



Australian
Competition &
Consumer
Commission

9 February 2012

Statement of Issues

Woolworths Limited - proposed acquisition of a takeaway packaged liquor licence located at Rocherlea Tasmania

1. Outlined below is the Statement of Issues released by the Australian Competition and Consumer Commission (ACCC) in relation to the proposed acquisition by Woolworths Limited (**Woolworths**) of the Black Stallion Hotel Drive-Thru Bottleshop and associated off licence (**the Licence**) located at 218 George Town Road, Rocherlea, Tasmania (**proposed acquisition**).
2. A Statement of Issues published by the ACCC is not a final decision about a proposed acquisition, but provides the ACCC's preliminary views, drawing attention to particular issues of varying degrees of competition concern, as well as identifying the lines of further inquiry that the ACCC wishes to undertake.
3. In line with the ACCC's *Merger Review Process Guidelines* (available on the ACCC's website at www.accc.gov.au) the ACCC has established a secondary timeline for further consideration of the issues. The ACCC anticipates completing further market inquiries by 24 February 2012 and anticipates making a final decision on 9 March 2012.
4. However, the anticipated timeline can change in line with the *Merger Review Process Guidelines*. To keep abreast of possible changes in relation to timing and to find relevant documents, market participants should visit the Mergers Register on the ACCC's website at www.accc.gov.au/mergersregister.
5. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It is also intended to provide the merger parties and other interested parties with the basis for making further submissions should they consider it necessary.

Background

6. On 3 November 2011 the ACCC commenced an informal review of the proposed acquisition.

The parties

The Acquirer - Woolworths Limited

7. Woolworths is the owner, or joint owner, of over 1100 retail liquor stores throughout Australia, which trade under the names 'Woolworths Liquor', 'Safeway Liquor', 'BWS' and 'Dan Murphy's'.

The Target – Black Stallion Hotel Drive – Thru Bottleshop, Rocherlea Tasmania

8. The Licence currently trades as 'Black Stallion Hotel – Drive-Thru Bottleshop' and is located at 218 George Town Road, Rocherlea, Tasmania. Rocherlea is located approximately 8 kilometres north of the Launceston CBD.
9. The Licence is branded as a Big Bargain Bottleshop (**BBB**). BBB operates as both a promotional banner group and bargaining representative for its affiliated stores.
10. The transaction relates to the bottle shop only. The Black Stallion Hotel and its general liquor licence will continue to be independently owned.

Industry background

11. The Tasmanian liquor retailing industry is made up of Woolworths, which has liquor outlets under the BWS brand, and independents who generally operate under a banner group. Banner groups operating within Launceston include BBB, Thirsty Camel, Duncans, 911, Cellarbrations and Liquor Stax. Wesfarmers does not presently operate any liquor retail outlets in Tasmania.
12. The ACCC understands that banner groups provide their affiliated stores with a number of services which differ from banner group to banner group but are likely to include:
 - a. Use of the banner group brand;
 - b. Signage for inside and outside the store;
 - c. A promotion schedule;
 - d. Banner group branded goods; and
 - e. The ability to access, and advertising of, specials (reflecting discounts collectively negotiated by the banner group at the wholesale level).

13. Banner affiliation carries with it a number of obligations. The terms and conditions of these obligations differ from banner group to banner group but are likely to include an obligation to:
 - a. stock particular items;
 - b. price promoted items at the advertised price point; and
 - c. obtain some or all stock from the banner group.
14. There are five kinds of liquor licence available in Tasmania – general, club, on, off and special. Relevantly:
 - a. A **general licence** authorises:
 - i. The sale of liquor for consumption on and off the licensed premises; and
 - ii. The sale of liquor at any time to a resident of the premises specified in the licence.
 - b. An **off licence** authorises the sale of liquor for consumption off the licensed premises. The proposed acquisition is of an off licence.

Areas of overlap and market definition

15. Section 50 of the *Competition and Consumer Act 2010* prohibits mergers or acquisitions that substantially lessen or are likely to substantially lessen competition in a market in Australia. Therefore, in assessing whether the proposed acquisition substantially lessens competition, the ACCC is considering the competitive impact of the transaction in the context of the market/s relevant to the proposed acquisition.

Retail market

16. The ACCC is currently considering the effect on competition in the market for the retail sale of packaged liquor for off-premises consumption on the north eastern side of the Tamar River within approximately five kilometres of the Licence.
17. Market inquiries to date indicate that the majority of sales at the Licence are to consumers that reside within five kilometres of the Licence.
18. Two key drivers that appear to influence where Rocherlea consumers purchase liquor are convenience and price. Those consumers that value convenience over price for a given transaction tend to use the store nearest their place of residence. In contrast, consumers that place price over convenience for a given transaction are likely to examine the weekly liquor advertising and may attend the nearest outlet of the banner group in the retail market that currently offers that consumer's product of choice for the cheapest price.

19. Consumers may utilise any of the stores within the retail market and are more likely to do so where the store is:
 - a. Located on an arterial road which the consumer regularly uses; and/or
 - b. Located in close proximity to where consumers regularly shop for other products, such as groceries.
20. Market inquiries to date indicate that consumers are unlikely to travel to the southern side of the Tamar River to purchase liquor.
21. There are currently four off-premises liquor stores within the retail market:
 - a. The Black Stallion Hotel Drive-Thru Bottleshop (the target);
 - b. Mowbray BWS (Woolworths owned);
 - c. Retreat BWS (Woolworths owned); and
 - d. Mowbray Liquor Stax (independently owned).
22. The ACCC understands that there are also three hotels within this market that possess general liquor licences which allow sales of takeaway packaged liquor for off-site consumption. The three hotels are, the Black Stallion Hotel (that has the target attached), the Retreat Hotel (that has a BWS bottleshop attached) and Archers Manor. Inquiries indicate that the volume of over-the-counter takeaway packaged liquor sales for off-site consumption from hotels in the Rocherlea area is very small and that consumers view over-the-counter takeaway packaged liquor sales for off-site consumption from hotels as a weak substitute for liquor stores. Accordingly, the ACCC currently considers that over-the-counter hotel sales are unlikely to represent a meaningful constraint pre or post acquisition.
23. There are 10 liquor stores located between 6-8 kilometres away from the Licence in the Launceston CBD on the southern bank of the Tamar River.

The ACCC invites market participants to comment on the appropriate market/s within which the ACCC should consider the proposed acquisition.

In particular, the ACCC is considering the issues which are outlined below and invites interested parties to comment on:

- Whether the retail market should include over-the-counter sales from hotels of takeaway packaged liquor for off site consumption;
- Whether the majority of sales at the Licence are to consumers that reside within five kilometres of the Licence;
- How far consumers are willing to travel to access takeaway packaged liquor stores;
- What factors influence consumers' choice of takeaway packaged liquor store;
- What factors influence consumers' willingness to travel to access takeaway packaged liquor stores that are greater than five kilometres from the Licence; and
- How does the state-based or regional pricing of Woolworths and other banner group affect the geographic scope of the retail liquor market/s.

Statement of Issues

Issues that may raise concerns

Reduction in variety and number of products on promotion

24. Market inquiries indicate that many consumers in the retail market are likely to:
- a. have a 'product of choice', that is, a strong brand preference for one or a small number of liquor products;
 - b. be price sensitive in relation to liquor purchases;
 - c. examine the weekly advertising of BWS and other banner groups and purchase their product of choice from the nearest outlet within the retail market that currently offers that product for the cheapest price. This is usually the outlet that has the product on discount or on promotion at that given time.
25. Market inquiries indicate that the majority of sales by off-premises liquor stores in the retail market are, at any given time, products that are on discount or on promotion.
26. The ACCC considers that BWS and other banner group's discounts and promotions appear to be an important element of differentiation and competition

within the retail market and that consumers can and do switch outlets in reaction to it.

27. The ACCC is concerned that the proposed acquisition will result in:
- a. Woolworths controlling three of the four off-premises liquor stores in the retail market;
 - b. the removal of one of the three banner groups that currently operate in the retail market; and
 - c. an associated reduction in the scope for consumers, at any given time, to purchase their preferred liquor products at a discount or on promotion (as discussed at paragraphs 24-26).

The ACCC invites market participants to comment on the likely effect on prices within the retail market post acquisition

In particular, the ACCC is considering the issues which are outlined below and invites interested parties to comment on:

- The proportion of sales at liquor stores in the retail market that relate to promoted items;
- The effect of Woolworths owning three of the four takeaway packaged liquor stores in the retail market;
- The effect of the removal of one of the three banner groups that currently operate in the retail market on customer choice and the ability for consumers to access products at a discount or on promotion; and
- The effect that state-based or regional pricing of Woolworths and other banner groups will have on prices in the retail market.

Elimination of a vigorous and effective competitor

28. The ACCC is considering whether the Licence is a vigorous and effective competitor in the retail market. This includes not only competition on price but also on non-price factors such as service levels and opening hours.

The ACCC invites market participants to comment whether the proposed transaction would result in the removal of a vigorous and effective competitor from the retail market

In particular, the ACCC is considering the issues which are outlined below and invites interested parties to comment on:

- Whether the Licence engages in competitive pricing behaviour for example discounting and promotions;
- Whether the Licence provides high levels of customer service;
- Whether the Licence competes effectively on other non-price factors; and
- Whether other liquor stores in the Rocherlea area respond to or have responded in the past to the activities of the Licence by improving or modifying their retail offer.

Barriers to entry and expansion

29. Market inquiries indicate that there is little prospect of the Black Stallion Hotel or the Retreat Hotel expanding/redeveloping their premises to open a second bottleshop to compete with the pre-existing attached bottleshop as:
- a. each has a pre-existing bottleshop;
 - b. there is a lack of demand in the market given the proximity of existing bottleshops;
 - c. there is limited space available for a second bottleshop to be established; and
 - d. the costs involved in building the bottleshop and modifying the existing infrastructure and signage, which is configured to optimise the prominence and accessibility of the pre-existing bottleshop, may be prohibitive relative to the return.
30. In addition, inquiries indicate that the potential for new entry in other areas may be restricted due to the limited access to appropriately zoned sites that are:
- a. Located on an arterial road which the consumer regularly uses; and/or
 - b. Located in close proximity to where consumers regularly shop for other products, such as groceries.
31. Rezoning of land may free up sites. However, depending on the level of objection, this can take up to 24 months. New entrants would also need to obtain an off-licence which can, depending on the level of objection, take up to 12 months.

32. The ACCC understands that new entrants would also need to obtain an off-licence. The ACCC understands that there are a number of criteria that must be satisfied before the Tasmanian Licensing Commissioner and Board will grant an liquor off licence including satisfying the Tasmanian Licensing Board that the granting of a licence is in the best interests of the community. Market inquiries indicate that the application process can, depending on the level of objection, take up to 12 months.
33. The ACCC understands that an application for an off licence in Ravenswood was rejected in 2010. Market participants are concerned that this rejection illustrates that the granting of additional licences in the Rocherlea area is unlikely.
34. The ACCC considers that the long rezoning application process and risk of rejection and licence application process represent barriers to entry to the retail market.
35. The ACCC is also concerned that the presence of three Woolworths' owned liquor stores within five kilometres may deter further entrants to the retail market.

The ACCC invites market participants to comment on the height of barriers to entry to the retail market and whether these barriers are likely to change if the proposed acquisition proceeds

In particular, the ACCC is considering the issues which are outlined below and invites interested parties to comment on:

- Whether a new entrant could or would enter the retail market by opening a liquor store within or attached to a hotel in circumstances where there is a pre-existing liquor store already attached to the hotel;
- The degree of difficulty faced by a new entrant in locating an appropriate and available site for a liquor store in the retail market;
- The degree of difficulty faced by a new entrant in obtaining a liquor licence for a liquor store in the retail market;
- The degree of difficulty faced by a new entrant in having land rezoned for a liquor store in the retail market; and
- The effect of three Woolworths' owned sites in the retail market.

ACCC's future steps

36. The ACCC will finalise its view on this matter after it considers market responses invited by this Statement of Issues.

37. The ACCC now seeks submissions from market participants on each of the issues identified in this Statement of Issues and on any other issue that may be relevant to the ACCC's assessment of this matter.
38. Submissions are to be received by the ACCC no later than 23 February 2012. The ACCC will consider the submissions received from the market and the merger parties in light of the issues identified above and will, in conjunction with information and submissions already provided by the parties, come to a final view in light of the issues raised above.
39. The ACCC intends to publicly announce its final view by 8 March 2012. However the anticipated timeline may change in line with the *Merger Review Process Guidelines*. A public Competition Assessment for the purpose of explaining the ACCC's final view may be published following the ACCC's public announcement.