

OUT18/2783

Dr Peter J Boxall AO
Chair, Independent Pricing and Regulatory Tribunal
NSW Container Deposit Scheme Review
PO Box K35
Haymarket Post Shop NSW 1240

NSW CONTAINER DEPOSIT SCHEME REVIEW

Dear Dr Boxall,

Thank you for giving the Office of the NSW Small Business Commissioner (OSBC) the opportunity to comment on the Independent Pricing and Regulatory Tribunal (IPART) NSW Container Deposit Scheme Review (Review).

The OSBC advocates on behalf of small businesses in NSW, provides mediation and dispute resolution services, and speaks up for small business in government.

After reviewing IPART's terms of reference and the Issues Paper of February 2018, 'Monitoring the impacts on container beverage prices and competition', we offer the following comments.

RETAIL PRICE ANALYSIS

We consider IPART's proposed approach to include in its price analysis the retail price of all container beverage products, regardless of whether they are covered by the CDS, a practical approach, given apparent challenges of price analysis at other levels of supply chains.

We highlight however that analysing *retail price* will naturally exclude price analysis further up the supply chain.¹ Representations we've received suggest that suppliers at various levels often feel they themselves bear CDS related costs and face competitive issues flowing from the CDS.

PRICE MONITORING PERIOD

IPART's proposal to monitor prices over the period from 1 November 2017 to 1 December 2018 (the monitoring period), and also consider prices before the introduction of the CDS, appears sound.

We agree that effects of the CDS may not be fully evident in the month it first took effect. In some cases prices could have changed prior to the monitoring period, and in many cases after its commencement – as fees and administrative costs are approximated, prices are negotiated and passed through supply chains.

EVALUATING IMPACT OF CDS ON BEVERAGE PRICES

Measuring overall price changes using price indices for beverages published by the Australian Bureau of Statistics (ABS) seems worthwhile. We imagine however that beverages not subject to the CDS may be included, and affect results. We also draw attention to the fact that this ABS data might

¹ e.g. ex-manufacturer, or ex-distributor

not isolate NSW beverage sales completely accurately, or align with ‘first supply’ classifications applicable under the CDS.

We expect IPART’s intent to separately quantify the extent to which the costs of the CDS are passed through to beverage prices using product level price data will be a relevant and useful complement to the ABS data analysis.

The Issues Paper describes CDS cost items at Table 2.3, identifying fees levied by the Scheme Coordinator, Network Operator, and the NSW Environment Protection Authority (EPA) on industry member, summarised as:

- administration costs,
- compliance costs,
- collection costs,
- refunds to material recycling facilities (MRFs), and
- other.

However, industry will tend to incur costs associated with the CDS that go beyond these fees. The Commonwealth Regulatory Burden Measure² considers the following compliance cost categories for example:

- notification,
- education,
- permission,
- purchasing,
- record keeping,
- enforcement,
- publication and documentation,
- procedural,
- delay, and
- other.

Should IPART seek to compare CDS costs against retail price increases to assess whether cost pass-throughs have been reasonable, we encourage IPART to estimate *all* costs associated with complying with the CDS at *all* levels of supply chains, and to also consider the addition of margins at each level – a common approach to pricing.³

RELEVANT MARKETS FOR COMPETITION IMPACT ASSESSMENT

It is difficult to identify a more appropriate comparison group for IPART’s ‘difference-in-difference’ analysis than Victoria. We note the similarities between the NSW and Victorian markets in terms of market size and believe contrasting these markets before and after CDS introduction will be of value.

Some stakeholders expect ‘national pricing’ to become increasingly prominent, which may mean circumstances observable in Victoria don’t operate completely independently of circumstances in NSW or other jurisdictions.

² a standard process for quantifying regulatory costs on business using an activity-based costing methodology

³ Cost plus pricing is a cost-based method for setting the prices of goods by adding together the costs for a product, and adding a mark-up percentage (to create a profit margin) to derive the price of the product.

COMPETITION INDICATORS

With reference to the competition indicators listed in Table 5.1 of the Issues Paper, we encourage IPART to consider the following issues, which may or may not be envisioned by the indicators.

Woolworths was the first retail refund partner when the program launched in December 2017. TOMRA Cleanaway's arrangement with Woolworths aims to provide up to 180 collection points in metro and regional areas of NSW.

This was intended to support the delivery of the scheme in time for the December launch and to provide customers with convenient RVM locations to drop off containers and then redeem their vouchers at a nearby Woolworths supermarket.

This arrangement would almost certainly have been more expedient to negotiate than approaching many smaller retailers. It may also involve lower costs, and as the CDS is industry/consumer funded, cost suppression benefits are shared amongst all scheme participants.

Consumers can claim the 10 cent eligible container refund via the following means:

- deposit to a PayPal account, or
- donation to selected charities, or
- a credit voucher towards shopping or redeemable for cash at Woolworths supermarkets.

Two main elements of TOMRA Cleanaway's arrangement with Woolworths concern competing retailers, namely that the RVM facilities, and the credit vouchers, will attract shoppers, who can be expected to buy a range of groceries at Woolworths rather than a competing retailer.

We also note that the legal limit for PayPal accounts is age 18, so minors need their parents' assistance to establish an account. Given the appearance this demographic is viewed as an important redeeming group, redemption at Woolworths stores may be further augmented.

The OSBC understands there to be a wide range of point of sale (POS) systems and that software modification may be needed to interact with credit vouchers. Also, there may be regulatory issues with a voucher so generic as to be considered a form of currency.

Many consumers would prefer to receive cash, but we are mindful of the challenges with this. An option that IPART may consider advising on the merits of is redemption via cryptocurrency, perhaps following a model along the lines of the 'Unify Rewards' program at the University of New South Wales (UNSW) that allows UNSW students to earn cryptocurrency by scanning a barcode in their digital wallet, earning for transactions made at campus retailers.

Notwithstanding the challenges, as far as competition is concerned, it appears preferable if credit vouchers could be redeemed at more (or all) retailers, and/or additional payment systems be made available.

COMPETITION IN THE CONTAINER BEVERAGE INDUSTRY

In relation to examining how the commencement of the CDS has affected competition in the container beverage industry, we suggest IPART consider assessing the industry at its different levels, i.e. manufacturers, importers/wholesalers/distributors, and retailers.

Manufacturers have told us that where clients must interact with the CDS administrators as a 'first supplier' or under an 'export protocol' for instance, they are hesitant to do so. In some limited cases,

we are advised this has led to non-development of new products, and concern about or actual loss of contract manufacturing opportunities.⁴

Craft brewing industry participants tell us they expect the CDS to have a chilling effect on their industry, which we understand to involve a large number of individually labelled products, because the administrative and cost burden⁵ is not practicable for production or import volumes that can be as modest as a few cartons.

Retailers adjacent to state borders tell us they have been losing beverage sales on lower priced products easily accessible by customers interstate. In some cases, retailers advise that when they've lost beverage contracts, e.g. for alcohol supply to a large customer, sales of complimentary goods included in the contract such as farm gate products have also been lost, multiplying the effect.

In late December 2017, we⁶ met with six retailers, operating nine retail sites located in various towns adjacent to the NSW border with Victoria. We received financial information volunteered by the six retailers, and attempted to model and combine this data with the use of certain assumptions and extrapolation. The financial information supported claims that sales of container beverages, and consequent profits, were lower post CDS implementation than would otherwise likely have been the case.

Using financial information from three of the six retailers found to be reasonably additive, we arrived at an estimated average profit foregone total of around \$90,000 annually per store.⁷ We are advised there may be approximately 66 liquor and grocery stores adjacent to the NSW border with Victoria.

The OSBC has also been presented concerns about larger retailers either appearing to absorb price increases, or discounting in particular NSW locations, to the agitation of local competitors.

APPROACH TO MONITORING COMPLAINTS

The proposed approach of monitoring complaints from customers and suppliers about the pricing response and market impacts of the scheme by considering feedback and complaints made at IPART's web site as well as relevant complaints to NSW Fair Trading, the Australian Competition and Consumer Commission (ACCC) and the OSBC seems reasonable. IPART may also like to consider feedback at the Return and Earn Facebook page, where 408 reviews have been posted at time of writing.⁸

REFERRAL TO REGULATORS

We note the Terms of Reference provide for IPART to identify and investigate any behaviour or market outcomes that appear unfair or unjustified on consumers or scheme participants and provide an interim report to the Premier and the Minister at its own discretion or on request from the Premier or the Minister for the Environment.

⁴ While we have no reason to doubt statements of this type, we are not in a position to verify them.

⁵ i.e. to comply with requirements as a 'first supplier', and to register a beverage and pay an \$80 registration fee per stock keeping unit (SKU)

⁶ along with Mr Greg Aplin MP, the NSW Environment Protection Authority and the NSW Cross-Border Commissioner

⁷ Pertinent figures were described in source documents variously as 'profit', 'gross profit', or 'net profit'. This estimate is qualified.

⁸ https://www.facebook.com/pg/NSWGovCDS/reviews/?ref=page_internal

We suggest IPART consider investigating effects experienced by smaller liquor and grocery retailers located in various towns adjacent to the NSW border with Victoria.

Noting IPART's suggestion that it will consider referring matters to NSW Fair Trading or the ACCC for investigation, our preliminary impression is these regulators lack the legal framework, resources, or regulatory priority to investigate and/or resolve any reduction in sales, profitability or employment that may arise out of robust, presumably lawful competition and consumer behaviour activated by regulatory differences affecting costs and incentives between neighbouring jurisdictions.

The OSBC appreciates the opportunity to comment on this Review, and we trust that the information and views shared herein are of assistance.

To discuss any aspect of this submission please contact Murray Johnston, Principal Advisor Advocacy and Strategic Projects, by email on murray.johnston@smallbusiness.nsw.gov.au or by phone on (02) 8222 4842.

Yours sincerely



Robyn Hobbs OAM
NSW Small Business Commissioner

16 March 2018