



Australian
Competition &
Consumer
Commission

8 March 2012

Statement of Issues — ALH Group Pty Ltd (75 per cent owned by Woolworths Limited) - proposed acquisition of hotels and takeaway liquor stores in NSW

1. Outlined below is the Statement of Issues released by the Australian Competition and Consumer Commission (ACCC) in relation to the proposed acquisition of various hotels and takeaway liquor stores in NSW by ALH Group Pty Ltd (ALH) (proposed acquisitions). ALH is 75 per cent owned by Woolworths Limited (Woolworths).
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 **22 March 2012** and anticipates making a final decision on **5 April 2012**. 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.
4. 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

5. The ACCC commenced an informal review into these proposed acquisitions on 22 December 2011.

The parties

Acquirers - ALH Group Pty Ltd (75 per cent owned by Woolworths Limited)

6. ALH is owned by Woolworths (75 per cent) and the Bruce Mathieson Group (25 per cent).
7. ALH owns and operates 294 hotels and approximately 12,000 gaming machines nationally. ALH currently operates 27 hotels and around 700 gaming machines in NSW.
8. Woolworths is currently the largest liquor retailing group in Australia with over 1100 retail stores and around 37 per cent of national liquor sales. Woolworths operates the takeaway liquor brands Dan Murphy's, BWS and Woolworths Liquor.
9. ALH/Woolworths have submitted to the ACCC that the hotels in the ALH group are managed separately from other Woolworths liquor outlets. However, the ACCC understands that, where an ALH group hotel operates a bottleshop, the bottleshop is branded as a BWS or Dan Murphy's and operates in accordance with the policies of the BWS and Dan Murphy's brands.
10. The ACCC considers that because Woolworths has effective control of ALH through its 75 per cent holding in the group and retains ownership and control of the retail liquor brands under which ALH bottleshops are operated, such bottleshops should be considered as part of the Woolworths liquor group for the purposes of assessing the competitive effects of the proposed acquisitions.

Targets - Hotels and takeaway liquor stores in NSW

11. The three vendors for the relevant transactions are:

- i. The Laundry Hotel Group

The Laundry Hotel Group (**LHG**) is a family owned and operated business and is currently the largest independently owned hotel chain in NSW. Most of its hotels are located in the Sydney metropolitan area. LHG does not operate any hotels in other states.

LHG has indicated to the ACCC that, following the proposed acquisitions, it would continue to own and operate 12 hotels not subject to this transaction.

- ii. The Waugh Hotel Group

The Waugh Group is a privately held hotel group, operated by brothers Ashton and Mitchell Waugh. The Waugh group has interests in a number of hotel businesses in Sydney.

The Waugh Group has advised the ACCC that it would continue to hold an interest in a number of hotels following the proposed acquisitions.

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iii. The De Angelis Hotel Group

The De Angelis Group is a family owned and operated business, with interests in a number of hotels not subject to the transactions which it would continue to hold post acquisition.

The proposed acquisitions

12. ALH proposes to acquire a total of 31 hotel licences and one takeaway packaged liquor licence in NSW from the three vendors.

13. The relevant proposed transactions are:

i. LHG

ALH proposes to acquire the businesses and associated assets of 24 hotels and one takeaway packaged liquor licence from LHG.

Under the proposed sale agreement with ALH, LHG would retain the freehold interests in the hotels and takeaway liquor licence. ALH would then enter into long term leases with LHG in respect of the freehold for the 24 hotels and one takeaway liquor outlet.

In a related transaction, LHG will also purchase the freehold property for five hotels from the Waugh group and enter long term lease agreements with ALH for the use of the freehold. As such, post acquisition LHG will be the lessor of 29 hotels and one takeaway liquor outlet to ALH.

ii. The Waugh Hotel Group

This proposed transaction is a joint venture between LHG and ALH for the acquisition of five hotels from the Waugh Hotel Group.

As detailed above, under the proposed sale agreements LHG would acquire the freehold property for five hotels from the Waugh Group while ALH would acquire the businesses and associated assets of those hotels. Post-acquisition, ALH would then enter into a long term lease arrangement with LHG for the use of the freehold.

iii. The De Angelis Hotel Group

ALH proposes to acquire the businesses and associated assets of two hotels from this group. The De Angelis group would retain the freehold to the land for both hotels and ALH would enter into long term lease agreements with the De Angelis group in respect of the freehold.

14. A full list of licences subject to the proposed acquisitions is contained at Attachment A.

Industry background

Retail sale of packaged liquor for off-site consumption

15. Woolworths and Wesfarmers are the largest retailers of packaged liquor in Australia with a combined national sales share of around 58 per cent in 2011, made up of Woolworths with 37 per cent and Wesfarmers with 21 per cent.
16. Independently owned bottleshops, some of which are members of buying/banner groups, make up the rest of the sales share in the industry. Independents often retail packaged liquor in association with marketing banner groups such as Cellarbrations, Liquorstax and Thirsty Camel and achieve purchasing scale through participating in buying groups.

Retail sale of liquor for on-site consumption, entertainment and gaming

17. In Australia the hotel industry is highly fragmented with the largest shares of national sales controlled by ALH with 10 per cent, Wesfarmers with 3.8 per cent, National Leisure and Gaming with 1.5 per cent and the Independent Pub Group with 1 per cent. In NSW, ALH currently holds approximately 1.3 per cent of hotel licences and this would increase to approximately 3 per cent following the proposed acquisitions.
18. LHG is currently the largest independent hotel operator in NSW with 1.86 per cent of hotel licences in the state. It is closely followed by a number of other operators in NSW including National Leisure and Gaming (1.5 per cent), the Waugh Hotel Group (0.9 per cent) and the De Angelis Group (0.39 per cent).
19. In NSW, hotels generate a significant proportion of their revenue from electronic gaming machines and, as such, ownership of these machines is considered important to the viability and competitiveness of hotels in the state. There are currently around 96,000 electronic gaming machine licences in NSW of which around 23,000 are held by hotels, with the remainder controlled by clubs and casinos. ALH/Woolworths currently owns around 700 gaming machines and as a result of these acquisitions will acquire around a further 700 machines.

Areas of Overlap

20. The ACCC considers that the following areas of overlap exist between ALH/Woolworths and the relevant vendors:
 - i. ALH/Woolworths, LHG, the Waugh Group and the De Angelis Group compete for the retail sale of packaged liquor for off-site consumption at the local level and at a broader state level (through state-based retail pricing for instance).
 - ii. ALH/Woolworths, LHG, the Waugh Group and the De Angelis Group compete in various local areas for the sale of liquor for on-site consumption, entertainment and gaming from hotels; and

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- iii. ALH/Woolworths, LHG, the Waugh Group and the De Angelis Group compete to acquire liquor from wholesale suppliers in NSW.

Market inquiries

- 21. On 22 December 2011 the ACCC commenced market inquiries regarding the proposed acquisitions.
- 22. As part of this process, the ACCC contacted market participants including more than 50 packaged liquor retailers and hotels in NSW and a number of competing liquor banner groups and wholesale suppliers of liquor.

Market definition

- 23. Section 50 of the *Competition and Consumer Act 2010 (CCA)* prohibits mergers or acquisitions that would have the effect or be likely to have the effect of substantially lessening competition in a market. In assessing a proposed acquisition pursuant to section 50 of the CCA, the ACCC considers the competitive impact of the transaction in the context of the market/s relevant to the proposed acquisition.

Retail markets for the sale of packaged liquor for off-site consumption

- 24. The ACCC considers that in retail markets involving chains, competition may occur at both the broader national or state level and at the local level. While all liquor retailers compete to attract customers from other retailers located in the same neighbourhood, many large retailers (such as ALH/Woolworths) standardise many elements of their retail offers (such as promotional pricing) across all stores within a state.
- 25. The ACCC considers local retail markets and a NSW retail market are both relevant to its assessment of the proposed acquisitions.
- 26. When assessing local retail markets, the ACCC aims to identify the competitive constraints on the merged firm's retail offers at a store level. In assessing the NSW retail market, the ACCC aims to identify the competitive constraints on the merged firm in determining its state-wide retail offers (such as state prices).
- 27. In undertaking its review of the proposed acquisition, the ACCC sought information from the industry on the geographic scope of both the broader market and local markets for the sale of packaged liquor for off-site consumption.
- 28. In regards to the broader market, the ACCC notes that major chains including the Woolworths brands (Woolworths Liquor, Dan Murphy's and BWS); the Wesfarmers brands (Liquorland, 1st Choice and Vintage Cellars); and independent brands such as IGA and Cellarbrations, standardise major elements of their retail offers across all stores in NSW, for example, through state-wide promotions. The ACCC considers the relevant issue for defining the broader market is to identify the constraints on the merged firm's state-based retail offers.

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29. In regards to local liquor retail markets, market participants indicated to the ACCC that customers generally travel less than 3km from their residence to purchase packaged alcohol for off-site consumption, with sales to customers residing further than 5km from most retailers being uncommon unless the customer is in the area for another purpose.
30. Market participants indicated that customers tend to utilise a retailer further than 5km from their residence only when that store is a 'destination' store, such as 'big box' (large format) retailers including Dan Murphy's and 1st Choice Liquor, or where a store is located on a major thoroughfare and is utilised by consumers travelling to or from another destination.
31. Given the above information, the ACCC has reviewed the proposed acquisitions in the context of local markets with a radius of 3-5km from the target licences, but also having regard to any site specific factors which may affect the radius.

The ACCC invites market participants to comment on the geographic scope of retail liquor markets.

In regards to broader retail markets, the ACCC seeks comment on the factors that may constrain ALH/Woolworths state-wide retail liquor offer.

In regards to local markets, whether the 3-5km radius identified by the ACCC is the correct geographic dimension for local markets for the sale of packaged liquor for off-site consumption, with reference to

- i. Whether the majority of sales from a liquor retailer are to consumers who reside within 3-5km of the retailer;
- ii. What factors influence consumers' willingness to travel to access takeaway packaged liquor stores that are greater than 3 to 5 kms from their residence; and
- iii. Which other retailers constrain the local offers of liquor retailers, regardless of whether these are within 3-5km of the retailer.

Retail markets for the sale of liquor for on-site consumption, entertainment and gaming

32. In undertaking its review of the proposed acquisitions, the ACCC has sought information from the industry on the geographic scope of markets for the sale of liquor for on-site consumption, entertainment and gaming.

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33. Market participants have indicated that for venues in regional or suburban areas, customers generally travel 3-5km to a licensed venue to purchase alcohol for on-site consumption.
34. However, market participants have also informed the ACCC that the type, size and location of a venue significantly alters the geographic scope of the relevant market, with 'destination' venues located in areas such as the Sydney CBD more likely to have broad reaching geographic catchment areas when compared to 'local' venues in suburban and regional areas. Although, the ACCC notes that while these venues have broad catchment areas, they may not directly compete with suburban venues for the same customers.
35. For all venues considered, the ACCC has reviewed the proposed acquisitions in the context of local markets with a radius of 3-5km from the target.

The ACCC invites market participants to comment on whether the 3-5km radius identified by the ACCC is the correct geographic scope for local markets for the sale of liquor for on-site consumption, entertainment and gaming, with reference to

- i. Whether the majority of customers of a venue reside within 3-5km of the venue;
- ii. What factors influence a consumer's willingness to travel to venues that are greater than 3-5km from their residence; and
- iii. Which other venues constrain the local offers of liquor retailers, regardless of whether these are within 3-5km of the retailer.

Wholesale market for the acquisition of liquor in NSW

36. In undertaking its review of the proposed acquisitions, the ACCC has sought information from the industry on the geographic scope of the wholesale market for the acquisition of liquor. Market participants have indicated that liquor supply agreements between liquor manufacturers and major retailers and wholesalers such as Woolworths and Metcash are usually arranged on a state basis. However, the ACCC has also received information that the growth in national liquor brands and retail chains has resulted in a shift towards national liquor supply agreements.

The ACCC invites market participants to comment on the geographic scope of wholesale liquor markets, particularly in regard to whether wholesale liquor markets are state-based or national.

Statement of issues

Issues that may raise concerns

Retail markets for the sale of packaged liquor for off-site consumption

37. The ACCC has considered the proposed acquisitions in relation to both local retail liquor markets and the NSW retail liquor market
38. The proposed acquisitions involve 13 hotels with attached or detached bottleshops and one stand-alone bottleshop. The ACCC does not consider hotels providing over the counter sales to be a significant constraint in these markets. Accordingly, the ACCC does not consider the remaining hotels subject to the transaction to be currently part of retail liquor markets as they do not operate attached bottleshops.
39. The ACCC has identified concerns in four local markets where the number of competitors will be significantly reduced post-acquisition. These markets are:
- i. The market for the sale of packaged liquor for off-site consumption within 3-5km of the **Chittaway Tavern**, located in the Chittaway Bay area of the NSW Central Coast.

The ACCC is investigating whether the proposed acquisition will result in a substantial reduction in competition in the local market for the sale of packaged liquor for off-site consumption surrounding the Chittaway Tavern.
 - ii. The market for the sale of packaged liquor for off-site consumption within 3-5km of the **Ocean Beach Hotel** and **Umina Foodtown**, located in the Umina Beach area of the NSW Central Coast.

The ACCC is investigating whether these proposed acquisitions will result in a substantial reduction in competition in the local market for the sale of packaged liquor for off-site consumption surrounding the Ocean Beach Hotel and Umina Foodtown.
 - iii. The market for the sale of packaged liquor for off-site consumption within 3-5km of the **Albion Park Hotel**, located in the Shellharbour area, South of Wollongong, NSW.

The ACCC is investigating whether the proposed acquisition will result in a substantial reduction in competition in the local market for the sale of packaged liquor for off-site consumption surrounding the Albion Park Hotel.

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- iv. The market for the sale of packaged liquor for off-site consumption within 3-5km of the **Charles Hotel**, located in the Fairy Meadow area north of Wollongong, NSW.

The ACCC is investigating whether the proposed acquisition will result in a substantial reduction in competition in the local market for the sale of packaged liquor for off-site consumption surrounding the Charles Hotel.

- 40. Each of these are addressed in more detail below.

The Chittaway Tavern

- 41. Chittaway Bay Tavern operates a significantly sized retail liquor outlet with a large range of products. This retail outlet is attached to a large hotel located within the Chittaway Bay Shopping Centre with an open plan bar and expansive attached beer garden.
- 42. Market inquiries undertaken by the ACCC indicate that the Chittaway Tavern currently competes with Berkeley Vale Cellars, Dan Murphy's Tuggerah and Woolworths Liquor Tuggerah in the local market for the sale of packaged liquor for off-site consumption in the Chittaway Bay area.
- 43. Market inquiries undertaken by the ACCC indicate that competition in the Chittaway Bay market occurs through price promotion, service and convenience. Market participants have indicated that Dan Murphy's is the price leader in this market while smaller competitors such as Berkeley Vale Cellars and the Chittaway Tavern compete on convenience and service. Market inquiries also indicate that two clubs in the Chittaway Bay area operate attached bottleshops for members, but market participants do not consider that these clubs impose a significant constraint on the larger competitors in the market.
- 44. The ACCC is concerned that the proposed acquisition will result in ALH/Woolworths controlling three of the four major competitors for the sale of packaged liquor for off-premises consumption in the retail market surrounding the Chittaway Tavern.
- 45. The ACCC considers that due to the level of horizontal aggregation in the market post acquisition, ALH/Woolworths may have the ability and incentive to increase prices or reduce service levels and range at the Chittaway Tavern. The ACCC considers that this may be a profitable strategy for ALH/Woolworths as consumers switching consumption as a result of increased prices and/or decreased service levels at the Chittaway Tavern are likely to switch to another ALH/Woolworths store.
- 46. The ACCC is also concerned that the presence of three separate Woolworths brands in this market post acquisition (BWS, Dan Murphy's and Woolworths Liquor) may provide ALH/Woolworths with the capacity to differentiate between locations, with the Chittaway Tavern BWS and Woolworths Liquor having the capacity to charge higher prices and/or provide lower range and service levels.

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47. Further, the ACCC is also considering the impact the reduction in competition resulting from the acquisition of the Chittaway Tavern will have on prices and service available at other licences in the market, particularly Dan Murphy's Tuggerah which has a price matching retail strategy.
48. Finally, the ACCC is considering the constraint imposed on the ALH/Woolworth licences, the Chittaway Tavern and Berkeley Vale Cellars by non-specialist liquor retailers including clubs with attached bottleshops.

The ACCC invites market participants to comment on the likely effect of the proposed acquisition of the Chittaway Tavern on the local market around the Chittaway Tavern, with reference to:

- i. The effect of ALH/Woolworths owning three of the four takeaway packaged liquor stores in the Chittaway Bay market;
- ii. The extent to which the Berkeley Vale Cellars imposes a competitive constraint on the target licence and the existing ALH/Woolworths licences;
- iii. The extent to which customers are likely to switch to other Woolworths related licences in response to an increase in prices or decrease in service at the Chittaway Tavern;
- iv. The extent to which a reduction in competition in this region may have a flow through to prices offered at other licences in the region, particularly Dan Murphy's Tuggerah; and
- v. The extent to which other liquor retailers, including clubs with attached bottleshops, compete with ALH/Woolworths, the Chittaway Tavern and Berkeley Vale Cellars.

The Ocean Beach Hotel and Umina Foodtown

49. The Ocean Beach Hotel is a large venue that operates a major attached bottleshop and a separate detached bottleshop under the same licence (the Ocean Beach Cellars). Umina Foodtown is a stand alone convenience store and bottleshop with a major liquor offering.
50. Market inquiries indicate that the Ocean Beach Hotel, Ocean Beach Cellars and Umina Foodtown currently compete with BWS Ettalong Beach, West Side Cellars and the Ettalong Hotel in the local market for the sale of packaged liquor for off-site consumption.
51. Market inquiries indicate that competition in this market occurs through price promotion, service and convenience.

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52. The ACCC is concerned that the proposed acquisition will result in ALH/Woolworths controlling three of the five licences for the sale of packaged liquor for off-premises consumption in the retail market surrounding the Ocean Beach Hotel and Umina Foodtown.
53. In addition to the high level of horizontal aggregation resulting from these acquisitions, the ACCC is concerned that post acquisition the remaining competitors in the market, West Side Cellars and the Ettalong Hotel, will not provide a strong competitive constraint on ALH/Woolworths. The ACCC also notes that there are a number of clubs in the Umina Beach area that operate attached bottleshops for members, but market participants do not consider that these clubs impose a significant constraint on the larger competitors in the market.
54. In particular, the ACCC is concerned that:
- i. West Side Cellars may not provide a significant competitive constraint on the merged entity as it will remain under the ownership of LHG. LHG may not have an incentive to compete with ALH/Woolworths due to its ongoing commercial interest in the Ocean Beach Hotel, Ocean Beach Cellars and Umina Foodtown as the lessor of the premises post acquisition; and
 - ii. The Ettalong Hotel may not provide a sufficient competitive constraint post acquisition due to the range and size of the retail liquor offering at this hotel.
55. While the ACCC is concerned that the existing competitors in this market may not provide a strong competitive constraint on ALH/Woolworths post acquisition, the ACCC understands that Wesfarmers intends to open a Liquorland store adjacent to the Coles supermarket in the area in the near future which may provide a stronger constraint. The ACCC is investigating the constraint likely to be imposed on ALH/Woolworths by Liquorland post acquisition.

The ACCC invites market participants to comment on the likely effect of the proposed acquisition of the Ocean Beach Hotel and Umina Foodtown on the local market around the Ocean Beach Hotel and Umina Foodtown, with reference to:

- i. The effect of ALH/Woolworths owning three of the five takeaway packaged liquor licences in the retail market on price competition in this area;
- ii. The extent to which West Side Cellars and the Ettalong Hotel are likely to provide a competitive constraint on ALH/Woolworths post acquisition;
- iii. The impact that Wesfarmers entering this market with a Liquorland is likely to have on competition in the market; and
- iv. The extent to which other liquor retailers, including clubs with attached bottleshops, compete with retail liquor licences in the Umina Beach area.

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The Albion Park Hotel

56. The Albion Park Hotel is a hotel in the Albion Park area near the Shellharbour area south of Wollongong. The Albion Park Hotel operates a medium sized attached bottleshop.
57. Market inquiries undertaken by the ACCC indicate that:
 - i. The Albion Park Hotel currently competes with the Albion Park Cellars, the Oaks Hotel and the BWS Albion Park in the local market for the sale of packaged liquor for off-site consumption in the Albion Park area; and
 - ii. Retail liquor stores in the Albion Park area compete with Dan Murphy's Shellharbour, which is a large format 'destination' store around 5km from the target licence.
58. The ACCC is concerned that the proposed acquisition of the Albion Park Hotel would result in ALH/Woolworths controlling two of the four competitors for the sale of packaged liquor for off-premises consumption in the retail market surrounding the Albion Park Hotel.
59. In particular, the ACCC is concerned that the Albion Park Cellars and Oaks Hotel may not provide a sufficient competitive constraint post acquisition due to the range and size of the retail liquor offering at these locations.
60. The ACCC considers that due to the level of horizontal aggregation in the market post acquisition, ALH/Woolworths may have the ability and incentive to increase prices or reduce service and range levels at the Albion Park Hotel. The ACCC considers that this may be a profitable strategy for ALH/Woolworths as consumers switching consumption patterns as a result of increased prices and/or decreased service levels at the Albion Park Hotel may switch to another ALH/Woolworths store.

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The ACCC invites market participants to comment on the likely effect of the proposed acquisition of the Albion Park Hotel on the local market around the Albion Park Hotel, with reference to:

- i. The effect of Woolworths owning two of the four takeaway packaged liquor stores in the retail market;
- ii. The extent to which the Oaks Hotel and Albion Park Cellars impose a competitive constraint on the Albion Park Hotel;
- iii. The extent to which customers are likely to switch to other Woolworths liquor retail stores in response to an increase in prices or decrease in service at the Albion Park Hotel; and
- iv. The extent to which a reduction in competition in this region may have a flow through to prices offered at other stores in the region, particularly Dan Murphy's Shellharbour.

The Charles Hotel

61. The Charles Hotel is a hotel in the Fairy Meadows area of Northern Wollongong. The Charles Hotel operates a large attached bottleshop.
62. Market inquiries undertaken by the ACCC indicate that the Charles Hotel currently competes with the Towradgi Beach Hotel, the Cabbage Tree Hotel, East Corrimal Cellars, Liquorland Balgownie, BWS Keiraville, BWS Fairy Meadow and Dan Murphy's Corrimal in the local market for the sale of packaged liquor for off-site consumption in the Fairy Meadow area.
63. The ACCC is concerned that the proposed acquisition of the Charles Hotel will result in ALH/Woolworths controlling four of the eight competitors for the sale of packaged liquor for off-premises consumption in the retail market surrounding the Charles Hotel.
64. The ACCC notes that the Charles Hotel operates a relatively large retail liquor outlet which may be a strong competitor in the retail liquor market in the Fairy Meadow area and the removal of this competitor may reduce competition in this market, resulting in an increase in prices and/or a decrease in service.
65. The ACCC considers that due to the level of horizontal aggregation in the market post acquisition, ALH/Woolworths may have the ability and incentive to increase prices or reduce service and range levels at the Charles Hotel. The ACCC considers that this may be a profitable strategy for ALH/Woolworths as consumers switching consumption as a result of increased prices and/or decreased service levels at the Charles Hotel may switch to another ALH/Woolworths store.

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66. In addition, the ACCC notes that while the Towradgi Beach Hotel operates a large attached bottleshop, the remaining competitors, the Cabbage Tree Hotel, East Corrimal Cellars and Liquorland Balgownie, may not provide a strong competitive constraint post acquisition due to either the range of their retail liquor offering or their location relative to the Charles Hotel.
67. Further, the ACCC is also considering the impact the reduction in competition resulting from the acquisition of the Charles Hotel will have on prices and service available at other licences in the market, particularly Dan Murphy's Corrimal which has a price matching retail strategy.

The ACCC invites market participants to comment on the likely effect of the proposed acquisition of the Charles Hotel on the local market around the Charles Hotel, with reference to:

- i. The effect of ALH/Woolworths owning four of the eight takeaway packaged liquor stores in the Fairy Meadow market;
- ii. The extent to which the remaining competitors impose a competitive constraint on the target licence and the existing ALH/Woolworths licences;
- iii. The extent to which customers are likely to switch to other ALH/Woolworths related licences in response to an increase in prices or decrease in service at the Charles Hotel; and
- iv. The extent to which a reduction in competition in this region may have a flow through to prices offered at other licences in the region, particularly Dan Murphy's Corrimal.

Retail markets for the sale of liquor for on-site consumption, entertainment and gaming

68. After assessing competition in the hotel markets within a 3-5km radius of the proposed targets, the ACCC has identified one local market where the number of competitors would be significantly reduced post-acquisition – the market for the sale of liquor for on-site consumption, entertainment and gaming within 3-5km of the **Green Valley Hotel**, located in the south west of the Sydney metropolitan area in the City of Liverpool.
69. The ACCC is investigating whether the proposed acquisition will result in a substantial reduction in competition in the local market for the sale of liquor for on-site consumption, entertainment and gaming in the local market surrounding the Green Valley Hotel.

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The Green Valley Hotel

70. The Green Valley Hotel is a medium sized hotel in the Green Valley area of South Western Sydney, around 5km west of the Liverpool city centre. The Green Valley Hotel has a small attached bottleshop.
71. Market inquiries indicate that the ALH owned Pritchards Hotel is the only competing hotel to the Green Valley Hotel offering the sale of liquor for on-site consumption, entertainment and gaming within 3km. As such there would be no hotel competitors to ALH/Woolworths within 3km of the target post acquisition.
72. The ACCC notes that although post acquisition there would be no hotel competitors to ALH/Woolworths located within 3km of the Green Valley Hotel, there are a significant number of hotel venues offering liquor for on-site consumption, entertainment and gaming in the Liverpool city centre, around 4km East of the Green Valley Hotel. The ACCC notes that there are no alternative hotel venues within 5km to the West of the Green Valley Hotel.
73. Further, while there would be no hotel competitors to the Green Valley Hotel within 3km post acquisition, there are at least two large club venues, the Mounties Club and the Liverpool Catholic Club, within 3km of the target which offer a similar range of services. The ACCC notes that these clubs have a significantly greater number of electronic gaming machines than either the Pritchards Hotel or the Green Valley Hotel.

The ACCC invites market participants to comment on the likely effect of the proposed acquisition of the Green Valley Hotel on the local market surrounding the Green Valley Hotel, with reference to:

- i. The distance customers are willing to travel to access liquor for on-site consumption, entertainment and gaming, noting the competitors to the Green Valley Hotel located in the Liverpool city centre; and
- ii. The extent to which large club venues offering similar services to hotels will impose a competitive constraint on ALH post acquisition.

Barriers to entry and expansion

74. Market inquiries for this matter have indicated that there are limited structural barriers to entry for both retail liquor markets and hotel markets. This is a result of low capital costs and access to buying groups allowing entry with limited purchasing scale.
75. However, the ACCC has found that while structural barriers to entry in these markets are low, there may be significant regulatory and strategic barriers preventing new entry in both the retail liquor and hotel markets.

Retail markets for the sale of packaged liquor for off-site consumption

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76. In the retail liquor market, market participants have indicated to the ACCC that the application process for a new liquor licence can involve significant cost and take up to twelve months to complete. In addition, market participants have indicated that if there is an existing high concentration of liquor outlets it may be impossible to acquire a new licence for that area.
77. In addition to regulatory barriers, market participants have raised concerns that the presence of a large, established competitor such as a Woolworths Dan Murphy's outlet or Wesfarmers 1st Choice Liquor may represent a significant strategic barrier to entry in a local market regardless of whether that market is currently competitive. This is a result of these retailers 'lowest price guarantee' marketing campaigns which may deter new entrants to a market.

Retail markets for the sale of liquor for on-site consumption, entertainment and gaming

78. Market participants have indicated to the ACCC that there may be significant regulatory barriers to new hotels entering the market. These barriers involve the difficulty in acquiring new liquor and gaming licences.
79. In regards to liquor licences, market participants have indicated that opposition from nearby businesses and residents can significantly delay or block the granting of an on-site licence while a high concentration of existing venues in an area can also reduce the chance of being granted a licence.
80. Market participants have indicated that acquiring electronic gaming machine licences is also very difficult in most areas, thus creating a significant barrier to entry as venues without electronic gaming machines are unlikely to be competitive with those that have gaming machines.

The ACCC invites market participants to comment on the height of barriers to entry to the markets identified above and whether these barriers are likely to change if the proposed acquisitions proceed, with reference to:

- i. The degree of difficulty faced by a new entrant in locating an appropriate and available site for a liquor store or hotel in the local markets identified above, including whether there are any zoning or other local government restrictions in place;
- ii. The degree of difficulty faced by a new entrant in obtaining a liquor licence for a liquor store or hotel in the local markets identified above;
- iii. The degree of difficulty faced by a new entrant in obtaining sufficient gaming licences and whether the acquisition increases these barriers;
- iv. The effect of ALH/Woolworths existing licences in the local markets identified above; and
- v. Any other difficulties facing a new entrant in these markets.

Issues unlikely to pose concerns

The NSW retail liquor market

81. In the NSW retail liquor market, the ACCC considers that the more significant competitive constraints on ALH/Woolworths are likely to come from competitors with a similar state-based offer. This includes Wesfarmers (1st Choice, Vintage Cellars and Liquorland) and the major banner groups such as Cellarbrations and Bottle-O.
82. While this is the case, it does not necessarily mean that a group of independent liquor retailers (such as LHG) do not impose a constraint on ALH/Woolworths' state retail offers. In setting its state offers, ALH/Woolworths is likely to consider the competitive position of its stores against all major competitors. This could include a group of independent liquor retailers (even if the retailers do not standardise their offers or brand).
83. In this particular matter, the ACCC notes that the largest transaction, the acquisition of LHG hotels, involves 10 liquor retailers. This compares to over 330 ALH/Woolworths liquor stores in NSW. As such, it seems unlikely that this proposed acquisition alone would materially alter the competitive constraints imposed on ALH/Woolworths state retail offers.
84. Of the remaining four retailers subject to the transactions, two are Waugh Group licences and two are De Angelis group licences. However, even if the ACCC included these four retailers with the 10 LHG retailers and treated the acquisitions as a single transaction, it would still represent a minimal change in the competitive constraint on ALH/Woolworths at the state level.
85. In this context, the ACCC considers it unlikely that the proposed acquisitions would have a significant impact on competition between brands at a state level due to the very small transfer of market share which would result from the proposed acquisitions.

Local markets for the sale of packaged liquor for off-site consumption and local markets for the sale of liquor for on-site consumption, entertainment and gaming

86. The ACCC has also considered the competitive impact of the proposed acquisitions on the local markets for the sale of packaged liquor for off-site consumption and local markets for the sale of liquor for on-site consumption surrounding the remaining target licences listed in Attachment 1 which are not specifically addressed above.
87. For each of these local markets the ACCC has identified a number of remaining competitors which would be likely to competitively constrain ALH/Woolworths post acquisition.

ALH Group Pty Ltd (75 per cent owned by Woolworths Limited) - proposed acquisition of Hotels and takeaway liquor stores in NSW

The ACCC invites market participants to comment on any competition concerns in any of the following markets:

- i. the NSW market for the sale of packaged liquor for off-site consumption;
- ii. the local market for the sale of packaged liquor for off-site consumption surrounding any of the target licences which are not addressed above; and
- iii. the local market for the sale of liquor for on-site consumption, entertainment and gaming surrounding any of the target licences which are not addressed above.

Wholesale market for the acquisition of liquor in NSW

88. The ACCC estimates that the proposed acquisitions will result in a market share transfer of approximately 1.4 per cent in this market.
89. Market participants did not consider that the proposed acquisitions would result in a significant lessening of competition in the NSW wholesale liquor market as the additional market share gained by ALH/Woolworths will be insufficient to significantly increase their market power when negotiating liquor supply agreements with manufacturers and other suppliers.
90. Accordingly, due to the small transfer of market share, and the lack of significant concern raised by the market, the ACCC believes it is unlikely the acquisition will raise any competition concerns within the wholesale liquor market in NSW.

The ACCC invites market participants to comment on whether the proposed acquisitions raise competition concerns in the NSW wholesale liquor market.

ACCC's future steps

91. The ACCC will finalise its view on this matter after it considers market responses invited by this Statement of Issues.
92. 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.
93. Submissions are to be received by the ACCC no later than **22 March 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

ALH Group Pty Ltd (75 per cent owned by Woolworths Limited) - proposed
acquisition of Hotels and takeaway liquor stores in NSW

information and submissions already provided by the parties, come to a final
view in light of the issues raised above.

94. The ACCC intends to publicly announce its final view by **5 April 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.

Attachment A

List of licences the subject of the proposed acquisition

Some hotels operate an attached bottleshop, where this is the case it is indicated below.

Licences proposed to be acquired from the Laundry Hotel Group

1. Albion Park Hotel, Cnr Terry & Tongarra Rd, Albion Park (attached bottleshop)
2. Balgownie Hotel, 141 Balgownie Road, Balgownie
3. Belfield Hotel, 2 Burwood Rd, Belfield
4. Charles Hotel, Fairy Meadow (attached bottleshop)
5. Chester Hill Hotel, 196 Waldron Rd, Chester Hill
6. Chittaway Tavern, 100 Chittaway Bay Rd, Chittaway (attached bottleshop)
7. Club Tavern, 2 Scott St, Liverpool
8. Family Inn, 278 Victoria Rd, Rydalmere (attached bottleshop)
9. Farmers Home Hotel, 2-6 Hammond Ave, Wagga Wagga
10. Golfview Hotel/Motel, 150 Rawson Rd, Guildford
11. Granville Hotel, 10 Goode St, Granville
12. Greenacre Hotel, 160 Waterloo Rd, Greenacre
13. Harlequin Hotel, 152-156 Harris St, Pyrmont
14. High Flyer Hotel, Cnr Marion St & Birch St
15. Honeysuckle Hotel, Lee Wharf C, Honeysuckle Drive, Newcastle
16. Horse & Jockey, Cnr Parramatta Rd & Knight St, Homebush
17. Hume Hotel, 501 Hume Highway, Yagoona (attached bottleshop)
18. Jamison Hotel, 186 Smith St, Penrith
19. North Wollongong Hotel, 3 Flinders St, North Wollongong
20. Ocean Beach Hotel, Cnr Trafalgar St & West St, Umina (attached bottleshop);
Ocean Beach Cellars, 307 Trafalgar Ave, Umina (drive through bottleshop,
operating under the same licence as the Ocean Beach Hotel)
21. Regents Park Hotel, 4 Amy St, Regents Park (attached bottleshop)
22. Tolland Hotel, 245 Bourke St, Wagga Wagga (attached bottleshop)
23. Umina Foodtown, Umina Mall, Ocean Beach Road, Umina (detached
bottleshop)
24. Villawood Hotel, 924 Woodville Rd, Villawood
25. Yagoona Hotel, 299 Cooper Rd, Yagoona

Licences proposed to be acquired from the Waugh Group

26. Billabong Hotel, 153 Merrylands Rd, Merrylands
27. Blue Cattle Dog, Mamre Road, St Clair (attached bottleshop)
28. Gymea Hotel, 41 Gymea Bay Rd, Gymea (attached bottleshop)
29. Lockies Hotel, 1423 Camden Way, Leppington
30. Summer Hill Hotel, 1 Lackey St, Summer Hill

Licences proposed to be acquired from the De Angelis Group

31. Green Valley Hotel, Woodward Crescent, Green Valley (attached bottleshop)
32. Toongabbie Hotel, 15 Aurelia St, Toongabbie (attached bottleshop)