermarkets Australia Pty Ltd, Applicant

Prepared by (name of person/lawyer) Liza Carver

Law firm (if applicable) Herbert Smith Freehills Kramer

Tel (02) 9322 4631

Fax

Email liza.carver@hsfkramer.com

Address for service Level 34, 161 Castlereagh Street, Sydney, NSW 2000
 (include state and postcode)

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Lauren Perkins

Linda Evans

Origin Energy Limited MA 1000024-1;

- e. acting for Chemist Warehouse on the Sigma Healthcare Limited proposed acquisition of CW Group Holdings Limited transaction; and
- f. acting for Ampol Retail Holding Pty Ltd's acquisition of EG Group Australia and EG AsiaPac Holdings (MN-01019) under the current merger regime.

ACCC Notice of Competition Concerns

- 6. On 5 March 2026, pursuant to section 51ABZK(1) of the CCA, the ACCC issued a Notice of Competition Concerns (**NoCC**) in respect of the Proposed Acquisition. A copy of the unredacted version provided to the Applicant's external legal advisers is exhibited at **tab 1** of **LCE-1**.
- 7. At paragraph 4.48 of the NoCC, the ACCC raised preliminary concerns that the Proposed Acquisition would result in the loss of an effective independent competitor. that *"offers a range and quality of products - this includes high-revenue products where an effective competitor competes head-to-head, but also unique and specialised products that provide a differentiated offering valued by customers"*..

ACCC site visit photographs and observations and top 100 SKU analysis, and Coles' response

- 8. On 21 May 2026, the ACCC wrote to HSFK for the purpose of providing the Applicant with the opportunity to respond to additional information obtained by the ACCC following the release of the NoCC that is potentially material to the ACCC's assessment of the Proposed Acquisition. A copy of this letter is exhibited at **tab 2** of **LCE-1**. That letter:
 - a. enclosed observations and photographs of the ACCC's site visit to supermarkets in Kalgoorlie in April 2026, which included high-level information relevant to supermarket product offerings, store layouts and amenities in Kalgoorlie, including photographs and notes regarding supermarket bakeries, 'ready to eat' meals, delis, butchers/meat, fresh fruit and vegetables, dairy products and frozen products, copies of which are exhibited at **tabs 3 – 9** of **LCE-1**; and
 - b. stated that the ACCC was taking steps to disclose certain confidential third-party information to the Applicant on an external counsel only basis, including in respect of a 'top 100 SKU analysis'. The letter stated that the ACCC had compared revenue for Coles Kalgoorlie's top 100 SKUs by revenue with revenue for SKUs offered by each of O'Connor Fresh IGA, Spudshed Kalgoorlie and Woolworths Kalgoorlie which are product matches.
- 9. On 1 June 2026, the ACCC sent an email to HSFK attaching a spreadsheet which was described as containing a comparison prepared by the ACCC of:
 - a. revenue for Coles Kalgoorlie's top 100 SKUs by revenue with revenue for SKUs offered by each of Woolworths Kalgoorlie, Spudshed and O'Connor Fresh IGA which were said to be product matches; and
 - b. revenue for O'Connor Fresh IGA's top 100 SKUs by revenue with revenue for SKUs offered by Coles Kalgoorlie which were said to be product matches,(the **Top 100 SKU Analysis**).
- 10. The ACCC's 1 June 2026 email and the Top 100 SKU analysis are each exhibited at

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Linda Evans

tabs 10 and 11 of LCE-1 respectively.

11. The spreadsheet set out the objective and methodology for the analysis, the sources of the data, and the assumptions relied on by the ACCC. The spreadsheets recorded that the objective was to:
 - a. “[f]ind matches for Coles Kalgoorlie's top 100 SKUs from O'Connor Fresh IGA, Woolworths Kalgoorlie and Spudshed Kalgoorlie's top 2000 products” and that the source of the data was lists of the top 2,000 SKUs by revenue in FY25 produced by each of Coles, Woolworths, O'Connor Fresh IGA and Spudshed in response to notices under section 155(1)(a) and (b) of the CCA; and
 - b. “[f]ind matches for O'Connor Fresh IGA's top 100 SKUs from Coles Kalgoorlie's top 2000 products” and the source the data was lists of the top 2,000 SKUs by revenue in FY25 produced by Coles and O'Connor Fresh IGA under section 155(1)(a) and (b) of the CCA.
12. Neither Coles not its external advisors were provided with this underlying data (in respect of third-party supermarkets).
13. The Top 100 SKU Analysis did not include any analysis or comparison of, nor any underlying data for, the two remaining supermarkets in Kalgoorlie – Lionel St IGA and Hannans Marketplace by Foodworks (**Foodworks**).
14. The 1 June 2026 email stated that the Top 100 SKU Analysis was provided on an external counsel only basis subject to signed confidentiality undertakings. Accordingly, the Top 100 SKU Analysis could not be provided to any employees of Coles including, most relevantly, Coles' in-house legal counsel and product ranging and matching specialists. The email also stated that the ACCC was providing Coles with an opportunity to make submissions in response to the Top 100 SKU Analysis prior to the statutory 15 business day black-out period under section 51ABZZD(5) of the CCA which, in the case of the notification of the Proposed Acquisition, was 11 June 2026. Accordingly, Coles' external advisers were afforded 10 calendar days, or 8 business days, to review, consider and respond to the Top 100 SKU Analysis. The ACCC did not indicate to Coles how the ACCC would apply the Top 100 SKU Analysis.
15. On 3 June 2026, HSFK wrote a letter to the ACCC requesting that certain Coles employees be provided access to the Top 100 SKU Analysis, subject to the signing of confidentiality undertakings and the redaction of revenue figures contained in the Top 100 SKU Analysis. Also on 3 June 2026, HSFK wrote to the ACCC stating “we apprehend that there may be some connection between the theoretical framework set out in the Rey Report and the factual material in the SKU Analysis. However, this is only speculation. Without any information from the ACCC as to if, or how, how this factual material is being applied to the Rey Report or otherwise, Coles is unable to meaningful respond to this information.” HSFK stated that “procedural fairness requires that Coles has an opportunity to respond to the ... SKU Analysis, in particular in circumstances where the ACCC may be applying these datasets to the framework set out in the Rey Report.” HSFK specifically requested that, in order to allow Coles the opportunity to respond to the Top 100 SKU Analysis, the ACCC provide further details on if, or how, it proposes to use or may use the Top 100 SKU Analysis, and at a minimum, confirmation as to what propositions or issues the Top 100 SKU Analysis is relevant to. Each of the 3 June 2026 letters from HSFK to the ACCC are exhibited at **tabs 12 and 13 of LCE-1** respectively.

- [illegible]

ACCC Phase 2 Determination Statement of Reasons

21. On 1 July 2026, the ACCC issued its Phase 2 Determination and Statement of Reasons (**SOR**). A copy of the unredacted SOR provided to Coles' external advisers is exhibited at **tab 20** of **LCE-1**.
22. Upon review of the SOR, including in particular paragraphs 1.15, 6.37, 7.24, 7.25,

7.44, 7.49, 7.51 and 8.9, I understood the ACCC's key theory of harm in respect of the Proposed Acquisition as the likelihood of a substantial lessening of competition arising from the exit of differentiated competitor (O'Connor Fresh IGA), including its locally tailored and responsive product range. The SOR referred to and / or included extracts from the Top 100 SKU Analysis at paragraphs 4.9, 6.45, 6.46 (Figure 4) and 7.24. In particular, the SOR stated that the Top 100 SKU Analysis:

- a. was consistent with [REDACTED] at paragraphs 6.45 and 6.46; and
- b. illustrated that [REDACTED] at paragraph 7.24.

23. I understood that the SOR also made findings based on information and evidence pertaining to supermarket SKUs, product ranges and product range decision-making processes, sources of supply and differentiation in Kalgoorlie which had not previously been disclosed to Coles or its external legal advisors (**Additional Information**), including:
- a. the total number of SKUs stocked by each supermarket in Kalgoorlie (including Foodworks and Lionel St IGA) at paragraph 2.43 (Table 3);
 - b. O'Connor Fresh IGA's sources of supply, including the proportion of its range that it acquires from Metcash and the extent to which it sources products from local suppliers at paragraph 6.37;
 - c. the proportion of O'Connor Fresh IGA's total range that O'Connor Fresh IGA submits is not stocked by Coles or Woolworths in Western Australia at paragraph 7.24;
 - d. Metcash's estimate of the proportion of products it supplies to O'Connor Fresh IGA which are stocked by Coles and Woolworths at paragraph 7.24; and
 - e. points of focus and differentiation for O'Connor Fresh IGA and other independent supermarkets in Kalgoorlie in terms of product ranges at, for example, paragraphs 6.37, 6.41, 6.50 and 7.25.

Post-SOR evidence disclosures of Additional Information

24. On 13 July 2026, the ACCC provided to Coles and HSFK, among other things:
- a. Woolworths' written response to a section 155 notice, which included information regarding Woolworths' product range decision-making processes; and
 - b. a spreadsheet containing Woolworths Kalgoorlie's top 2,000 SKUs (being the Woolworths data source for the ACCC's top 100 SKU analysis).
25. On 30 July 2026, the ACCC provided HSFK with confidential O'Connor IGA documents including, in respect of product range, differentiation and SKUs:
- a. O'Connor IGA's top 2,000 SKUs by revenue;
 - b. data relating to every SKU available for purchase at O'Connor IGA;
 - c. O'Connor IGA's product categories and sub-categories;
 - d. other documents describing O'Connor IGA's product range processes and

focuses.

26. On 5 August 2026, the ACCC provided HSFK with various confidential third-party documents, including in respect of product range, differentiation and SKUs:
 - a. file notes of calls between the ACCC and each of Lionel St IGA and Foodworks; and
 - b. Foodworks' response to an ACCC request for information.
27. On 11 August 2026, the ACCC disclosed to HSFK various highly confidential third-party documents, including in respect of product range, differentiation and SKUs:
 - a. Spudshed's top 2,000 SKUs by revenue and other information pertaining to Spudshed's product range and decision-making processes;
 - b. information relating to Woolworths' product range decision-making processes; and
 - c. Metcash information regarding the supply of products to O'Connor IGA, Lionel St IGA and Foodworks.
28. Many of the documents referred to in paragraphs 24 to 27 are referred to in the SOR: for example, as described in paragraph 23 above.

Application under s 100S(2)(b)

29. The SOR discloses that the grounds on which the ACCC made its determination included, as set out in paragraph 8.9 of the SOR, a conclusion that the exit of O'Connor Fresh IGA would result in the loss of a differentiated local offer, including local products and locally responsive product ranging. As explained in paragraphs 22 and 23 above, I understand that ground to be informed by the Top 100 SKU Analysis and Additional Information the ACCC obtained from third parties.
30. Coles did not have a reasonable opportunity to make submissions to the ACCC in relation to those grounds, or the evidence or other material on which those grounds were based, before the ACCC made its determination.
31. Coles' opportunity to make submissions or provide evidence in response to the Top 100 SKU Analysis was unreasonably constrained by:
 - a. the late provision of the Top 100 SKU Analysis, which was provided only 10 calendar days before the statutory block-out period; and
 - b. the fact that it was provided on an external counsel only basis such that Coles' product ranging teams could not test or interrogate the analysis and, in particular, the ACCC's assessment of "matching" SKUs;
 - c. the limited and incomplete information provided to the ACCC as to the relevance of the material to the Rey Report.
32. Coles had no opportunity at all to make submissions in relation to the other findings in the SOR, nor the Additional Information on which those findings were based, regarding supermarket SKUs, product ranges and product range decision-making processes, sources of supply and differentiation described in paragraph 23 above.

Lauren Perkins

Linda Evans

Sworn by the deponent
at Burleigh Heads
in the State of Queensland
on 4 September 2026
Before me:

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Linda Evans

Signature of deponent

Lauren Perkins

Signature of witness

Name, address and qualification of witness

Lauren Elizabeth Perkins
Level 34, 161 Castlereagh Street, Sydney NSW 2000
Australian Legal Practitioner

A person authorised under section 19(1) of the *Oaths and Affirmations Act 2018* (Vic) to take an affidavit.

This affidavit, as signed and notated by the authorised affidavit taker, was signed by the deponent by electronic means.

This affidavit was signed in front of the authorised affidavit taker by means of audio visual link.

The authorised affidavit taker has used an electronic copy of this affidavit and not the original in completing the jurat requirements.

This affidavit is an electronic copy, not an original.

PUBLIC VERSION

COLES SUPERMARKETS AUSTRALIA PTY LIMITED APPLICATION FOR
REVIEW OF AUSTRALIAN COMPETITION AND CONSUMER COMMISSION
MERGER AUTHORISATION DETERMINATION (MN-01068)

Commonwealth of Australia
Competition and Consumer Act 2010

In the Australian Competition Tribunal

File No. ACT 1 of 2026

Re Application for review of a determination made by the Australian Competition and
Consumer Commission under subsection 51ABZE(1) of the *Competition and Consumer
Act 2010*

CERTIFICATE IDENTIFYING EXHIBIT

This is the electronic exhibit marked 'LCE-1' now produced and shown to Linda Catherine Evans
at the time of swearing her affidavit on 4 September 2026.

Linda Evans

Before me:

Lauren Perkins

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Signature of witness:

Name of witness: Lauren Elizabeth Perkins

Address of witness: Level 34, 161 Castlereagh Street, Sydney NSW 2000

Qualification of witness: Australian Legal Practitioner

A person authorised under section 19(1) of the *Oaths and Affirmations Act 2018* (Vic) to take an
affidavit.