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Mr Scott Gregson
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
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Dear Mr Gregson

Thank you for the opportunity to comment on the Applications for Authorisation A91054 and A91055 lodged by the Distilled Spirits Industry Council of Australia Inc and others.

Firstly, I would like to apologise for this late response to your initial invitation. However, I can advise that the Application has been considered by both NSW Health and the NSW Office of Liquor Gaming and Racing and this letter constitutes a joint response from both agencies.

As you would be aware, Recommendation 1.13 of the 2003 NSW Summit on Alcohol Abuse called for the development of a Retailer Alert Scheme that would help identify alcohol beverages that breach the Alcohol Beverages Advertising Code and encourage retailers to remove offending products from sale until breaches are rectified.

In its response to the Alcohol Summit, the NSW Government committed to work with industry and other governments to facilitate development of such a scheme as one of a wide range of actions to promote responsible alcohol consumption in the community. Subsequent to this, the NSW Government has further committed to target and reduce risky drinking under the new State Plan and a specific priority for which NSW Health is the lead agency.

In this context, it is pleasing to note that key members of the Alcohol Industry have developed and brought forward a joint proposal for an industry managed retailer alert scheme that adopts many components considered in the NSW Government's response to the Alcohol Summit.

It is also noted that the proposed scheme, if authorised, could have a wide application given advice that the industry members represent 98% of the beer market, 80% of the spirits, liqueurs and ready to drink beverages market, 85-90% of the wine market and 90-95% of the retail alcohol market.

However, it is suggested that the proposed scheme could be significantly strengthened and, therefore, its potential public benefit enhanced through the following revisions to the current proposal:

- Given the proposed scheme's objective is to promote compliance with the Alcohol Beverages Advertising Code and the principles of responsible advertising and promotion of alcohol products by industry, retailer alerts should apply to all alcohol beverages rather than being limited to new beverages after the scheme's commencement.

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- In addition, the need for the specific exclusion of low alcohol beverages from new ABAC provisions from the scheme is unclear. These new provisions relate to:
 - ⇒ direct association between the consumption of alcohol and the operation of a motor vehicle, boat or aircraft or engagement in sport or other potentially hazardous activity;
 - ⇒ challenging or daring people to drink or sample a particular alcoholic beverage.

Despite a low alcohol content, these products can still be drunk to intoxication and could be irresponsibly advertised and promoted to encourage risky or underage drinking. Consequently, it would be in the greater public interest for the proposed exclusion to be removed.

- In line with the Alcohol Summit response, an express mechanism is required to facilitate speedier responses to offending products, including their removal from sale while they are rectified. The proposed processes and lengthy timeframes, including 60 days during which retailers may continue to sell the product, would not provide for the sort of immediate responses that may be required to, for example, avoid harms that could arise by an inappropriate promotion or advertising of a product targeting alcohol consumption by young people.
- In addition to the proposed dedicated website, a requirement should be included to proactively promote public awareness of the scheme and its complaints process. This would serve to enhance the proposed scheme's effectiveness by avoiding the relatively low level of public awareness there appears to be with regard to the Alcohol Beverage Advertising Code scheme.

Finally, while the industry application is for a national scheme, the proposal has yet to be reported back to the Ministerial Council on Drug Strategy where it was considered in May 2004. It is also noted that the NSW Government's response to the Alcohol Summit suggested that "support from all Australian jurisdictions" for the scheme would be important.

Consequently, it may be advisable for the Commission's final determination of the application to await and be informed by consideration of the proposal by the Ministerial Council that next meets in November 2007.

Once again, thank you for this opportunity to comment on the industry proposal. I would be pleased for this Department to provide further assistance in progressing this matter.

Yours sincerely



Dr Richard Matthews
Deputy Director-General
Strategic Development

30 AUG 2007