



The State of Queensland acting through the Office of Liquor and Gaming Regulation – applications for re-authorisation A91385 & A91386

Interim authorisation decision 2 October 2013

Decision

The Australian Competition and Consumer Commission (the ACCC) has granted conditional interim authorisation in respect of the applications for re-authorisation lodged by the State of Queensland acting through the Office of Liquor and Gaming Regulation (OLGR) on 17 September 2013. The applications for re-authorisation relate to conduct conditionally authorised (A91224 and A91225) by the ACCC in 2010 (the existing authorisations).

Conditional interim authorisation is granted to liquor accord arrangements in the form of OLGR's pro-forma liquor accord arrangements (PLAA) subject to the same conditions as the existing authorisations.

Conditional interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

The application for authorisation

The OLGR has applied for re-authorisation of the PLAA subject to the same conditions as the existing authorisation. Liquor accord agreements are signed by licensed premises and others in a particular area and contain strategies to reduce the abuse and misuse of alcohol. Re-authorisation is sought for the 'Responsible service of alcohol' section of the PLAA which covers:

- price controls - such as, a ban on drink cards, extreme discounts and discounts of limited duration, and a requirement to offer smaller serves of full strength drinks and serves of lower alcohol beverages at lower prices than full strength beverages; and
- supply controls - such as, a ban on serving alcohol in nonstandard containers such as water pistols or test tubes, on drinking games, and on advertising or allowing promotions of particular drinks.

Currently, the Townsville Liquor Accord is the only liquor accord in Queensland that adopts elements of the price and supply controls of the PLAA. As such, the application for interim authorisation currently impacts only on the Townsville Liquor Accord.

More generally, in relation to the PLAA:

- participation is voluntary and only applies to premises that sell alcohol for on-site consumption;
- compliance with the terms of an accord will not be enforced; and
- each accord will cover only the local area, and will contain only those terms from the pro-forma accord that the signatories choose to implement.

The authorisation process

Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (the Act). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist in determining whether a proposed arrangement results in a net public benefit.

Interim authorisation

Section 91 of the Act allows the ACCC to grant interim authorisation without making a decision on the merits of the application.

OLGR requested interim authorisation on the basis that:

- the Townsville Liquor Accord has been in operation since July 2012, the competitive dynamics of the market will not change if an interim authorisation is granted;
- there is a public benefit in allowing the Townsville Liquor Accord to continue with their current price and supply controls to minimise identified harms in and around their licensed premises and their local area;
- membership of the accord is voluntary and the controls implemented pursuant to the accord have been put in place where the circumstances are appropriate and only apply to members of the accord; and
- there has been no reported or apparent public detriment through effects on price and consumer choice.

Consultation

Upon receipt of the applications for re-authorisation, the ACCC invited submissions from interested parties in order to consider the request for interim authorisation. The ACCC received one submission from the Distilled Spirits Industry Council of Australia (DSICA) which raised concerns. The OLGR and Townsville Liquor Accord made separate submissions in response to concerns raised by DSICA. The key concerns raised by DSICA and relevant responses are outlined below:

- DSICA submits the new authorisation should not be for the proposed five years because this is unnecessarily long to determine the effectiveness of the PLAA. DSICA submits that the appropriate length of authorisation is three years. OLGR submits that the conditions contained in the existing authorisation allow for an ongoing assessment of how the pro-forma liquor accord is being applied by individual liquor accords and that with these conditions five years is appropriate. Townsville Liquor Accord submits that it would be happy with either a three or five year authorisation.
- DSICA submits that the establishment of explicit price controls by the Townsville Liquor Accord and Whitsunday Liquor Accord were not encompassed by the original authorisation. OLGR submits in response that it believes the price controls

established were encompassed by the original authorisation and that the setting of minimum price at specific times and days was a direct action to negate a culture of rapid and excessive consumption of alcohol during those times. Townsville Liquor Accord submits that it disagrees with DSICA's interpretation of the current authorisation.

- DSICA submits that the minimum price applied to spirits is a permanent feature across all trading hours and that this does not fit with the claimed justification of members of the Townsville Accord. In response, Townsville Accord submits the introduction of price controls was a response to significant concerns regarding the increasing levels of intoxication and associated violence in the Accord area that it associated with extreme discounting to the price of spirits.
- DSICA notes that Townsville and Whitsunday Liquor Accords targeted spirits in their respective Accords and questions why they did not target other product categories such as beer, wine or cider in their accord. Townsville Accord submits that spirit based drinks were being heavily discounted and it was believed that this was leading to an increase in anti-social and violent behaviour. The Townsville Accord agreed strategies would be discussed for other types of drinks, should this be required.

The ACCC's view is that the concerns raised by DSICA are most appropriately investigated and assessed during the ACCC's assessment of the substantive authorisation application.

The DSICA submission, OLGR's response to that submission, Townsville Liquor Accord's response to that submission and any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website www.accc.gov.au/authorisations.

Reasons for decision

In granting conditional interim authorisation, the ACCC notes that:

- Granting conditional interim authorisation will preserve the status quo, enabling the Townsville Liquor Accord signatories to continue to adopt elements of the PLAA;
- OLGR's existing authorisation expires on 7 October 2013 and the ACCC will not have concluded its assessment of the substantive application for re-authorisation by that date;
- this avoids significant disruption to signatories to the Townsville Liquor Accord in the face of imminent expiry of the current authorisation.

Reconsideration of interim authorisation

The ACCC may review the decision to grant conditional interim authorisation at any time, including at the draft determination stage, should the ACCC's assessment indicate that this is appropriate. The ACCC's decision in relation to the conditional interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.