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AUSTRALIAN COMPETITION TRIBUNAL

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Lodgment and Details

Document Lodged:	Affidavit
File Number:	ACT 1 of 2026
File Title:	APPLICATION BY COLES SUPERMARKETS AUSTRALIA PTY LTD
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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]

IN THE AUSTRALIAN COMPETITION TRIBUNAL

APPLICATION BY COLES SUPERMARKETS AUSTRALIA PTY LTD

ACT 1 OF 2026

Affidavit

Affidavit of:	Andrew Dhugal Christopher Eastwood
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:	4 September 2026

I, Andrew Dhugal Christopher Eastwood, 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. 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 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 "**ADCE-1**" is an electronic bundle of documents, separated by virtual tab numbers.

Section 1: Relevant experience

5. I graduated from the University of New South Wales in 1997 with degrees in law and economics.
6. Since my admission as a solicitor of the Supreme Court of New South Wales in 1998, I have practised almost exclusively in the field of commercial litigation.
7. I became a partner in the commercial litigation group at Freehills (now HSFK) in 2006. As a commercial litigation partner, the majority of my practice has involved regulatory disputes. My experience has included representing parties in the following proceedings in the Australian Competition Tribunal:

Filed on behalf of (name & role of party) Coles Supermarkets Australia Pty Ltd, Applicant
Prepared by (name of person/lawyer) Merryn Quayle and Andrew Eastwood
Law firm (if applicable) Herbert Smith Freehills Kramer
Tel (03) 9288 1499 and (02) 9225 5442 Fax
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Address for service (include state and postcode) Level 34, 161 Castlereagh Street, Sydney, NSW 2000

Lauren Perkins

[redacted]

a. *Applications by Public Interest Advocacy Centre Ltd and Ausgrid* [2016] ACompT 1; and

b. *Applications by Australia and New Zealand Banking Group Limited and Suncorp Group Limited* [2024] ACompT 1.

Section 2: The ACCC's Consideration of Coles' Business Case

8. On 5 March 2026, the ACCC released its Notice of Competition Concerns pursuant to section 51ABZK(1) of the CCA (**NoCC**). A copy of the unredacted version provided to the Applicant's external legal advisers is exhibited at **tab 1** of **ADCE-1**.

9. At paragraph 4.24 of the NoCC, the ACCC stated that its preliminary view was that there was reason to believe the Proposed Acquisition may be unprofitable for [redacted]. In support of this proposition, the ACCC stated at paragraph 4.35 of the NoCC that it had conducted its own sensitivity analysis of Coles' business case, though I understand the ACCC had not provided this to Coles at the same time as the NoCC.

10. On 24 March 2026, the ACCC provided HSFK with two documents relating to the analysis undertaken by the ACCC's staff referred to in paragraph 4.35 of the NoCC. A copy of the analysis is exhibited at **tab 2** of **ADCE-1** and a copy of the methodology is exhibited at **tab 3** of **ADCE-1**.

11. Subsequent to the receipt of the ACCC's sensitivity analysis of Coles' business case, HSFK instructed Mr Tony 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.

12. The instructions given by HSFK to Sapere included factual information and Coles' business records and analysis that constitute Coles' business case for the Proposed Acquisition. At the same time, HSFK also prepared a response to the NoCC and the ACCC's sensitivity analysis of Coles' business case, by reference to information from relevant employees and business records of Coles. An unredacted copy of the Applicant's response to the NoCC dated 14 April 2026 is exhibited at **tab 4** of **ADCE-1** (**NoCC Response**).

13. In the NoCC Response, Coles highlighted multiple issues with the ACCC's sensitivity analysis in section 5.3. Specifically, Coles [redacted]. Furthermore, [redacted]:

a. [redacted];

b. [redacted];

c. [redacted]; and

Lauren Perkins [redacted]

d. [redacted].

14. On 4 May 2026, Coles provided the ACCC with an Expert Report of Mr Tony Samuel, a copy of which is exhibited at **tab 5** of **ADCE-1** (**Sapere Report**). This report noted that the sensitivity analysis used by [redacted].

15. On 13 July 2026, the ACCC provided HSFK with an index of documents that were briefed to Dawna Wright of FTI Consulting, a copy of which is exhibited at **tab 6** of **ADCE-1**. From this index, it is clear that the ACCC provided documents relevant to Coles' business case until at least 28 April 2026.

16. The ACCC did not provide HSFK or Coles with any expert evidence that considered Coles' business case or the Sapere Report. As such, I understand that the only expert evidence available to the ACCC with respect to Coles' business case was the Sapere Report, which responded to the analysis in the NoCC.

Section 3: The ACCC's Consideration of Coles' CAR Model

17. On 30 June 2026, the ACCC released its Phase 2 Determination in the form of a Statement of Reasons (**SOR**) which determined that the Proposed Acquisition must not be put into effect.

18. On 15 July 2026, the Applicant lodged an application for review of the SOR by the Tribunal under section 100C of the CCA.

19. Aspects of the SOR, especially paragraphs 6.79 and 6.80, together with Attachment C, call into question Coles' business case for the Proposed Acquisition. The SOR notes that the business case was a "*material consideration*" (paragraph 6.209) and "*relevant consideration*" (paragraph C13) for the ACCC's assessment, even though the ACCC also considered that the profitability of the Proposed Acquisition was not determinative.

20. Attachment C refers to various calculations and adjustments the ACCC has made in relation to Coles' business case as contained within a model known as the Capital Allocation Request Model or the "CAR Model", a copy of which is exhibited at **tab 7** of **ADCE-1**. (**the Original CAR Model)**. Relevantly, that Original CAR Model contains a [redacted] in the "Summary" tab at cell AA101.

21. At paragraph C5 of the SOR, the ACCC states:

> "*The ACCC considers that there are some calculation issues with the [Original CAR Model].*
>
> - *Latent Revenue: As discussed above, the ACCC considers that what is labelled 'Latent' revenue is not new sales revenue but sales for which a source competitor had not been identified. An implication of this is that the 'Latent' sales, $[redacted], to the extent that they are achieved may be an additional sales revenue impact to other stores, including Coles Kalgoorlie, such that the [Original CAR Model] underestimates the Coles-on-Coles impact and overstates profit. The ACCC considers an appropriate year 1 impact on Coles Kalgoorlie revenue is [redacted]% rather than [redacted]%.*

Lauren Perkins [redacted]

- *Year 2 and year 3 ramp up: The ACCC notes Mr Samuel's and Mr Davis' explanations of the way Coles has modelled a ramp-up in its sales revenue from year 1 to years 2 and 3. However, that ramp up in sales revenue for the Proposed Supermarket is not accounted for in the Coles-on-Coles impact.*

  The implication of this is that the [Original CAR Model] understates the Coles on-Coles impact and overstates profit. Adjusting for this would indicate year 2 and year 3 impacts on Coles Kalgoorlie revenue are [redacted]% (rather than [redacted]%) and [redacted]% (rather than [redacted]), respectively.

- *Payback period: The formula in the [Original CAR Model] does not discount cashflows from year to year. This can be remedied by calculating the discount rate as 1/(1+WACC)^t.*

- *Incorrect year: The [Original CAR Model] takes as an input for [redacted] revenue the [redacted] revenue from the MA model. Coles uses a [redacted]% rate of inflation for [redacted], such that revenue estimates in each year of the business case are inflated [redacted]%."*

22. At paragraph C10, the ACCC states:

> "*Although not determinative, the ACCC considers that, with the above calculation issues (set out in paragraph C5) addressed and applying no further changes to reflect different judgements on the inputs, a central case of the model is that the acquisition would be [redacted] over 10 years:*
>
> - [redacted];
> - [redacted];
> - [redacted];
> - [redacted];
> - [redacted]."

23. At paragraph C11 of the SOR, the ACCC states:

> "*The ACCC accepts that the central case of the model, without those adjustments, does support Coles' conclusion that the acquisition would be [redacted] over [redacted].*"

24. The ACCC then states at paragraph C12:

> *"But it is notable that, even in this alternative, the Acquisition would be unprofitable using Coles benchmarks if the Proposed Supermarket attracted [redacted] revenue than forecast (for instance, [redacted]. This highlights [redacted]. It is an open question as to what Coles response would be in that situation, that is whether to accept that loss making position, or to seek to win additional sales to get the Proposed Supermarket to a profitable or breakeven position, with the implication*

Lauren Perkins [redacted]

that this would enhance the prospect that the Relevant Independent store would be unviable."

25. At paragraph 6.80 of the SOR, the ACCC states:

> *"If the Proposed Supermarket's revenue in* [redacted] *were $*[redacted]*, which is* [redacted]*% less than Coles' forecast, then Coles' incremental NPV for the Acquisition would be negative and the Relevant Independent's revenue impact would be reduced.*"

26. That analysis in the SOR is different to the analysis in the NoCC and related materials on which the Sapere Report, opined and it appears that the ACCC abandoned its pre-NoCC analysis and replaced it with the analysis set out above in paragraphs 19–25 above.

27. On 6 July 2026, HSFK under cover of email sent a letter to the ACCC requesting copies of all worksheets relating to the ACCC calculations referenced in the SOR. The letter stated:

> "*In a number of areas in the Determination Reasons, the ACCC has undertaken calculations which are not referenced to any expert report but appear to be the ACCC's own calculations. An example is the figures in C5 of Attachment C. Would you please provide by 4pm on Tuesday 7 July copies of any and all worksheets used by the ACCC in preparing the Determination…*"

Copies of the cover email and letter are exhibited at **tabs 8 to 9** of **ADCE-1**.

28. On 7 July 2026, the ACCC sent an email to HSFK confirming it was considering the request for copies of the worksheets requested on 6 July 2026 and would revert shortly. A copy of this email is exhibited at **tab 10** of **ADCE-1**.

29. On 13 July 2026, the ACCC sent a letter to HSFK confirming that it did not propose to provide copies of the worksheets, on the basis that they contain internal staff analysis and calculations, are not referred to in the SOR, and that the relevant paragraphs of the SOR explain the methodology and issues identified. A copy of this letter is exhibited at **tab 11** of **ADCE-1**.

30. Between 5 August 2026 and 11 August 2026, there was correspondence between HSFK and the Australian Government Solicitor (**AGS**), acting on behalf of the ACCC, regarding the documentary index and the provision of the worksheets underlying the SOR (including Attachment C). In particular:

    a. On 5 August 2026, HSFK sent a letter to AGS requesting the documentary index be updated to include all ACCC calculations referred to in the SOR and all models containing these calculations, including three examples identified by HSFK.

    b. On 6 August 2026, AGS responded by letter confirming that, whilst the ACCC maintained the relevant calculations were not expressly referred to in the SOR, it was nonetheless prepared to update the documentary index to include the three example worksheets identified by HSFK and to provide copies.

    c. On 7 August 2026, HSFK sent an email to AGS requesting provision of the worksheets by 4pm that day.

Lauren Perkins [redacted]

d. On 10 August 2026, HSFK sent an email to the ACCC following up on the provision of the worksheets, noting the confidentiality regime applied regardless of whether the documents were listed in the documentary index, and emphasising urgency given Coles' concise statement was due on 14 August 2026. AGS responded by email confirming amongst other things that three worksheets would be provided by midday on 11 August 2026. HSFK sent a further email requesting confirmation as to which paragraphs of the SOR the worksheets are relevant to. AGS responded by email stating that the worksheets relate to paragraph 6.80 and at least paragraphs C5, C10 and C12.

e. On 11 August 2026, the ACCC provided three worksheets pursuant to the correspondence referred to above.

Copies of the relevant correspondence between HSFK and AGS referred to above are exhibited at **tabs 12 to 19** of **ADCE-1**.

31. Therefore, Coles did not receive the worksheets underlying the SOR until six weeks after the SOR was released. This meant that Coles was unable to comment or make submissions on the ACCC's calculations and adjustments to the Original CAR Model in those worksheets, including the "calculation issues" asserted by the ACCC and the ACCC's analysis of the level of revenue reduction required for the proposed store's NPV to become negative. As noted above, the ACCC's analysis of the Coles' business case in the SOR was different to the pre-NoCC analysis upon which the Sapere Report opined and Coles made submissions.

32. The two worksheets relevant to this application are:

a. a worksheet titled "COL.0009.0001.0001 (ACCC Adjusted - calc issues) - CONFIDENTIAL AND HIGHLY COMMERCIALLY SENSITIVE - Please see notes about sensitivity in iM doc #31,534,082 (1)" and which has the document ID number 01068.022.038.0002, a copy of which is exhibited at **tab 20** of **ADCE-1** (**the Calculation Issues Spreadsheet**); and

b. a worksheet titled "COL.0009.0001.0001 (ACCC Adjusted - revenue sensitivity) - CONFIDENTIAL AND HIGHLY COMMERCIALLY SENSITIVE – please see notes about sensitivity .xlsx" and which has the document ID number 01068.022.038.0003, a copy of which is exhibited at **tab 21** of **ADCE-1** (**the Revenue Sensitivity Spreadsheet**) (together, **the ACCC Spreadsheets**).

33. As I explain further below, each of the ACCC Spreadsheets appears to be an amended version of the Original CAR Model.

Calculation Issues Spreadsheet

34. The Calculation Issues Spreadsheet contains the same tabs as the Original CAR Model and contains an additional tab labelled "ACCC Adjustments".

35. The "ACCC Adjustments" tab of the Calculation Issues Spreadsheet refers to the four issues identified in paragraph C5 of the SOR (see paragraph 21 above) and explains the ACCC's adjustments to Coles' business case within the spreadsheet to address these so-called "calculation issues". The Calculation Issues Spreadsheet is annotated (at Cell C10) to indicate that: "*Adjustments made to original calculations are highlighted red*".

Lauren Perkins [redacted]

36. The "Summary" tab of the Calculation Issues Spreadsheet contains the figures in paragraph C10 of the SOR (see paragraph 22 above). I set out in the below table the figures in C10 and the cell in the 'Summary" tab corresponding to those figures:

Figure in C10	Cell in "Summary" tab corresponding to Figure in C10
[redacted]	AA101
[redacted]	AA102
[redacted]	AA104
[redacted]	W93
[redacted]	T94

37. Based on the above, I infer that the Calculation Issues Spreadsheet is the ACCC's attempt at addressing the so-called "calculation issues" set out in paragraph C5 of the SOR. This results in changes to the financial metrics for Coles' business case as set out in paragraph C10 of the SOR.

Revenue Sensitivity Spreadsheet

38. The Revenue Sensitivity Spreadsheet contains the same tabs as the Original CAR Model. The Revenue Sensitivity Spreadsheet does not contain a tab, equivalent to the "ACCC Adjustments" tab in the Calculation Issues Spreadsheet. However, members of the HSFK team, working under my supervision, identified and brought to my attention that there were red highlighted cells in the Revenue Sensitivity Spreadsheet that contained different values compared to the equivalent tabs of the Original CAR Model. I infer from this, and from the ACCC's explanation referred to in paragraph 35 above, that the red highlighting indicated the ACCC's adjustments to the Original CAR Model.

39. The figures referred to in paragraph C12 of the SOR (see paragraph 24 above) can be seen in the "Forecast" tab of the Revenue Sensitivity Spreadsheet in the following cells:

Figures in C12	Cell in "Forecast" tab corresponding to Figure
[redacted] revenue than forecast	X3
[redacted]	AD3

40. The "Summary" tab of the Revenue Sensitivity Spreadsheet contains figures different to the Original CAR Model, including [redacted] at cell AA101.

41. Therefore, I infer that the Revenue Sensitivity Spreadsheet is the ACCC's attempt to calculate the sensitivity of Coles' business case to changes in revenue, particularly

Lauren Perkins [redacted]

the percentage of revenue reduction below forecast revenue required for the NPV to become negative (i.e. the NPV tipping point) as described in paragraph C12 of the SOR.

HSFK consideration of ACCC Spreadsheets

42. I caused members of the HSFK team working under my supervision to prepare redline or compare reports between the Original CAR Model and each of the ACCC Spreadsheets, using the software "Litera Compare for Excel".

a. The Original CAR Model compared to the Calculation Issues Spreadsheet is exhibited at **tab 22** of **ADCE-1** (**Calculation Issues Compare**).

b. The Original CAR Model compared to the Revenue Sensitivity Spreadsheet is exhibited at **tab 23** of **ADCE-1**. (**Revenue Sensitivity Compare**).

43. The software "Litera Compare for Excel" undertakes an automated comparison of two excel workbooks and marks the original figures (that is, the figures which the original spreadsheet contained, but the new spreadsheet does not contain) in red strikethrough text. The new figures (that is, the figures which the new spreadsheet contains, but which the original spreadsheet did not contain) are presented in blue text. The software also creates a new tab called "Litera Compare Report", which summarises the changes identified between the workbooks against various headings, for example "value change", "formula and value change", "formula only change", and "total changes".

44. I extract a summary showing the changes identified by those comparison reports in the table below:

Litera Compare for Excel heading	Calculation Issues Compare	Revenue Sensitivity Compare
Value Change:	4	6
Modified:	5849	5956
Formula And Value Change:	58	34
Formula Change Only:	16	15
Image Add:	1	1
Image Del:	1	1
Named range Del:	9	9
Named range Modified:	108	108
Pivot table Modified:	1	1
Header Add:	28	28

[redacted]

Sheet Add:	1	0
Total Changes:	**6076**	**6159**

45. I understand the output of the Litera Compare Report to be that there are over 6,000 differences between the Original CAR Model and each of the ACCC Spreadsheets.

46. As noted in paragraph 35 and 38 above it is my understanding that red highlighted cells in the ACCC Spreadsheets represent the ACCC's intentional or direct amendments to the Original CAR Model.

47. From reviewing the ACCC Spreadsheets, there do not appear to be over 6,000 cells highlighted red. I infer that the ACCC made direct adjustments to certain cells that have had flow on effects throughout the spreadsheet that might not be readily apparent to people unfamiliar with the CAR Model.

Section 4: Proposed new evidence under section 100S(2)(b)

48. The Tribunal has the SOR and the ACCC Spreadsheets underlying it before the Tribunal in its review of the ACCC's determination.

49. Coles was given no opportunity to consider the ACCC Spreadsheets or make submissions in relation to them. The ACCC Spreadsheets were not disclosed to it until six weeks after the ACCC made its determination the subject of the Tribunal's review (as explained in paragraphs 27 to 30 above).

50. I have discussed the ACCC Spreadsheets with relevant Coles employees. I am informed by Leanne Wadell (née Hannan) Senior Finance Manager in the Coles Property Finance team and believe that there are material errors in the adjustments made to the Original CAR Model by the ACCC. The errors are not simply in the nature of disagreement about appropriate inputs, but errors of a logical kind that produce misleading outputs or wrong interpretations of the Original CAR Model.

51. By way of example only, the Revenue Sensitivity Spreadsheet purports to calculate the NPV tipping point of the Original CAR Model by manually reducing the forecast revenue of the Proposed Supermarket. But the manual reduction of that forecast revenue should have been accompanied by corresponding reductions in the sales won by the Proposed Supermarket from the existing Coles Kalgoorlie store and reductions in the variable costs of the Proposed Supermarket. The ACCC did not do this and have thus materially understated the tipping point.

52. Other errors are based on misunderstandings of the Original CAR Model, which could readily have been clarified by Coles had it been given the opportunity to comment on the ACCC Spreadsheets or the questions that the ACCC was attempting to answer by creating the ACCC Spreadsheets.

53. Based on discussions with team members from Coles, I understand that the outputs of the ACCC Spreadsheets, particularly as summarised in paragraphs C5, C10, C12 and 6.80 set out above, are wrong or have the potential to mislead the Tribunal if relied upon without correction and further explanation.

54. The evidence that Coles seeks to provide to the Tribunal in relation to the ACCC Spreadsheets is an affidavit from a Coles employee familiar with the CAR Model:

    a. identifying the methodological errors in the ACCC's adjustments;

Lauren Perkins

[redacted]

b. explaining why those adjustments are inconsistent with the internal logic of the CAR Model, and/or reflect a misunderstanding of certain inputs into the CAR Model; and

c. calculating "correct" figures to replace those identified to be incorrect.

Sworn by the deponent at Sydney in the State of New South Wales on 4 September 2026 Before me:	)))))	[redacted] 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 'ADCE-1' now produced and shown to Andrew Dhugal Christopher Eastwood at the time of swearing his affidavit on 4 September 2026.

Before me:

Lauren Perkins

....

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

[redacted]

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