NOTICE OF LODGMENT

AUSTRALIAN COMPETITION TRIBUNAL

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

Lodgment and Details

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

COMMONWEALTH OF AUSTRALIA
AUSTRALIA
AUSTRALIAN COMPETITION TRIBUNAL

REGISTRAR

Dated: 6/08/2026 9:19 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.

Commonwealth of Australia

Competition and Consumer Act 2010

In the Australian Competition Tribunal

File No: ACT 1 of 2026

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

OUTLINE OF SUBMISSIONS BY METCASH TRADING LIMITED[1]

1 By application dated 3 August 2026, Metcash Trading Limited (**Metcash**) seeks, pursuant to paragraph 8(b) of the Directions, further directions concerning the application of the Confidentiality Regime to six documents Metcash provided to the ACCC on a confidential basis during the ACCC's review of the proposed acquisition the subject of this proceeding (**Acquisition**). The Tribunal's power to make such directions arises under s 106 of the *Competition and Consumer Act 2010* (Cth). In support of its application, Metcash relies on the affidavit of Jennifer Ann Chamberlain, Chief Financial Officer of the Food division of Metcash, affirmed on 3 August 2026. Metcash's application concerns only the most highly confidential and sensitive documents it produced to the ACCC regarding the Acquisition, on the understanding that the other confidential information and documents it submitted to the ACCC[2] will be subject to the Confidentiality Regime.

The Frontier Report and the CRA Report

2 Metcash seeks a direction that no person described in the Confidentiality Regime at [3(a)] to [3(e)] have access to two external economists' reports that Metcash had previously provided to the ACCC, and provided again in January 2026 in connection with the Acquisition (Application, [1(b)]; Chamberlain, [9] – [17]). They are: a report by Frontier Economics, dated 23 February 2023, regarding a proposed acquisition by [redacted] (**Frontier Report**);[3] and a report by Charles River Associates, dated 3 December 2024, prepared for the ACCC's inquiry into the supermarket sector, conducted in 2024 and 2025 (**CRA Report**).[4]

[1] In these submissions, capitalised terms which are defined in the directions made by the Tribunal on 21 July 2026, including the Annexure thereto, have the meaning given to those terms in the Directions.
[2] Being the following documents in the Documentary Index: 01068.001.007.0004 (described on page 198); 01068.001.005.0178, 01068.001.005.0001, 01068.001.005.0114, 01068.001.005.0188, 01068.001.005.0190, 01068.001.005.0261, (described on page 218-219); 01068.001.013.0007 (described on page 227), 01068.022.037.0265, 01068.022.037.0268, 01068.001.016.0068 (described on page 240); and 01068.001.020.1931 (described on page 243).
[3] Described in Annexure A to the Application at row 1(a) (document 01068.001.005.0011, described on page 218 of the Documentary Index); Chamberlain, [8(a)], [9], [12].
[4] Described in Annexure A to the Application at row 1(b) (document 01068.001.005.0042, described on page 218 of the Documentary Index); Chamberlain, [8(b)], [9], [15].

3 This direction would prevent internal solicitors and external advisors to a Participant from accessing the Frontier Report and CRA Report under [3(a)] to [3(e)] of the Confidentiality Regime, but leave open the possibility of any other person having access with Metcash's prior written consent (Confidentiality Regime, [3(f)]).

4 The Tribunal can be satisfied that it is desirable to make this direction, having regard to the confidential nature of the Frontier Report and CRA Report. Each report relies on, contains and otherwise reflects confidential data and other information on Metcash's business, and its view of its competitive environment. That data and information is detailed and specific; is not publicly observable or otherwise available to Metcash's competitors; was previously provided by Metcash to the ACCC on a confidential basis (Chamberlain, [11], [12], [16]); and addresses matters of commercial and competitive sensitivity to Metcash, including [redacted]) (Chamberlain, [13]), the significance of scale economies to Metcash based [redacted]Chamberlain, [14], [17]), [redacted] (Chamberlain, [17]).

5 Disclosure of such information and data to a Participant's internal solicitors and external advisors as contemplated by the Confidentiality Regime at [3(a)] to [3(e)], when Coles is a key competitor of Metcash in wholesale and retail markets, would raise the real prospect of harm to Metcash (Chamberlain, [19]), as it would give such individuals information about Metcash's operations, competitive position, strengths and vulnerabilities which is competitively sensitive, despite being somewhat historical.[5] It would be challenging, if not impossible, for individuals who had accessed that information to put it wholly out of mind in future if advising Coles on matters such as conduct or competitive conditions in grocery wholesaling, or the particular local areas addressed in the Frontier Report (Chamberlain, [13]). That risk would be all the more acute in the case of Coles' internal solicitors, who more regularly advise Coles on such matters. Inadvertent use of the relevant information could entail Coles adopting a course more advantageous to Coles, and more adverse to Metcash, than it would otherwise have adopted.

6 The Tribunal can further be satisfied that it is desirable to make the direction sought on the basis that the matters addressed in the Frontier Report and CRA Report appear to have limited, if any, relevance to this proceeding: they do not appear to have been relied on by the ACCC in its statement of reasons, and they are remote from this proceeding in time, subject matter and (regarding the Frontier Report) geography. In particular, the

[5] *ACCC v Cement Australia Pty Ltd (No 2)* [2010] FCA 1082 at [22]-[23].

Frontier Report addresses a proposed acquisition [redacted], and both the Frontier Report and the CRA Report are significantly concerned with competition in grocery wholesaling, which does not appear to have been relevant to the ACCC's determination (Chamberlain, [20]).

Documents forming part of Metcash's May Response

7 Metcash also seeks a further direction that no internal solicitor of a Participant have access to Metcash's response, dated 1 May 2026, to a compulsory notice issued by the ACCC (**May Response**),[6] or to three of its enclosures (Application, [1(a)]; Chamberlain, [8(c)]).[7] Metcash provided those documents to the ACCC on a confidential basis,[8] and considers them to be highly sensitive and confidential (Chamberlain, [23] – [25]).

8 The Tribunal can be satisfied that it is desirable to make this direction, having regard to the confidential nature of the information in the May Response and enclosures. These documents contain detailed, specific and recent data and information about [redacted],[9] [redacted],[10] [redacted],[11] [redacted].[12] It would be challenging, if not impossible, for Coles' internal solicitors who had accessed that information to put it wholly out of mind in future if advising Coles, for example, regulatory and policy matters (Chamberlain, [26]). Inadvertent use of the relevant information in such matters could entail Coles adopting a course which was more advantageous to Coles, and more adverse to Metcash, than it would otherwise have adopted. Disclosure could thereby cause real and significant competitive harm to Metcash and/or independent supermarkets it supplies, and might even have a chilling effect on competition (Chamberlain, [26], [27]).

6 August 2026

Alice Muhlebach

---

[6] Described in Annexure A to the Application at row 2 (document 01068.001.020.1915, described on page 243 of the Documentary Index); Chamberlain, [8(c)].
[7] Described in Annexure A to the Application at row 2(a) (document 01068.001.020.1928, described on page 243 of the Documentary Index and defined as the "**Max Endorsed Thresholds**" document in Chamberlain, [8(c)(ii)]); row 2(b) (document 01068.001.020.1929, described on page 243 of the Documentary Index and defined as the "**Response to Schedule 1, questions 1(a), 1(b) and 2(e)**" document in Chamberlain, [8(c)(i)]; and row 2(c) (document 01068.001.020.1930, described on page 243 of the Documentary Index and defined as the "**WA Price Book**" document in Chamberlain, [8(c)(iii)].
[8] As identified on the first page of the May Response.
[9] Chamberlain, [23], [24(a)]; May Response at 01068.001.020.1917 and 01068.001.020.1918; Response to Schedule 1, questions 1(a), 1(b) and 2(e) (in tab titled "Data response to Schedule 1, q 1(a). 1(b) and 2(e)").
[10] Chamberlain, [23], [24(b)], [24(c)]; May Response at 01068.001.020.1918 to 1068.001.020.1920; Max Endorsed Thresholds document; WA Price Book document.
[11] Chamberlain, [23]; May Response at 1068.001.020.1918 to 1068.001.020.1920; Response to Schedule 1, questions 1(a), 1(b) and 2(e) (in tab titled "2(b)"); WA Price Book document.
[12] May Response at 01068.001.020.1921 to 1068.001.020.1923.