



COMMONWEALTH OF AUSTRALIA
Competition and Consumer Act 2010 (Cth)

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 (Cth)*

Applicant: Coles Supermarkets Pty Ltd

DIRECTIONS

TRIBUNAL: Justice O'Bryan (President)

DATE: 21 July 2026

WHERE MADE: Melbourne

THE TRIBUNAL DIRECTS THAT:

Participants and service of documents

1. Pursuant to s 109(2) of the *Competition and Consumer Act 2010 (Cth)* (the **Act**), O'Connor Fresh Pty Ltd ATF O'Connor Fresh Trust (**O'Connor IGA**) be permitted to intervene in this proceeding.
2. Any further applications pursuant to s 109(2) of the Act are to be made by no later than 31 July 2026.
3. Unless otherwise specified and subject to further order, any document required to be served by these orders must be served on:
 - (a) the applicant;
 - (b) any person who has been granted permission to intervene in this proceeding, (the **participants**) and the Australian Competition and Consumer Commission (**Commission**).



Extended review period

4. Pursuant to s 100P(3) of the Act, the period within which the Tribunal must make its determination on the review as specified in s 100P(2) is extended by a period of 60 days.

Confidentiality

5. The confidentiality regime set out in the Annexure to these directions (**Confidentiality Regime**) is to apply until further direction.
6. Subject to any further direction, the Confidentiality Regime will apply to all documents filed and/or served by a participant or the Commission in this proceeding that are identified as being subject to a claim for confidentiality.
7. By 23 July 2026, each participant is to serve on each other participant and the Commission the names of each external solicitor retained by the participant and each internal solicitor employed by the participant whom the participant proposes be permitted to have unrestricted access to confidential information in accordance with paragraph 3(a) of the Confidentiality Regime (**proposed permitted recipients**).
8. By 27 July 2026, the Commission is to notify each non-participant who provided information, documents or evidence to the Commission on a confidential basis:
 - (a) of the terms of the Confidentiality Regime and the names of each proposed permitted recipient for the purposes of paragraph 3(a) of the Confidentiality Regime; and
 - (b) that the non-participant may apply to the Tribunal for further directions to be made with respect to the non-participant's confidential information by filing a written application with the Tribunal on or before 3 August 2026 identifying:
 - (i) the confidential information to which the application relates; and
 - (ii) the further directions sought by the non-participant.
9. By 3 August 2026, a participant may apply to the Tribunal for further directions to be made with respect to that participant's confidential information by filing a written application with the Tribunal identifying:
 - (a) the confidential information to which the application relates; and
 - (b) the further directions sought by the participant.



10. If an application is filed by a non-participant with the Tribunal in accordance with paragraph 8(b) or by a participant in accordance with paragraph 9:
- (a) the Tribunal will notify the non-participant (if applicable), each participant and the Commission of the time and date for the hearing of the application;
 - (b) no later than 2 business days prior to the hearing date, the confidentiality applicant or participant (as applicable) seeking further directions must file and serve an outline submission of no more than 3 pages in support of the application; and
 - (c) no later than 1 business day prior to the hearing date, each participant opposing the further directions must file and serve an outline submission of no more than 2 pages in response.

Provision of documents by the Commission

11. By 28 July 2026, the Commission is to file and serve a single chronological index (**Documentary Index**) of the following material, which identifies for each document whether any part of the document is subject to a claim for confidentiality and, if so, the person claiming confidentiality:
- (a) the information that was referred to in the Commission's reasons for making the determination; and
 - (b) any other information furnished, documents produced or evidence given to the Commission in connection with the making of the Commission's determination.
12. By 28 July 2026, the Commission is to serve on each participant an electronic bundle of the documents referred to in the Documentary Index that are not identified as being subject to a claim for confidentiality.
13. By 5 August 2026, the Commission is to serve on each participant an electronic bundle of the documents referred to in the Documentary Index that are identified as being subject to a claim for confidentiality and which are not the subject of an application for further directions under paragraphs 8(b) or 9. For the avoidance of doubt, the Confidentiality Regime will apply to those documents.
14. The Commission is to serve on each participant an electronic bundle of the documents referred to in the Documentary Index that are identified as being subject to a claim for confidentiality and which are the subject of an application for further directions under



paragraphs 8(b) or 9 in accordance with such directions as are made by the Tribunal upon the determination of the application for further directions.

Concise statement of contention

15. The concise statement required to be given to the Tribunal by the applicant by 14 August 2026 pursuant to s 7-22 of the Competition and Consumer (Notification of Acquisitions) Determination 2025 (Cth) must:
 - (a) not exceed 20 pages; and
 - (b) be served on each other participant and the Commission.
16. By 28 August 2026, each other participant is to file and serve a concise statement of contentions limited to 20 pages.
17. By 11 September 2026, the Commission is to file and serve a concise statement of contentions limited to 20 pages.

Application under s 100S

18. Any application by a participant to provide new information, documents or evidence pursuant to s 100S(2) of the Act is to be made by 4 September 2026 and be accompanied by any evidence in support and an outline submission limited to 8 pages.

Findings of fact and economics that are not contested

19. By 18 September 2026, the participants are to confer and file a joint document identifying all material findings of fact, economics and law set out in the Commission's statement of its reasons for determination that are not contested by any participant on the review.

Hearing

20. The proceeding is listed for hearing at the Federal Court, Victoria Registry, on the following 8 days:
 - (a) 9 to 12 November 2026; and
 - (b) 16 to 19 November 2026.

Constitution of the Tribunal

21. For the purpose of hearing and determining this proceeding, the Tribunal will be constituted by Justice Michael O'Bryan, Dr Ray Steinwall and Professor David Byrne.

Hearing Book

22. By 2 October 2026, the applicant is to serve a draft index to a hearing book listing all documents proposed to be relied upon at the hearing.
23. By 9 October 2026, each other participant and the Commission are to serve on the applicant a list of any documents to be included in the hearing book that are additional to the applicant's list.
24. By 16 October 2026, the participants and the Commission are to confer and agree upon the form and content of the hearing book.
25. By 21 October 2026, the applicant must file and serve a copy of the hearing book in electronic form which:
 - (a) is produced in a text-recognised PDF format;
 - (b) is paginated sequentially throughout;
 - (c) is divided into separate volumes of documents such that each volume comprises a single PDF file and the file name of each PDF file is the volume number; and
 - (d) each volume of documents (being a PDF file) contains electronic bookmarks to each document in that volume.

Submissions

26. By 16 October 2026, the applicant must file and serve an outline submission limited to 30 pages.
27. By 23 October 2026, each participant other than the applicant must file and serve an outline submission limited to 30 pages.
28. By 30 October 2026, the Commission must file and serve an outline submission limited to 30 pages.

Other matters

29. Participants have liberty to apply.



A handwritten signature in blue ink, appearing to be "N. Y.", is written over the seal.

REGISTRAR



Annexure

Confidentiality Regime

- 1 The following defined terms apply for the purposes of this Confidentiality Regime:
 - a) **ACCC** means the Australian Competition and Consumer Commission
 - b) **Act** means the *Competition and Consumer Act 2010* (Cth);
 - c) **Confidential Information** means all information filed with the Tribunal, served or otherwise produced in the proceeding:
 - i) in respect of which a claim of confidentiality has been made and has not been refused by the Tribunal;
 - ii) which has been marked 'Confidential'; and
 - iii) which is not in the public domain or is only in the public domain by reason of a breach by any person of a confidentiality undertaking in the proceeding;
 - d) **Determination** means the determination made by the Commission which is the subject of this proceeding for review;
 - e) **Directions** means the directions made by the Tribunal on 21 July 2026 to which this Confidentiality Regime is attached;
 - f) **Participant** means:
 - i) the applicant for review; and
 - ii) any person who has been granted permission to intervene in this proceeding;
 - g) **Support Staff** means persons providing administrative assistance and includes secretaries, administrative assistants, graduates, paralegals, IT staff, print room staff and staff of external printing or technology vendors based in Australia;



h) **Third Party** means a person, other than a Participant, who provided information, documents or evidence to the Commission in connection with the Determination on a confidential basis;

i) **Tribunal** means the Australian Competition Tribunal.

2 The following persons have unrestricted access to the Confidential Information, provided that such persons keep that material confidential and in accordance with this Confidentiality Regime:

- a) the Tribunal, Tribunal staff and any other person assisting the Tribunal;
- b) the ACCC, ACCC staff and any other person assisting the ACCC in relation to the proceeding including the ACCC's barristers and external solicitors; and
- c) Support Staff of the persons listed in paragraphs 2(a)-(b) and paragraphs 3(a)-(d) of this Confidentiality Regime.

3 The following persons have unrestricted access to the Confidential Information, provided that such persons have signed the Confidentiality Undertaking in the form attached before receiving the Confidential Information and the Confidential Information is only used for the purpose of this proceeding:

- a) external solicitors retained by a Participant and internal solicitors employed by a Participant who are directly involved in the proceeding provided that:
 - i) the name of the solicitor was notified to the other Participants and the Commission in accordance with the Directions; and
 - ii) no objection was made by any Participant or Third Party in accordance with the Directions to the solicitor having access to the Confidential Information under this Confidentiality Regime, or any objection was dismissed by the Tribunal;
- b) barristers retained by a Participant who are directly involved in the proceeding;
- c) independent experts retained for the purposes of the proceeding on behalf of a Participant;



- d) independent experts and external consultants engaged for the purposes of the proceeding by the ACCC (but such experts and external consultants are only required to sign the confidentiality undertaking in the form attached and marked “Confidentiality Undertaking” to access Confidential Information not in their control prior to the commencement of the proceeding); and
 - e) any other external solicitor retained by a Participant who is directly involved in the proceeding provided that:
 - i) the name of the person is first notified to each Participant or Third Party whose Confidential Information is proposed to be accessed by the person; and
 - ii) the notified Participant or Third Party does not object in writing within 4 business days of receiving notification;
 - f) any other person with the prior written consent of each Participant or Third Party whose Confidential Information is proposed to be accessed by the person.
- 4 If a Participant or Third Party objects to access in accordance with paragraph 3(e)(ii), the Participant seeking access may apply in writing to the Tribunal to have the access dispute determined.
- 5 The Participants and the ACCC are each to keep a register of the persons within their organisation, or retained by their organisation, who have signed Confidentiality Undertakings pursuant to paragraph 3 above, and of the external printing or technology vendors based in Australia who have been provided with any Confidential Information, which register can be inspected on 3 business days’ notice.
- 6 The Confidential Information must not be referred to orally during the hearing of the proceeding unless the Tribunal has directed that the hearing is to take place in private pursuant to s 106(2) of the Act.
- 7 Until further order of the Tribunal, Confidential Information is not to appear in any transcript of the proceeding before the Tribunal other than in a confidential copy of the transcript, which shall only be made available to the persons referenced in



paragraphs 2 and 3 of this Confidentiality Regime and otherwise as permitted by this Confidentiality Regime.

8 For the avoidance of doubt, nothing in this regime prevents:

- a) one or more of the Participants and the ACCC from having access to or otherwise dealing with their own Confidential Information;
- b) the ACCC having access to or otherwise dealing with Confidential Information of any Participant that was in its control prior to the commencement of the proceeding.



Attachment to Confidentiality Regime

Confidentiality Undertaking

I, [name], [occupation], of [address], on [date] hereby undertake as follows:

1 In this undertaking:

- a) **ACCC** means the Australian Competition and Consumer Commission;
- b) **Confidential Information** means all information filed with the Tribunal, served or otherwise produced in the proceeding:
 - i) in respect of which a claim of confidentiality has been made and has not been refused by the Tribunal;
 - ii) which has been marked 'Confidential'; and
 - iii) which is not in the public domain or is only in the public domain by reason of a breach by any person of a confidentiality undertaking in the proceeding;
- c) **Confidentiality Regime** means the confidentiality regime annexed to the directions of the Tribunal made in this proceeding on 21 July 2026;
- d) **proceeding** means File No. ACT 1 of 2026 being the application for review of a determination made by the Australian Competition and Consumer Commissioner under subsection 51ABZE(1) of the Competition and Consumer Act 2010: Coles Supermarkets Australia Pty Limited (including any appeals from a decision of the Tribunal in the proceeding);
- e) **Support Staff** means persons providing administrative assistance and includes secretaries, administrative assistants, graduates, paralegals, IT staff, print room staff and staff of external printing or technology vendors based in Australia.
- f) **Tribunal** means the Australian Competition Tribunal; and

2 I will not use the Confidential Information for any purpose other than my work in respect of the proceeding.



- 3 I will keep the Confidential Information confidential and will not disclose the Confidential Information directly or indirectly to any person, other than persons who have signed this undertaking, or any other persons permitted to access such information pursuant to the Confidentiality Regime or any directions of the Tribunal in the proceedings related to confidentiality.
- 4 To the extent that I possess the Confidential Information, I will:
- a) establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access or use;
 - b) keep the Confidential Information under my effective control; and
 - c) immediately notify the ACCC and the party who made the claim of confidentiality in writing of any suspected or actual unauthorised use, copying or disclosure of the Confidential Information, of which I become aware.
- 5 To the extent that I cause, or permit, any Support Staff to have access to the Confidential Information:
- a) that will occur on the basis that the Confidential Information is treated in accordance with clause 4 above; and
 - b) I will ensure that any access given to external printing or technology vendors based in Australia is on the basis that those vendors do not retain any of the Confidential Information after completion of their services.
- 6 Following the final determination of the proceeding, subject to any professional obligations I have to retain any of the Confidential Information, I will:
- a) use reasonable efforts to destroy the Confidential Information in my possession, custody or control; or
 - b) otherwise, in respect of any Confidential Information under my effective control and not destroyed in accordance with paragraph (a), deal with it only in accordance with this undertaking.



- 7 I acknowledge that my obligations in this undertaking will continue after the final determination of the proceeding (or such other period as the Tribunal determines is appropriate) and the destruction of the Confidential Information.
- 8 I acknowledge that damages may not be an adequate remedy for the breach of my obligations in this undertaking and that the person who made a claim of confidentiality in respect of that information may be entitled to equitable relief (including, without limitation, injunctive relief) in respect of any threatened or actual breach of my obligations in this undertaking.
- 9 Nothing in this undertaking shall impose an obligation upon me in respect of information:
- a) which is in the public domain; or
 - b) which has been obtained by me otherwise than in relation to the proceeding, provided that the information is not in the public domain and/or has not been obtained by me by reason of, or in circumstances which involve, any breach of confidentiality undertaking or a breach of any other obligation of confidence in favour of a person who made a claim of confidentiality in respect of that information or by any other unlawful means, of which I am aware.
- 10 I irrevocably submit to the jurisdiction of the Tribunal for the purposes of enforcing the terms of this undertaking.

SIGNED by [insert name] in the presence of:

Dated: