

The Australian Competition and Consumer Commission

Press Release

Release number:

MR 112/15

Media enquiries:

Media team - 1300 138 917

Coles refunds over \$12 million to suppliers following ACCC action

30 June 2015

The Australian Competition and Consumer Commission welcomes today's statement from independent arbiter, the Hon Mr Jeff Kennett AC. Mr Kennett has instructed Coles to refund over \$12 million to suppliers and has also allowed suppliers to exit the ARC program without penalty or have their ARC contribution rebates reviewed. In addition to the refunded amounts, this will result in further substantial ongoing savings for Coles' suppliers.

"The arbitration process conducted by Mr Kennett has proven both extremely timely and effective with significant benefits to suppliers," ACCC Chairman Rod Sims said.

"The process will also deliver flow on effects for suppliers more broadly as a result of changes Mr Kennett says Coles has begun to implement that affect the way it deals with its suppliers."

The refunds process arose out of the resolution of two proceedings commenced by the ACCC against Coles in 2014: the 'ARC proceedings', and the 'claims proceedings'. In December, the Federal Court made declarations in both proceedings by consent that Coles had engaged in unconscionable conduct in 2011 in its dealings with certain suppliers.

As part of the resolution, Coles also provided a court enforceable undertaking to the ACCC to establish a formal process to provide options for redress for over 200 suppliers. In December 2014, Mr Kennett was appointed to administer the process and to assess the eligibility of:

- over 200 smaller suppliers listed in the ARC proceedings, categorised by Coles as 'Tier 3' Suppliers, to obtain refunds of any prior ARC rebate payments and seek adjustments of future rebates (taking into account the circumstances of their entry into the ARC program and any benefit received from their access to ARC over and above any arrangements they had with Coles prior to the implementation of the ARC program); and
- suppliers referred to in the claims proceedings (in respect of which Coles made admissions in relation to profit gap claims, waste claims, and delivery fines) to obtain possible payments.

"The high level feedback from suppliers is that they are largely satisfied with access to redress from Coles and the timely, efficient and low cost approach. Ultimately, it was a matter for each supplier to decide whether or not to proceed with the resolution proposed, and as Mr Kennett's report demonstrates, a very large number accepted the relief offered by Coles," Mr Sims said.

"The arbitration process was intended to provide an efficient alternative to otherwise lengthy and costly processes in determining the loss and damage of affected suppliers. Mr Kennett has now finalised his deliberations and has instructed Coles to refund over \$12 million to a number of 'Tier 3' suppliers and a further \$324,000 to suppliers listed in the claims proceedings. This is in addition to the penalty ordered by the court of \$10 million," Mr Sims said.

Under the arbitration process, it was also open to suppliers to simply exit the ARC program. A number of suppliers took this option. Suppliers who sought a review of their eligibility for refunds also had the option to exit the ARC program.

“Mr Kennett has reported that his arbitration process has resulted in substantial ongoing savings for suppliers. Exit from the program chosen by some suppliers and reduced rates for others will save suppliers significant additional costs into the future,” Mr Sims said.

Mr Kennett’s determinations, as the independent arbiter, are binding on Coles and Coles has already moved to implement steps necessary to comply with those determinations. Mr Kennett also made a number of non-binding recommendations to Coles on the basis of his discussions with some suppliers.

“The ACCC recognises and acknowledges Coles’ co-operation in acting upon the binding determinations made by Mr Kennett and in making some of the non-binding changes recommended by Mr Kennett. It moved quickly and without challenge to accept the decisions and implement changes,” Mr Sims said.

Coles has advised the ACCC that it intends to become a signatory to the Food and Grocery Code from 1 July 2015. The introduction of an effective and equitable dispute resolution process for disputes arising between retailers or wholesalers and suppliers is a key feature of the Code. For further information about the Code, visit <http://www.accc.gov.au/business/industry-codes/food-and-grocery-code-of-conduct>

In addition to its role in enforcing the Code, the ACCC will continue to monitor developments in the supermarket sector and issues raised by suppliers, including under the provisions of the Australian Consumer Law.

This media release is available at the ACCC website:

<https://www.accc.gov.au/media-release/coles-refunds-over-12-million-to-suppliers-following-accc-action>