

To Minister for Small Business

Competition Review Panel

28.4.15

In our view:

The application of Competition Policy to alcohol regulation must prioritise the minimisation of harm as the primary principle.

We oppose alcohol being sold in supermarkets as this will significantly increase in the availability of alcohol in Australia and undermine Government efforts to reduce harms.

More alcohol outlets equals more antisocial activities

Significant harms are caused by alcohol. Government action is important.

Let's put people before profits

Thank you

Andrew Woodhouse

President

Potts Point and Kings Cross Heritage Conservation Society

Saving our Past for our Future

INFORMATION BRIEF: FARE's assessment of the Competition Policy Review final report

Key points

- The Competition Review Panel's final report has been completed and has recognised:
 - ✓ the need for alcohol to be regulated in Australia due to the harm it causes;
 - ✓ the importance of harm minimisation as an objective of liquor licensing legislation in Australia; and
 - ✓ the need for state and territory governments to be able to set trading hours and planning and zoning controls respective to their needs.
- However, the Competition Review Panel has recommended that *"liquor regulation be included in a new round of regulation reviews"* to ensure that legislation *"does not unduly restrict competition."*
- The Review found that restrictions on the sale of alcohol through supermarkets are anti-competitive and has recommended that these *"be reviewed as part of a new round of regulation reviews."*
- The Commonwealth Government is now consulting on the final report, with submissions due by 26 May 2015, it is important your views are heard as part of this.

Introduction

On 31 March 2015 the Commonwealth Government released the final report of the review Australia's competition policy, which was undertaken by a panel chaired by Professor Ian Harper.

National Competition Policy, dating from the 1990s, has been responsible for much of the relaxation of the regulation of alcohol's availability (through trading hours and outlets numbers) in Australia. When it was established in 2014 the Harper Review was seen by public health advocates as a threat of further deregulation of alcohol controls in Australia.

FARE was instrumental in encouraging the health sector to make submissions to Professor Harper's review. More than 40 submissions specifically about alcohol were made to the panel, not only by those in the public health sector. This has resulted in the final review report acknowledging that alcohol is 'no ordinary commodity' and that the public interest is served by recognising the importance of harm minimisation as an objective of liquor licensing legislation in Australia.

This was a major accomplishment for the combined efforts of the sector and will assist significantly in public health efforts to stop harms caused by alcohol through availability controls.

This *Information Brief* describes the panel's approach to the recommendations about the sale of alcohol and FARE's assessment of these recommendations.

The final report can be found at the [Competition Policy Review](#) website.

The Hon Bruce Billson MP, the minister responsible for competition has announced a further period of consultation and reaction to the detailed recommendations, which will conclude on 26 May 2015.

Organisations are encouraged to make submissions to the Commonwealth Government during this time.

Competition Review Panel's view on alcohol regulation

The Competition Review Panel (the Panel) has acknowledged that there is a clear justification for alcohol to be regulated due to the harm that it causes. In addition, the Panel agrees with *"the many submitters who note that 'Alcohol, because of its potential to cause harms, is not like other products'."*

The Panel notes that: *"The risk of harm to individuals, families and communities from problem drinking and gambling is a clear justification for regulation."*

However, the Panel has not accepted that alcohol should be exempt from Competition Policy, stating that: *"A number of submitters consider that regulations relating to alcohol should be entirely exempt from any review of regulations against competition principles."* Finding instead that: *"...such regulations also restrict competition and reduce consumer choice."*

The Panel notes that: *"Considerable time has elapsed since the NCP reviews of regulation in these areas. Those reviews noted the desirability of revisiting these regulations in future to assess their impact and to compare outcomes in jurisdictions that have implemented competition reforms with those that have not."*

The Panel's view is that alcohol and/or liquor regulations should be reviewed by each state and territory government. They state that: *"As with other regulations, liquor and gambling regulations should be included in a new round of regulation reviews (see Recommendation 8) to ensure that they are meeting their stated objectives at least cost to consumers and are not unduly restricting competition."*

FARE's assessment:

FARE is pleased that the Panel has accepted that there is a clear justification for regulating alcohol and that the panel has recognised that alcohol is not an ordinary product, like cornflakes or washing powder.

However, FARE is disappointed that the Panel did not recommend that alcohol be exempt from Competition Policy. There is opportunity with the recommendation to review state and territory liquor licensing legislation to participate and ensure that a range of voices are heard.

Competition Review Panel's view on harm minimisation

The Panel recognised the importance of harm minimisation in the regulation of alcohol stating that (emphasis added by FARE): *"... given the Panel's view that the risk of harm from liquor provides a clear justification for liquor regulation, any review of liquor licensing regulations against competition principles must take proper account of the public interest in minimising this potential harm."*

However, the Panel also notes that certain liquor licensing legislation restricts competition (such as in Queensland where only premises with a hotel licence may operate detached bottle-shops). They state that: *"It is not obvious to the Panel that these restrictions serve the public interest rather than serving the interests of incumbent retailers. This illustrates the importance of ensuring that any restrictions are designed to achieve clearly defined policy objectives, and then tested to ensure that they are doing so and that they do not have unintended consequences that can harm competition."*

The Panel outlines their lack of expertise in the area, stating that: *"The Panel has neither the expertise nor the resources to assess this evidence, nor to analyse the costs of harm compared to the costs of reduced competition. Such an investigation is beyond the scope of this Review."*

The Panel, therefore recommends that: *"Reviews of these regulations should draw on evidence, including comparing competition and harm reduction outcomes from the different approaches adopted across jurisdictions. The public interest in minimising harm from problem drinking and gambling should be given*

proper weight as part of any such review. The impact of regulatory restrictions on the ability of small businesses to compete should be considered as part of such reviews.”

It is the Panel’s view that it is the responsibility of the party arguing for the retention of anti-competitive regulation to demonstrate public interest grounds. The Panel states that: *“Maintaining a rigorous, transparent and independent assessment of whether regulations serve the public interest, with the onus on the party wishing to retain anti-competitive regulation, is important to ensure that changes in regulation improve the wellbeing of Australians.”*

FARE’s assessment:

It is important that the Panel has recognised the need to minimise the harm from alcohol and recommends that this should be an objective of state and territory liquor licensing legislation. This allows for health to be considered in all liquor licensing regulation across Australia and this is important in protecting people from harm.

There is also an opportunity, through the reviews of liquor licensing legislation, to advocate for harm minimisation to be the primary objective of liquor licensing legislation across Australia.

It is important that the Panel has recognised the need for public interest tests to be applied to liquor licensing legislation. However, the onus of proof to demonstrate that the benefits of anti-competitive regulation outweighs the costs sits with those arguing for a public health interest.

Competition Review Panel’s view on trading hours and planning and zoning rules

The Panel has clarified their intentions around proposed changes to trading hours and planning and zoning laws, stating that: “...the Panel does not propose that the recommendation to deregulate trading hours for sellers of ‘ordinary’ goods and services (see Recommendation 12) should prevent policymakers from regulating trading times for alcohol retailing (or gambling) in order to achieve the public policy objective of harm minimisation.

Similarly, the recommendation that competition be taken into account as an important part of the planning and zoning process (see Recommendation 9) should not be interpreted as removing any ability for governments, in dealing with planning and zoning, to take full account of harm minimisation as an objective.

FARE’s assessment:

FARE is pleased that the Panel has clarified their intentions around the proposed regulation of trading hours and planning and zoning laws. FARE is also pleased that the Panel has recognised the rights of state and territory governments to be able to restrict trading hours and/or set planning and zoning controls relevant to their jurisdiction through their Liquor Licensing and Planning Laws.

Competition Review Panel’s view on selling alcohol in supermarkets

The Panel’s view is that alcohol should be able to be sold in supermarkets, stating that: “Trading hours restrictions and restrictions preventing supermarkets from selling liquor impede competition. The Panel recommends that restrictions preventing supermarkets from selling liquor be reviewed as part of a new round of regulation reviews (see Recommendation 8)^a and that retail trading hours be deregulated (see Recommendation 12).^b”

The Panel also notes that: “Some restrictions on the sale of alcohol (and on gambling) appear to favour certain classes of competitors to the detriment of consumers. All regulations must be assessed to determine whether there are other ways to achieve the desired policy objective that do not restrict competition. However, it is certainly not the Panel’s view that the promotion of competition should always trump other legitimate public policy considerations.”

FARE’s assessment:

FARE is disappointed that the Panel did not accept that alcohol should not be sold in supermarkets. The sale of alcohol in supermarkets is likely to increase access to alcohol as well as the physical and economic availability of alcohol. In turn this will increase alcohol consumption in Australia and increase resultant harms.

However, the Panel has not recommended changes but instead recommended that these restrictions be reviewed as part of the new round of regulatory reviews. This means there will be opportunities to influence these reviews as part of the state and territory government processes.

^a Recommendation 8 states:

All Australian governments should review regulations, including local government regulations, in their jurisdictions to ensure that unnecessary restrictions on competition are removed. Legislation (including Acts, ordinances and regulations) should be subject to a public interest test and should not restrict competition unless it can be demonstrated that:

- *the benefits of the restriction to the community as a whole outweigh the costs; and*
- *the objectives of the legislation can only be achieved by restricting competition.*

Factors to consider in assessing the public interest should be determined on a case-by-case basis and not narrowed to a specific set of indicators. Jurisdictional exemptions for conduct that would normally contravene the competition law (by virtue of subsection 51(1) of the CCA) should also be examined as part of this review, to ensure they remain necessary and appropriate in their scope. Any further exemptions should be drafted as narrowly as possible to give effect to their policy intent. The review process should be transparent, with highest priority areas for review identified in each jurisdiction, and results published along with timetables for reform. The review process should be overseen by the proposed Australian Council for Competition Policy (see Recommendation 43) with a focus on the outcomes achieved rather than processes undertaken. The Australian Council for Competition Policy should publish an annual report for public scrutiny on the progress of reviews of regulatory restrictions.

^b Recommendation 12 states:

Remaining restrictions on retail trading hours should be removed. To the extent that jurisdictions choose to retain restrictions, these should be strictly limited to Christmas Day, Good Friday and the morning of ANZAC Day, and should be applied broadly to avoid discriminating among different types of retailers. Deregulating trading hours should not prevent jurisdictions from imposing specific restrictions on trading times for alcohol retailing or gambling services in order to achieve the policy objective of harm minimisation.

Overall assessment

FARE is pleased with the general outcome of the Competition Review Panel Final Report. The Panel has significantly shifted their views in relation to alcohol policy acknowledging both the harms that it causes and the need for regulation. However, it is disappointing that the Panel has not recommended that alcohol not be sold in supermarkets.

What next?

There is opportunity for further influence as the Minister for Small Business is consulting on the final report to help inform the Commonwealth Government's response.

Written submissions can be made by Tuesday 26 May 2015 to competition@treasury.gov.au.

FARE will send out information in the coming days about how to respond to this invitation for further submissions.

Previous submissions

For more information on Competition Policy Review, please refer to previous submissions by FARE and the National Alliance for Action on Alcohol (NAAA) of which FARE is a member.

FARE November 2014 Submission <http://www.fare.org.au/wp-content/uploads/2015/02/Final-FARE-submission-to-Competition-Policy-17Nov14.pdf>

National Alliance for Action on Alcohol (NAAA) November 2014 Submission <http://www.actiononalcohol.org.au/downloads/submissions/2014/competition-policy-review-submission-nov.pdf>

FARE June 2014 Submission <http://www.fare.org.au/wp-content/uploads/2014/09/FAREs-support-letter-for-NAAAs-National-Competition-Policy-submission.pdf>

National Alliance for Action on Alcohol (NAAA) June 2014 Submission <http://www.fare.org.au/wp-content/uploads/2014/09/Submission-from-National-Alliance-for-Action-on-Alcohol-Competition-Policy-Review-10-June-2014.pdf>