



10 June 2014

Professor Ian Harper
Chair of the Review Panel
Competition Policy Review
Canberra ACT 2600

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Dear Professor Harper

I am pleased to present the submission of Coles Group Limited (**Coles**) to the Competition Policy Review Issues Paper.

In summary, Coles submits to the Panel that:

- consumers must be at the heart of Australia's competition policy;
- Australia's competition law should be improved to ensure it is consistent with international best practice and it promotes consumer welfare;
- an improved competition policy framework would help drive much-needed productivity improvement in Australia; and
- competition in the sectors in which Coles operates is vigorous which has delivered and will continue to deliver consumer benefits.

The Issues Paper states "that submissions should be of sufficient detail to enable the Panel to test propositions properly". As such, this submission provides a detailed response to the questions posed in the Issues Paper that are relevant to the sectors in which Coles operates.

Material contained within this submission is commercial-in-confidence and competitively sensitive. Coles is providing this material in good faith and requests that its commercial sensitivity be respected.

Coles suggests that the Panel publish the overview of this document on its website, alongside the submissions of other participants in the Review.

Coles would be grateful for the opportunity to meet with the Panel and discuss its submission.

Sincerely

John Durkan
Chief Operating Officer
Coles Group Limited

Overview

Coles welcomes the opportunity to contribute to this important and timely review of Australia's competition policy.

The grocery sector in Australia touches all Australian households. For many, the cost of buying groceries each week consumes a significant component of their household budget. This is particularly the case in households with lower and fixed incomes.

The cost of living in Australia is, justifiably, front and centre of the national debate.

In coming years, cost of living pressures on Australian households have the potential to become even more acute than they are today. Slowing real wage growth, the rising cost of housing, less secure employment prospects, the increasing cost of raising children, increasing utility prices and lower returns on savings and investments are having a fundamental impact on household budgets – and appear set to continue into the future.

Coles considers that it, and its peers in the grocery sector, are playing an important role in helping households meet the increasing challenge of cost of living pressure.

For its part, Coles is proud to have recorded cumulative food and liquor (**F&L**) deflation of 4 per cent over the past five years¹, compared to the Australian Bureau of Statistics (**ABS**) measure of national inflation of 12.2 per cent over the same period.² Coles considers that this, and other benefits to consumers are the result of vigorous competition in the grocery sector.

The grocery sector makes a significant contribution to the Australian economy. It employs 400,000 people across the nation, and has, in recent years, made demonstrable improvements in productivity.

The sector recorded sales of \$106.8 billion in FY2013 and has grown at a compound average growth rate of 4.6 per cent a year, from July 2008, to June 2013.³

Over the last five years, from July 2008, to June 2013, the sector has experienced above-average improvement in multifactor productivity of 7.6 per cent, an indication of effective adoption of innovative technologies and work practices.⁴

¹ Wesfarmers Quarterly Retail Sales Results, FY2009-FY2013, based on Coles' internal food and liquor inflation methodology.

² Australian Bureau of Statistics, Series 6401.0 Consumer Price Index, Australia, All groups CPI.

³ Australian Bureau of Statistics, Australian National Accounts, Table 1: Retail Trade by Industry Group 850101, cat no 5206.0.

Coles considers that a vigorous best-practice competition policy framework is essential to promoting a productive economy that benefits all Australians.

This Review provides a once-in-a-generation opportunity for an economy-wide review of competition policy in Australia – and to reaffirm consumers as the focus of our nation’s competition law.

Coles submits to the Panel that:

- consumers must be at the heart of Australia’s competition policy;
- Australia’s competition law should be improved to ensure it is consistent with international best practice and it promotes consumer welfare;
- an improved competition policy framework would help drive much-needed productivity improvement in Australia; and
- competition in the sectors in which Coles operates is vigorous, which has delivered and will continue to deliver consumer benefits.

Coles considers that the majority of the provisions in the Competition and Consumer Act 2010 (**CCA**) are working effectively in that they promote competition, they are underpinned by sound economic and legal principles, and they are, by and large, administered appropriately by the Australian Competition and Consumer Commission (**ACCC**).

Coles submits that the focus of this Review should be on how to improve Australia’s competition law in ways that will make the regulatory framework for Australian business consistent with international best practice.

Aligning Australia’s competition law with international best practice will provide an important additional economic and productivity dividend for Australia and Australian consumers. It will encourage and facilitate inbound investment and ensure Australian businesses expanding into global markets are not held to a higher and more costly domestic regulatory standard, thereby increasing competition both here and abroad.

⁴ Australian Bureau of Statistics, Estimates of Industry Multifactor Productivity, Table 1: Gross value added based multifactor productivity indexes, cat no 5260.0.55.002.

Australian competition legislation has evolved over time, shifting from the ‘anti-trust’ or ‘anti-monopoly’ legislation that was introduced at the start of the 20th century to legislation that promotes competition.

While there has been a raft of developments, reviews, inquiries and jurisprudence relating to competition legislation, it has been generally accepted since the passing of the Trade Practices Act 1974 that the ultimate and intended beneficiaries of competition legislation are not competitors but consumers. The Swanson Report found that the fundamental assumption of the trade practices legislation is that:

“[T]he needs of the community, including consumers, are most effectively satisfied through the operation of the market mechanism in which the driving force is competition.”

This is evident in the objective of the CCA in s. 2:

“The object of the Act is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection.”

The Courts have long recognised that the central object of competition law is consumer welfare. This has been affirmed by subsequent reviews on the CCA, including the most recent Dawson Review, as well as by the ACCC itself. In particular, Rod Sims, Chairman of the ACCC, recently noted that:

“In many ways, the ACCC’s role should be quite simple to communicate – in short, making markets work for consumers now and in the future.”

Coles considers that the sectors in which it operates are characterised by vigorous competition.

The grocery sector is dynamic and subject to a high degree of innovation and both product and service differentiation. The ACCC has previously found that supermarket retailing in Australia is “workably competitive” with a wide range of retailers competing across a spectrum of dimensions including price, quality, range, service, innovation and convenience. Since the ACCC’s review in 2008, there has been rapid entry and expansion by international grocery retailers, including Costco and ALDI, which demonstrates that market share in the grocery sector is highly contestable.

Petrol retailing in Australia is also highly competitive, with refiner-marketers such as Caltex and BP competing with Woolworths/Caltex and Coles Express/Shell as well as a wide range of independent

petrol retailers with varying ownership and franchise structures. Puma Energy, owned by Europe's Trafigura, and 7-Eleven, with global parent headquarters in Japan, are also recent entrants to the petrol retail market in Australia.

Coles believes there are five important principles which underpin a competition policy that is synonymous with international best practice.

First, the fundamental goal of competition policy is to promote competition for the benefit of consumer welfare.

Secondly, consumer welfare is best promoted by competitive markets, which over time encourage efficiency, higher productivity and lead to strong competition on price and innovation in products and services.

Thirdly, competition policy should seek to permit market forces to achieve competitive outcomes to the benefit of consumers. It should focus on the promotion of dynamic markets – for example, by ensuring that regulatory barriers to entry are low or by removing restrictions on competition. It should also prohibit conduct that substantially lessens competition, only prohibit particularly egregious conduct on a *per se* basis and exempt conduct that, while it lessens competition, provides a clear public benefit.

Fourthly, competition law and policy should apply consistently across the economy.

Fifthly, competition law should encourage confidence and certainty, and be administered in a clear, fair, transparent and low cost manner.

This Review presents a timely opportunity to improve Australia's competition framework in accordance with these principles.

Coles also commends to the Panel the analysis in the submission by its parent, Wesfarmers Limited, of the importance to the Australian economy, and to the strength and resilience of Australian business, of best practice competition policy.

Coles looks forward to being a constructive participant in this Review.