

RESPONSE TO ACCC SUPERMARKETS INQUIRY



2 April 2024

Via: supermarkets@accc.gov.au

The Independent Brewers Associations (**IBA**) welcomes the ACCC's inquiry into pricing and competition in Australia's supermarket sector as the issues raised are directly impacting independent breweries across Australia.

About the IBA

The Independent Brewers Association (IBA) is the peak national industry body representing the nation's 600+ independent craft brewers. We were established in 2017, in part to act as a collective voice and established pooled resources that could address many of the issues canvassed in this paper.

Our members are overwhelmingly small to medium businesses that employ locals and give back to their communities. Two-thirds of these small businesses are based in regional and rural Australia.

Our members provide skilled jobs, tourism destinations and work directly with the agricultural sector through local malted barley, hops and fruit.

In 2021, an economic impact analysis undertaken by KPMG confirmed that our part of the beer industry contributes approx. \$1.93 billion annually to the national economy and employs 35,000 Australians in the agricultural, manufacturing, distribution and hospitality industries.

Small independent craft breweries employ 51% of the whole brewing industry.

The IBA is primarily member funded by small businesses and does not receive any funding from the Federal Government of any kind. We, therefore, do not have the same resources of the major retailers to fight for every one of the issues through litigation or lobbying efforts.

We are therefore grateful that the ACCC is considering the impact of the supermarkets on small brewers.

About the Australian beer market

While we understand that this inquiry is about supermarkets it is critical to understand their outsized impact on the overall market structure for the beer industry in Australia.

Australia's beer market is dominated by two large foreign owned breweries (Lion/Kirin and CUB/Asahi) (**Dominant Brewers**) who, in 2023, held approximately 85% total market share. With family-owned Coopers brewery holding about 5% and independent breweries around 7% and Coles Group and Endeavour Group (together the **Dominant Retailers**) now holding approximately 5% total market share of the beer industry.

Beer is sold in two major channels in Australia. Through taps in venues, known as on-premise, and in packaged form directly from the producer and through retailers. In the on-premise market the Dominant Breweries have around 90% market share. This structural market dominance was the subject of the House of Representatives Standing Committee on Economics Inquiry into Competition – and we do not intend to address it in detail however the impact of that is that historically, retail has provided an opportunity for independent breweries and is the channel that enabled the 'craft beer revolution' to take place.

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The most significant change in the overall beer industry in the past five years is that the Dominant Retailers have now moved to hold a 5% total market share in beer (and growing) – this substantially lessens market access for small breweries.

The rise of home brand beer

The Dominant Retailers have gained market share of beer, not by directly vertically integrating but by trademarking brand names – having their beer made by other breweries - and then marketing and selling under those brands (home brand beer). See **Appendix A** for “Who Owns my Beer” to see the array of brands created by the Dominant Retailers.

The rise of home brand beer has been one of the most significant shifts in the Australian beer market in the past decade.

As set out above, in 2023 it is estimated that the beer produced on behalf of the Dominant Retailers is now roughly equivalent to Coopers and that this rise has not come at the expense of the Dominant Brewers but rather independent beer.

While the Dominant retailers may have been slow to adopt craft beer, over the past five years have been able to rely on their substantive sales data to determine which products are selling well, “clone” the product and then use their substantial marketing, preferred in-store display positioning and preferential terms (distribution centres, handling fees etc) and set pricing at or below a competitive product.

There has been extensive independent reporting on the rise of private label/ Home brand beer in Australia – highlighting the issues it creates.

- [Retailers invest in private label craft beer](#), 20 October 2020.
- [Calls for 'real teeth' in regulating large retailers](#), 12 April 2023.

In reporting their Q1 2023/2024 results both Dominant Retailers continued to illustrate the success of the strategy of their private label products in driving growth – with Pinnacle Drinks (Endeavour Group/Woolworths) reporting 82 new private label products¹ in Q1 and Exclusive Liquor Brands (Coles) adding 150 new private label products in Q1².

It is not the Dominant Brewers who will suffer as a result of the use of the dominant market position. We have seen the impacts on other food and beverage producers throughout Australia as a result of the conduct of the Dominant Retailers.

Labelling aimed at misleading consumers

Dominant Retailers hide behind small print so that consumers can not tell whether the product is Home brand beer or genuine independent craft beer. For other products in the Dominant Retailers it is generally clear whether that product is 'home brand' with a Woolworths or Coles logo clearly visible on the front of the product. That is not the case for beer. With Woolworths it is even more challenging for consumers as their own internal structures means that the brand that owns most of the beer is “Pinnacle Drinks” which most consumers would not identify as a wholly

¹ “Endeavour results show shift to budget mainstream,” 30 October 2023. Available: <https://brewsnews.com.au/endeavour-results-show-shift-to-budget-mainstream/>

² “Revenue growth for Coles Liquor but craft down,” 26 October 2023. Available: <https://brewsnews.com.au/revenue-growth-for-coles-liquor-but-craft-down/>



owned business of Endeavour Group/Woolworths. See **Appendix B** for the example of Southern End Brewing Company.

Endeavour Group have also recently had beer made under contract in Vietnam where manufacturing and production standards are not as rigorous and then sold it in direct competition with Australian made beer -but presented to the consumer as a Premium Vietnamese craft product. See **Appendix C**.

In 2014, following independent industry reporting,³ the ACCC issued two infringement notices against a Dominant Brewery - CUB in relation to concerns that it represented that Byron Bay Pale Lager was brewed by a smaller brewer in Byron Bay when that was not the case.

At the time, ACCC found that:

“the ACCC is concerned that the overall representation made by the Product labelling is likely to mislead consumers to understand that the beer contained in the bottle has been brewed by BBBC at its small brewery in Byron Bay, New South Wales, when in fact:

- (a) the Product was brewed by CUB at one of its breweries; and
- (b) that CUB brewery was located in Warnervale, New South Wales. Warnervale is approximately 630 kilometres away by road from Byron Bay.

...

Many small brewers cater to consumers who prefer to support small, niche businesses. When large companies portray themselves as small businesses, it undermines the unique selling point that such small businesses depend upon, and it misleads consumers.”

As a result of that decision the ACCC wrote to several brewers and, then ACCC Chair Rod Sims confirmed that a dozen brewers had agreed to change their beer labels to ensure they did not miss MISLEAD? consumers.⁴

Independent breweries are highly connected to the communities they are established in and their provenance is often a key feature of the genesis story for independent craft breweries. It is the artisanal crafted nature of their products that leads to their product carrying a higher price.

This position was reiterated by the ACCC in 2014 when evaluating another artisanal product:

“Consumers are often willing to pay premium prices for local products and businesses are following consumer demand by stocking local goods. Protecting the integrity of credence claims made about food products is a priority enforcement area for the ACCC.”⁵

³ Brews News 'Byron Bay Brewing Co gets a little 'craft-washing' from CUB'. 25 Jan 2013. Available: <https://brewsnews.com.au/byron-bay-brewing-co-gets-a-little-craft-washing-from-cub/>

⁴ Radio Brews News Podcast “Episode 53 – ACCC chair Rod Sims on labelling” 15 May 2025. Available: <https://brewsnews.com.au/episode-53-acc-cc-chair-rod-sims-on-labeling/>

⁵ ACCC Media Release “Maggie Beer Products acknowledges labelling likely to be misleading”. 19 August 2014. Available: <https://www.accc.gov.au/media-release/maggie-beer-products-acknowledges-labelling-likely-to-be-misleading>



In failing to be clear about which brands are owned by the Dominant Retailers and where the products are made the effect is “craft washing”. The Dominant Retailers want to gain the advantage in the eyes of the consumer for being artisanal or local products and can use their market leading positions/considerable wealth to do so.

In May 2015, it was reported that the ACCC had ‘had talks with Coles’ and that in deciding whether a label is misleading it would be ‘what would a reasonable consumer think’. ACCC Chair Rod Sims said:

“The more some of these bigger companies seek to disguise who they are, the more important it is that we deal with that, because they’re only doing it for one reason and that is to sell more beer,” he said.

“They obviously have the view that if the consumers knew... [everything about the product], they might not sell as much beer.”⁶

In 2017, the Australian consumer affairs television show “The Checkout” highlighted the outcome of the investigation in an episode.⁷ Although it is satire in its style it is hard to ignore the issue of the lack of truth in labelling or good faith attempts when presented so clearly. Notably, The Checkout highlights that even when a business does disclose who owns the product the description is so small and illegible it could be easily missed eg. Pinnacle Drinks.

Consumers are continuing to be misled.

As Dr Tim Cooper, Owner of Coopers Brewery said ‘Our argument has always been that our performance is much stronger in markets where consumer preference dictates what is on the shelves, which is more the case in the independent market.’⁸

The Dominant Retailers use their position to mislead consumers to purchase more of their home brand product while directly affecting the market share of small Australian producers.

We are also now seeing the Dominant Retailers take their products beyond retail to wholesale/keg market. In November 2023, Tinnies (which is owned by Exclusive Liquor Brands/Coles) announced sponsorship agreements with Cricket Australia that will see Tinnies be poured at cricket matches in Queensland and Victoria. This deal replaced independent brewer CBCo as pourage rights holder.⁹

This further illustrates how the Dominant Retailers are using their substantial power to increase their market share in the beer market.

⁶ Brews News, “Brewers change beer labels to appease ACCC,” 15 May 2015. Available: <https://brewsnews.com.au/brewers-change-beer-labels-to-appease-accc/>

⁷ The Checkout “Craft Beer: Brew’s Your Daddy” Available: <https://www.youtube.com/watch?v=EvpsNZQ-sWU>

⁸ Hansard, House of Representatives, Standing Committee on Economics, Inquiry into promoting dynamism, competition and business formation, 25 July 2023 pg30.

⁹ “Sponsorship deal sees Coles’ Tinnies poured at cricket,” 1 November 2023. Available: <https://brewsnews.com.au/cricket-deal-sees-coles-tinnies-poured-at-cricket/>



The use of substantial market power to maintain dominance

It is estimated that approximately 91% of beer drinkers purchase from mainstream liquor stores.¹⁰ It is well accepted that the Dominant Retailers have substantial control over market access for the Australian Beer market in the on-premise space.

While we would like to provide more detail, many of our members are too afraid to provide examples or go on the record with issues as they fear the repercussions from the Dominant Retailers. This alone demonstrates the precarious position our members are in.

The Dominant Retailers use their substantial market power to:

- Impose strict trading terms;
- Provide preferential marketing and display to the Dominant Brewers and the retailers owned brands;
- Gather market (unaffordable for us) data and information and then rely on that information to create products that directly compete with breweries through the introduction of homebrand beer.
- Draw on the benefits of the 'craft halo' to confuse consumers into thinking they were purchasing beer from a craft brewer by not showing their highest level ownership..

The testimony from Dr Tim Cooper at the Standing Committee on Economics illustrates the challenges for a brewery even the size of Coopers. For small breweries the issues are magnified as the power imbalance between the Dominant Retailers and independent breweries is so great.

- *“Our market share means that we have less market power to negotiate with the two major retailers, who have just under a 60 per cent market share of the packaged beer market.*
- *“By way of illustration, our market share in independent retailers is approximately seven to eight per cent, whereas our market share in the national retailers sits at approximately four to five per cent;*
- *“The major brewers, especially Asahi post-merger, have been able to negotiate more favourable trading terms with the major retailers. These terms dictate ambient floor space; chilled space in fridges and cool rooms; and requirements for ranging, including any new products.*
- *“We have also found that we're getting further squeezed by retailers preferencing private label products after they have met the terms of the majors.*
- *“For example, in South Australia, four independent bottle shops were recently bought by EDG and converted to BWS stores; Coopers' sales went down by approximately 50 per cent, as we are unable to secure the same ranging and floor space as when they were independently owned.”¹¹*

In 2019, in assessing the future for CUB in the Australian beer market, Budweiser concluded that “relationships with, and the ability to leverage the modern trade retailers for consumer insights will also add to the company’s competitiveness.”¹²

Due to the market power of the Dominant Brewers they are able to leverage the substantial data from the Dominant Retailers to their own commercial benefit. While we are not suggesting collusion or price fixing, obtaining data in a consumer market provides clear advantages as the substantial market data gathered by the Dominant Retailers is

¹⁰ Associate Professor Sammartino, quoted in “Retailers invest in private label craft beer”, 20 October 2020. Available: <https://brewsnews.com.au/retailers-invest-in-private-label-craft-beer/>

¹¹ Hansard, House of Representatives, Standing Committee on Economics, Inquiry into promoting dynamism, competition and business formation, 25 July 2023, p32.

¹² Budweiser Brewing Company Global Offering on the Hong Kong Stock Exchange, 5 July 2019 at p89.



not being provided at the same level of detail to small breweries or is entirely unaffordable. The gathering and sharing of data only amongst the Dominant players entrenches their dominant position.

Recently, several of our members have reported that they have directly witnessed sales representatives of the Dominant Brewers giving pre-paid credit cards to staff in retail outlets of the Dominant Retailers to give priority positioning to their products. This again exemplifies the extent to which the Dominant Retailers have effective control over the retail market such that any tactic will be used by those with the means to achieve a favourable result. Our members are small independently owned businesses and do not have the funds to 'buy' favourable treatment. Nor should they have to.

Unfair trading terms

Many independent brewers talk openly about the challenging trading terms imposed by the Dominant Retailers. However, are too concerned for the viability of their businesses to provide copies of contracts or speak out – even on the promise of anonymity. Such is the power of the Dominant Retailers in controlling market access.

In the Treasury's recent consultation on unfair trading practices it highlights that "[e]xploiting bargaining power imbalances in supply chain arrangements, including by unilaterally varying supply terms at short notice" is an example of potentially unfair trading practices.¹³

In February 2023, independent reporting highlighted that Endeavour Drinks imposed an increase on costs to distribute through its national distribution centre.¹⁴ The reporting provides a clear perspective from a small brewer:

"One industry source who anonymously contacted Brews News said this would further hurt small and medium suppliers.

"They have written to suppliers and given them no choice but to accept the increase," the email said.

"This will put further pressure on small to medium suppliers who are already disadvantaged to the large alcohol suppliers in the market.

"Small suppliers typically make between 15% to 20% gross margin."

The emails said that Endeavour Drinks Group, which reported retail revenues of \$2.5 billion for the first quarter of FY23, "insists on making 40% gross margin from its suppliers or they threaten to not stock the products."

The email claimed the new charge was in addition to that gross margin and its existing 4 per cent handling charge.

"This will result in Endeavour Drinks earning almost twice the margin as their smaller suppliers," it said.

Brews News has not been able to verify these figures.

"This action is likely to send a number of smaller to medium Australian independent suppliers to the brink of bankruptcy, especially given Endeavour Drinks controls more than 50% market share.

"This also comes at a time when small to medium suppliers are under significant inflationary cost pressures themselves."

¹³ The Australian Government the Treasury, "protecting consumers from unfair trading practices," August 2023, p9.

¹⁴ "Brewers bear brunt of Dan Murphy's price promise," 2 February 2023. Available:

<https://brewsnews.com.au/brewers-bear-brunt-of-dan-murphys-price-promise/>



The email said alleged the move was an example of Endeavour Drinks abusing its market power.

The above is one example of the Dominant Retailers setting terms. In many cases, small breweries are also expected to accept 60 day terms on payments which has a dramatic impact on cash flow of a small business.

These practices can only be described as unfair and are only possible as a result of the significant market imbalance generated as a result of the Dominant Retailers outsized role in restricting market access for small breweries.

Unfair use of data

As the Dominant Retailers control 91% of market access in retail they are also able to gather data down to the SKU and store level for each product. The Dominant Retailers then use that data to make decisions that directly impact small brewers and the Dominant Brewers have the power to purchase it. They do this with no requirement to provide the data to the broader industry to ensure that there is a shared factual basis for certain decisions.

For example; Brewery Yellow¹⁵ was a brewery that had three products ranged in several stores throughout a state and at least one product ranged nationally. Brewery Yellow were advised by a representative of a Dominant Retailer that Beer A and Beer B 'did not have sufficient pull through' at six stores and would no longer be ranged.

Brewery Yellow did not believe that position to be accurate and after being shown onscreen examples of the data by individual store representatives they were able to confirm that, on the basis of the data, their products were selling higher compared to alternative products.

Brewery Yellow did not have any mechanism to engage in a discussion about whether there was any fairness for deranging their product.

This is a direct example of aggressive business conduct with limited mechanism or power for redress and is only possible due to the Dominant Retailers substantial market power. It also demonstrates that **consumer preferences** were not the driver for the decision to derange.

We look forward to supporting this inquiry further at any time and look forward to the opportunity to provide more detailed information.

If you would like to discuss any aspect of this submission in more detail, please do not hesitate to contact me, I am available at [REDACTED]

Yours sincerely,

[REDACTED]

KYLIE LETHBRIDGE
Chief Executive Officer

¹⁵ Brewery name has been changed as brewery does not want to be on the record due to likely repercussions for speaking out.

Appendix A: Who owns your beer?

WHO OWNS YOUR BEER? DISCOVER WHICH BREWERIES AREN'T INDEPENDENT OWNED



LOOK FOR THE SEAL

IMAGE SUPPLIED BY



Appendix B: Southern End Brewing Company

Southern End Brewing Company is a brand owned by EDG. It's beer is brewed under contract by an independent brewer.

It describes itself as "Victorian Born and Brewed". The Trade Mark "Southern End Brewing Co" was lodged by EDG and accepted in April 2021.

It is clear from at least one review on Dan Murphy's Online Store (owned by EDG) that a reasonable consumer would conclude that Southern End is a brewery based in Victoria.¹⁶

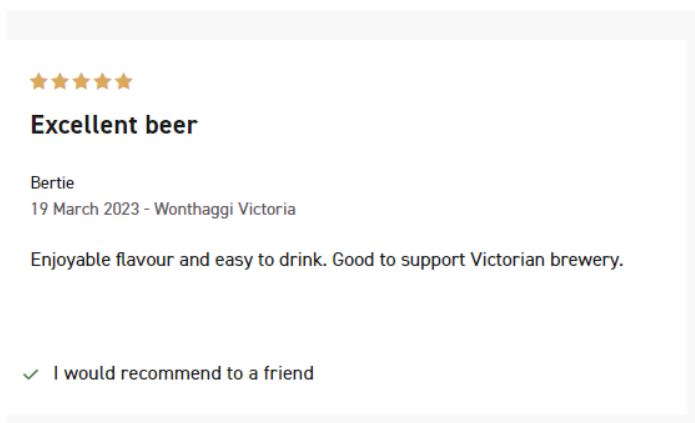
EDG will likely argue that the beer is brewed in Victoria by an independent brewery and therefore not misleading.

However, the description that it is owned by Pinnacle Drinks on the back of the beer is very small.

If pushed EDG may just discontinue this product (its currently on clearance at Dan Murphy's) but this is illustrative of the systemic challenge. WORTH INCLUDING THE PRICE DIFFERENCE TO ANOTHER LARGER?

The question that must be asked is 'Why wouldn't EDG want to clearly disclose that it owns this brand and that it has its beer made by an independent brewery?'

The only reasonable conclusion is so that they can pass off this product as 'craft beer' such that customers are misled into choosing this product because they think they are buying a 'craft beer'.



¹⁶ Dan Murphy's "Southern End Brewing Co" Accessed 15 November 2023. Available: https://www.danmurphys.com.au/product/DM_160159/southern-end-brewing-co-lager-can-375ml?isFromSearch=false&isPersonalised=false&pageName=member_offers

Appendix C – Endeavour Group’s Nam Nam Alley

