



Australian Hotels Association (AHA)

Submission in relation to:

Competition Policy Review 2014

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2 Summary

The Australian Hotels Association (AHA) is the peak employer association in the hotel, hospitality and accommodation sectors. The AHA is pleased to provide this submission addressing the Consolidated List of Questions relevant to AHA as set out in the Competition Policy Review Issues Paper dated 14 April 2014. Issues include:

- The enforcement of sections of parts of the *Competition and Consumer Act 2010 (CCA)* has resulted in the application from big players distributing goods and services to pubs and hotels seeking and gaining exemptions to behave in anti-competitive ways the Act is designed to counter.
- Many pub and hotel owners are small operators and find “fighting the system” consuming, costly and resource intensive.
- This results in small businesses becoming “price takers” at the discretion of aggressive, litigious behaviour of large firms and entities with concentrated market power.

3 About the AHA

The Australian Hotels Association (AHA) is an organisation of employers in the hotel and hospitality industry registered under the *Fair Work (Registered Organisations) Act 2009*. AHA has more than 5,000 licensed hotel members located in each state and territory. AHA members include all types of hotel, from country pubs to five star resorts.

While some hotels are part of national or international chains or corporate entities that operate in several jurisdictions, the majority are small owner-operated businesses serving their local communities in accordance with the laws of their particular state or territory.

The AHA’s accommodation hotel members are serviced by Tourism Accommodation Australia, a division of the AHA. The AHA has branches located in every Australian capital city and a Canberra-based national office.

4 About the hotel industry

The hotel industry is a significant employer, with more than 278,000 persons employed between the hotel sector (188,000)¹ and the accommodation sector (90,000)², and an annual wages and salaries contribution of \$5.41 billion. In addition there are an estimated 20,000 employees in the casino sector³.

Although some hotels are large-scale operations with hundreds of employees which form part of national or international chains, the majority of AHA members are small, locally-owned businesses serving their surrounding communities. In 2005-06 only 145 of 65,197 businesses in the ABS *Accommodation, Cafes & Restaurants* sector employed more than 100 people.⁴

¹ PricewaterhouseCoopers (2009) *Australian hotels: More than just a drink and a flutter*

² Australian Fair Pay Commission (August 2008), *Accommodation, Cafes and Restaurants Industry Profile, Research Report No. 1/09*

³ Australasian Casino Association, *Submission to the Parliamentary Joint Select Committee on Gambling Reform*, 31 January 2011

⁴ Australian Bureau of Statistics (2007), *Australian Industry 2005-06*

A recent industry report by Ferrier Hodgson states that “the hospitality industry makes a significant contribution to economic output, contributing 2.8 percent of GDP in 2013. The sector provides food, beverage, accommodation, entertainment and gaming facilities to both corporate and leisure users and so forms an integral part of both the business and social fabric of Australia.”⁵

5 “On premise” competition issues hotels

“On Premise” is a licensed industry term which refers to hotel business activity which is generated and focused on the liquor licensed footprint of the hotel. “On Premise” is the priority revenue generator for hotel businesses, as opposed to “off Premise” which generally refers to the sale of products (mainly beverages) for consumption away from the licensed premises. “On Premise” activity includes the sale of alcoholic and non-alcoholic beverages, provision of meals and food, accommodation, and various forms of entertainment including dancing, gaming, wagering and patron competitions.

5.1 Music Licensing

For hotels (and any other business) to be able to play music in their venues, two types of copyright licence are required. The two types of licence are set out below:

- Australian Performing Rights Association (APRA) – the copyright in the song (lyrics, composition, etc)
- Phonographic Performance Company of Australia Limited (PPCA) – the copyright in the recording and/or music video of the song

APRA and PPCA are “collecting societies”. Their members are the persons or companies owning the copyright in the song or the recording. Whilst the level of coverage is unknown, it is fair to say that APRA and PPCA have close to 100% “ownership” of the commercial music copyright environment.

APRA and PPCA charge hotels (and other businesses playing music) licence fees. Those licence fees are then distributed (after costs) back to the copyright owner. APRA and PPCA have exemptions from the Australian Competition and Consumer Commission to conduct their business by what would otherwise be unlawful means (monopoly, cartel).

Hotel operators act as both consumers and businesses in the music market place. The effects of the public interest test means consumers have to continue on the receiving end of price setting and other anti-competitive behaviours. There is currently no technical mechanism for dealing with the effects of the public interest test on businesses as consumers. Hotels are price takers and just have to accept non-competitive practices and engage with the copyright collection societies.

A lack of competition in the market means that APRA and PPCA are able to operate aggressively within the market using litigation to obtain outcomes with little regard to the costs; a course of action unlikely to be mirrored by small business operators for whom legal costs can be exorbitant. The APRA and PPCA litigation costs are absorbed in the fee schedule paid by licensees. If APRA and PPCA had to compete in a market to attract businesses to obtain a licence more effort might ostensibly be focussed on marketing and reducing costs rather than litigation.

⁵ Ferrier Hodgson, 2014, Hospitality Industry Overview, <http://www.ferrierhodgson.com/au/specialisations/hospitality> accessed 20 June 2014

5.2 Pay Television

Hotels deal with two providers of pay television;

- Sky Racing – thoroughbred, harness and greyhound racing
- Fox Sports – NRL, AFL, Rugby

Whilst some racing and sporting events are available on free to air from time to time, the volume is not sufficient to dilute what is effectively a monopoly power. This market concentration in the provision of pay television broadcast of sporting and horse racing events limits competition and puts hotel business operators in the position of “price taker”. This is especially the case in relation to Australian AFL and NRL. Given technical advancements and the availability of multiple platforms, hotel operators may be able to negotiate more favourable rates in the future directly with sporting organisations.

However, it is absolutely at the discretion of Fox Sports as to how they bundle and price packages without tailoring to individual consumer requests, hence over servicing for what the client wants. Again, hotel operators are price takers with little protection from unconscionable conduct or market power provisions of the *Competition and Consumer Act 2010 (CCA)*. The disproportionate power exercised by Fox Sports and Sky Racing is having an effect on productivity outcomes and is anti-competitive.

5.3 Retail Wagering

Each state and territory government has in place licence agreements granting those entities exclusive rights to provide retail wagering as follows:

NSW	Tabcorp
Victoria	Tabcorp
Queensland	Tatts Group
Tasmania	Tatts Group
South Australia	Tatts Group
Western Australia	Racing & Wagering WA
NT	Tatts Group
ACT	ACT TAB

Retail wagering exclusivity means that hotels can only sell wagering acting as an agent for the company holding the exclusive licence in that state or territory. The presence of a monopoly ensures far less productive offerings than would be the case in a competitive environment. Some examples of monopolistic and unproductive business practice caused by a lack of competition are set out below:

- Some states wagering technology is vastly inferior forcing customers to use old technology
- Third line forcing is used to enforce hotels having to pay for Sky Racing to be eligible for an agency
- Commissions paid to hotels are unrealistic and offered on a “take it or leave it basis”
- Customers suffer from not having a satisfactory range of new and competitive products

The following are effects caused by the exclusive licencing:

- Hotels forced to accept commission revenues that are lower than would be in a competitive environment
- Customers are forced to use old technology and wager with outdate products
- Little incentive for hotel agencies to jointly grow the market and increase competition

5.4 On line

The hotel industry also suffers from a competitive disadvantage as a retailer compared to those offering similar products on line, e.g.

- On line gaming – hotels are subject to a rigorous regulatory environment in regard to gaming. They are subject to significant regulation and taxation regimes including e.g. AUSTRAC Anti Money Laundering and Counter Terrorism regulations, gaming taxation, gaming red tape, patron care and reporting. The on line gaming environment is unregulated meaning it is a zero contributor and has no patron care strategies
- On line wagering – on line Corporate Bookmakers do not have to compete with the “bricks and mortar” retail wagering environment run by hotels. Corporate bookmakers have the luxury of being able to avoid paying tax in the jurisdiction a bet is made. Most are domiciled in smaller jurisdictions such as Northern Territory, Tasmania and Norfolk Island. This is simply because it is “cheaper” to buy a licence in a smaller jurisdiction.

6 Regulatory environment in the hotel industry

The focus of state legislation regulating the hotel industry in the years since the 1995 agreement to the “institutional framework” has further emphasised policies of harm minimisation and responsible hospitality and gaming trading practices. These policies support much of the regulatory content of existing legislation and positively reinforce the “public benefit” gained for the community from the legislation. The relevant Acts in each state have generally similar objects that deal with regulating the hotel industry to achieve:

- The responsible supply and service of liquor and gaming services in a way that is consistent with the expectations of the community
- Minimised harm, and the potential for harm, from misuse of the industry’s products and services
- Minimised adverse effects on the health or safety of members of the public or the amenity of the community

The hotel industry understands its responsibilities to the community and supports the need for a regulated market in its products and services. Despite intense regulation, the hotel industry remains highly competitive with participants striving to meet the requirements of the public while maintaining the principles of responsible hospitality practice.

The hotel industry contends that state governments should not be required to again review the legislation regulating the industry in the manner required following the introduction of the 1995 arrangements. Current legislation has recognised relevant competition principles applicable to the industry and legislative amendments have been subjected to a “Public Benefits Test” over the ensuing years. Relevant legislation is reviewed regularly and has achieved the public benefit of responsible trading within a competitive environment.

7 Conclusion

This paper concentrates on raising key competition issues at a high level. In summary:

- The monopolies encountered in the hotel industry are to the detriment of business productivity and consumer benefit.
 - The highly regulated industry is designed by state and territory governments to protect the consumer, but at the same time allows a competitive environment.
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