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To whom it may concern,

Re: SUBMISSION by National Retail Association in response to: "Monitoring the impacts on container beverage prices and competition" issues paper.

The National Retail Association (NRA) welcomes the opportunity to provide feedback on the Independent Pricing and Regulatory Tribunal (IPART) Issues Paper in relation to the introduction of a Container Deposit Scheme (CDS) in NSW. NRA is supportive of the Environment Minister's objective to reduce litter, with retailers and customers alike sharing the concern about the harmful impact of littering on the environment.

We understand that the Government seeks to address recycling rates in NSW. Plastic litter impacts visual amenity and detracts from a tourist economy, as well as impacting marine wildlife. Local governments play an important role in ameliorating the impacts of disposable plastic, but the expense is ultimately borne by our communities.

Under this scheme, consumers who return empty eligible beverage containers to Return and Earn collection points receive a 10-cent refund per container. Only the containers likely to end up as litter are eligible – generally bottles, cans and cartons in sizes that are often consumed outside the home.

We understand that The Premier has asked IPART to monitor and report on the impacts of the CDS over the first year of its operation. However, it should be noted that the existence of a charge payable by suppliers would naturally result in an increase to the price of goods, even though every effort is being made by retailers to keep prices low and stay competitive.

Background

The National Retail Association (NRA) is Australia's most diverse retail industry organisation, servicing close to 20,000 stores and outlets nationwide. We are a not-for-profit organisation built on strong relationships with our members.

We exist to help retail and service sector businesses comply with an ever-changing and growing regulatory environment. Our services are delivered by highly trained and well-qualified in-house experts with industry specific knowledge and experience. We provide professional services and critical information right across the retail industry, including the majority of national retail chains and thousands of small businesses, independent retailers, franchisees and other service sector employers.

Members are drawn from all of the sub-categories of retail including fashion, groceries, department stores, household goods, hardware, fast food, cafes and personal services like hairdressing and beauty.

NRA has represented the interests of retailers and the broader service sector for almost 100 years. Our aim is to help Australian retail businesses grow.

NSW CDS Issues

The 1 December implementation date of the NSW scheme has created unnecessary additional burden for retailers and has affected the management of price. It is the busiest time of the year for retailers, as people make purchases in the lead up to the Christmas holidays. Further, key decisions on the structure of the scheme were delayed without an overall delay to the implementation, meaning that the industry had very little time to negotiate with other stakeholders in the new pricing regime. This was particularly difficult with the delays in the identification of a scheme coordinator and network operator, which in turn delayed the publishing of the handling fees for the scheme. With this occurring during the busiest time of the year and in a retail environment where price competition is fierce, the pressure and burden on the industry cannot be underestimated.

It is also worth noting that key decisions on the structure of the scheme - such as the management of export volumes out of NSW and the definitions of contract manufacturing - have been revised and published in the past few weeks. While we appreciate the new definitions make the management of the scheme easier on our members, it is worth noting that these changes - which impact the scheme’s administration and therefore costs - have only been made three months after the scheme began.

The NSW scheme was predicated on “first suppliers” providing advanced payments to the scheme coordinator to fund the scheme. This is especially problematic and needs consideration when reviewing price changes for a number of reasons:

- **Inaccurate forecasting:** Given that this occurred at the busiest time of the year when the highest volume of products is traded, the industry’s ability to forecast volumes over the Christmas period had the potential to be highly inaccurate. It was difficult to predict the impact of significant price changes over this period, given the unprecedented change to the NSW market.
- **Competitive landscape:** Based on the movement of volumes and the shape and scale of various supply chains, the timing of the price change occurring within the store would differ from product to product and retailer to retailer. Given how competitive the retail environment is on such fast-moving products, coupled with a lack of visibility on pricing decisions from other retailers until those products/new prices hit the market, retailers did everything within their power to keep prices as low as possible to avoid having a significant detrimental impact on performance. Any retailer who used this opportunity to increase prices well over and above the costs of the scheme during this period would have likely suffered significant losses.

The final key issue experienced by retailers in the implementation of the scheme in NSW related to the monthly change in fees. For most retailers and suppliers, a review of pricing would occur once every three, six or twelve months depending on the retailer, supplier, the agreement, the products in question etc. Mandating the increased frequency with which to negotiate supplier price changes based on the performance of the scheme (and the subsequent changes to the handling fees) not only adds a significant administrative burden to all members of the supply chain, but it also ensures that in some instances, determining the true supply cost for an item with variable supply costs means mirroring supply cost changes in retail prices is almost impossible. We believe that this is an important consideration when reviewing retail pricing, as the difference of pricing over time may not be a like-for-like comparison of the current handling fee. However, competitive forces operate so that all efforts are made by retailers and suppliers to offer the most competitive price possible.

Other price factors

Outside of specifically reviewing the impact of the CDS, IPART should be aware of other factors that influence pricing on such products:

- **Product makeup and changes:** many factors influence price, including the ingredients that are included in the product itself. Given that the price of these raw ingredients may change over time due to a variety of external factors (which suppliers and retailers often address by way of average pricing to avoid the need to fluctuate supply and retail pricing), the retail price may subsequently change as well.

- **Product costs by jurisdiction:** while many national retailers attempt to align the retail price of products from one state or territory to another, some situations mean that this cannot happen, and that the price will be different. This may be for a variety of reasons, such as the costs of logistics to move product (which would vary from one jurisdiction's geography to another), the volume that is traded in various jurisdictions of a particular product (affecting economies of scale) or the level of competition within one area or another. As a result, it is important that IPART does not compare prices for NSW products to other jurisdictions, given the multitude of differences that may impact prices.
- **Promotional activity:** The highly competitive nature of the beverage industry is reflected in the fact that promotional activities on various products is par for the course for most retailers, some of whom may have sold products at a discounted price during the holiday period (when most other stakeholders are increasing their prices to a higher amount due to the CDS). These promotional activities on specific lines are temporary, however, with prices then returning to a more workable amount at a later date. Consideration is needed for this practice, as while it might appear to be a significant increase in price after the CDS has been implemented, it is actually a correction with the intent of offering a competitive price to a consumer.

Responses to specific questions in the discussion paper

1 Do you agree with our proposed approach to include in our price analysis:

– the retail price of all container beverage products regardless of whether they are covered by the CDS
– the period before and after the introduction of the CDS?

The NRA is dubious about the conclusions that could reliably be drawn from such an analysis.

A retailer will often change the prices of the various products they stock in order that they might realise the greatest margin for the business. This will necessarily involve a number of products and a range of moveable prices. It will not always involve beverage products and could, for example, be the case that a convenience store has kept soft drink prices the same, while chocolate bars have increased in price. The IPART proposal assumes that retailers would only seek to offset lost margin by increasing prices in similar products (ie beverages).

Further, it is a dangerous assumption to assume that retail pricing strategies are coordinated across all beverage categories. Whilst that may be an ideal scenario, many of our members are simply not that coordinated and will run promotions and offers ad hoc as they see fit for any number of reasons.

Testing the price before and after implementation will, by definition, demonstrate the price impact. What period before and after the introduction is IPART referring too? Presumably this would need to cover a material period of time. Also, it would need to be compared to seasonal pricing for prior years, not simply prior months.

While the regulator may claim it is looking to ensure there is no price gouging going on in the wake of the introduction, we expect that this comparison will show prices have risen by less than 15 cents per unit in most cases. Due to the very competitive nature of consumer goods retailing, at least some of the cost will be absorbed by the retailer and supply chain. Even if the price changes are greater than 15 cents per unit, this would still not allow any reliable conclusions, given that a number of factors impact the pricing decision, and timing of changes. Moreover, the analysis proposed will not provide any insight into the changes to consumers' purchasing behaviour and – therefore – the impact of the scheme on retailers. In these circumstances, it is hard to construe the price analysis question as anything more than a witch-hunt on retailers, with no concern for their performance or the costs they have incurred in implementing the scheme.

Finally, this analysis would not on its face identify those retailers who may have had the planning and financial capacity to buy large amounts of stock from suppliers at the price before the CDS charge was implemented. Those retailers could continue to sell at a lower retail price, or rather they may be the ones who are benefiting most as they increase their retail price but continue to sell stock at supply prices which exclude the CDS levy.

2 Do you agree with the two proposed approaches for evaluating the impact of the CDS on beverage prices:

– measuring overall price changes (trends) using price indices for beverages published by the Australian Bureau of Statistics (ABS)
– quantifying the extent to which the costs of the CDS are passed through to beverage prices using product level price data?

Price negotiations between the supplier and the retailer need to consider a range of factors, including logistics, timing and even the unique nature of a product. The approach proposed by this question for evaluating the impact of the CDS is simply a process of identifying any change, but it will not give an insight into the underlying reasons. Further, the logistics of measuring price in retail outlets would be problematic. Where containers are sold in large volumes – such as in major supermarkets - shelf prices are generally visible. But this is not always the case in the convenience sector. This complexity would increase with the range of goods stocked by any individual retailer.

This ignores the relative impact of the price changes in two ways:

1. This assessment will not demonstrate the price increase relative to the margin the retailer is already achieving on the sale of product. For example, if the margin on a

bottle of water was 10c pre-CDS, then there may be justifiable reasons for increasing the product by the full amount of the supplier's charge. Another product with a larger retailer margin may not demand the same increase and the trend would be different.

2. Some retailers charge different prices for the same product (discussed at 4 below). The relative increase should be a factor of the review.

3 What are the relevant markets for our competition impact assessment?

The beverage industry comprises a number of separate, but interlinked markets. In some cases, a market relates to a product that consumers would regard as close substitutes when relative prices change. For example, relevant product markets may include beer, pre-mixed spirits, soft drinks, bottled water, and fruit juices. Consumers are price sensitive for a range of reasons and the beverages are available in a range of venues. So, we foresee difficulties in attempting to define the relevant markets for the proposed study.

Similar issues arise when considering the geography applicable to the 'relevant markets'. This will be particularly skewed by those border areas adjacent to ACT, Queensland and Victoria which are in effect competing with non-CDS jurisdictions.

4 Are there any further competition indicators to those listed in Table 5.1 that we should consider in making our assessment?

Beverages, excluding alcohol, are possibly the most widely accessible consumer goods – being available in outlets ranging from supermarkets and service stations to schools canteens and sports clubs. The NRA considers that testing competition in a saturated market would provide limited value. This appears to be in line with IPART's statement in section 2.4 of the issues paper, which notes that "Previous assessments of the beverage industry in NSW have either not revealed substantial concerns about competition, or have found there is 'workable competition' in the industry".

Retailers in various categories rely on the sales of beverages for a range of reasons. For retailers outside supermarkets, the sale of beverages is attractive as they can provide a reasonable return. In the convenience sector, the sale of beverages is at a premium price. And in a "closed" market such as a school canteen or sporting club, there are different price drivers often related to fundraising (higher prices) or a service obligation (closer to cost price). For example a bottle of water is available at a leading supermarket for 99c, however at a closed function or sporting event the same bottle of water could attract $4-$5.

To expand on the point made at item 2 above, the relative increase is important, plus understanding whether the increase will be recorded in per centage terms or dollar terms. If each of the retailers above increased the product by 10c then the supermarket would look like it has increased prices by 10 per cent while the sporting venue only increased by 2 per cent.

What would the IPART report on increase prices say? It would seem difficult to reconcile every sale price against every price paid to a supplier, so even providing a relativity of the amount passed through to consumers would be difficult, however that may be what IPART is required to do if a fulsome review is required.

We consider these differential pricing factors – and the consumer behaviour that renders each of them viable in its own place – are far too complex to be codified and tested in this review.

5 How has the commencement of the CDS affected competition in the container beverage industry, in particular for small and medium sized enterprises and any cross border issues?

The beverage sector is heavily reliant on promotional activity and it is not uncommon for beverages to be sold at half price to promote customer activity. In the case where price plays a role, the sensitive consumer may choose to purchase a lower cost brand rather than going without. Given this distinctive market behaviour, there would be no way of accurately accounting for any change in consumer behaviour in the short time the scheme has been in operation.

The NRA has been made aware of situations where businesses have suffered due to their proximity to borders in both Queensland and the ACT. In the price-sensitive market described above, why would a consumer pay more for a drink each and every time they buy one when they can get it cheaper over the border? If the intent of the scheme is to change consumer behaviour through the offer of a 10-cent refund, then it is impossible to argue that a 15-cent price premium would not also change consumer behaviour – albeit in a negative way.

6 Has the introduction of the Scheme Coordinator, Network Operator and other participant bodies in the CDS affected the competitive dynamic in the beverage market?

The role of the container refund point has seen alliances with the network operators to attract business to particular outlets. These early adopters have seen benefits of additional traffic flow in some cases.

7 Do you agree with our proposed approach to monitoring complaints from customers and other scheme participants about the performance and conduct of suppliers in the beverage market?

Of concern with regards to the monitoring of complaints stems from the fact that the scheme would naturally increase prices on products which is unlikely to be popular with both consumers and suppliers. As a result, there is a potential for an increase in complaints, even though every effort is being made by members of the industry to stay competitive and keep prices down.

Also, the review does not allow us to comment on the collection network, which we consider the main drivers for complaints from the public. Any perceived value would be the assumption that the increased premium would be easier redeemed at accessible venues across the state.

8 Do you agree with our proposed criteria in section 5.4 for deciding whether to refer any behaviour or market outcomes that appear unfair or unjustified on consumers or scheme participants to the relevant regulator?

The NRA has made clear in this submission that we do not believe this review is able to determine reliably the true impact of the scheme on pricing of individual goods. In the absence of this information, we do not support the suggestion of sending retailers to a regulator. It is our very strong view that this review should take a less hostile attitude to retailers, and have more respect for – and understanding of – the enormous financial and logistical challenges that the implementation of the CDS has imposed on them.

Sincerely,

[redacted]

David Stout
Manager Policy
National Retail Association