APSAD

Competition Policy Review Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

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17 November 2014

Dear Review Panel.

Submission on the Competition Policy Review draft report, September 2014

The Australasian Professional Society on Alcohol and other Drugs (APSAD) expresses its thanks to the Review Panel for providing an opportunity to respond to the draft report of the Competition Policy Review.

APSAD is Australia's leading multidisciplinary organisation for professionals involved in the drug and alcohol field.

APSAD is dedicated to promoting improved standards in clinical practice for medical practitioners and other health professionals who deal with alcohol and other drug-related problems in the course of their work. It also provides a network of drug and alcohol professionals in Australia, New Zealand and the Asia Pacific. The Society is also involved in promoting population health, particularly as it relates to preventive interventions concerning alcohol, tobacco, pharmaceutical products and illicit drugs.

Through its internationally recognised scientific journal, the *Drug and Alcohol Review*, and its annual Scientific Conference, APSAD provides a forum for the latest research on the nature, prevention and treatment of physical, psychological and social problems related to the use of psychoactive substances.

APSAD currently has over 380 members across Australia and around the world. The Society has particularly strong links with New Zealand and the Asia Pacific region.

Our members represent a wide range of professional disciplines including; administrators, educators, counsellors, general practitioners, nurses, physicians, psychologists, medical researchers, pharmacists, policy advisors, psychiatrists, social/behavioural researchers, and public health experts.

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Our responses to the draft report may be summarised as follows:

1. The report overlooks some important general principles about how alcohol, tobacco and potentially harmful pharmaceutical products should be exempt from the types of competition rules that appropriately apply to other goods and services that do not have a comparable or significant harm potential, and that limiting trading hours and places of sale (including outlet density) should be permissible in the interest of population health.
2. The final report could highlight, far more strongly, the existence of the bargain between the state and people who sell alcohol, tobacco and pharmaceutical products that the purveyors of these products will serve the state's and community's interests in certain ways in return for being given a partial monopoly (i.e. protected from fully open competition), and
3. The final report should emphasise that the lowest price to the consumer and unrestricted competition should not dominate all other considerations for such products. In particular, individual and population health considerations relating to psychoactive substances need to be treated as higher priorities than the promotion of competition and facilitating the lowest prices to consumers.
4. The Draft Report includes a regrettable, and wrong, illustration about user choice with respect to drug rehabilitation programs.

General principles about how competition policy should deal separately with alcohol, tobacco and pharmaceutical products

APSAD submits that alcohol, tobacco and pharmaceutical products should be exempted from the types of competition rules that appropriately apply to other goods and services that do not have a comparable or significant harm potential. To treat all goods and services as being subject to the same competition rules directly overlooks the fact that different products have different potentials for creating harm to individual and population health and well-being, and that this needs to be taken into account in applying competition policies.

We understand that other submissions to the Review Panel have spelled out in detail the scientific research that clearly demonstrates how lifting restrictions on trading hours for alcohol sales, and the locations and density of alcohol sales, directly causes increases in alcohol-related harms in both public and domestic places. These harms include acute problems such as assaults and road crashes, and longer term problems such as alcohol -related diseases.[1] It is crucial, APSAD believes, to give local governments with responsibilities for planning and zoning, and the state and territory liquor and tobacco licensing authorities, wide scope to limit the availability of these particularly harmful psychoactive substances.[2] Accordingly, we suggest that Draft Recommendation 10 (page 32) be amended to emphasise the important role of planning and zoning in restricting access to alcohol and tobacco products in the interests of population health and well-being.

[1]Gao, C, Ogeil, R & Lloyd, B 2014, *Alcohol's burden of disease in Australia*, FARE and VicHealth in collaboration with Turning Point, Canberra and National Drug Research Institute 2007, *Restrictions on the sale and supply of alcohol: evidence and outcomes*, National Drug Research Institute, Curtin University of Technology.

[2]Babor, TF, Caetano, R, Casswell, S, Edwards, G, Giesbrecht, N, Graham, K, Grube, JW, Hill, L, Holder, H, Homel, R, Livingston, M, Osterberg, E, Rehm, J, Room, R &Rossow, I 2010, *Alcohol: no ordinary commodity - research and public policy*, 2nd edn, OUP, Oxford.

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Accordingly, we are concerned that the draft report states that:

> *Anti-competitive regulations remain in place despite significant progress made under NCP. The Panel recommends that regulations restricting competition be reviewed by each jurisdiction, with particular priority given to regulations covering planning and zoning, retail trading hours, taxis, pharmacy and parallel imports (page 5).*
>
> *The Panel recommends that remaining restrictions on retail trading hours be removed (p. 67).*

APSAD acknowledges that restrictions on the areas listed are direct limitations on competition, but, on balance, strong restrictions on alcohol, tobacco, and potentially harmful pharmaceutical products are essential to enhance population health.

Strengthening the bargain between the state and people who sell harmful products that protects the latter from full competition

The final report could highlight, far more strongly than does the Draft Report, the existence of the bargain between the state and people who sell alcohol, tobacco and pharmaceutical products that the purveyors of these products will serve the state's and community's interests in certain ways in return for being given a partial monopoly, that is, protected from fully open competition. Such protection is inherent in the state's licensing of professions, including pharmacists, in that practising in the profession is limited to those who have certified expertise and who practise within the limits of government regulation. Similarly, it is inherent in the state's licensing of places and persons selling alcohol.

This bargain, which impairs full competition when it is working effectively, is not at all clear in the statements of principles underlying the Draft Report, nor does it come through strongly enough in the draft recommendations.

APSAD is conscious that its support for restrictions on the availability of alcohol and tobacco, in particular, has anti-competitive elements and entails protecting some retailers from fully open competition. This is most obviously the case when the research evidence that alcohol and tobacco related harms can be reduced by reducing the density of outlets of these products is well implemented in the interests of population health.[3] We assert that this degree of protection, besides mildly influencing consumer decisions about purchases so as to reduce harms from use, also offers a substantial incentive to the retailers to comply with the regulations restricting availability of the products they sell.

This bargain between the state and retailers applies to retail pharmacies as well as to retailers of alcohol and tobacco products. APSAD believes that the current requirement that a qualified pharmacist should always be available in retail pharmacies, whilst they are open, is essential. The protection of consumers requires them to be advised, by a qualified pharmacist, about the pharmaceutical products that they are purchasing. APSAD does not hold a strong view about the necessity or otherwise of pharmacies being owned by pharmacists (p. 76) but it urges the Review

[3] Livingston, M 2011, 'Alcohol outlet density and harm: comparing the impacts on violence and chronic harms', *Drug Alcohol Rev*, vol. 30, no. 5, pp. 515-23.

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Panel to emphasise the need for pharmacists to always be present whilst their pharmacies are open, and for pharmaceutical sellers to act within professional guidelines and government regulations in their sales practices.

Competition policy that promotes free competition and the lowest price to the consumer should not override population health policy considerations

APSAD urges that the final report should emphasise that competition rules should not give dominance to outcomes of the lowest price to the consumer. This is because, with regard to psychoactive substances such as alcohol, tobacco and many pharmaceutical products, the overall well-being of our community will be enhanced by strong anti-competitive controls in these areas including, as recognised by all Australian governments, the need to use price signals as instruments to inhibit consumption.[4] Individual and population health considerations relating to psychoactive substances need to be treated as higher priorities than industry profitability and the lowest prices to consumers.

The Draft Report states:

> *Competition policy is aimed at improving the economic welfare of Australians. It is about making markets work properly to meet their needs and preferences.*
> *In the Panel's view, competition policy should:*
> - *make markets work in the long-term interests of consumers… (p. 4).*

APSAD agrees with the sentiment but is concerned that its operationalisation in the body of the report is flawed. Placing substantial restrictions on individuals and companies that wish to market alcohol and tobacco, as demonstrated by the research evidence of how this reduces harms to individuals and the community, are crucial ways of making markets work in the long-term interests of consumers. Unfortunately, however, too much of the Draft Report emphasises that minimising prices and removing restrictions on availability (sales outlet density and trading hours) is the way to enhance the long-term interests of consumers. APSAD submits that the research evidence shows that the actual position is the opposite of this with respect to alcohol, tobacco, and many pharmaceutical products.

Furthermore, the draft report reminds us of policy decisions made in the past:

> *In 1995 all Australian governments agreed that legislation (including Acts, enactments, ordinances and regulations) should not restrict competition unless it could be demonstrated that the benefits of the restriction to the community as a whole outweighed the costs, and further that the objectives of the legislation could only be achieved by restricting competition* (p. 75).

APSAD is concerned that the way this principle has been implemented during the intervening years has often failed to respect the exception allowing restriction of competition where it is demonstrated that the benefits of the restrictions to the community as a whole outweighed the costs. The massive expansion in availability of alcohol in a number of jurisdictions, most prominently Victoria, through lifting restrictions on trading hours and outlet densities, has caused

[4]Wagenaar, AC, Salois, MJ &Komro, KA 2009, 'Effects of beverage alcohol price and tax levels on drinking: a meta-analysis of 1003 estimates from 112 studies', *Addiction*, vol. 104, no. 2, pp. 179-90.

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substantial direct harms to the community.[5] In contrast, the significant increase on restrictions of availability of tobacco products that have occurred over a similar timeframe have produced outstanding population health outcomes.[6] For these reasons, APSAD would like to see the Final Report include a statement about the failure to implement this principle adequately over the last two decades and the way that future competition policy needs to more appropriately balance population health and other considerations.

APSAD further contends that the second condition quoted from p. 75, that the objectives could only be achieved by restricting competition, is an unrealistic and untestable standard. Governments seek to reduce harms from alcohol, tobacco and pharmaceuticals with a variety of strategies, which optimally will work together, and the existence of other strategies, even if they are effective, is not a sufficient argument against a strategy with a proven ability to reduce incrementally such harms.

User choice and commissioned services

In discussing more consumer choice in how human services are delivered (pp. 146 ff), the Draft Report refers to commissioned services in the following terms:

> *Commissioned services: these are services where user choice is unlikely to work as a model, for reasons such as:*
>
> *…*
>
> • *the service is being provided for people who are not able to make the appropriate choices themselves (such as drug rehabilitation); or…*(p. 147).

While we appreciate that the words in parentheses are given as an illustration, the illustration is false. Contemporary approaches to drug rehabilitation emphasise the importance of the person receiving such interventions to work collaboratively with their therapists to develop, implement and review their treatment plans and outcomes. People in drug rehabilitation programs are definitely able to make the appropriate choices themselves, contrary to what the Draft Report states. APSAD urges the report's authors to find a more apposite example.

Thank you again for this opportunity to comment on the provisions of the Draft Report.

Dr Rose Neild
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Australasian Professional Society on Alcohol and other Drugs

[5] Gao, C, Ogeil, R & Lloyd, B 2014, *Alcohol's burden of disease in Australia*, FARE and VicHealth in collaboration with Turning Point, Canberra.

[6] National Preventative Health Taskforce, Tobacco Working Group 2009, *Tobacco control in Australia: making smoking history*, Technical Report No 2, including addendum for October 2008 to June 2009, [Department of Health and Ageing], Canberra.

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