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Coles' proposed acquisition of two Saputo milk processing plants not opposed

The ACCC will not oppose Coles' (ASX: COL) proposed acquisition of two milk processing plants from dairy processor, Saputo. The processing plants are located at Erskine Park, NSW and Laverton, VIC.

Coles and Saputo both currently acquire raw milk from dairy farmers in Victoria and NSW. Coles currently has its milk processed at the Erskine Park and Laverton plants by Saputo. After the acquisition, Saputo will have its raw milk processed by Coles at these facilities under similar arrangements.

Following engagement with key stakeholders, the ACCC released a [Statement of Issues](#) in July 2023 identifying its preliminary concerns that the proposed acquisition may increase Coles' bargaining position in the dairy supply chain.

Concerns were also raised that the acquisition may change Saputo's incentives and result in it exiting the raw milk market in NSW, which would reduce the number of buyers of raw milk.

"We acknowledge the strong concerns raised by some dairy industry participants about Coles' acquisition of milk processing facilities," ACCC Deputy Chair Mick Keogh said.

"We explored the industry's concerns very closely through discussions with farmers and their representative bodies, and conducted a detailed review of Saputo and Coles' internal documents and their incentives."

"After careful consideration, we concluded that, compared with the current state of competition where the majority of the capacity at these facilities is already contracted to Coles, the acquisition is unlikely to result in a substantial lessening of competition in breach of section 50 of the Competition and Consumer Act," Mr Keogh said.

The ACCC took into account Saputo's financial data which indicates that it has a commercial incentive to continue selling its Devondale milk in NSW. Saputo also recently entered into a five-year toll processing agreement with Coles at the Erskine Park processing plant.

"We considered that the proposed acquisition would be unlikely to change Saputo's incentives to continue acquiring raw milk from farmers in NSW for at least the next five years," Mr Keogh said.

"We also found that other dairy companies such as Lactalis and Bega would continue to be competitors for raw milk in central NSW, and that the proposed acquisition is unlikely to change this."

The ACCC also looked closely at concerns that the acquisition would strengthen Coles' position in the dairy supply chain, and that it would give Coles the incentive and ability to adversely affect other processors.

"While we found that Coles may have an incentive to consolidate some of its milk volumes in the eastern states, this was unlikely to lead to a substantial lessening of competition," Mr Keogh said.

“Coles will likely continue to face financial incentives to stock and support branded milk from other processors, due to the higher retail margins it earns on these products.”

In addition, the ACCC found that Coles’ commercial incentives to consolidate its milk supply would exist with or without the transaction due to the significant excess capacity at the Laverton and Erskine Park facilities.

The ACCC acknowledges that some stakeholders asked that conditions be imposed on Coles so its relationships with processors and farmers are effectively covered by existing industry behavioural codes.

The ACCC considers that these safeguards are already in place, given that Coles’ conduct with farmers it purchases raw milk from is covered by the mandatory [Dairy Code of Conduct](#) in the same way as other processors and purchasers of raw milk.

Coles’ interactions with processors is also covered by the voluntary [Food and Grocery Code of Conduct](#).

Notes to editor

In considering the proposed acquisition, the ACCC applies the legal test set out in section 50 of the Competition and Consumer Act.

In general terms, section 50 prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in any market.

Background

Coles proposes to acquire Saputo’s fresh milk processing facilities in Laverton North (VIC) and Erskine Park (NSW). While Coles is by far the largest customer of these two facilities, they do supply a range of other milk products to retailers.

Coles is a major supermarket chain and one of Australia’s largest grocery and general merchandise retailers. Coles supplies branded and own brand fresh milk products at the retail level through its supermarkets. Coles is the distributor for its own brand fresh milk to Coles stores, produced under tolling arrangements with producers including Saputo. Coles does not currently own or operate any dairy processing facilities. Coles is listed on the Australian Securities Exchange.

Saputo is a wholly-owned subsidiary of Canadian based dairy product company Saputo Inc. Saputo is one of the largest dairy processors in Australia with 10 manufacturing facilities. Saputo produces and wholesales a wide range of dairy products for the domestic market including fresh drinking milk, cheese, extended shelf-life milk and cream products, cultured products and dairy ingredients. Saputo products are sold under brands including Cheer, Devondale and Sungold.

Media enquiries: 1300 138 917

Email: media@acc.gov.au

acc.gov.au/media