



## CHARTER FOR THE COMPETITIVE SALE OF INDEPENDENT SUPERMARKETS

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### 1. Purpose of the Charter

- 1.1 The purpose of this Charter is to ensure that any acquisition of a Supermarket owned or operated by an Independent Supermarket Retailer takes place under a competitive bidding process.

### 2. Effective Date

- 2.1 This Charter shall take effect and bind each Party on 1 July 2005.

### 3. Definitions

- 3.1 "Independent Supermarket Retailer" means any person that owns or operates a Supermarket other than a Party or any Related Body Corporate of a Party.

- 3.2 "Interest in a Supermarket" means:-

- (a) any part of a Supermarket;
- (b) any freehold owned by an Independent Supermarket Retailer used for the conduct of a Supermarket; or
- (c) any share, unit or other interest in an entity owning or operating a Supermarket.

- 3.3 "Party" means Coles Myer Limited, Woolworths Limited, Metcash Trading Limited and any other person that has agreed to be bound by this Charter, all subsidiaries and related companies, and where the context requires includes any nominee of a Party.

- 3.4 "Related Body Corporate" has the meaning given by the Corporations Act.

- 3.5 "Sale Agreement" in connection with a Supermarket means:-

- (a) any verbal or written agreement to sell, transfer ownership of or grant to a Party the right to operate the Supermarket; and
- (b) any written option or offer to acquire, lease or operate the Supermarket.

- 3.6 "Supermarket" means a business retailing groceries, including liquor and household goods, and includes any Interest in a Supermarket.

### 4. Notification of Prospective Acquisitions

- 4.1 Where a Party proposes to make a formal offer to acquire a Supermarket the party must provide to the vendor a written notice in the form of Appendix A to this Charter.

- 4.2 A Party must not in connection with the acquisition of a Supermarket prior to entering into a Sale Agreement with the Independent Supermarket Retailer

- (a) Seek to secure from the Independent Retailer the right to exclusively negotiate with the Independent Retailer or to otherwise prevent or inhibit the owner of the Supermarket from dealing with other parties to secure the best price for the Supermarket or the most advantageous sale terms; or
- (b) Otherwise act to limit the right or ability of the Independent Supermarket Retailer to seek other potential purchasers for the Supermarket or frustrate the attempts of the Independent Supermarket Retailer to do so, including by attempting to impose unnecessarily broad confidentiality obligations.

4.3 A Party must not:-

- (a) Enter into any Sale Agreement in relation to the Supermarket; or
- (b) Pay any money to or as directed by an owner of the Supermarket;
- or
- (c) Enter into possession of the Supermarket; or
- (d) Take any steps to re-brand or re-image or close the Supermarket;

until at least 7 days have elapsed from the date of the Notice to the vendor in accordance with clause 4.1.

4.4 The Parties agree that, if a Party considers that another Party has breached clause 4.2 or clause 4.3 of this Charter, these Parties will, in good faith, seek to agree on whether a breach has occurred and, if so, negotiate an appropriate outcome.

## **5. Assistance to independent supermarkets**

5.1 Nothing in this Charter shall prevent a Party from entering into an agreement to supply an Independent Supermarket Retailer that contains a restriction on sale to a party other than the Party where the Party has provided assistance to the Independent Supermarket Retailer provided such restriction is reasonable in the context of the assistance provided and does not result in a breach of the Trade Practices Act 1974.

## Appendix A – Notice to Vendor

[vendor]

[vendor's address]

This notice is provided in relation to discussions between [buyer] and you in relation to the possible acquisition of your supermarket business at [location]. The purpose of this notice is to inform you of your rights under the Charter for the Competitive Sale of Independent Supermarkets ("the Charter"), to which [buyer] is a party.

As a party bound by the Charter [buyer] has agreed to refrain from certain conduct in relation to the acquisition of independent supermarkets, and to inform you of your right to approach other interested parties in order to seek alternative buyers.

As a party to the Charter [buyer] has agreed that it will not in connection with the sale or transfer of a Supermarket prior to entering into a Sale Agreement with you:-

- (1) Seek to secure from you the right to exclusively negotiate with you or to otherwise prevent or inhibit you from dealing with other parties to secure the best price for the Supermarket or the most advantageous sale terms;  
or
- (2) Otherwise act to limit your right or ability to seek other potential purchasers for the Supermarket or frustrate your attempts to do so including by attempting to impose unnecessarily broad confidentiality obligations upon you.

[buyer] has also agreed that it will not:-

- (3) Enter into any Sale Agreement in relation to the Supermarket; or
- (4) Pay any money to or as directed by you; or
- (5) Enter into possession of the Supermarket; or
- (6) Take any steps to re-brand or re-image or close the Supermarket;

until at least 7 days have elapsed from the date of this Notice.

The Australian Competition and Consumer Commission has facilitated the development of this Charter. Compliance with this Charter is an important issue for [buyer]. In the event that you believe your rights have been infringed please contact [insert name of designated contact for complaints] from our company to discuss the matter. A copy of the Charter can be viewed on our website at [website details].

[signature of buyer]

[date of notice]