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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

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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]

PUBLIC VERSION

IN THE AUSTRALIAN COMPETITION TRIBUNAL

APPLICATION BY COLES SUPERMARKETS AUSTRALIA PTY LTD

ACT 1 OF 2026

Affidavit

Affidavit of:	Liza Windel Carver
Re:	Application by Coles Supermarkets Australia Pty Ltd under section 100S(2)(b) of the *Competition and Consumer Act 2010* (Cth).
Address:	Level 34, 161 Castlereagh Street, Sydney, NSW 2000
Occupation:	Solicitor
Date:	27 August 2026

I, Liza Windel Carver, 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** or **Coles**). 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 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. I am not instructed, nor do I intend to, waive legal professional privilege on behalf of the Applicant in relation to any subject matter referred to in this affidavit. Nothing in this affidavit ought to be construed as constituting a waiver of such privilege.

4. Exhibited to me at the time of swearing this affidavit and marked "**LWC-1**" is an electronic bundle of documents, separated by virtual tab numbers.

Section 1: Relevant experience

5. I graduated from the University of Sydney in 1986 with degrees in law and economics. I have spent most of my professional career either as a legal practitioner in the area of competition law or in roles concerned with competition law policy and enforcement.

6. Between 1993 and 1999, I was an Associate Commissioner with the Trade Practices Commission (**TPC**) and then the ACCC.

7. Between January 1998 and March 2022, I was a partner in the competition law groups of Gilbert + Tobin, Ashurst and Herbert Smith Freehills (as HSFK was then known).

Filed on behalf of (name & role of party) Coles Supermarkets Australia Pty Ltd, Applicant
Prepared by (name of person/lawyer) Liza Carver
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[redacted] [redacted] [redacted]

8. Between March 2022 and May 2025, I was a Commissioner with the ACCC, holding the positions of Chair of the Enforcement Committee and Deputy Chair and Chair of the Mergers Review Committee.

9. At the end of May 2025, I returned to HSFK, as a partner in the competition law group.

10. As a competition law partner, the majority of my practice has been in mergers, including contentious merger matters. That experience has included representing parties in the following proceedings:

    a. *Qantas Airways Limited* [2004] ACompT 9*;*

    b. The Australian Gas Light Company in relation to the decided case *Australian Gas Light Company v ACCC* [No 3] [2003] FCA 1525;

    c. AGL in proceedings in the Tribunal in relation to the decided case of *Application for Authorisation of Acquisition of Macquarie Generation by AGL Energy Limited* [2014] ACompT 1; and

    d. TPG in relation to the decided case *Vodafone Hutchison Australia Pty Ltd v ACCC* [2020] FCA 117.

Section 2: ACCC Phase 1 assessment

11. Coles notified the Proposed Acquisition to the ACCC on 26 November 2025.

12. On 18 December 2025, the ACCC wrote to Coles to advise of "*the competition issues identified during Phase 1 that may warrant further investigation by the ACCC*". The letter, a copy of which is exhibited at **tab 1** of **LWC-1,** said that the ACCC had identified the following issues that may warrant further investigation (emphasis added):

    - *whether the Acquisition would lead to **excess supermarket capacity relative to consumer demand**;*
    - *whether the local market will be concentrated, Coles' share of supply and the extent of competitive constraint on Coles after the Acquisition;*
    - ***whether the proposed store could be expected to be unprofitable, or lead to the existing Coles Kalgoorlie becoming unprofitable**;*
    - *whether the Acquisition will **induce the exit** of existing grocery retailers; and*
    - *whether the Acquisition will make new entry unprofitable.*

13. Coles and the ACCC engaged in further correspondence in the ACCC's Phase 1 review.

14. On 29 January 2026, the ACCC decided that the Proposed Acquisition was to be subject to Phase 2 review. A copy of that decision is exhibited at **tab 2** of **LWC-1**. The decision says among other things (emphasis added):

    > *3.1 During Phase 1, the ACCC may decide that a notification of an acquisition is to be subject to Phase 2 review if it is satisfied that the acquisition, if put into effect, could, in all the circumstances, have the effect, or be likely to have the effect, of substantially lessening competition in any market.*

[redacted]

[redacted]

> *3.2 The basis for the ACCC's Phase 2 Notice, including the nature of the theories of harm that form the basis for the ACCC's satisfaction and the matters the ACCC intends to investigate before making a determination, is set out below. The two theories of harm the ACCC is considering are set out below.*
>
> ...
>
> *3.16 …* ***the ACCC is considering the likely economic rationale of the Acquisition closely****. Information before the ACCC suggests the Acquisition* ***may lead to an over-supply of supermarket capacity relative to consumer demand****, such that existing competitor stores may become unprofitable.*
>
> ...
>
> *3.20 The ACCC is considering the effect the Acquisition would have on Coles' market power and the ability of competitors to compete. The ACCC's preliminary view is that the Acquisition may create, strengthen or entrench substantial market power because* ***it may only be profitable due to the impact on competitors or potential competitors****.*

15. On or about 9 February 2026, Coles retained HSFK to represent it in relation to the Proposed Acquisition. I have jointly led the work on the matter with my partner Linda Evans.

16. HSFK retained independent experts to provide expert economic and financial evidence during the course of the Phase 2 investigation.

17. On 16 February 2026, HSFK appointed:

    a. Mr Tony Samuel of Sapere Forensic Group (**Sapere**); and

    b. Mr Warwick Davis from Frontier Economics Melbourne (**Frontier Melbourne**).

Section 3: ACCC Phase 2 Assessment

18. On 5 March 2026, pursuant to section 51ABZK(1) of the CCA, the ACCC issued its 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 3** of **LWC-1**.

My understanding of the issues to which Coles had to respond

19. I read the NoCC having regard to the statutory requirement that it set out:

    a. the ACCC's preliminary assessment of whether the Proposed Acquisition, if put into effect, would have the effect, or be likely to have the effect, of substantially lessening competition in any market; and

    b. the grounds on which the ACCC makes the assessment, referring to the evidence or other material on which the grounds are based.

20. The concerns outlined in the NoCC, consistent with those outlined in its earlier 18 December 2025 letter and 29 January 2026 decision, led me to believe that the focus of the ACCC's assessment was whether the Proposed Acquisition made 'economic sense' from Coles' perspective or whether instead it could be characterised as predatory in effect.

 [redacted] [redacted]

21. Unlike a merger, which by definition eliminates an acquired competitor from the market, the Proposed Acquisition establishes new capacity and creates a new source of supply for consumers which expands consumer choice such that consumers can choose which supplier they wish to deal with. I understood that acquisitions of this kind, that have the effect of increasing capacity, may sometimes raise competition concerns when they involve a strategic investment in excess capacity leading to recoupment on exit of a competitor. For example, I was broadly aware at the time of the United States Supreme Court decision in *US v Aluminium Co. of America* 148 F.2d 416 which dealt with the prospect of predatory exclusion through capacity expansion (albeit in the context of a monopolisation case rather than a merger assessment).

22. The concerns outlined in the NoCC, and earlier documents, were consistent with this in their focus on the economic rationale for the Proposed Acquisition and the concern about over-supply "relative to consumer demand". Also consistent are the ACCC's Merger Assessment Guidelines published on 20 June 2025, which in their entirety address mergers between competitors, between firms in a buyer/supplier relationship, or between firms that supply related products, and do not provide guidance in relation to acquisitions of the kind here or put notifying entities on notice of any ACCC views or policies on the topic.

23. I did not understand the ACCC to consider that the mere exit of an independent competitor, in the absence of predatory or exclusionary conduct, was a theory of harm to which Coles needed to respond.

24. For example, paragraph 4.14 of the NoCC states that the Proposed Acquisition is "*likely to lead to an over-supply of supermarket capacity in Kalgoorlie, leading to the exit of an effective independent supermarket competitor*." The language used is indicative of building capacity in advance of demand. This reading was reinforced by paragraphs 4.15 – 4.17 of the NoCC. Moreover, at paragraph 4.21 of the NoCC, the ACCC identified O'Connor Fresh IGA (**O'Connor IGA**) as likely to be materially impacted by the Proposed Acquisition and likely to exit the market as a result.

25. At paragraph 4.24 of the NoCC, the ACCC stated that, [redacted], the ACCC's preliminary view was that there was reason to believe that the Proposed Acquisition may be unprofitable for [redacted]. I read this paragraph and the preceding paragraphs as setting out a conventional theory of harm involving strategic investment in excess capacity leading to recoupment on exit of a competitor.

NoCC Response (5 March 2026 until 14 April 2026)

26. I considered that there were aspects of the NoCC that did not set out what was required by section 51ABZK(3) of the CCA with sufficient particularity.

27. On 17 March 2026, I caused a letter to be sent to the ACCC, a copy of which is exhibited at **tab 4** of **LWC-1**. The letter raises Coles' concerns that aspects of the NoCC did not enable it to sufficiently understand the grounds for the ACCC's preliminary assessment so as to prepare its submissions. In that letter, Coles also requested further information and documents from the ACCC, which was set out in Schedule 1 to the letter.

28. On 18 March 2026, I received an email from Mr George Cunningham of the ACCC, a copy of which is exhibited at **tab 5** of **LWC-1**. The email from Mr Cunningham states

[redacted]

[redacted]

that when the ACCC provided the NoCC to Coles on 5 March 2026, it had intended to indicate that it would separately provide additional, confidential materials relating to the Coles and O'Connor IGA's financials, but had not done so due to an '*oversight*' on the part of the ACCC.

29. On 24 March 2026, under cover of letter from the ACCC, I received two documents containing analysis undertaken by the ACCC's staff which was foreshadowed by Mr Cunningham in tab 5 of LWC-1 above. Copies of the letter and its attachments are exhibited at **tabs 6 to 8** of **LWC-1**. The attachments to the letter were an Excel Spreadsheet containing the ACCC's analysis on the profitability of the proposed new Coles store and the methodology adopted by the ACCC in undertaking this analysis.

30. On receipt of this material from the ACCC, I understood that material to be consistent with an investigation into a conventional strategic excess capacity or predation theory of harm. I understood that this was the theory that needed to be responded to by the Applicant as a matter of the factual circumstances and analysis that Coles had undertaken in deciding whether to pursue the Proposed Acquisition.

31. On 28 March 2026, under cover of letter with attachments, the ACCC responded to HSFK's letter of 17 March 2026 (being tab 4 of LWC-1). Copies of the letter and its attachments are exhibited at **tabs 9 to 11** of **LWC-1**. The ACCC provided supermarket prevalence data and responses to various requests from HSFK in Schedule 1 to the 17 March 2026 letter and stated that the ACCC would be providing the profitability forecast of the competitor store (O'Connor IGA). The ACCC's response did not provide any further specificity or clarity around the questions raised in HSFK's letter relating to metrics of over-supply. Instead, the ACCC stated that it: "*considers that the information provided in the NOCC is sufficient for Coles to understand the substance of the submissions made by third parties in relation to over-supply and to make submissions in response*."

32. On 31 March 2026, Ms Janet Li from the ACCC emailed HSFK attaching the profitability analysis of O'Connor IGA (Excel Spreadsheet) and a methodology note (**ACCC O'Connor Profitability Analysis**). Copies of the email and its attachments are exhibited at **tabs 12 to 14** of **LWC-1**. On reviewing the ACCC O'Connor Profitability Analysis, I formed the view that the analysis was a 'companion piece' to the ACCC's analysis of the profitability of the Coles investment that is exhibited at tabs 7 to 8 of LWC-1 and that the ACCC considered there to be a causal nexus between Coles' expansion and the exit of O'Connor IGA and that this was consistent with a predation theory of harm.

33. HSFK instructed Mr Samuel of Sapere to review and provide an opinion on:

    a. the financial analysis that Coles undertook to assess the Proposed Acquisition;

    b. whether Coles' analysis was consistent with what a prudent and efficient business would take into consideration when assessing an expansion of its network capacity; and

    c. the financial models prepared by the ACCC to test the profitability of the Proposed Acquisition and impact on competitors.

34. The instructions to Sapere included factual information and Coles' business records and analysis that constitute what is referred to in paragraph 6.59 of the SOR as Coles' business case for the Proposed Supermarket (**Business Case**).

[redacted]

[redacted]

35. We also instructed Mr Davis of Frontier Melbourne to provide an opinion on the economic principles that should inform an assessment of whether a decision to invest in expanded capacity in the retail grocery sector may substantially lessen competition in a market and to provide observations on the application of those principles to the facts.

36. HSFK also sought information from relevant employees and access to business records of Coles to prepare a response to the NoCC and the additional profitability material provided by the ACCC referred to above at paragraph 32. An unredacted copy of the Applicant's response to the NoCC is exhibited at **tab 15** of **LWC-1**. I reviewed and settled this document which was provided to the ACCC on 14 April 2026.

Review of s155(1)(c) examination transcripts

37. Between 1 May to 15 May 2026, the ACCC provided to HSFK the transcripts of section 155(1)(c) examinations with various Coles' employees. I reviewed these transcripts and formed the view that the ACCC's questions were aimed at interrogating the financial viability of the Coles Somerville store.

38. For example, the transcript of the examination of Kate Broad (Coles National Location Planning Manager) on 13 April 2026, a copy of which is exhibited at **tab 16** of **LWC-1**, records that counsel for the ACCC (Mr Declan Roche) interrogated [redacted] (pages 58 to 59). In addition, Mr Little of the ACCC asked questions about [redacted] (pages 90 -93).

39. I took this line of questioning as being consistent with the ACCC exploring whether Coles' investment was commercially rational. That is, I considered that the ACCC was still assessing the Proposed Acquisition by reference to this predation or profit sacrifice theory of harm.

Section 4: Post-NoCC Response Period (after 14 April 2026)

40. On 18 May 2026, under cover of letter, a copy of which is exhibited at **tab 17** of **LWC-1,** HSFK received two reports from the ACCC:

    a. a report prepared by Dawna Wright at FTI Consulting analysing the financial circumstances of O'Connor Fresh IGA (**FTI Report**), a copy of which (together with accompanying spreadsheet) is exhibited at **tabs 18 to 19** of **LWC-1**; and

    b. a report prepared by Patrick Rey, a Professor of Economics at the Toulouse School of Economics, providing an opinion on the economic principles for the potential exit of O'Connor Fresh IGA, a copy of which (together with annexures) is exhibited at **tabs 20 to 22** of **LWC-1** (**First Rey Report**).

41. The ACCC's cover letter to these two expert reports stated that the ACCC "*may have regard to*" the reports in making a determination in relation to the Proposed Acquisition. The ACCC did not indicate how, in particular, the First Rey Report may be applied.

42. On 21 May 2026, the ACCC made a further disclosure to Coles by letter, a copy of which is exhibited at **tab 23** of **LWC-1**, but this did not concern the application of the First Rey Report.

43. Upon reading the First Rey Report, I understood it to be a summary note of economic principles expressed in relatively short form as a narrative. I understood the report to be saying that as a matter of principle, an investment in new capacity which has a causal relationship with the exit of a differentiated and independent competitor could under certain conditions lead to a consumer detriment indicative of an inefficient allocative outcome. The net welfare basis for the opinion was different from what I would expect to see as an assessment of the impact of the conditions for competition on a factual and counterfactual forward-looking basis. The technical appendix to the First Rey Report contained what I understood to be a modified 'Cournot' mathematical model.

44. I have a general understanding of the role of Cournot modelling techniques in merger analysis, including from my involvement in the Qantas and Air New Zealand alliance authorisation determination in 2003 (*Authorisation No.* A30220, A30221, A30222, A90862 and A90863) and subsequent review by the Tribunal in *Qantas Airways Limited [2004] ACompT 9* (**Qantas Case**). I acted for the intervenor in these proceedings, being Gullivers Group, an association offering travel distribution services. A Cournot model was a feature of Mr Timothy Hazeldine's evidence who appeared as an expert on behalf of Gullivers Group. The Tribunal found this evidence to be '*static*', mechanistic and '*having little probative value*' (paragraph 347 of the Tribunal's reasons for determination in the Qantas Case).

45. I caused a letter to be sent to the ACCC on 3 June 2026, a copy of which is exhibited at **tab 24** of **LWC-1**. The letter raises Coles' concerns that it had not been informed how the theoretical framework in the First Rey Report might be applied by the ACCC. The letter states:

> *There is nothing in the NoCC that suggests that the framework set out in the Rey Report would be applied to the Acquisition. The ACCC has not otherwise provided any indication as to how it proposes to use or apply this framework. For example, after providing the Rey Report, on 21 May 2026 the ACCC provided the disclosure letter which enclosed some additional information that has arisen since the issuing of the NoCC that the ACCC said is potentially material to its assessment, and referred to the provision of other information that the ACCC said it was not yet in a position to share. The disclosure letter does not suggest any intention to share any material relating to the application of the Rey Report to the facts of this review. Procedural fairness in connection with the ACCC's determination requires that Coles have an opportunity to comment, not only on the Rey Report, but on the potential application(s) of the Rey Report to the Acquisition that the ACCC may be considering.*

46. On 5 June 2026, I received a letter from the ACCC in response to HSFK's 3 June 2026 letter, a copy of which is exhibited at **tab 25** of **LWC-1**. The letter states:

> *It is for the Commission to decide whether and how the principles expounded by Professor Rey may inform the ultimate decision the ACCC is to make on whether the Acquisition may be put into effect.*
>
> *The ACCC has not prejudged this question. Rather, it is considering how the principles articulated in the Rey Report may assist the ACCC to identify whether the new investment represented by the Acquisition would be pro-competitive or anti-competitive. The ACCC would be assisted by Coles' submissions in this regard.*

 [redacted] [redacted]

47. On 5 June 2026, HSFK retained Dr Mike Walker at Frontier Economics UK (**Frontier UK**) as an independent economic expert. Dr Walker was instructed to provide a report on:

    a. the utility of Cournot modelling as employed by Professor Rey;

    b. the appropriateness of the modifications that Professor Rey has made to the standard Cournot model;

    c. the situations and types of markets for which Cournot modelling is appropriate;

    d. the alternative modelling approaches that are commonly used, including the relative strengths and weaknesses of those models; and

    e. the extent to which the Rey Report is useful and informative for decisionmakers in relation to analysis of the Proposed Acquisition.

48. When HSFK retained Dr Walker (and until the determination was made), Coles had not been informed by the ACCC of how it proposed to use or apply the Rey framework. If Coles had been aware that the ACCC proposed to use the Rey framework to reach a conclusion that entry by Coles, resulting in exit of O'Connor Fresh IGA, had an effect or likely effect of substantially lessening competition even absent predation, Coles would have had an opportunity to put further or different questions to Dr Walker, including whether that theory of harm is an appropriate basis for a competitive assessment of the Proposed Acquisition.

49. HSFK also re-engaged Mr Davis of Frontier Melbourne to provide independent economic expert opinion on the matters raised by the First Rey Report.

50. At about 6.30pm on Friday, 5 June 2026, the ACCC provided to Coles further disclosure of additional information to which it may respond by 11 June 2026, but this did not concern the application of the First Rey Report. A copy of this email is exhibited at **tab 26** of **LWC-1**.

51. On 9 June 2026, HSFK received a report from Frontier UK which was principally responsive to the debate over Bertrand and Cournot modelling, a copy of which is exhibited at **tab 27** of **LWC-1**. A copy of Dr Walker's report was provided to the ACCC on 10 June 2026.

52. On 11 June 2026, Coles met with the ACCC for the purpose of discussing Coles' submissions to the ACCC. A copy of the PowerPoint presentation that was shown during the meeting is exhibited at **tab 28** of **LWC-1**. The presentation relevantly includes the following statements on page 7 (which I recall being raised during the meeting):

    a. "*The ACCC has not disclosed the material facts and propositions that would enable Coles to understand the issues likely to be relevant to the ACCC's decision*"; and

    b. "*The ACCC has not advised Coles (or its external advisors) whether, after an extensive investigation, the ACCC maintains the 'preliminary assessment' in the NoCC. This includes excess capacity, profitability of investment, impact to state-wide pricing*".

53. On 17 June 2026, HSFK sent a further letter to the ACCC regarding procedural fairness particularly in relation to the need for the Applicant to be in a position to

[redacted]

[redacted]

understand and comment on the ACCC's potential application of the First Rey Report to the Proposed Acquisition. A copy of this letter is exhibited at **tab 29** of **LWC-1**.

54. The ACCC did not respond to the 17 June 2026 letter.

Section 5: Second Rey Report

55. On 30 June 2026, I reviewed the ACCC's Statement of Reasons for its Phase 2 Determination that the Proposed Acquisition must not be put into effect (**SOR**).

56. Paragraph 4.7 of the SOR records that the ACCC took into account not only the First Rey Report but another report of Professor Rey dated 25 June 2026 (**Second Rey Report**).

57. Until I read the SOR, I did not know, and Coles did not know, that the ACCC had sought further expert opinion from Professor Rey. Coles had no opportunity to respond to the Second Rey Report, or even to pose to Dr Walker or Mr Davis any questions that the ACCC considered warranted further opinion.

58. The Second Rey Report, a copy of which is exhibited at **tab 30** of **LWC-1,** was provided to Coles on 3 July 2026.

59. I now know that the ACCC sought Professor Rey's further opinion on 17 June 2026. A copy of the ACCC's letter to Professor Rey of that date is exhibited at **tab 31** of **LWC-1**.

60. I note that in the Second Rey Report, Professor Rey (at p 5) asserts that Dr Walker "does not question the validity" of the economic principles outlined in the First Rey Report. In the SOR, the ACCC asserted that Dr Walker "appears also to support an approach that assesses the net effect on consumer welfare, albeit using a different economic model [to that used by Professor Rey]": SOR, [6.202]. I am informed by Dr Walker and believe that this is not his position.

Section 6: Proposed new evidence under section 100S(2)(b)

61. The SOR discloses that the grounds on which the ACCC made its determination are based on the First and Second Rey Reports.

62. Paragraphs 6.185 to 6.209 record that the ACCC accepted Professor Rey's theoretical framework as enabling a finding of a substantial lessening of competition resulting from the exit of a firm notwithstanding the absence of profit sacrifice by Coles.

63. The conclusions in Section 8 of the SOR, and paragraph 8.8 in particular, depend on the Rey framework.

64. Coles did not have a reasonable opportunity to make submissions to the ACCC in relation to those grounds or the Rey Reports on which they were based before the ACCC made its determination.

65. Coles' opportunity to make submissions in relation to the First Rey Report was unreasonably constrained by the late provision of the First Rey Report. The limited opportunity to respond was afforded in a practical context where the theory of harm to which the First Rey Report is relevant was novel and was not disclosed to Coles in the NoCC or otherwise, and where Coles was expected simultaneously to respond to other late disclosures of material.

66. Coles' opportunity to make submissions in relation to the First Rey Report was further constrained by the ACCC's failure to inform Coles, even when Coles asked,

 [redacted] [redacted]

that it was considering applying Professor Rey's economic principles to support a conclusion that exit of O'Connor Fresh IGA would have an effect or likely effect of substantially lessening competition even in the absence of any predation by Coles. Because it was not aware that the ACCC was investigating this theory of harm, Coles did not have a reasonable opportunity to instruct Dr Walker to provide his expert opinion on that theory of harm, or its potential application to the Proposed Acquisition.

67. Coles had no opportunity at all to make submissions in relation to the Second Rey Report. This was in a practical context where the ACCC could have sought, but chose not to seek, further information from Dr Walker and Mr Davis and not only from Professor Rey.

68. The evidence that Coles seeks to provide to the Tribunal in relation to the Rey Reports is a further expert report from Dr Walker addressing the following questions:

i. the extent to which the Second Rey Report addresses concerns raised by Dr Walker in his report of 9 June 2026 regarding the appropriateness of the Rey framework and modelling techniques employed by Professor Rey;

ii. the extent to which the Second Rey Report's analysis appears to be reflected in the SOR; and

iii. whether the theory of harm presented in the Second Rey Report is an appropriate basis for a co[redacted] Acquisition.

Sworn by the deponent)
at Sydney)
in the State of New South Wales)
on 27 August 2026)
Before me:)

[redacted]

Signature of deponent

Signature of witness

Name, address and qualification of witness

[redacted]

Level 34, 161 Castlereagh Street, Sydney NSW 2000

Australian Legal Practitioner

[redacted]

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 exhibit marked 'LWC-1' now produced and shown to Liza Windel Carver at the time of swearing her affidavit on 27 August 2026.

[redacted]

Before me:

.....[redacted]...

Signature of witness:

Name of witness: [redacted]

Address of witness: Level 34, 1[illegible]1 Castlereagh Street [redacted] Sydney NSW 2000

Qualification of witness: Australian Legal practitioner