

NOTICE OF LODGMENT
AUSTRALIAN COMPETITION TRIBUNAL

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Lodgment and Details

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File Number:	ACT 1 of 2026
File Title:	APPLICATION BY COLES SUPERMARKETS AUSTRALIA PTY LTD
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REGISTRAR

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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.

PUBLIC VERSION

Commonwealth of Australia
Competition and Consumer Act 2010

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No. ACT 1 of 2026

Re: Application by Coles Supermarkets Australia Pty Ltd

OUTLINE OF SUBMISSIONS FOR O'CONNOR FRESH IGA

This document contains confidential information which is indicated as follows:

1. Confidential and governed by the Confidentiality Regime made by Justice O'Bryan on 21 July 2026.
2. Highly Confidential and governed by the directions of Justice O'Bryan dated 10 August 2026, where ALDI Stores (A Limited Partnership) is not the Confidentiality Claimant.

A. Introduction

1. O'Connor Fresh IGA is a strong, effective and differentiated independent competitor in the Kalgoorlie market. It is a profitable business with a consistent record of revenue growth. In a future without the Proposed Acquisition, it will remain so. In that future, it is forecast to remain cash flow positive and able to comfortably service its debt.

2. In a future with the Proposed Acquisition, the position changes markedly. The commercially realistic likelihood is that O'Connor Fresh IGA will exit the market. The Proposed Supermarket will substantially reduce O'Connor Fresh IGA's revenue from its first trading year, so that its debt becomes unserviceable. There is no commercial likelihood of a sale of the business as a going concern. The most likely outcome is that both O'Connor Fresh IGA and its assets will leave the Kalgoorlie market.

3. The Proposed Acquisition will bring about a substantial deterioration in the competitive structure of the Kalgoorlie market. With the exit of O'Connor Fresh IGA, concentration will increase significantly. The number of independent full line supermarkets will fall from two to one, and Coles and Woolworths will increase their market shares. Barriers to entry are already high, and the prospect of any further new entry will reduce from unlikely to likely non-existent. Coles' market power will increase.

4. O'Connor Fresh IGA is the only full line supermarket that offers a wide, locally responsive and locally sourced range, including a full-service delicatessen and lunch bar, freshly prepared food and an on-site butchery. It offers high amenity, high service standards and extended trading hours. O'Connor Fresh IGA's exit will mean that the market will lose the competitive tension contributed by this materially differentiated offering, and the price and non-price rivalry that brings. The remaining supermarkets will have less incentive to compete on price and promotions, and to maintain or improve their range, service and store quality. They will lose the only full line supermarket in the southern and western catchment that trades outside standard hours. The Proposed Supermarket will not make good that loss, because it will carry substantially the same range as Coles' existing store and Coles is not permitted to trade extended hours.

5. The lessening of competition is meaningful and relevant to the competitive process.

6. Further, the loss of O'Connor Fresh IGA would be deleterious to the interests of consumers in Kalgoorlie, who would have lost the benefits of the rivalry across the market and the differentiated features that O'Connor Fresh IGA presently offers.

B. Relevant principles

7. An effect of "substantially" lessening competition is one that is "meaningful or relevant" to the competitive process.¹ The word "substantially" connotes an evaluative, rather than a precise, legal standard.² It is capable of being met when the relevant effect on competition is quantitatively "more than insignificant" or "not insubstantial".³

8. The relevant principles for assessing effects on the competitive process were settled by the Trade Practices Tribunal in *Re Queensland Co-operative Milling Association Ltd* (1976) 8 ALR 481 (*QCMA*). There, the Tribunal emphasised that "whether firms compete is very much a matter of the structure of the markets in which they operate", and the elements of market structure that need to be considered include the number and size distribution of independent sellers, the degree of market concentration, the height of barriers to entry, and product differentiation.⁴ As developed below, the evidence establishes that on each of these criteria, the market structure in Kalgoorlie will substantially deteriorate in a future with the Proposed Acquisition.

9. Coles contends that, in the absence of predation, profit-sacrifice or overcapacity, the exit of a differentiated competitor cannot legally support a finding that there has been a substantial lessening of competition.⁵ It is unclear if its point is that for an entry which causes an exit to give rise to a substantial lessening of competition it is necessary that the entrant be engaged in short-term profit sacrifice with a view to longer-term recoupment. If so, the contention is misconceived. It seeks to substitute various bright line tests for the statutory language. That has never been the correct approach under Australian law. It might well be that the kinds of tests to which Coles points are useful indicia of the likelihood of a

¹ *Stirling Harbour Services Pty Ltd v Bunbury Port Authority* [2000] FCA 38; (2000) ATPR 41-752 at [114] per French J; *Universal Music* at [242].

² *ACCC v Pacific National* (2020) 277 FCR 49 at [219].

³ *Pacific National* at [219].

⁴ *QCMA* at 512. The Tribunal also observed vertical relationships as an indicia of market structure, however that criteria is not relevant on the present facts.

⁵ Coles Written Submissions (*CWS*) dated 16 October 2026 at [3].

substantial lessening of competition; but they are not tests that exclude the possibility of an SLC.

10. If, instead, Coles' point is that mere exit does not itself establish a substantial lessening of competition,⁶ then that is true but irrelevant - as that is not the argument advanced by O'Connor Fresh IGA. The substantial lessening of competition that will arise if the Proposed Acquisition proceeds is the detrimental effect on the competitive process, as revealed by comparing market structure and rivalry with and without the entry of the Proposed Supermarket and the likely exit of O'Connor Fresh IGA.

11. As has been observed, "sometimes conduct which might otherwise be part of the ordinary competitive process can ultimately result in damage to that process".⁷ The effects or likely effects on competition are likely to emerge over a longer period of time than upon the immediate exit of the relevant competitor.⁸ These reflections echo the observation made by Beach J in *Pacific National* that "a medium to long term effect not easily corrected may amount to a substantial lessening of competition."⁹

C. The Kalgoorlie market

C1. Market participants

12. There is no dispute that the relevant market is that for the retail supply of groceries by supermarkets in the city of Kalgoorlie-Boulder (**Kalgoorlie**).¹⁰ There are presently six supermarkets in Kalgoorlie,¹¹ and it is common ground that in a future without the Proposed Supermarket, where O'Connor Fresh IGA remains, that is likely to continue.¹²

13. The three largest supermarkets [REDACTED] are Coles, O'Connor Fresh IGA, and Woolworths.¹³ Each is a full-line supermarket. Two of the remaining supermarkets, Hannans Marketplace by FoodWorks (**FoodWorks**) and IGA Lionel Street (**IGA Lionel St**), are

⁶ See, e.g. CWS [70].

⁷ *Woodman Beenleigh Pty Ltd v Bunnings Group Limited* [2026] FCA 1231 at [104].

⁸ *Woodman Beenleigh* at [104].

⁹ *Pacific National* at [1262].

¹⁰ Joint document identifying all material findings of facts, economics and law set out in the ACCC's Reasons for Determination that are not contested by any participant on the Review filed on 2 October 2026 (**Agreed Facts**) at [5.1].

¹¹ Agreed Facts [2.31].

¹² CWS [13]-[14].

¹³ Agreed Facts [REDACTED]

small-format independents,¹⁴ [REDACTED]

[REDACTED].¹⁵ The sixth, Spudshed Kalgoorlie (**Spudshed**), is predominantly a [REDACTED]
[REDACTED]¹⁶ and is [REDACTED].¹⁷

14. **Coles and Woolworths:** even without the Proposed Supermarket, Coles and Woolworths have a combined share of [REDACTED] of the Kalgoorlie market by selling floor area (SFA).¹⁸ They hold [REDACTED] of the gross lettable area and [REDACTED] by SFA of the four largest supermarkets in Kalgoorlie.¹⁹ Coles offers approximately [REDACTED] Stock Keeping Units (SKUs) while Woolworths offers approximately [REDACTED].²⁰ Presently, Woolworths is Coles' geographically closest competitor in Kalgoorlie²¹ with the two supermarkets located within one block of each other.²² However, in a future with the Proposed Acquisition, Woolworths will not be located in close proximity to the Proposed Supermarket.²³

15. **O'Connor Fresh IGA:** is an independently owned and operated full line supermarket at the corner of O'Connor Street and Maguire Street, Somerville, Kalgoorlie. It serves the southern and western suburbs of Kalgoorlie and the West Kalgoorlie industrial precinct. It is the closest supermarket to the Proposed Supermarket.²⁴

16. O'Connor Fresh IGA is the [REDACTED]
[REDACTED]
[REDACTED].²⁵ [REDACTED]
[REDACTED].²⁶ It
stocks a [REDACTED]

14 Agreed Facts [REDACTED]; Coles, *Kalgoorlie Submission*, 26 November 2025, [REDACTED]

15 [REDACTED]
[REDACTED]
[REDACTED]

16 Coles Concise Statement (CCS) [10]; [REDACTED]

17 [REDACTED]
[REDACTED]

18 Agreed Facts [REDACTED].

19 Agreed Facts [REDACTED].

20 Agreed Facts [REDACTED]

21 Agreed Facts [2.31].

22 CWS [14(a)].

23 Agreed Facts [2.34].

24 Agreed Facts [2.31].

25 [REDACTED]
[REDACTED]
[REDACTED]

26 [REDACTED]

██████████²⁷ O'Connor Fresh IGA, being a ██████████²⁸ or large format store, ██████████
██████████²⁹

17. O'Connor Fresh IGA's range includes the ██████████ total number of SKUs in Kalgoorlie ██████████ Coles ██████████, and ██████████ Woolworths ██████████ and Spudshed ██████████.³⁰ Although O'Connor Fresh IGA's ██████████
██████████³¹ While O'Connor Fresh IGA offers ██████████³² O'Connor Fresh IGA's most ██████████
██████████
██████████³³

18. FoodWorks and IGA Lionel St: are each, ██████████
██████████³⁴ IGA Lionel St typically serves customers ██████████³⁵ It is typically ██████████
██████████³⁶ IGA Lionel St has an SFA of approximately ██████████ and a market share of approximately ██████████ (absent the Proposed Supermarket) based on SFA.³⁷ FoodWorks' customers typically ██████████
██████████³⁸ FoodWorks has an SFA of approximately

27 ██████████
██████████
██████████
28 ██████████
29 ██████████
30 Agreed Facts ██████████; ██████████
██████████
31 ██████████
██████████
32 Agreed Facts ██████████
33 ██████████
██████████
34 ██████████
██████████
35 ██████████
██████████
36 ██████████
37 Agreed Facts ██████████
38 ██████████

██████████ and a market share of approximately ██████████ (absent the Proposed Supermarket) based on SFA.³⁹

19. The broad categorisation of supermarkets into full line and small format is an agreed fact.⁴⁰ Coles now submits that the Tribunal should not make the distinction. In fact, the distinction is important and necessary. O'Connor Fresh IGA stocks [REDACTED]

[REDACTED],⁴¹ and [REDACTED]

.⁴² Nor is it the case, contrary to Coles' submission,

⁴³ O'Connor Fresh IGA

.⁴⁴ Generally, [REDACTED]

45

20. The two smaller independents are incapable of imposing meaningful competitive constraints in any future with the Proposed Acquisition. Having limited size and scale, FoodWorks and IGA Lionel St are not capable of exerting the same competitive pressure as larger supermarkets like O'Connor Fresh IGA. [REDACTED]

46.

21. Coles also contends that the Tribunal should infer that “if O’Connor IGA exited the market, it would be commercially rational for FoodWorks and Lionel St to meet any unmet

39 Agreed Facts [REDACTED]

40 Agreed Facts [2.10].

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43

44

45

46 [REDACTED]

demand, and for local producers to seek an alternative supplier for their products".⁴⁷ Coles offers no evidence to support that contention. IGA Lionel St and FoodWorks [REDACTED]
[REDACTED],⁴⁸ [REDACTED]
[REDACTED]⁴⁹ and [REDACTED]
[REDACTED].⁵⁰ FoodWorks is located on the other side of Kalgoorlie to both O'Connor Fresh IGA and the Proposed Supermarket.⁵¹

22. In addition, [REDACTED]
[REDACTED]
[REDACTED].⁵² FoodWorks [REDACTED]
[REDACTED]
[REDACTED].⁵³ In these circumstances, Coles' suggestion⁵⁴ [REDACTED]
[REDACTED] on Coles and Woolworths if the Proposed Acquisition proceeds should be rejected.

23. **Spudshed:** stocks [REDACTED] SKUs,⁵⁵ and [REDACTED]
[REDACTED]
[REDACTED].⁵⁶ Spudshed's range [REDACTED]
[REDACTED]
[REDACTED].⁵⁷ By Spudshed's own admission, [REDACTED]
[REDACTED],⁵⁸ [REDACTED]
[REDACTED]⁵⁹ [REDACTED]
[REDACTED], notably distinguish it from O'Connor Fresh IGA, and limit the ways in which Spudshed is capable of constraining Coles and Woolworths.

47 CWS [22].

48 Agreed Facts [REDACTED].

49 [REDACTED].

50 [REDACTED].

51 Agreed Facts [2.31].

52 [REDACTED]

53 [REDACTED]

54 CWS [REDACTED]

55 Agreed Facts [REDACTED]

56 Agreed Facts [REDACTED]

57 [REDACTED].

[REDACTED]

[REDACTED]

58 [REDACTED]

59 [REDACTED].

24. **Other retailers:** do not impose a meaningful competitive constraint on the supermarkets in Kalgoorlie, if any. Neither ALDI nor Costco have a presence in Kalgoorlie.⁶⁰ The nearest supermarket outside of Kalgoorlie is an IGA Local Grocer 38km away, in Coolgardie.⁶¹ Coles generally prices 20% to 30% higher than Costco, Amazon and Bunnings for overlapping products,⁶² suggesting it is unconstrained by those retailers.

C2. Barriers to entry and expansion

25. The height of barriers to entry and expansion is a critical element of market structure.⁶³ The Kalgoorlie market is characterised by high barriers to entry and expansion, particularly for independent supermarkets. Exogenous barriers include high freight and logistics costs associated with servicing a remote regional market,⁶⁴ stagnant consumer demand and population growth,⁶⁵ significant capital requirements,⁶⁶ and lengthy planning and development processes.⁶⁷ Endogenous barriers to entry include the presence in Kalgoorlie of two major supermarket chains (Coles and Woolworths) with substantial scale,⁶⁸ supplier bargaining power⁶⁹ and promotional capability.⁷⁰

26. As to consumer demand, Coles asserts that despite limited population growth of just 0.4% per annum, consumer demand in Kalgoorlie has increased significantly.⁷¹ Coles refers to increased SFA,⁷² which is a measure of potential capacity not demand. It also cites sales growth at its Kalgoorlie store between 2023 and 2025, as well as at [REDACTED] and [REDACTED].⁷³ However, Coles relies on [REDACTED],⁷⁴ and has not addressed inflation. Moreover, as the figures relate to just three of the six market participants, Coles has also failed to establish that these supermarkets have not successfully attracted revenue away from other supermarkets in Kalgoorlie. Without excluding these

⁶⁰ CCS [3].

⁶¹ Agreed Facts [5.15].

⁶² Agreed Facts [6.33]; [REDACTED]

⁶³ QCMA at 512.

⁶⁴ *Supermarkets Inquiry Final Report*, February 2025 (SIFR), pp 15, 153.

⁶⁵ CWS [28].

⁶⁶ Agreed Facts [6.215]-[6.220]; SIFR, p 12.

⁶⁷ Agreed Facts [6.215].

⁶⁸ SIFR, p 1.

⁶⁹ SIFR, pp 20, 269.

⁷⁰ SIFR, p 1.

⁷¹ CWS [28].

⁷² CWS [28].

⁷³ [REDACTED]

⁷⁴ [REDACTED]

possibilities, and as against near-zero population growth, it would be unsafe for the Tribunal to conclude that increased [REDACTED] for some supermarkets reflects material growth in demand in the Kalgoorlie market generally.

27. Rather than signalling low barriers to entry as contended by Coles,⁷⁵ the true history of entry and exit in the Kalgoorlie market demonstrates the difficulty of new entry and expansion. Coles reduced from two stores to one in 2021.⁷⁶ [REDACTED]
[REDACTED].⁷⁷ [REDACTED]
[REDACTED],⁷⁸ and [REDACTED]
[REDACTED].⁷⁹ [REDACTED]
[REDACTED].⁸⁰ The parties are agreed that "many new supermarkets are replacements of old supermarkets".⁸¹ While [REDACTED]
[REDACTED],⁸² FoodWorks changed ownership in 2025, and O'Connor Fresh IGA changed ownership in 2024, contrary to Coles' assertion,⁸³ none of these are examples of true "new entry" as they added no additional capacity. In the past,
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].⁸⁴

28. [REDACTED]
[REDACTED].⁸⁵ [REDACTED]
[REDACTED]
[REDACTED].⁸⁶ Their size

⁷⁵ CWS [27].

⁷⁶ Agreed Facts [6.228]; [REDACTED]
[REDACTED]

⁷⁷ Agreed Facts [REDACTED].

⁷⁸ [REDACTED]
[REDACTED]
[REDACTED]

⁷⁹ [REDACTED]

⁸⁰ [REDACTED]
[REDACTED]

⁸¹ Agreed Facts [6.229].

⁸² [REDACTED].

⁸³ [REDACTED]

⁸⁴ [REDACTED]

⁸⁵ [REDACTED]

⁸⁶ [REDACTED]

means that Coles and Woolworths also have access to far greater capital than their smaller independent counterparts,⁸⁷ resulting capacity to make significant investments. For example, [REDACTED]

[REDACTED]⁸⁸ [REDACTED].⁸⁹

29. Independent supermarkets such as O'Connor Fresh IGA must successfully navigate these barriers to enter, survive and expand in the Kalgoorlie market.

D. O'Connor Fresh IGA is an effective and materially differentiated competitor

30. O'Connor Fresh IGA is a vigorous and effective independent competitor. It has a materially differentiated offering that is valued by customers and imposes a material competitive constraint on other supermarkets in Kalgoorlie.

31. Contrary to its submissions to this Tribunal,⁹⁰ [REDACTED]
[REDACTED]⁹¹

Coles submitted to the ACCC that [REDACTED]
[REDACTED]

[REDACTED]⁹² Coles has also accepted that O'Connor Fresh IGA's "offer is attractive to Kalgoorlie shoppers", and that its "success and sustainability occurs in an already-competitive environment".⁹³ Following [REDACTED]

[REDACTED]⁹⁴ and
[REDACTED]
[REDACTED]⁹⁵

32. The ways in which O'Connor Fresh IGA differentiates and otherwise competes in the Kalgoorlie market is demonstrated by the following aspects of its offering.

33. **Differentiated, locally responsive and locally sourced range:** O'Connor Fresh IGA offers a wide and differentiated range within the relevant market. While O'Connor Fresh

⁸⁷ SIFR, 2025, p 17; 152.

⁸⁸ Agreed Facts [REDACTED].

⁸⁹ Agreed Facts [REDACTED].

⁹⁰ CWS [19], [21].

⁹¹ [REDACTED]

⁹² [REDACTED].

⁹³ Agreed Facts [6.180].

⁹⁴ [REDACTED].

⁹⁵ [REDACTED].

IGA [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁹⁶

34. O'Connor Fresh IGA's [REDACTED]
[REDACTED]
[REDACTED]. For example, [REDACTED]
[REDACTED]⁹⁷ [REDACTED]
[REDACTED]^{98 99}.

35. [REDACTED]
[REDACTED]¹⁰⁰ [REDACTED]
[REDACTED]¹⁰¹ [REDACTED]
[REDACTED]¹⁰² [REDACTED]
[REDACTED]¹⁰³ [REDACTED]
[REDACTED]¹⁰⁴ [REDACTED]¹⁰⁵ [REDACTED]¹⁰⁶
[REDACTED]
[REDACTED]¹⁰⁷ [REDACTED]
[REDACTED]¹⁰⁸.

96 Agreed Facts [REDACTED]
97 [REDACTED]
98 [REDACTED]
99 [REDACTED]
100 [REDACTED]
101 [REDACTED]
102 [REDACTED]
103 [REDACTED]
104 [REDACTED]
105 [REDACTED]
106 [REDACTED]
107 [REDACTED]
108 [REDACTED]

36. Contrary to Coles' contention that [REDACTED]
[REDACTED]
[REDACTED],¹⁰⁹ [REDACTED]
[REDACTED]¹¹⁰ [REDACTED]
[REDACTED]
[REDACTED].¹¹¹ Moreover, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].¹¹²

37. The local products offered by O'Connor Fresh IGA are [REDACTED]
[REDACTED].¹¹³ Woolworths
determines its overall product range nationally or at State level,¹¹⁴ and [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].¹¹⁵
While Coles [REDACTED],¹¹⁶ [REDACTED]
[REDACTED]¹¹⁷ and [REDACTED]
[REDACTED]¹¹⁸ By contrast, [REDACTED]
[REDACTED]¹¹⁹ [REDACTED]
[REDACTED].¹²⁰ [REDACTED]

109 CWS [REDACTED]
110 [REDACTED]
111 [REDACTED]
112 [REDACTED]
113 [REDACTED]
114 Agreed Facts [2.11]; Woolworths, *Woolworths Response to s 155 Notice dated 17 April 2026 (Tranche 2)*, 14 May 2026, 01068.001.028.0001, pp. 3-4.
115 [REDACTED]
116 [REDACTED]
117 [REDACTED]
118 [REDACTED]
119 [REDACTED]
120 [REDACTED]

.¹²¹ These differences illustrate O'Connor Fresh IGA's success in competing through differentiation.

38. **Store quality and amenity:** Coles and Woolworths both compete on store quality,¹²² and

.¹²³

.¹²⁴

39. Contrary to Coles' assertion,¹²⁵ detailed information regarding the store quality and amenity of all six Kalgoorlie supermarkets was gathered by the ACCC in its site visits on 16 and 17 April 2026, and recorded in contemporaneous notes and images.¹²⁶ In its site visit to O'Connor Fresh IGA, the ACCC described the store as

.¹²⁷ By contrast,

,¹²⁸ and also noted that

.¹²⁹

40. The O'Connor Fresh IGA site was

.¹³¹

¹²¹ .

¹²² Agreed Facts [6.20].

¹²³ .

¹²⁴ .

¹²⁵ CWS [14(e)].

¹²⁶ ACCC, Site Visit – notes, 16 and 17 April 2026, 01068.022.015.0351; ACCC, Site Visit – Coles Kalgoorlie – images, 16 April 2026, 01068.022.015.0001; ACCC, Site Visit – Hannans Marketplace – images, 16 April 2026, 01068.022.015.0325; ACCC, Site Visit – IGA Lionel St – images, 16 April 2026, 01068.022.015.0026; ACCC, Site Visit – O'Connor Fresh IGA – images, 16 April 2026, 01068.022.015.0032; ACCC, Site Visit – Spudshed Kalgoorlie – images, 16 April 2026, 01068.022.015.0073; ACCC, Site Visit – Woolworths Kalgoorlie – images, 17 April 2026, 01068.022.015.0363.

¹²⁷ .

¹²⁸ .

¹²⁹ .

¹³⁰ .

.¹³¹

.¹³¹

.¹³¹

[REDACTED]¹³².

41. O'Connor Fresh IGA is situated in a high amenity location. It is co-located with a Chemist Warehouse, a liquor store, and a carwash.¹³³ It has a [REDACTED]¹³⁴ with [REDACTED]¹³⁵ [REDACTED]¹³⁶, and is close to schools, a recreation centre and the Kalgoorlie-Boulder airport.¹³⁷ Coles submits that it offers more carparking bays than O'Connor Fresh IGA. However, Coles' bays are also shared by a greater number of co-located stores in the same precinct as Coles.¹³⁸

42. [REDACTED]¹³⁹ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] O'Connor Fresh IGA is now materially differentiated from Lionel St IGA (contrary to Coles' assertion¹⁴⁰) and Spudshed with respect to offering a delivery service, and comparable to Coles, Woolworths and Foodworks.

43. **Specialised staff and services and high service levels:** [REDACTED]
[REDACTED]
[REDACTED]¹⁴¹ Coles and Woolworths both accept that they compete on customer service.¹⁴²

¹³² [REDACTED]
[REDACTED]

¹³³ Agreed Facts [6.36].

¹³⁴ ACCC, Site Visit – O'Connor Fresh IGA – images, 16 April 2026, 01068.022.015.0032, pp 1-5; ACCC, Site Visit – notes, 16 and 17 April 2026, [REDACTED].

¹³⁵ ACCC, Site Visit – notes, 16 and 17 April 2026, [REDACTED].

¹³⁶ [REDACTED]
[REDACTED].

¹³⁷ Agreed Facts [6.36].

¹³⁸ CWS [14(e)].

¹³⁹ [REDACTED]

¹⁴⁰ CWS [24].

¹⁴¹ [REDACTED]
[REDACTED]

¹⁴² Agreed Facts [6.24].

44. [REDACTED]
[REDACTED]¹⁴³ [REDACTED]
[REDACTED] and [REDACTED]¹⁴⁴ [REDACTED]
[REDACTED]
[REDACTED]¹⁴⁵ [REDACTED]
[REDACTED]¹⁴⁶ [REDACTED]
[REDACTED]
[REDACTED]¹⁴⁷ [REDACTED]
[REDACTED] and
[REDACTED]¹⁴⁸

45. [REDACTED]
[REDACTED]¹⁴⁹ Coles and
Woolworths do not have an equivalent offering. [REDACTED]
[REDACTED]
[REDACTED]¹⁵⁰ [REDACTED]
[REDACTED]¹⁵¹

46. **Extended trading hours:** Coles and Woolworths are “general retail shops” subject to trading hour restrictions in Kalgoorlie, while the independent supermarkets are not.¹⁵² Longer trading hours are a valuable point of differentiation and service-provision for

143 [REDACTED]
[REDACTED]
144 Agreed Facts [REDACTED]
[REDACTED]
145 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
146 [REDACTED]
[REDACTED]
147 [REDACTED]
[REDACTED]
148 [REDACTED]
[REDACTED]
149 [REDACTED]
[REDACTED]
150 [REDACTED]
[REDACTED]
151 [REDACTED]
152 Agreed Facts [2.35]; *Retail Trading Hours Act 1987* (WA). See also *Retail Trading Hours Regulations 1988* (WA) and *Retail Trading Hours (City of Kalgoorlie-Boulder) Variation Order 2020* (WA); ACCC, s155(1)(c) *Examination of Reece Grant*, 15 April 2026, 01068.001.023.0001, pp 75–76.

O'Connor Fresh IGA, which trades from 4am to 10pm daily.¹⁵³ This is a particular competitive advantage for mining and other shift workers who may need to shop outside standard business hours (and a particular benefit for those kinds of consumers). While the three other independent supermarkets also trade extended hours, two of those are small-format stores, and the third (Spudshed) is a differentiated fresh produce [REDACTED] located in a different part of the city.

47. Price competition:

48.

Category	Value
Category 1	156
Category 2	
Category 3	157
Category 4	158
Category 5	
Category 6	
Category 7	
Category 8	
Category 9	
Category 10	

¹⁵³ Agreed Facts [2.36]. See also Coles, *Expert Report of Dr Mike Walker (Frontier Economics)*, 9 June 2026, 01068.022.009.0704, p 21 fn 35.

Line	Text	Start	End
154	154	0	1000
155	155	0	1000
156	156	0	1000
157	157	0	1000
158	158	0	1000

49. O'Connor Fresh IGA plays a central role in local price rivalry. [REDACTED]

[REDACTED]¹⁵⁹ [REDACTED]
[REDACTED]
[REDACTED]¹⁶⁰

Similarly, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹⁶³

50. O'Connor Fresh IGA's role in this price rivalry is not negated simply because, as Coles claims,¹⁶⁴ [REDACTED]
[REDACTED]. Pricing constraint can be directional, even if it does not involve exact price matching. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

51. **Convenience:** Coles urges the Tribunal to infer that a material portion of consumers shop at O'Connor Fresh IGA only because it is "convenient".¹⁶⁵ The inference is undermined by analysis which shows that [REDACTED]

[REDACTED]¹⁶⁶ Moreover, [REDACTED]
[REDACTED]¹⁶⁷ [REDACTED]
[REDACTED]
[REDACTED]¹⁶⁸ meaning that they in fact represent entire product categories and cannot

159 [REDACTED]
160 [REDACTED]
161 [REDACTED]
162 [REDACTED]
163 [REDACTED]
164 [REDACTED]
165 CWS [27].
166 [REDACTED]
167 [REDACTED]
168 [REDACTED]

be meaningfully compared to revenue from single-product SKUs. [REDACTED]

[REDACTED].¹⁶⁹ These are the very same items that Coles and Woolworths claim as top SKUs.

52. In any event, convenience is a further point of differentiation that O'Connor Fresh IGA embraces, and which allows it to compete effectively, including by catering specifically to it.¹⁷⁰

53. Coles also seeks to undermine the value of O'Connor Fresh IGA's differentiation by suggesting that the latter has been incentivised to differentiate in response to the competitive constraint imposed by Coles and Woolworths.¹⁷¹ But that argument merely serves to illustrate how competitive rivalry works in this market: O'Connor Fresh IGA offers a differentiated product so it can compete, and in so doing, it constrains those competitors by attracting customers away from them. This incentivises Coles and others to improve their offering to the consumers of Kalgoorlie.

E. O'Connor Fresh IGA in a future without the Proposed Acquisition

54. The features of O'Connor Fresh IGA's offering discussed above enable it to successfully compete with other supermarkets in Kalgoorlie. The parties agree that O'Connor Fresh IGA generates substantial revenue, and that this demonstrates that its offer is attractive to consumers in Kalgoorlie.¹⁷² O'Connor Fresh IGA is also a profitable business.

[REDACTED]¹⁷³ [REDACTED]
[REDACTED]¹⁷⁴ [REDACTED]
[REDACTED]¹⁷⁵ [REDACTED]
[REDACTED]

¹⁶⁹ [REDACTED]

¹⁷⁰ [REDACTED]

¹⁷¹ CWS [36].

¹⁷² Agreed Facts [6.180].

¹⁷³ [REDACTED]

¹⁷⁴ Agreed Facts [REDACTED].

¹⁷⁵ [REDACTED]

[REDACTED]

[REDACTED] 176.

55. [REDACTED]

[REDACTED] 177. [REDACTED]

[REDACTED] 178. [REDACTED]

[REDACTED]

[REDACTED] 179. [REDACTED]

[REDACTED]

[REDACTED] 181.

56. Coles asserts that the competitive offering of O'Connor Fresh IGA can be [REDACTED]

[REDACTED] 182

[REDACTED]

[REDACTED]

[REDACTED] 183.

57. [REDACTED]

[REDACTED] 184. [REDACTED]

[REDACTED]

[REDACTED] 185. That is untenable. [REDACTED]

[REDACTED] 186. [REDACTED] 187. [REDACTED]

[REDACTED]

176 [REDACTED]

177 [REDACTED]

178 [REDACTED]

179 [REDACTED]

180 [REDACTED]

181 [REDACTED]

182 [REDACTED]

183 [REDACTED]

184 [REDACTED]

185 [REDACTED]

186 [REDACTED]

187 [REDACTED]

.¹⁸⁸ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁸⁹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁹⁰ Net present value represents economic value after accounting for the time value of money and risk. It is not an indicator of a company's capacity to service its debt.

58. In a future without the Proposed Acquisition, the modelling demonstrates that O'Connor Fresh IGA's will continue as a profitable and viable business, thereby imposing material competitive constraint on other participants in the Kalgoorlie market, including Coles and Woolworths.

F. O'Connor Fresh IGA in a future with the Proposed Acquisition

59. By contrast, in a future with the Proposed Acquisition, it is likely that O'Connor Fresh IGA will exit the Kalgoorlie market.

60. **Revenue impact of the Proposed Supermarket:** In a future with the Proposed Acquisition, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁹¹ Coles offers no cogent reason why the Tribunal cannot rely on this analysis.¹⁹²

61. In any event, [REDACTED]

[REDACTED]¹⁹³ [REDACTED]

[REDACTED]

¹⁸⁸ [REDACTED]

¹⁸⁹ [REDACTED]

¹⁹⁰ [REDACTED]

¹⁹¹ [REDACTED]

¹⁹² C.f. CWS [58]-[62].

¹⁹³ [REDACTED]

[REDACTED] 194 [REDACTED]
[REDACTED]
[REDACTED] 195 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 198 [REDACTED]

62. [REDACTED]
[REDACTED]
[REDACTED] 199 [REDACTED]
[REDACTED]
[REDACTED] 200 [REDACTED] of this total is not allocated to any particular competitor and is described only as [REDACTED] Coles concedes [REDACTED]
[REDACTED] 201 Mr Samuel's review of Coles' Business Case assumed [REDACTED]
[REDACTED] 202 [REDACTED]
[REDACTED]
[REDACTED] 203 and [REDACTED] 204 [REDACTED]

63. On the other hand, [REDACTED]
[REDACTED]
[REDACTED] 205 [REDACTED]
[REDACTED]

194 [REDACTED]
[REDACTED]
195 [REDACTED]
196 [REDACTED]
[REDACTED]
197 [REDACTED]
198 [REDACTED]
199 [REDACTED]
200 [REDACTED]
201 [REDACTED]
[REDACTED]
202 [REDACTED]
[REDACTED]
203 [REDACTED]
204 [REDACTED]
205 [REDACTED]

[REDACTED]²⁰⁶ This is likely to [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²⁰⁷ If the
turnover assumption is modified to model O'Connor Fresh IGA's revenue as estimated by
FTI for [REDACTED]²⁰⁸ [REDACTED]
[REDACTED]
[REDACTED]²⁰⁹
O'Connor Fresh IGA's [REDACTED]
would remain unchanged.

64. [REDACTED] in a future with the Proposed Acquisition, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²¹⁰ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²¹¹ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²¹²

65. Coles criticises O'Connor Fresh IGA for [REDACTED]
[REDACTED]
[REDACTED]²¹³
The criticism is without foundation. [REDACTED]

206 [REDACTED]
[REDACTED]
207 [REDACTED]
208 [REDACTED]
209 [REDACTED]
[REDACTED]
210 [REDACTED]
[REDACTED]
211 [REDACTED]
[REDACTED]
212 [REDACTED]
[REDACTED]
213 [REDACTED]

[REDACTED]

[REDACTED]²¹⁴.

66. In any event, Coles' criticism of O'Connor Fresh IGA's business decisions is beside the point. The Tribunal's task is to compare the likely future with the Proposed Acquisition with the likely future without it on the facts and evidence before the Tribunal, not on speculation as to what a different, hypothetical market participant might have done in O'Connor Fresh IGA's position in the past, or might do in the future.

67. [REDACTED] any competitive response by O'Connor Fresh IGA to the Proposed Supermarket would require

[REDACTED]

[REDACTED]

[REDACTED]²¹⁵.

[REDACTED]

[REDACTED]²¹⁶.

68. [REDACTED]

[REDACTED] in a future with the Proposed Acquisition [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]²¹⁷.

[REDACTED]

[REDACTED]

[REDACTED]²¹⁸.

214 [REDACTED]

215 [REDACTED]

216 [REDACTED]

217 [REDACTED]

218 [REDACTED]

69. A sale of the business as a going concern is also unlikely. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED],²¹⁹ [REDACTED]

[REDACTED]²²⁰ [REDACTED]

[REDACTED]

[REDACTED]²²¹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]²²²

70. [REDACTED]

[REDACTED]

[REDACTED]²²³ [REDACTED]

[REDACTED]

[REDACTED]²²⁴ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]²²⁵ [REDACTED]

219 [REDACTED]

220 [REDACTED]

221 [REDACTED]

222 [REDACTED]

223 [REDACTED]

224 [REDACTED]

225 [REDACTED]

[REDACTED]

[REDACTED]²²⁶

71. [REDACTED]²²⁷ is based on flawed assumptions. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]²²⁹ These companies are not comparable to O'Connor Fresh IGA. Coles' capex at its existing Kalgoorlie store [REDACTED] is also not a reliable basis to forecast capex for O'Connor Fresh IGA.²³⁰ Coles opened its existing Kalgoorlie store in 2021. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]²³²

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]²³³

72. Finally, whatever scenario eventuates, O'Connor Fresh IGA's business or assets are

[REDACTED]

[REDACTED]

[REDACTED]

226 [REDACTED]

227 [REDACTED]

228 [REDACTED]

229 [REDACTED]

230 [REDACTED]

231 [REDACTED]

232 [REDACTED]

233 [REDACTED]

[illegible]

Country	Number of people
Country 1	237
Country 2	238
Country 3	239

²⁴⁰ While Coles quibbles with the certainty that can be ascribed to these estimates,²⁴¹ no prediction as to the future can be completely certain and the approach taken to estimating these shares is entirely conventional. In a future with the Proposed Acquisition there will be increased concentration in the Kalgoorlie market and the two major supermarket chains will substantially increase their market share.

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242 CWS [35].

76. Heightened barriers to entry and expansion and virtually no threat of future entry: in a future with the Proposed Acquisition, heightened endogenous barriers are likely to further deter new entry and expansion. Coles suggests [REDACTED]

[REDACTED]²⁴³ In fact, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²⁴⁴ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²⁴⁵ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²⁴⁶ [REDACTED]
[REDACTED]
[REDACTED]²⁴⁷ [REDACTED]

[REDACTED] that even the best example Coles can offer of supposed new entry is far from materialising, and that the Proposed Supermarket will act as a substantial deterrent to new entrants who may have considered entering the market had it not proceeded. In those circumstances, in accordance with the test established in *Queensland Wire*,²⁴⁸ incumbent market power will increase if the Proposed Acquisition proceeds.

77. As to other potential new entrants, [REDACTED]
[REDACTED]²⁴⁹ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²⁵⁰ [REDACTED]

78. There is also no evidence before the Tribunal that O'Connor Fresh IGA's exit would result in new entry or expansion,²⁵¹ including through acquisition of its assets. [REDACTED]

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248 *Queensland Wire* at 189.

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c.f. CCS [45].

Existing competitors are also unlikely to develop new stores in Kalgoorlie, or to acquire O'Connor Fresh IGA's assets. [REDACTED]

79. **Reduced constraints from independent suppliers:** if the Proposed Acquisition proceeds resulting in the exit of O'Connor Fresh IGA, the number of independent full-line supermarkets will reduce from two to one. The remaining independent will be Spudshed,

80. Reduced rivalry on non-price dimensions: in a future with the Proposed Acquisition where O'Connor Fresh IGA exits the market, it is likely that there will be reduced rivalry in the Kalgoorlie market on the non-price dimensions on which O'Connor Fresh IGA

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Agreed Facts [2.34].

differentiates itself. Coles and Woolworths generally do not stock a locally-tailored range. There is no evidence that they source a significant portion of their range from local suppliers — indeed, [REDACTED]

[REDACTED].²⁶⁰ The provision of locally sourced produce and products to consumers in Kalgoorlie is a source of differentiation that O'Connor Fresh IGA currently provides, and which will be lost if the Proposed Acquisition proceeds and results in O'Connor Fresh IGA's exit. There may also be less incentive to compete on customer service, store investment and (at least for the independents) longer trading hours.

81. Reduced price rivalry: O'Connor Fresh IGA's exit will also materially reduce price rivalry. O'Connor Fresh IGA [REDACTED]

[REDACTED] That direct price competition will be lost. Even where prices are set centrally by the major supermarkets, [REDACTED].²⁶¹

[REDACTED]²⁶² [REDACTED].

H. Adverse effect on consumer interests

82. The interests of consumers in Kalgoorlie will be adversely affected if the Proposed Acquisition proceeds and O'Connor Fresh IGA exits the Kalgoorlie market.

83. Consumers will lose choice. Consumers will lose the only full-line supermarket in Kalgoorlie providing a combination of a wide and locally-responsive range, locally-sourced product lines, full-service delicatessen and lunch bar, freshly prepared food, and on-site butchery. If it proceeds, the Proposed Supermarket [REDACTED]

[REDACTED].²⁶³ There will be no new alternatives.

²⁶⁰ [REDACTED]
[REDACTED]
²⁶¹ [REDACTED]
²⁶² [REDACTED]
²⁶³ Agreed Facts [6.2]; Coles, [REDACTED]
[REDACTED]

84. With the loss of competitive tension will reduce the pressure on the remaining supermarkets to maintain or improve their product, service and store quality, and reduce their incentive to invest in customer service, tailored and locally sourced ranges, and store renewal. As to service, O'Connor Fresh IGA is superior in many respects, as set out in this submission.²⁶⁴ O'Connor Fresh IGA's exit will remove this constraint from the customer service dimension of competition in Kalgoorlie, with remaining rivals having less incentive to invest in customer service in the future with the Acquisition.

85. As to product range, with less competition in Kalgoorlie, Coles and other competitors would have significantly less incentive to match or closely match the differentiated products offered by O'Connor Fresh IGA.

86. As to store quality, O'Connor Fresh IGA's exit is likely to reduce the incentive for Coles and other rivals to consider the option of upgrading, or reinvesting in, their stores in Kalgoorlie. [REDACTED]

[REDACTED]²⁶⁵

87. **Consumers will lose the benefit of extended trading hours shopping.** With the exit of O'Connor Fresh IGA, consumers (including mining and shift workers) will lose the only full-line supermarket in the southern and western catchment trading outside standard hours. While Spudshed also trades extended trading hours, it is located furthest from the Proposed Supermarket and [REDACTED].

88. **Loss of local price and promotional rivalry.** For the reasons noted in paragraph 81, with the exit of O'Connor Fresh IGA, consumers will experience reduced local price and promotional rivalry.

23 October 2026

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