

MALLESONS STEPHEN JAQUES

21 March 2011

Dr Richard Chadwick
General Manager, Adjudication Branch
Australian Competition and Consumer Commission
23 Marcus Clarke Street
CANBERRA ACT 2601
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Dear Dr Chadwick

Re: Australian Hotels Association Divisions application for revocation of authorisation A90987 and substitution of new authorisation A91257 - Draft Determination

Thank you for your letter of 3 March 2011, inviting submissions on the likely anticompetitive detriment from the aggregation of the AHA members' bargaining power in the markets relating to the proposed expanded authorisation.

Lion Nathan National Foods understands that the "proposed expanded authorisation" includes an expanded category of suppliers with whom AHA members may collectively bargaining (including Lion Nathan National Foods and other suppliers of wine, beer and spirits¹), and a range of as yet unidentified suppliers.

Lion Nathan National Foods agrees with the Commission's decision to propose to decline authorisation to expanded arrangements.

In our previous submission dated 25 November 2011, we outlined the reasons why Lion Nathan National Foods wished to oppose the AHA's application. Lion Nathan National Foods continues to oppose the proposed expanded authorisation for these reasons, which are summarised below:

- up to 75% of hotels are AHA members and, according to AHA, its membership comprises more than 50% of eligible members in Australia.² It follows that AHA members represent a high proportion of wholesale purchasers of wine, beer and spirits and the expanded authorisation would result in a very high concentration of buying power. By way of analogy, we would expect the Commission to be concerned about the likely effect on competition of a proposed acquisition which would increase the acquirer's market share to about 75%, where the remaining 25% of the market would be highly fragmented;

¹ AHA's application for authorisation of 25 October 2010 identified "Lion Nathan" as a target supplier and the suppliers listed at page 3 of the submission attached to AHA's application included, relevantly, "wine, beer and spirits suppliers". The application did not refer to "National Foods" and suppliers were not expressed to include suppliers of dairy products or juice. However, AHA's submission, dated 17 December 2010, states that "*we would see the authorisation applying to any product supplied by Lion Nathan to AHA members in each Division.*" If AHA's proposed expanded authorisation application is intended to apply to dairy products and juices supplied by National Foods, the public detriments from AHA's proposed conduct would only be magnified.

² <http://www.aha.org.au/2010.01%20Industry%20Data.pdf> and Australian Hotels Association Divisions application for revocation of authorisation A90987 and substitution of new authorisation A91257, 25 October 2010

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- the key operating costs of AHA's members in at least 27 categories of products would be highly likely to converge. AHA's members are likely to seek to leverage efficiencies arising from their increased bargaining power, by dealing with a smaller number of suppliers, or skewing their purchases towards one supplier;
- although consumer demand may ultimately determine whether AHA's members acquire some products from their suppliers, there are other products that consumers may not be aware of, such as products supplied by smaller suppliers, or new products, where Say's Law is highly likely to apply. Those products play a critical part of the competitive process and the only way to drive consumer demand for them is to supply them. The expanded authorisation would be highly likely substantially hinder the important role of those products in the competitive process;
- therefore, the concentration buying power and the convergence of the operating costs of AHA's members, who compete against each other, that would result from the expanded authorisation would be highly likely to reduce the range of goods and services which AHA members offer, to the detriment of consumers and the competitive process.

Further, there is no evidence that any cost savings that might be realised by AHA's members would be passed onto consumers.

Lion Nathan National Foods considers that substantial anticompetitive detriments would be highly likely to arise if the Commission authorised the proposed expanded authorisation. As such, Lion Nathan National Foods considers that the Commission should decline the proposed expanded authorisation.

Please contact us if the Commission requires any further information.

Yours sincerely



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