



# ICRC

independent competition and regulatory commission

## **Progress Report**

Container Deposit Scheme

Price Monitoring

Report 2 of 2019, February 2019

The Independent Competition and Regulatory Commission is a Territory Authority established under the *Independent Competition and Regulatory Commission Act 1997* (the ICRC Act). The Commission is constituted under the ICRC Act by one or more standing commissioners and any associated commissioners appointed for particular purposes. Commissioners are statutory appointments. Joe Dimasi is the current Senior Commissioner who constitutes the Commission and takes direct responsibility for delivery of the outcomes of the Commission.

We have responsibilities for a broad range of regulatory and utility administrative matters. We have responsibility under the ICRC Act for regulating and advising government about pricing and other matters for monopoly, near-monopoly and ministerially declared regulated industries, and providing advice on competitive neutrality complaints and government-regulated activities. We also have responsibility for arbitrating infrastructure access disputes under the ICRC Act. In discharging our objectives and functions, we provide independent robust analysis and advice.

Our objectives are set out in section 7 and 19L of the ICRC Act and section 3 of the *Utilities Act 2000*.

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## How to make a submission

This progress report provides an opportunity for stakeholders to provide feedback and evidence to inform the development of the final report. It will also ensure that relevant information and views are made public and brought to the Commission's attention.

Submissions on the progress report close at **5pm Friday 12 April 2019**, and can be emailed to the Commission at [icrc@act.gov.au](mailto:icrc@act.gov.au).

Alternatively, submissions may be made online through the form on the Commission's website: [www.icrc.act.gov.au](http://www.icrc.act.gov.au) or mailed to the Commission's address below.

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The Commission encourages interested parties to make submissions in either Microsoft Word format or PDF (OCR readable text format – that is, they should be direct conversions from the word-processing program, rather than scanned copies in which the text cannot be searched).

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The Commission secretariat may be contacted at the above addresses, by telephone on (02) 6205 0799 or by fax on (02) 6207 5887. The Commission's website is at [www.icrc.act.gov.au](http://www.icrc.act.gov.au).



# Executive Summary

The ACT Container Deposit Scheme (CDS) commenced on 30 June 2018, with the objective to reduce litter, recover eligible containers, increase the recycling rates of used beverage containers and help engage the community in active and positive recycling behaviours.<sup>1</sup>

On 4 April 2018, the Commission received an industry reference from the ACT Government to monitor and report on the impact on ACT beverage prices and competition arising from the introduction of the CDS. The Terms of Reference ask the Commission to:

- monitor the effect of the CDS on beverage prices in the ACT, the performance and conduct of beverage suppliers in the ACT, and any other market impact on consumers;
- recommend any actions to address any adverse effects or behaviours arising from the operation of the CDS; and
- recommend whether price monitoring or any other monitoring is necessary beyond the initial 12-month period.<sup>2</sup>

The Commission has reached an important stage of its monitoring activities, where it can share its draft views on the price and competition impacts of the CDS. This progress report sets out the Commission's draft findings and draft recommendations.

## Overview of draft findings and recommendations

The Commission's monitoring to date found that price increases attributable to the CDS do not appear to be inconsistent with a 'workably competitive' market. A workably competitive market is generally defined, in economics, as having enough rivalry between firms such that prices are determined by underlying costs rather than any market power. In a workably competitive market there could be short periods when prices and costs are out of alignment, as beverage suppliers can choose when to pass on changes in costs. However, rivalry between beverage suppliers will constrain suppliers from increasing prices above costs on a sustained basis.

Based on the information, data and analysis to date, the Commission has found no specific evidence that the CDS has had a material impact on competition. However, the Commission has identified several issues that may have the potential to create barriers to entry and restrict competition should they not be addressed. The Commission has made draft recommendations to address these issues.

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<sup>1</sup> ACT Government 2018a.

<sup>2</sup> Appendix 1.

The Commission is seeking feedback from stakeholders on the draft recommendations and comments on any other issues that may be relevant to this investigation.

### **Price increases are consistent with what would be expected given the nature and magnitude of the scheme costs, based on data received to date**

A key part of the Commission's investigation is to assess whether the price increases attributable to the ACT CDS appear to be consistent with a workably competitive market. To do this, the Commission has compared the estimated price impact from the ACT CDS with the estimated direct costs<sup>3</sup> for the ACT CDS. If, for a sustained period, the price increases resulting from the ACT CDS are larger than the scheme's costs (on a per container basis), it could indicate that the ACT beverage market may not be workably competitive.

The Commission examined the price impact of the CDS on both wholesale and retail prices of eligible beverages. The analysis of wholesale prices was based on non-promotional wholesale price lists provided by first suppliers on a confidential basis. For retail prices, the Commission's analysis was limited to some extent by the data available. The Commission's analysis relied on the Australian Bureau of Statistics (ABS) consumer price indices for water, soft drinks and juices, and beer and promotional retail prices from Ebiquity.<sup>4</sup>

The Commission's draft findings suggest that the increase in beverage prices attributable to the ACT CDS are consistent with what would be expected given the nature and magnitude of the scheme costs.

The Commission has found that non-promotional wholesale prices for eligible beverages, over the period from July to December 2018, increased on average by 12.4 cents per container (including GST) as a result of the CDS.<sup>5</sup> This price increase was higher than the Commission's estimate of the scheme's direct costs of around 7.1 cents per container (including GST). In addition to these direct costs, beverage suppliers incur indirect costs of participating in the scheme such as the cost of compliance, reporting and updating billing systems.

Based on the Commission's analysis to date, retail beverage prices, which are the prices that consumers pay, increased by less than non-promotional wholesale prices. This includes discounts and promotions.

The Commission has found that retail price increases in Canberra appear to be similar to those in Sydney when the NSW CDS was introduced. The average price increase for

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<sup>3</sup> Chapter 2 provides further detail on the direct costs of the ACT CDS.

<sup>4</sup> Ebiquity is an independent media and marketing analytics organisation that monitors advertising across a number of channels such as TV, digital and press.

<sup>5</sup> The wholesale price increase refers to the price paid by retailers, rather than the price paid by the end consumer. The price paid by the end consumer is the retail price, which may be different from the wholesale price for a range of reasons, including discounts offered by wholesalers (including distributors) to retailers and discounts offered by retailers to consumers.

water, soft drinks and juices was around 5 per cent in Canberra following the introduction of the ACT CDS, compared to around 8 per cent in Sydney following the introduction of the NSW CDS. The average price of beer increased by around 2 per cent in Canberra, and also in Sydney, following the introduction of their respective CDSs

In addition, the Commission has found that the CDS may have increased promotional retail prices of alcoholic beverages by around 11 cents per container (including GST), which is less than the price increase for non-promotional wholesale alcoholic beverages.

As described earlier, the average direct costs of the scheme were around 7.1 cents per container (including GST) over the first six months of the ACT CDS. While the direct costs were lower than the observed price increase in non-promotional wholesale beverages, the Commission does not consider the difference to be unreasonable due to several factors. First, beverage suppliers face indirect costs of participating in a CDS, such as compliance and reporting costs and one-off upgrades to systems (for example, billing systems). The Independent Pricing and Regulatory Tribunal (IPART) considered the presence of an additional 1.5 to 2.3 cents per container (including GST) above the average direct costs to be reasonable over the first 12 months of the NSW.<sup>6</sup>

In the ACT, these indirect costs per container may be relatively larger because of reduced economies of scale. These indirect costs are likely to vary significantly across first suppliers<sup>7</sup> because of differences in systems and processes in place (such as those relating to reporting and administration), making them difficult to estimate.

Second, the volatility in the scheme's monthly direct costs may have created cash flow pressures for beverage suppliers and uncertainty around setting an appropriate and stable price, especially in the short time period examined.

Third, part of the difference between the estimated direct costs and the scheme's impact on non-promotional wholesale prices reflects the fact that discounts and promotions are not accounted for in non-promotional prices. It appears that first suppliers may be adjusting discounts and promotional prices to account for the volatility in the monthly direct costs of the ACT CDS.

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<sup>6</sup> IPART 2018d, p 58.

<sup>7</sup> The first suppliers in the ACT pay the scheme costs on a per container basis, as determined by the Scheme Coordinator, and may recover the costs from consumers. Further detail is available in Chapter 2.

The Commission's draft findings have similarities to the findings of IPART on the NSW CDS. As with IPART's findings, the Commission has found that the direct costs of the CDS to be below 10 cents per container. The Commission notes that the scheme's direct costs in the ACT is around 7.1 cents per container (including GST) compared to IPART's estimate of 9.2 cents per container<sup>8</sup> (including GST) for the NSW CDS.

In terms of the price impact of the scheme, the draft findings were less comparable between the Commission and IPART because of differences in the type of prices and data used. For instance, the Commission used non-promotional wholesale prices while IPART used average retail prices which included both promotional and non-promotional data. As described previously, promotional prices may be important as it appears that first suppliers may be adjusting discounts to account for volatility in direct costs rather than non-promotional wholesale prices.

### **The scheme payment model has led to significant month to month volatility in scheme costs and has the potential to adversely affect competition**

The Commission has found that the ACT CDS payment model may create cash flow pressures for the industry, particularly for small first suppliers. This may have the potential to adversely affect competition in the future.

The ACT CDS uses an advance payment model, where first suppliers are invoiced in the month of supply (with seven-day payment terms) based on forecasts of the volume of containers supplied and returned in the ACT. These invoices are then 'trued up' later once the actual volumes are known, so that first suppliers only pay for the actual costs of the scheme.

The cash flow pressures reported by industry relate to the scheme contribution being paid by first suppliers in advance of the scheme costs being known, and the seven-day payment terms imposed by the Scheme Coordinator, Exchange for Change. The Commission has therefore made a draft recommendation to implement an arrears payment model in place of the current advance payment model and to increase the payment terms to 14 days.

In addition, the scheme payment model has led to month to month volatility in the direct costs of the scheme, which ranged from negative 0.4 cents per container to around 11.2 cents per container (including GST) in the period from July 2018 to January 2019. While volatility is likely to reduce in time under the current advance payment model, forecasts will still be used, with the need for true ups.<sup>9</sup> Therefore, an arrears payment model may reduce volatility in direct costs as it is based on actual costs and volumes.

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<sup>8</sup> IPART 2018c, p 27. This is for the period December 2017 to July 2018.

<sup>9</sup> True ups adjustments applied to first suppliers' monthly invoices to adjust the cost differences between the forecast cost and the actual costs of the CDS. Further details on true ups are available in Chapter 2, 4 and 6.

To implement an arrears payment model, an overdraft facility would be required. Therefore, in conjunction with recommending a move to an arrears model, the Commission also recommends that the ACT Government consider providing the security for the overdraft facility, with the associated costs being recovered through the scheme costs.

### **Scheme efficiency can be improved by increasing transparency and harmonising the ACT CDS with other schemes**

Several stakeholders raised concerns about the efficiency of the scheme's costs, particularly those related to the Network Operator, Re.Turn It, and the Scheme Compliance Fee (the costs incurred by the ACT Government for regulating the CDS). The Commission has considered the Australian Beverage Council Ltd's (ABCL) submission to the issues paper to publish the Scheme Compliance Fee. The Commission has made a draft recommendation that the ACT Government consider publishing a contract summary of the Network Operator Agreement and Scheme Coordinator Agreement to increase transparency of the ACT CDS, and to inform interested parties about the costs incurred by the ACT Government in administering the ACT CDS.

Based on submissions received to the issues paper and targeted consultation with first suppliers, the Commission has found that the differences between the CDSs in Australia appear to increase the administrative burden faced by first suppliers operating across multiple jurisdictions. The Commission has made a draft recommendation that the ACT Government and Exchange for Change seek to harmonise the ACT CDS with other schemes across Australia, particularly the NSW CDS, to the extent it would benefit ACT beverage suppliers and consumers.

### **Price and competition monitoring is not likely to be required beyond the investigation period**

At this stage of the investigation, the Commission considers that ongoing price and competition monitoring beyond the initial investigation period is unlikely to be needed. However, the Commission will continue to seek feedback and evidence before making a final recommendation in the final report.

As noted above, the Commission considers that the price changes resulting from the ACT CDS, based on evidence to date, are not inconsistent with workably competitive markets. In addition, the Commission has found no specific evidence of changes in supplier behaviour as a result of the ACT CDS that would restrict or reduce competition in the beverage market. The Commission has identified some issues that may have the potential to adversely affect first suppliers and competition in the future and has made draft recommendations to address them.

## The Commission’s process for this investigation to date

The Commission’s investigation process has involved the collection of information, data analysis and stakeholder consultation.

The progress report represents the second milestone in the Commission’s price and competition monitoring of the ACT CDS. Table 1 shows the Commission’s next steps of the investigation.

**Table 1** Next steps of the investigation

Report or Activity	Date
Progress report released	28 February 2019
Public hearing	20 March 2019
Progress report submissions close	12 April 2019
Final report to the Minister for City Services	31 July 2019

Since the commencement of the investigation, the Commission has consulted with a range of stakeholders, including manufacturers, distributors, wholesalers, retailers, the Scheme Coordinator (Exchange for Change), the Network Operator (Re.Turn It) and consumers.

The Commission recognises the importance of engaging with stakeholders as part of its investigation and has used a range of methods to seek comments from interested parties. The Commission has sought comments through its online feedback form, invited formal submissions from stakeholders, arranged targeted meetings with industry stakeholders, and issued requests for information and data from stakeholders.

To build on the consultation undertaken to date by the Commission, a public hearing is planned for 20 March 2019, with further details available on the Commission’s website. It will provide interested parties with an opportunity to engage directly with the Commission and to provide feedback on the progress report.

The final report will provide the Minister for City Services (the Minister) by 31 July 2019 in accordance with the Terms of Reference, and will set out the Commission’s final findings and final recommendations.

## List of Commission’s draft findings and recommendations

The following list consolidates the Commission’s draft findings and recommendations contained in this progress report.

### Draft findings on scheme costs

1. The direct costs of the CDS averaged around 7.1 cents per container (including GST) over the period July 2018 to January 2019.

2. The direct costs have fluctuated significantly each month, ranging from negative 0.4 cents per container (in November 2018) to around 11.2 cents per container (in August 2018).
3. The monthly volatility in the direct costs mainly reflect the difference between forecast and actual volumes of containers recovered and the associated true ups. The difference between forecast and actual volumes returned has become smaller since the start of the scheme.

### **Draft findings on price impact of ACT CDS**

4. Non-promotional wholesale prices for all eligible beverages increased by an average of 12.4 cents per container (including GST) as a result of the ACT CDS in the period from July to December 2018, with:
  - non-alcoholic beverage prices increasing by 12.3 cents per container; and
  - alcoholic beverage prices increasing 12.6 cents per container.
5. The retail prices of eligible beverages appear to have increased as a result of the ACT CDS. Based on ABS data, the price increase appears to be similar to that observed for eligible beverages in Sydney when the NSW CDS was introduced.
6. The promotional retail price of eligible alcoholic beverages increased by an average of 11 cents per container (including GST) as a result of the ACT CDS in the period from July to November 2018. Similar data for promotional retail prices for non-alcoholic beverages is not available to the Commission.
7. There is no specific evidence to suggest that the introduction of the CDS has impacted the price of beverages not covered by the scheme, such as wine and spirits.
8. The estimated changes in eligible beverage prices do not appear to be inconsistent with a workably competitive market.
9. It is reasonable for suppliers to increase prices above the direct costs of the CDS because of the indirect costs of the scheme.
10. A part of the difference between the estimated direct costs and the scheme's impact on non-promotional wholesale prices reflects the fact that discounts and promotions are not accounted for in non-promotional prices.
11. The month to month volatility in the scheme's direct costs has led to some uncertainty around setting pricing for some suppliers. Suppliers with a preference for stable pricing may prefer to wait until the scheme's monthly direct costs are clearer before making further adjustments to non-promotional prices.

### **Draft findings on other competition and market impacts of the ACT CDS**

12. The ACT CDS may create cash flow pressures for some businesses, particularly small businesses. The pressures result from the scheme contribution being paid by first suppliers in advance of the scheme costs, and the seven-day payment terms imposed by Exchange for Change.
13. The scheme's payment model has contributed to the month to month volatility in scheme costs.

14. The Commission has found no specific evidence of changes in supplier behaviour as a result of the ACT CDS that would restrict or reduce competition in the beverage market.
15. The Commission has found that some beverage suppliers are choosing to simplify the administration of CDSs across jurisdictions by averaging the costs across the multiple schemes.

#### **Draft recommendation on scheme costs**

1. The ACT Government should consider publishing a summary of the Network Operator Agreement and Scheme Coordinator Agreement, including key elements such as the roles and responsibilities of the Network Operator and Scheme Coordinator, the number of collection points, and the Scheme Compliance Fee.

#### **Draft recommendation on other competition and market impacts**

2. The ACT Government and Exchange for Change work with their counterparts in other jurisdictions to harmonise the ACT CDS with other schemes across Australia, in particular with the NSW CDS, to the extent it would benefit ACT beverage suppliers and consumers in the long run.

#### **Draft recommendations to reduce volatility in scheme costs**

3. The ACT CDS adopt an arrears payment model with payment terms of 14 days, in particular if NSW CDS adopts an arrears payment model; such a model would be expected to reduce volatility in scheme costs, improve transparency and reduce administrative burden for first suppliers.
4. The ACT Government consider providing the security for the overdraft facility required to implement an arrears payment model, with the associated costs being recovered as a scheme cost from first suppliers.
5. The period in which a true up can be made is limited to 12 months after the invoice is issued.

#### **Draft recommendation on the need for ongoing price monitoring**

6. Based on the analysis to date, ongoing monitoring of the price and competition impacts of the ACT CDS is unlikely to be needed beyond the initial 12-month period, ending 30 June 2019.

#### **The Commission is seeking feedback on:**

1. What indirect costs do first suppliers incur from participating in the ACT CDS, and how much are these costs? These indirect costs refer to costs that are in addition to those costs invoiced by the Scheme Coordinator.
2. Is there any evidence that the introduction of the ACT CDS has resulted in significant changes in market shares of first suppliers?

3. Should an arrears payment model be adopted in the ACT regardless of whether this payment model is adopted by NSW?
4. Should the period for true up adjustments be limited to 12 months after invoice?
5. Is there any evidence that a significant increase in beverage container supplied in the ACT prior to the introduction of the ACT CDS followed by a corresponding reduction after its introduction?
6. Is there any evidence that the introduction of the ACT CDS has resulted in significant difference in the range of products available or the quantity of beverages consumed by consumers?
7. Is there any evidence that the introduction of the ACT CDS has resulted in significant beverage container movements between NSW and ACT?



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# 1 Investigation process

## 1.1 Background to this investigation

The ACT Government passed legislation to introduce a Container Deposit Scheme (CDS) from 30 June 2018. The objectives of the CDS are to reduce litter, recover eligible containers, increase the recycling rates of used beverage containers and help engage the community in active and positive recycling behaviours.<sup>10</sup>

On 4 April 2018 the Commission received an industry reference from the ACT Government to monitor and report on the price and competition impacts of the ACT CDS. The Terms of Reference are provided at Appendix 1.

## 1.2 The Commission's role and powers

The Commission is an independent commission within the ACT Government. The Commission's purpose is to regulate pricing, access and other matters for relevant industries. The Commission is governed by the *Independent Competition and Regulatory Commission Act 1997* (the ICRC Act).

The Terms of Reference for the investigation were issued under Section 16 of the ICRC Act.

The Commission may seek information from persons if there is reason to believe that information will assist with the monitoring and reporting of prices and competition. Section 41 of the ICRC Act provides for the Commission to require by written notice persons to give information or documents that may assist it in exercising its functions.

## 1.3 The Commission's investigation process

The timing and nature of the Commission's investigation process are guided by the Terms of Reference and the ICRC Act. The Terms of Reference sets out the monitoring period and reporting requirements. The ICRC Act provides that all hearings must be open to the public and that the Commission must invite public submissions.

The progress report represents the second milestone in the Commission's price and competition monitoring of the ACT CDS. Table 1.1 shows the Commission's indicative investigation timeline.

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<sup>10</sup> ACT Government, 2018a.

**Table 1.1 Indicative investigation timeline**

Report or Activity	Date
Issues paper released	5 July 2018
Issues paper submissions closed	17 August 2018
Progress report released	28 February 2019
Public hearing	20 March 2019
Progress report submissions close	12 April 2019
Final report to Minister for City Services	31 July 2019

The Commission is seeking comments on this progress report, particularly on the draft findings and recommendations. The Commission will continue to seek further information and evidence from stakeholders to inform the Commission's final findings and recommendations. The progress report is open for comment until 5pm, Friday 12 April 2019. Interested parties are invited to submit comments in writing (via the ICRC website, email or post) as shown in the 'How to Make a Submission' section on page iii.

Since the commencement of the investigation, the Commission has consulted with a range of stakeholders, including manufacturers, distributors, wholesalers, retailers, the Scheme Coordinator (Exchange for Change), the Network Operator (Re.Turn It) and consumers.

The Commission recognises the importance of engaging with stakeholders as part of its investigation and has used a range of methods to seek comments from interested parties. The Commission has sought comments through its online feedback form, invited formal submissions from stakeholders, arranged targeted meetings with industry stakeholders, and issued requests for information and data from stakeholders.

To build on the consultation undertaken to date by the Commission, a public hearing is planned for 20 March 2019, with further details available on the Commission's website. It will provide interested parties with an opportunity to engage directly with the Commission and to provide feedback on the progress report.

The final report will provide the Minister for City Services (the Minister) by 31 July 2019 in accordance with the Terms of Reference. The final report will set out the Commission's findings from its price and competition monitoring over the period from 1 June 2018 to 30 June 2019 and its final recommendations on improvements to the scheme.

At any time during the monitoring period, the Commission may investigate and report on unfair or unjustified behaviours or market outcomes in accordance with the Terms of Reference.

## 1.4 Purpose of progress report

The progress report is required by the Terms of Reference and will satisfy the draft report requirements under Section 18 of the ICRC Act. In accordance with Section 21 of the ICRC Act, the Commission will seek submissions from interested parties on its progress report and provide the Minister with the final report.

## 1.5 Structure of progress report

The rest of this report provides further information on this investigation, the Commission's approach, and the draft findings and recommendations:

- Chapter 2 describes the key features of the ACT CDS and outlines the different schemes across Australia.
- Chapter 3 describes the Commission's approach to monitoring the price and competition impacts of the ACT CDS.
- Chapter 4 discusses the Commission's draft findings on the direct costs of the ACT CDS.
- Chapter 5 outlines the estimated price impacts of the ACT CDS and discusses whether the changes in container beverage prices are in line with what would be expected in a competitive market.
- Chapter 6 discusses other competition and market impacts of the ACT CDS.
- Chapter 7 summarises the Commission's draft findings and draft recommendations on the need for ongoing price and competition monitoring.

The progress report includes several appendices:

- Appendix 1 contains the Terms of Reference for the price and competition monitoring of the ACT CDS.
- Appendix 2 sets out the Commission's draft statement of compliance with the Terms of Reference
- Appendix 3 sets out the Commission's draft statement of compliance with the ICRC Act.
- Appendix 4 describes the containers eligible for the ACT CDS.
- Appendix 5 summarises the submissions received in relation to this investigation.



## 2 ACT Container Deposit Scheme

### 2.1 Overview of the ACT CDS

The ACT CDS commenced on 30 June 2018 and allows consumers to return empty eligible containers to authorised collection points and receive a 10-cent refund for each container.

### 2.2 CDS participants and financial operation

The key participants in the ACT CDS, besides consumers, are the Scheme Coordinator, the Network Operator, the Materials Recovery Facility (MRF) operator and the first suppliers of eligible containers. The first supplier is either a beverage manufacturer (if it is located in the ACT) or a beverage distributor, wholesaler or retailer (if it is importing beverages from other jurisdictions). The roles of each participant are outlined in Box 1.<sup>11</sup>

#### **Box 1 Key roles of ACT CDS participants**

##### **Scheme Coordinator**

The Scheme Coordinator, Exchange for Change (ACT) Pty Ltd, is responsible for administering the scheme payments account. The Scheme Coordinator is also responsible for the prevention, monitoring and reporting of fraud.

##### **Network Operator**

The Network Operator for the ACT CDS is Re.Turn It (Canberra) Pty Ltd. Its role includes the establishment, administration and operation of a network of collection points,<sup>12</sup> which encompasses container handling, administration, and container return refunds. The Network Operator is paid by the Scheme Coordinator to carry out this role.

##### **Materials Recovery Facility**

The MRF operator for the ACT, Re.Cycle Operations (Canberra) Pty Ltd, can receive a 10-cent refund for eligible containers returned via kerbside collections from municipal services in the ACT and surrounding NSW councils, subject to it reaching a refund sharing agreement with these governments.

##### **First Suppliers**

The first suppliers into the ACT pay the scheme costs on a per container basis, as determined by the Scheme Coordinator, and may recover the costs from consumers.

<sup>11</sup> ICRC 2018, pp 6–7.

<sup>12</sup> Collection points can also be operated by third parties, who are paid the handling fees and refund amounts by the Network Operator.

### Consumers

Consumers can receive a 10-cent refund for each eligible container returned at authorised collection points.

## 2.3 Beverage markets

The beverage industry is composed of many products, manufacturers, suppliers, distributors and retailers. Identifying and defining the relevant beverage markets is a critical step to identifying the beverage industry participants whose behaviour and conduct is impacted by the ACT CDS. The relevant market includes those products or services actually or potentially supplied within the geographic region.

For the progress report and the analysis of prices, the Commission used beverage prices for eligible containers under the ACT CDS, which have been categorised as:

- wholesale prices – these prices are set by manufacturers, wholesalers and/or distributors; and
- retail prices – these prices are set by retailers.

Figure 2.1 shows the composition of consumer prices resulting from wholesale and retail prices, including discounts and promotions at each step of the supply chain. For simplicity in Figure 2.1 other supply chain participants such as distributors and manufacturers can be considered as wholesalers. Further detail on the data used in the Commission’s analysis can be found in Box 2 in Chapter 3.

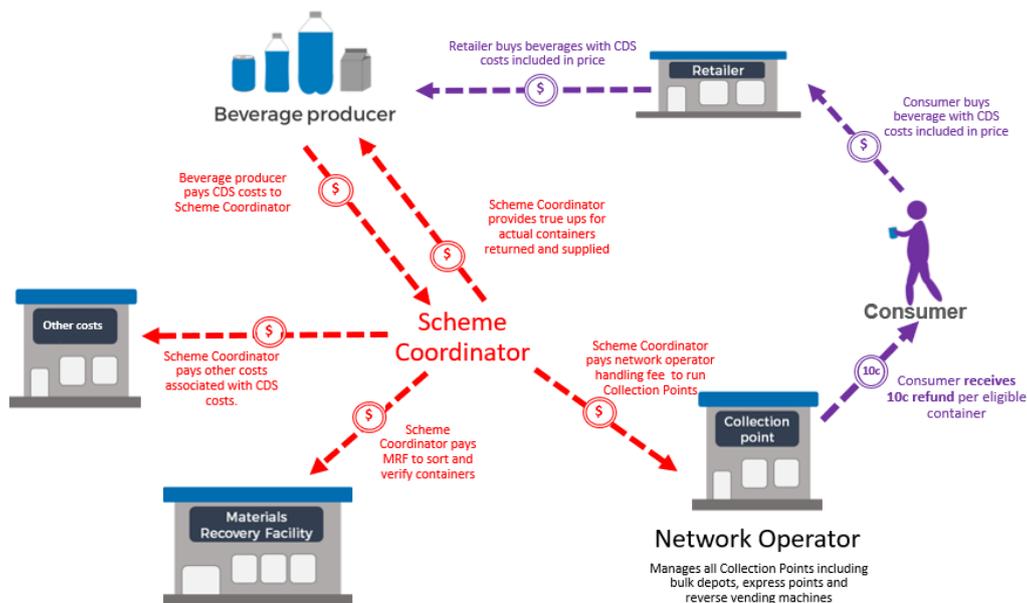
**Figure 2.1 Simple flow of prices in the market**



## 2.4 ACT CDS costs

ACT CDS costs (also referred to as direct costs in this report) are recovered by the Scheme Coordinator from first suppliers. First suppliers are charged based on the volume of containers supplied. Figure 2.2 provides an overview of the ACT CDS cost flows.

Figure 2.2 ACT CDS cost flows



Source: Commission's analysis of ACT Government 2018c.

The key CDS costs and offsets consist of:<sup>13</sup>

- Scheme Coordinator Fee: the costs that the Scheme Coordinator charges first suppliers to administer the CDS.
- Scheme Compliance Fee: the costs that the ACT Government charges to the Scheme Coordinator to regulate the CDS, which the Scheme Coordinator charges first suppliers.
- The forecast monthly network fee: the costs for the Network Operator for administering collection points and handling containers, based on forecast container volumes at collection points., which the Scheme Coordinator charges first suppliers.
- The forecast monthly refund amount: the forecast refunds for containers returned through collection points, provided by the Scheme Coordinator through true ups to first suppliers.
- The forecast processing refund amount: the forecast refunds for containers returned through the MRF provided by the Scheme Coordinator through true ups to first suppliers.

<sup>13</sup> ICRC 2018, pp 8–9.

- Other costs and cost offsets: costs incurred to recover late payments from beverage suppliers; bad debt costs (this relates to unpaid debts that are written off by the Scheme Coordinator); the cost of the Commission’s investigation; and cost offsets from interest earned on CDS funds that reduce scheme costs;

In addition to these costs, the Commission recognises that there are indirect costs incurred by first beverage suppliers to comply and participate in the ACT CDS. These are discussed in Chapters 4 and 6.

Suppliers are invoiced for ACT CDS costs in the month of supply, before their actual supply is known. As such, their container supply and the associated costs are forecast in advance. The Scheme Coordinator is responsible for making these forecasts. A forecast is required because:

- The volume of containers supplied will change over time. Container volumes are estimated a month in advance, using existing sales data that suppliers provide the Scheme Coordinator.
- The CDS container recovery rate will change over time. A higher recovery rate will increase scheme costs because the amount of refunds paid will be higher. Recovery rates are expected to increase over time as more collection points are established and consumers divert more containers from litter and non-recyclable waste streams into recycling through the CDS.
- The route of container recovery through the CDS may change over time. Containers returned through collection points incur a handling fee whereas containers returned through the MRF do not. For a given level of container returns, an increase in the proportion returned via collection points will increase scheme costs.

As shown in Figure 2.2, the CDS is an advance payment model and includes a true up mechanism so that suppliers pay actual costs only. There will be differences between forecast scheme costs, which are calculated and paid in advance, and actual scheme costs, which are calculated in arrears once data is available. The true up adjustments are made in arrears and any differences are added to, or deducted from, the scheme costs charged to first suppliers in later months. The true up mechanism is discussed in more detail in Chapter 4 and 6.

## 2.5 Eligible beverages and containers

To be eligible for the scheme a container must meet certain criteria regarding its size, material and the original beverage. Eligible beverage containers are between 150mL and 3L in size. Containers must be made from glass, plastic (PET and HDPE), aluminium, steel or liquid paperboard (cartons). The eligibility criteria are summarised in Appendix 4.

Container approvals granted under other Australian CDSs will generally be recognised in the ACT CDS. This means that a beverage supplier does not need to seek approval for its container in the ACT if it has already registered its container as part of a CDS in another jurisdiction.

## 2.6 Container deposit schemes across Australia

In Australia, most jurisdictions have now adopted a CDS with the aim to reduce litter and increase recycling rates of beverage containers. As shown in the Table 2.1, the ACT, NSW and QLD implemented a CDS in the last 18 months, while the WA Government is planning to implement a CDS in early 2020. SA and NT implemented a CDS in 1977 and 2012, respectively.

**Table 2.1 Summary of CDSs across Australia**

State/Territory	Commencement Date	Description
South Australia	Since 1977	SA was the first state to implement a CDS with the scheme operating since 1977. The scheme had a return rate of around 77 per cent in 2017-18. <sup>14</sup>
Northern Territory	January 2012	NT was the second jurisdiction to implement a CDS, which commenced in January 2012. Although the scheme is independent of SA's CDS, the two governments have signed an Intergovernmental Agreement <sup>15</sup> to allow for coordination and consistency across the schemes in both jurisdictions. The scheme had a return rate of around 75 per cent in 2017-18. <sup>16</sup>
New South Wales	December 2017	The NSW CDS commenced in December 2017 and had a return rate of around 53 per cent in September 2018. <sup>17</sup>
Australian Capital Territory	June 2018	The ACT CDS commenced in June 2018 and was designed to be consistent with the NSW CDS. The container return rate was 29 per cent for the period from July to December 2018. <sup>18</sup>
Queensland	November 2018	The QLD CDS commenced in November 2018. In order to promote harmonisation across borders, the scheme was designed to be consistent with existing schemes of SA, NT and NSW. The scheme return rate is not yet publicly available.
Western Australia	2020 (expected)	The WA Government is planning to implement a CDS in early 2020. <sup>19</sup> The scheme is expected to be similar to those in other jurisdictions; for instance, it is expected to have the same container refund amount and will complement existing kerbside recycling.
Victoria and Tasmania	N/A	Victoria and Tasmania do not have a CDS.

<sup>14</sup> EPA South Australia 2018.

<sup>15</sup> NT EPA 2018, p 5.

<sup>16</sup> NT EPA 2018, p 7.

<sup>17</sup> The Commission's analysis using the Exchange for Change NSW True Up Newsletters for September and October 2018.

<sup>18</sup> Commission's analysis based on Exchange for Change data provided in January 2019 and Exchange for Change ACT True Up Newsletter for December 2018.

<sup>19</sup> Government of Western Australia 2018.

The Commission recognises that differences between the schemes, particularly those between the NSW CDS and the ACT CDS, are important to consider in this investigation given that many beverage suppliers operate across multiple jurisdictions. The key differences are summarised in Table 2.2 and relate to the type of refunds available to consumers, the different types of collection points, management of collections, the scheme payment models, and container registration fees.

**Table 2.2 Key differences in schemes across Australia**

Category	Context	Description
Type of refunds	Cash and/or electronic refunds	Container refunds in SA are paid in cash only, whereas other jurisdictions have two or more payment options for refunds.
Container registration fees	Fees to register containers under the CDS	SA and NSW are the only jurisdictions where first suppliers must pay a fee to register containers.
Scheme payment model	Advance or arrears payments by first suppliers	ACT and NSW are the only jurisdictions where first suppliers are invoiced in advance for the scheme costs. First suppliers in other jurisdictions are invoiced in arrears.
Management of collection points	Number of operators or coordinators	ACT and NSW each have one network operator, whereas SA and NT have three "super collectors" and four coordinators, respectively, for the purpose of managing collection points and the collection and handling of containers.
Types of collection points	Reserve vending machine, express points, depots, etc.	NSW and QLD are the only two jurisdictions that have more than two types of collection points for customers to return eligible containers.

The differences between the schemes are likely to have implications for the administrative burden faced by first suppliers, which may be passed on to beverage consumers. For example, scheme differences could result in first suppliers having to set up tailored reporting requirements and systems for each scheme, rather than adapting a uniform approach. These issues are discussed further in Chapters 6.

Differences between the ACT CDS and the NSW CDS may give rise to cross border issues. For example, the differences could result in movements of containers between the ACT and NSW if they affect supplier or consumer behaviour. The Commission discusses cross border issues in Chapter 6.

## 3 Commission's approach

### 3.1 Overview of the Commission's approach

The Commission's approach for this price investigation consists of the following steps.

1. Estimate the direct costs of the ACT CDS, based on information provided by the Scheme Coordinator.
2. Estimate the changes in container beverage prices that are attributable to the ACT CDS, using a range of available information.
3. Assess whether the changes in container beverage prices are consistent with a competitive market by comparing them with the direct costs of the scheme.
4. Assess whether changes in other indicators suggest the CDS has affected competition in the ACT beverage market.
5. Based on the results from the above steps, assess whether ongoing price monitoring is required beyond the initial 12-month period.

The Commission consulted on its proposed approach in the issues paper. Stakeholders provided feedback in relation to the second step on calculating the price impact and this is discussed in Section 3.3. The Commission's approach to estimating the price impact attributable to the CDS differs in some ways from the approach outlined in the issues paper, mainly reflecting limitations on the datasets available to the Commission. This is also discussed in Section 3.3.

As part of the Commission's investigation, the Commission undertook consultation with beverage associations and businesses (including both large and small local businesses) and took a direct approach in sourcing data directly from industry where available. This has provided the Commission with valuable insight and understanding of how beverage organisations operate in the ACT.

The Commission is mindful of the range of factors that affect beverage prices beyond the ACT CDS itself, as well as limitations around the available data. Therefore, the Commission has undertaken cross-checks using other available data sources and has supplemented quantitative with qualitative analysis where appropriate.

### 3.2 Estimate the direct costs of the ACT CDS

To estimate the direct costs of the ACT CDS, the Commission used data supplied by Exchange for Change on the first seven months of the scheme (the period from 30 June 2018 to 31 January 2019). The direct costs represent the costs that the Scheme Coordinator recovers from first suppliers through monthly fees. The Commission calculated these costs by summing the following components on a per container basis:

- The advance contributions paid by first suppliers, which depend on the forecast volume of containers returned for each month.
- True up adjustments paid to or by first suppliers to reconcile differences between the advance contributions and the actual fee for the month, based on monthly actual container volumes and types returned.

As noted in Chapter 2, there are additional costs associated with participating in and complying with a CDS by first suppliers. These costs are likely to vary significantly across first suppliers because of differences in systems and processes in place (such as those relating to reporting and administration), making them difficult to estimate. Therefore, the Commission has taken a similar approach to the Independent Pricing and Regulatory Tribunal (IPART)<sup>20</sup> and has not estimated or included these costs in its calculation of the direct costs. This is discussed further in Chapter 5.

### 3.3 Estimate the changes in container beverage prices that are attributable to the ACT CDS

The Commission's first step in monitoring the price impact of the CDS was to establish that eligible beverage prices increased with the commencement of the ACT CDS. This was confirmed by undertaking a t-test to determine whether there was a statistically significant change in retail and wholesale price data for the ACT before and after 1 July 2018 (see Box 2 for details on the data).

#### **Box 2 Data used for the analysis of CDS price impact on the ACT beverage market**

The Commission received pricing data from 10 organisations, such as retailers, manufacturers, wholesalers and distributors. For the purpose of the Commission's analysis, pricing data was first split into the following two datasets based on the company's primary business operation in the ACT:

- wholesale prices – this included non-promotional beverage prices with and without the CDS price impact and was provided by manufacturers, wholesalers and/or distributors; and
- retail prices – this included both promotional and non-promotional beverage prices and was provided by retailers.

<sup>20</sup> IPART 2018c, pp 19–20.

The Commission categorised the data contained in the two datasets in a similar manner to IPART<sup>21</sup> by beverage market (alcoholic or non-alcoholic – see Chapter 2 for more detail) and then by the following beverage categories within each market:

- water;
- soft drink;
- fruit juice;
- beer;
- cider; and
- ready-to-drink (RTD).

The analysis of wholesale prices was based on data between June 2017 and December 2018.

Following this, the Commission used several methods and data sources to estimate the changes in container beverage prices that are attributable to the CDS. The approach involved the following four methods:

**Method 1:** Calculate the average CDS costs passed on by first suppliers in beverage prices, as reported in a sample of commercial-in-confidence non-promotional wholesale price lists provided by industry.<sup>22</sup> Then, confirm that the CDS costs imposed by first suppliers and reported in the dataset are consistent with communication materials provided by industry, such as information fliers or letters used by industry to inform its customers of new costs and price changes.

**Method 2:** Calculate the estimated price impacts of the CDS on retail prices by comparing changes in the Australian Bureau of Statistics (ABS) Consumer Price Index (CPI) for beverages between Canberra and Melbourne. Then, confirm whether this price impact is consistent with the change observed between Sydney and Melbourne following the introduction of the NSW CDS.

**Method 3:** Consider individual price changes since the introduction of the CDS reported by consumers and scheme participants via our website.

**Method 4:** Consider the price changes for promotional alcoholic beverages using Ebiquity data.<sup>23</sup> To assess whether the CDS impacted on promotional retail prices of alcohol, the Commission compared discounts offered in Canberra and Melbourne before and after the introduction of the CDS. The Commission was able to undertake this analysis only for promotional alcoholic beverage prices as it does not have access to a comparable dataset for non-alcoholic beverage prices.<sup>24</sup>

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<sup>21</sup> IPART 2018d, p 100.

<sup>22</sup> Method 1 used prices from January to December 2018.

<sup>23</sup> Ebiquity is an independent media and marketing analytics organisation that monitors advertising across a number of channels such as TV, digital and press.

<sup>24</sup> Method 4 used prices from January to December 2018.

There are a number of advantages and limitations to each of the methods outlined above. When the findings from these methods are considered together, they provide a more complete picture of the price impact of the CDS. The advantages and limitations are outlined below.

- The advantage of the first method is that the Commission can directly identify the impact of the CDS on non-promotional wholesale prices, rather than estimating the impact from pricing data that includes the effects of other factors (for example, changes in input costs). A limitation of this method, however, is that non-promotional prices may be more stable than average beverage prices which include the impact of changes in the magnitude or frequency of promotions and discounts. This method cannot identify any impact of the CDS on the magnitude or frequency of promotions and discounts that differ from the impact of the CDS on non-promotional prices. In addition, the price impact identified from method 1 is for wholesale prices, rather than retail prices that end consumers face.
- The second method has the advantage of using retail price data, which includes both promotional and non-promotional prices paid by end consumers. However, changes in retail prices changes may reflect factors other than the impact of the ACT CDS such as differences in the costs of beverage production or distribution. The Commission does not have access to detailed information about changes in other costs.
- The advantage of the third method is that it can identify the extent to which individual price increases following the introduction of the CDS are consistent with the average impact identified using the first two methods. The limitation of this method is that it cannot reliably identify an average price impact.
- The advantage of the fourth method is that it provides insight as to whether the CDS impacted on the magnitude of promotional discounts for alcoholic beverages. A limitation of this method is that it does not include promotions or discounts for non-alcoholic beverages.

The Commission's approach to estimating the price impact attributable to the CDS differs in some ways from the approach outlined in the issues paper, mainly reflecting limitations on the datasets available to the Commission. The Commission initially considered adopting a similar approach to that adopted by IPART.

However, the Commission's approach to identifying the price impact attributable to the introduction of the CDS, as adopted in this progress report, is different to the approach taken by IPART in its investigation of the NSW CDS, which relied on a retail price dataset and a difference-in-difference methodology.<sup>25</sup> It was not possible for the Commission to implement this approach because of differences in the data available to the Commission compared to IPART.

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<sup>25</sup> IPART 2018a; IPART 2018b; IPART 2018c; and IPART 2018d.

Specifically, the Commission does not have unit level retail price data for a comparison group (such as beverages in other jurisdictions) that would be necessary to implement such an approach. The IPART used retail prices for Sydney and Melbourne to undertake its analysis, while the Commission only has retail price data for Canberra.

The Commission's analysis has been limited to some extent by the availability of data on wholesale and retail prices, and on non-promotional and discounted/promotional prices at the wholesale and retail levels. The Commission is seeking more information on prices to inform the final report.

### **Stakeholder feedback on the approach outlined in the issues paper**

The Commission consulted on its approach to price and competition monitoring following the release of the issues paper. Stakeholders raised several issues, including limitations of ABS data, the time period examined, and the impact of different pricing behaviours of suppliers.

The Liquor Stores Association NSW & ACT (LSA) stated that the ABS consumer price indices for beverages may not be a reliable indicator of the price impact of the ACT CDS. The reason given was that changes in the beverage price indices may reflect factors other than the CDS, including the price movements of ineligible beverages. The Commission agrees with the LSA on the limitations of the ABS CPI data and has used other data sources, in addition to ABS data, to identify the CDS price impact (see Box 2).

The Australian Beverage Council Ltd (ABCL) stated in its submission that it may not be possible for up to eighteen months (from the date of CDS commencement) to accurately determine the impact of the scheme.<sup>26</sup> The Commission intends to review the impacts of the ACT CDS in its first 12 months and make a recommendation on the need for ongoing price monitoring.

The National Retail Association (NRA) submitted that most retailers and suppliers review pricing at different intervals depending on a range of factors, including the type of organisation, the agreement in place and the type of product. The NRA's view is that these factors are important to consider when examining prices.<sup>27</sup> The Commission agrees with this and recognises that there is a range of factors impacting on beverage prices. To inform this report the Commission consulted directly with beverage suppliers to gain a better understanding of pricing practices.

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<sup>26</sup> ABCL Submission 2018, p 6.

<sup>27</sup> NRA Submission 2018, p 2.

### **3.4 Assess whether the changes in container beverage prices are consistent with a competitive market**

For this step, the Commission compared the estimated price impacts and direct costs of the ACT CDS to assess whether the changes in prices are consistent with a workably competitive market. A workably competitive market is generally defined, in economics, as having enough rivalry between firms such that prices are determined by underlying costs rather than any market power. In a workably competitive market there could be short periods when prices and costs are out of alignment, as beverage suppliers can choose when to pass on changes in costs. However, rivalry between beverage suppliers will constrain suppliers from increasing prices above costs on a sustained basis. If, for a sustained period, the price increases resulting from the ACT CDS were larger than the scheme's costs (on a per container basis), it could indicate that the ACT beverage market is not workably competitive. This approach is consistent with that taken by IPART.<sup>28</sup>

The Commission recognises that some potential price impacts of the ACT CDS may take time to be passed through to consumers. For instance, beverage suppliers may update prices according to internal review timelines rather than when the CDS costs are incurred. The Commission will continue to monitor the impacts of the scheme and report on its findings in the final report.

### **3.5 Assess other effects on competition and beverage markets**

In this step, the Commission examined other indicators (see Chapter 6), as outlined in the issues paper<sup>29</sup> and in Table 3.1, to assess whether the ACT CDS affected competition in the ACT beverage market.

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<sup>28</sup> IPART 2018c, p 23.

<sup>29</sup> ICRC 2018, p 19.

**Table 3.1 Indicators for competition monitoring**

Indicator	How the Commission will consider
Market structure or share	Are there changes in market structure or market shares as a result of the ACT CDS? Are firms entering or exiting the ACT market following the ACT CDS?
Barriers to entry	Are there increased barriers to entry as a result of the ACT CDS?
Supplier behaviours	Are there changes in the behaviours for suppliers, distributors or retailers as a result of the ACT CDS?
Consumer choice	Are consumers disadvantaged by reductions in the beverage options available due to the ACT CDS?
Consumer behaviours	Are consumers changing consumption behaviour as a result of the ACT CDS?
Cross border impacts on supply and pricing	Are consumers and suppliers changing beverage purchasing, supply and pricing behaviours as a result of differences between ACT and NSW CDS?
Cross border container movements	What transfers of full and empty containers occurred before and after the introduction of the ACT CDS?

Source: ICRC 2018, p 19.

The Commission consulted directly with first suppliers operating in the ACT to understand how they have responded to other schemes operating in Australia and to better understand pricing practices across the ACT beverage industry. The Commission has also sought pricing and volume data, feedback on how the ACT CDS has impacted on business operations, including any cross border impacts and administrative costs caused by differences in the ACT compared to other costs. The Commission's draft findings from the consultation are reported in Chapter 6.

### **3.6 Assess whether ongoing price monitoring is required beyond the initial 12-month period.**

The final step is for the Commission to assess whether ongoing price monitoring is required beyond the initial 12-month period. In reaching a draft decision on this, the Commission has considered draft findings from the previous steps outlined in this section.



## 4 Direct costs of the ACT CDS

The Commission used data provided by Exchange for Change as the basis for estimating the direct costs of the ACT CDS on a per container basis. The data comprised of:

- the advance contributions paid by first suppliers as per the monthly invoices issued by Exchange for Change for period from July 2018 to January 2019; and
- the true up adjustments applied to first suppliers' monthly invoices to adjust for differences between the forecast and actual costs of the CDS, with collection point true ups occurring monthly<sup>30</sup> and MRF true ups occurring quarterly.<sup>31</sup>

The Commission summed these amounts for each month, then divided each monthly sum by the volume of containers supplied in that month to calculate the average direct cost per container over the whole period and for each month within this period.

The following sections discuss the Commission's draft findings on the direct costs of the ACT CDS in more detail.

### **Box 3 Summary of draft findings for the direct costs of the ACT CDS**

The Commission estimates that the direct costs of the ACT CDS averaged around 7.1 cents per container (including GST) for the period 1 July 2018 to 31 January 2019. However, these costs fluctuated from month to month over this period from around negative 0.4 cents per container to around 11.2 cents per container (including GST). This volatility was due to two factors:

- the scheme payment methodology of billing first suppliers based on a forecast of container volumes and types for a given month; and
- then truing up later once the actual volumes and types are known.

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<sup>30</sup> The first collection point true up occurred in the September 2018 invoice for the months of July and August 2018.

<sup>31</sup> The first MRF true occurred in November 2018 invoice for the months of July, August and September 2018.

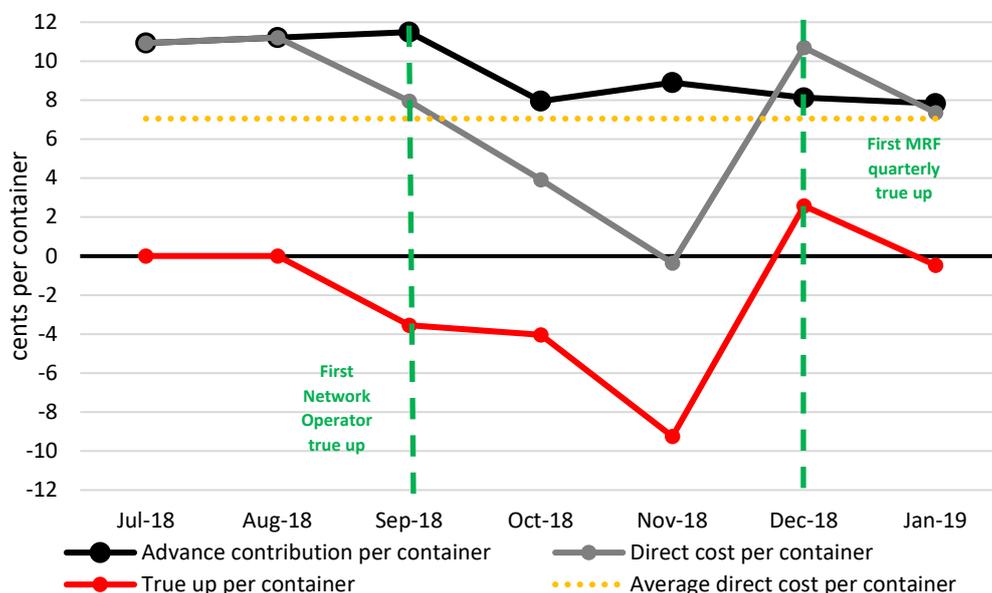
## 4.1 Commission’s estimate of ACT CDS direct costs

The Commission estimates that the direct costs of the ACT CDS averaged 7.1 cents per container (including GST) over the period from 1 July 2018 to 31 January 2019, as shown in Figure 4.1. The monthly direct costs ranged from a low of negative 0.4 cents per container in November 2018 to a high of around 11.2 cents per container in August 2018. The Scheme Coordinator made no true ups in the months of July or August 2018, so the direct cost per container was equal to the advance contribution for the first two months of the ACT CDS.

These draft findings are similar to outcomes for the NSW CDS. IPART reported an average direct cost for the first six months of 9.3 cents per container including GST, varying between 1.0 cent and 15.1 cents per container depending on the month.<sup>32</sup>

As discussed in Chapter 3, to calculate the direct cost in a particular month the Commission summed the advance contribution and the true ups that occurred in the invoice month, and then divided this by the forecast number of containers supplied in the month. For example, the September 2018 invoices for first suppliers contained true ups relating to both July and August 2018; in Figure 4.1 these true ups have been combined as a single true up in the month of September 2018.

**Figure 4.1** Direct costs per container, July to December 2018 (cents per container, including GST)



Source: Commission’s analysis of Exchange for Change data provided in January 2019 and Exchange for Change True Up Newsletter for December 2018.

<sup>32</sup> IPART 2018d, p 8.

The two main adjustments made by the Scheme Coordinator are:

- network operator true up – this is an adjustment to take into account the differences between the forecast and actual containers returned at collection points; and
- MRF operator true up – this is an adjustment to take into account the differences between the forecast and actual containers returned via kerbside collections.

Network operator true ups have occurred in each month since September 2018. In general, actual containers returned at collection points for a month are known at the end of that month, which allows the network operator true ups to occur in the subsequent month. The network true ups ranged from 4.0 cents per container in October 2018 to negative 2.6 cents per container (including GST) in December 2018.<sup>33</sup>

The MRF true ups occur about two months after each quarter, which is when actual volumes of containers recovered at the MRF become known. The first MRF true up of 5.6 cents per container (including GST) occurred in November 2018 and related to the actual costs between 30 June and 30 September 2018.

## 4.2 Volatility in monthly direct costs

The volatility in monthly direct costs largely reflects the scheme's payment mechanism whereby first suppliers are billed in a particular month based on forecasts of container volumes and types for that month. First supplier invoices include a true up by the Scheme Coordinator in subsequent months once the actual volumes and types are known. As such, the difference between forecast return rates and the actual return rates affects the monthly direct cost. This is similar to IPART's findings for the NSW CDS.<sup>34</sup>

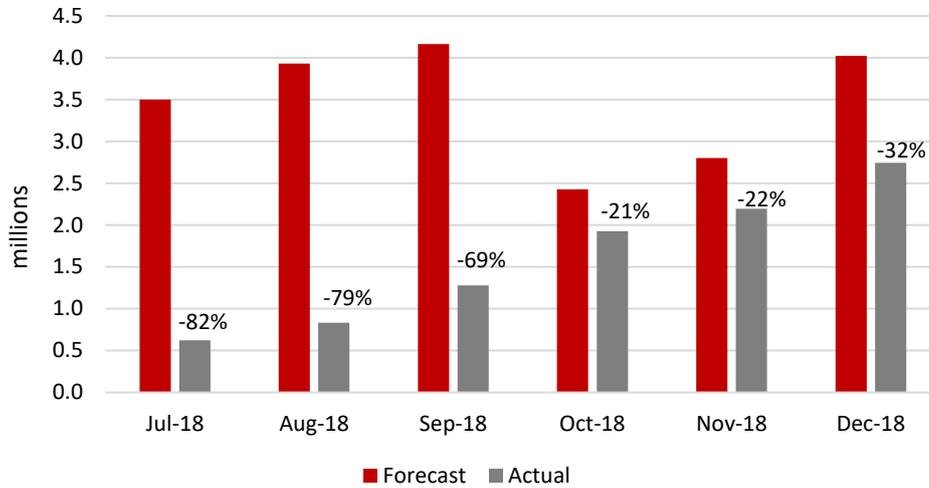
The differences in the forecast and actual container returns at collection points for the first six months of the CDS are shown in Figure 4.2. The figure shows that, in the first three months of the ACT CDS, the actual number of containers recovered was more than 70 per cent lower than forecast, which led to the large true ups shown in Figure 4.1. Figure 4.2 also shows that the difference between forecast and actual volumes of containers recovered at collection points decreased after the first three months.

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<sup>33</sup> Negative true ups increase the amount payable by first suppliers, as the actual costs of the CDS are more than the forecast costs of the CDS. Positive true ups reduce the amount payable by first suppliers, as the forecast costs of the CDS are more than the actual costs of the CDS.

<sup>34</sup> IPART 2018c, p 7.

**Figure 4.2 Collection points – forecast and actual containers returned under the ACT CDS (millions)**



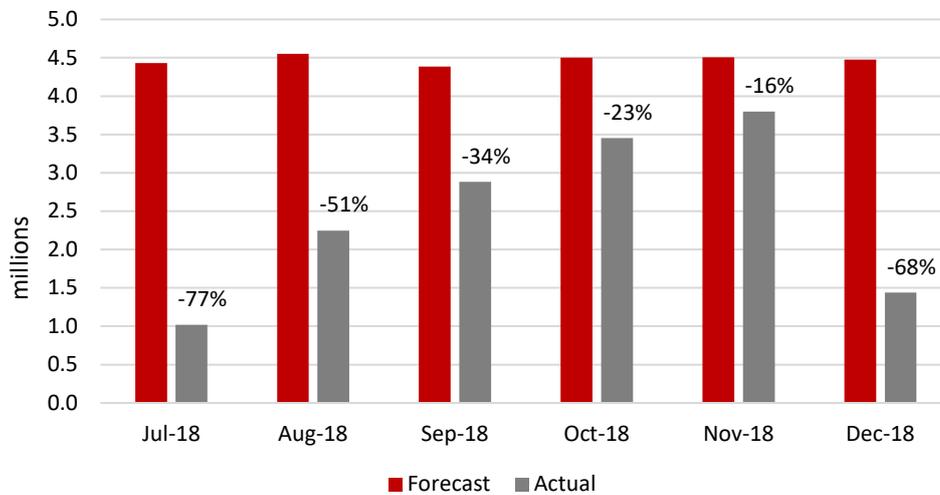
Source: Commission's analysis of Exchange for Change data provided in January 2019

Note: The percentages shown in the figure are the monthly differences between the forecast and actual containers returned.

The difference between forecast and actual container returns at the MRF for the first six months of the CDS are shown in Figure 4.3. The figure shows that the difference between forecast and actual containers returned has been decreasing in line with an increase in actual container returns, with the exception of December 2018. The significant fall in actual containers returned via the MRF for December 2018 could be due to seasonality factors.<sup>35</sup> The Commission will analyse further data on container returns at the MRF in its the final report.

<sup>35</sup> For example, MRF collections could be temporarily reduced during holiday periods, as consumers may not be available when yellow bin collections occur.

**Figure 4.3 MRF – forecast and actual containers returned under the ACT CDS (millions)**



Source: Commission's analysis of Exchange for Change data provided in January 2019.

Note: The percentages shown in the figure are the monthly differences between the forecast and actual containers returned.

### 4.3 Scheme Compliance Fee

The Commission received a submission about the costs of the ACT CDS from the ABCL. It stated the following in relation to the Scheme Compliance Fee:<sup>36</sup>

- the ACT Government should declare the fee amount, the intended use of the funds and what will happen to surpluses; and
- the Commission should consider the imposition of the fee and transparently report both the amount and the justification for its imposition.

In considering ABCL's concerns about the imposition of the Scheme Compliance Fee, the Commission has reviewed the fee and considered IPART's findings that this fee for the NSW CDS represented around 1-2 per cent of annual costs.<sup>37</sup>

Given that the total costs of the ACT CDS are only available for the first three months of the ACT CDS, while the NSW CDS has been operational for over a year, the Commission considers it is too early to determine the appropriateness of the Scheme Compliance Fee as scheme costs have varied from month to month. The Commission will continue to monitor the Scheme Compliance Fee and include its findings on this matter in the final report.

<sup>36</sup> ABCL submission 2018.

<sup>37</sup> IPART 2018d, p 80.

The Commission also considered ABCL's request to publish details about the Scheme Compliance Fee in order to improve transparency. The Commission notes IPART's recommendation on the Scheme Compliance Fee that the NSW EPA should publish a contract summary of the Network Operator Agreement and Scheme Coordinator Agreement.

The Commission considers that, to improve transparency of the ACT CDS more broadly and address the concerns raised by stakeholders, the ACT Government should consider publishing a summary of the Network Operator Agreement and Scheme Coordinator Agreement, including key elements such as the roles and responsibilities of the Network Operator and Scheme Coordinator, the number of collection points, and the Scheme Compliance Fee.

#### **4.4 Draft findings on scheme costs**

The Commission's draft findings relating to the direct costs of the CDS in the ACT are:

1. The direct costs of the CDS averaged around 7.1 cents per container (including GST) over the period July 2018 to January 2019.
2. The direct costs have fluctuated significantly each month, ranging from negative 0.4 cents per container (in November 2018) to around 11.2 cents per container (in August 2018).
3. The monthly volatility in the direct costs mainly reflect the difference between forecast and actual volumes of containers recovered and the associated true ups. The difference between forecast and actual volumes returned has become smaller since the start of the scheme.

#### **4.5 Draft recommendation on scheme costs**

The Commission's draft recommendation relating to the direct costs of the CDS in the ACT is:

1. The ACT Government should consider publishing a summary of the Network Operator Agreement and Scheme Coordinator Agreement, including key elements such as the roles and responsibilities of the Network Operator and Scheme Coordinator, the number of collection points, and the Scheme Compliance Fee.

## 5 Price impacts of the ACT CDS

To estimate the changes in container beverage prices that are attributable to the CDS, the Commission used several methods and data sources as described in Chapter 3.

To assess whether the changes in beverage prices attributable to the CDS are consistent with a competitive market, the Commission compared the estimated price impact from the ACT CDS outlined in this chapter with the estimated direct costs of the ACT CDS outlined in Chapter 4.

The following sections discuss the Commission's draft findings on the price impacts of the ACT CDS and whether the price changes are consistent with a competitive market.

### **Box 4 Summary of draft findings on price impacts of the ACT CDS**

There has been a statistically significant increase in the average retail and non-promotional wholesale price of eligible beverages since the introduction of the ACT CDS, based on the Commission's analysis of price data for the ACT before and after 1 July 2018.

On average, non-promotional wholesale prices of all eligible beverages increased on average by 12.4 cents (including GST) per container due to the introduction of the CDS over the six months from July to December 2018 (Table 5.1). The price impact was similar across beverage types, ranging on average from 12.0 cents to 12.7 cents per container. In addition:

- The price impact was only slightly larger for alcoholic beverages than for non-alcoholic beverages (increases of 12.6 cents and 12.3 cents, respectively).
- There was no evidence of any price impact from the CDS for beverages that were not eligible for the scheme.
- There was no evidence of an increase in ACT beverage prices prior to the introduction of the CDS that was attributable to the CDS.

In terms of the impact on retail prices, the Commission's analysis was limited to some extent by the data available. The Commission has found that changes in the ABS consumer price indices for water, soft drinks and juices, and beer in Canberra, when the ACT CDS was introduced, were similar to those changes in Sydney when the NSW CDS was introduced. This indicates that the retail price changes in the ACT from the ACT CDS may be similar to the retail price changes in NSW from the NSW CDS. In addition, the Commission has found that the CDS may have increased promotional retail prices of alcoholic beverages by around 11 cents per container (including GST) over the period from July to November 2018, which is less than the price increase for non-promotional wholesale alcoholic beverages

The Commission’s draft findings suggest that the increase in beverage prices attributable to the ACT CDS are not inconsistent with a workably competitive market. As mentioned earlier, the Commission has found that non-promotional wholesale prices of eligible beverages increased by an average of 12.4 cents per container (including GST) as a result of the CDS over the period from July to December 2018. However, the average monthly price increase has decreased from a high in July (see Figures 5.2 and 5.4). Over this period, the average direct cost of the scheme was around 7.1 cents per container (including GST).

While the direct costs are lower than the estimated price increase, the Commission considers the difference to not be unreasonable due to several factors:

- the presence of indirect costs incurred by first suppliers, such as compliance and reporting costs and one-off upgrades to systems (for example, billing systems); and
- the volatility in the scheme’s monthly direct costs, which creates cash flow pressures for businesses and uncertainty around setting an appropriate and stable price, especially in the short time period examined.

In addition, part of the difference between the estimated direct costs and the scheme’s impact on non-promotional wholesale prices reflects the fact that discounts and promotions are not accounted for in non-promotional prices.<sup>38</sup> It appears that first suppliers, to some extent, may be adjusting discounts and promotional prices to account for the volatility in the monthly direct costs of the ACT CDS.

**Table 5.1 Average wholesale price increase due to the ACT CDS, July to December 2018 (cents per container)**

Beverage Market	Beverage Type	Price change
<b>All</b>		<b>12.4</b>
<b>Non-alcoholic</b>		<b>12.3</b>
	Water	12.3
	Soft drink	12.5
	Fruit juice	12.0
<b>Alcoholic</b>		<b>12.6</b>
	Beer	12.6
	Cider	12.7
	Ready-to-drink	12.6

Source: Commission’s analysis of confidential data provided by first suppliers in 2018 and 2019.

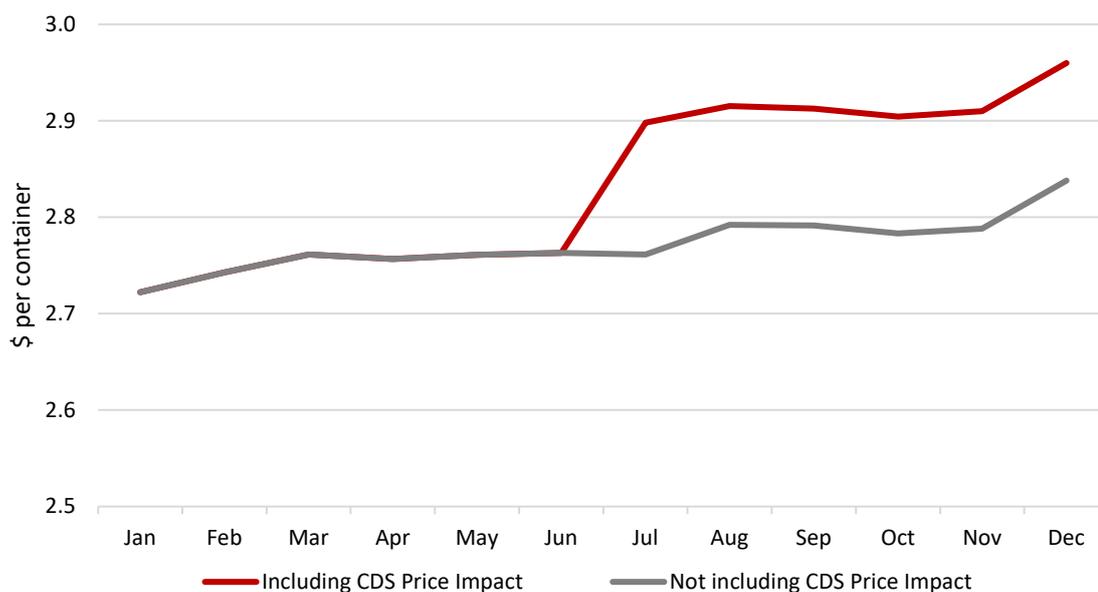
<sup>38</sup> See Figure 2.1 in Chapter 2 for more detail on differences in wholesale and retail prices.

## 5.1 Changes in wholesale beverage prices in the ACT

To assess the changes in non-promotional wholesale beverage prices in the ACT, the Commission calculated the average CDS costs imposed by first suppliers on beverages, as reported in a sample of commercial-in-confidence non-promotional wholesale price lists provided by a number of first suppliers.<sup>39</sup> In most cases, the price lists recorded the non-promotional wholesale prices with and without CDS-related costs. Following this, the Commission confirmed whether the CDS costs imposed by first suppliers and reported in the dataset were consistent with communication materials provided by those suppliers, such as information fliers and letters used by first suppliers to inform their customers of new costs and price changes.

Non-promotional wholesale prices of all eligible container beverages increased by 12.4 cents (including GST) per container due to the introduction of the CDS over the six months from July to December 2018. Figure 5.1 shows the average eligible beverage price increasing with the introduction of the CDS from 30 June 2018. The average increase varied somewhat by product type and from month to month.

**Figure 5.1** Average monthly wholesale prices of eligible beverages, January to December 2018 (\$ per container, GST inclusive)



Source: Commission's analysis of confidential data provided by first suppliers in 2018 and 2019.

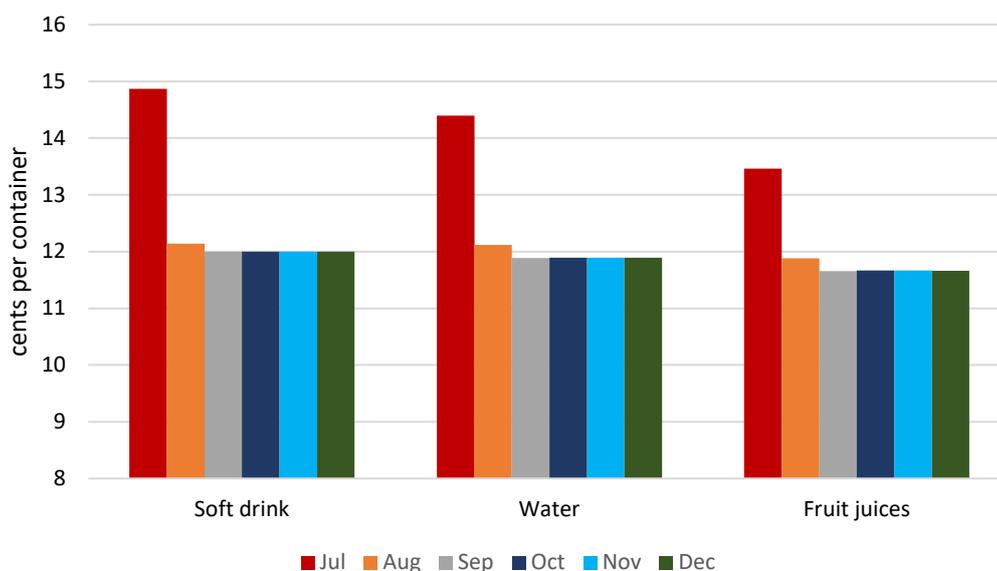
<sup>39</sup> The wholesale price increase reported in this section refers to the price paid by retailers, rather than the price paid by the end consumer. The price paid by the end consumer is the retail price, which may be different from the wholesale price for a range of reasons, including discounts offered by wholesalers (including distributors) to retailers and discounts offered by retailers to consumers.

## Non-alcoholic beverage prices

For eligible non-alcoholic beverages, average prices increased by around 12.3 cents per container (including GST) as a result of the CDS in the period from July to December 2018. The increase ranged from a low of 12.0 cents for fruit juices to a high of 12.5 cents for soft drinks.

The average price impact of the CDS by month is shown in Figure 5.2 (based on non-promotional wholesale prices). For all beverage types, the average price impact was highest in July 2018 before a decrease in August 2018 and a slight decrease in September 2018. This may be due, in part, to beverage suppliers issuing new price lists effective from August 2018 to reflect the reduced costs of the ACT CDS.<sup>40</sup> From September 2018, the price impact remained largely unchanged for all non-alcoholic beverage types.

**Figure 5.2** Average monthly CDS impact on eligible non-alcoholic beverage prices, July to December 2018 (cents per container, GST inclusive)



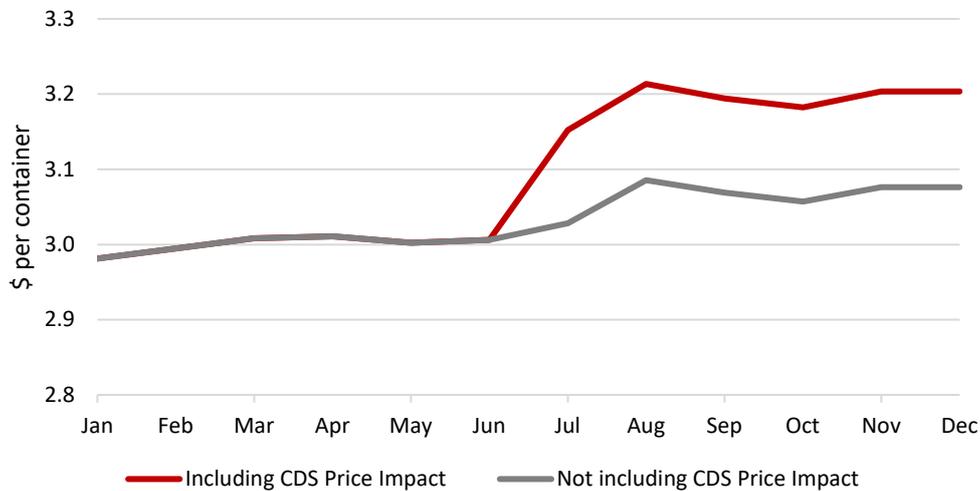
Source: Commission's analysis of confidential data provided by first suppliers in 2018 and 2019.

## Alcoholic beverage prices

For eligible alcoholic beverages, average prices increased by around 12.6 cents per container between July and December 2018 as a result of the CDS. The average price increase was largely the same for all beverage types, varying by only 0.1 of a cent (see Table 5.1). Figure 5.3 shows the average eligible alcoholic beverage price increasing with the introduction of the CDS.

<sup>40</sup> Coca-cola Amatil 2018.

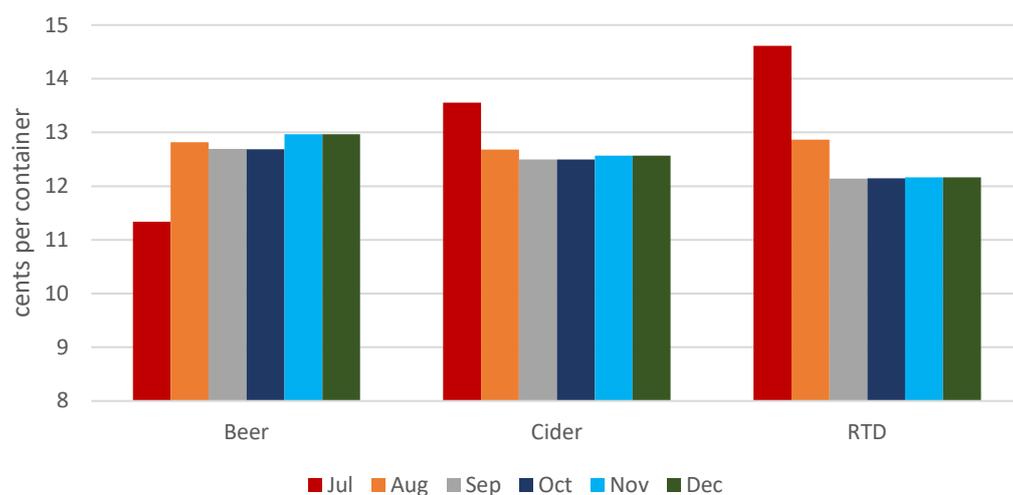
**Figure 5.3 Average monthly wholesale prices of eligible alcoholic beverages in 2018 (\$ per container, GST inclusive)**



Source: Commission's analysis of confidential data provided by first suppliers in 2018 and 2019.

The average price impact of the CDS by month is shown in Figure 5.4 (based on non-promotional wholesale prices). In July 2018 the price impact varied by beverage type; it was relatively larger for RTD beverages and smaller for beer. The difference in the price impact narrowed in August 2018 and September 2018 such that the price impact was largely the same for these beverages from September 2018. As with non-alcoholic beverages, the price impact has remained largely unchanged in the period from September to December 2018.

**Figure 5.4 Average monthly CDS impact on eligible alcoholic beverage prices, July to December 2018 (cents per container, GST inclusive)**



Source: Commission's analysis of confidential data provided by first suppliers in 2018 and 2019.

### **Price impact consistent with industry communication material**

The Commission reviewed industry communication materials provided in-confidence for the purpose of this investigation. The material provided included formal letters to customers, brochures about the ACT CDS, price lists which identified the CDS impact, and media statements about the CDS impact. For example, Coca-Cola Amatil released a media statement in July 2018 on its changes to its prices that were attributable to the ACT CDS.<sup>41</sup>

The Commission reviewed the price changes reported in the communication material to those reported in the dataset provided by first suppliers. The comparison showed that the reported non-promotional price increases attributable to the CDS in the two sources were consistent.

### **Promotional alcoholic beverage prices**

The Commission considered the scheme's impact on the promotional retail price of eligible alcoholic beverages. The effect on promotional prices may be different to non-promotional prices because first suppliers may rely, to some extent, on adjusting discounts and promotional prices to account for monthly volatility in the direct costs of the ACT CDS. For example, in the face of month to month volatility in direct costs, beverage suppliers may prefer to set a stable non-promotional price and then, once scheme costs become known, adjust the magnitude or frequency of promotional discounts.

The price impact was analysed using Ebiquity data on promotional retail prices of alcoholic beverages.<sup>42</sup> The Commission compared discounts offered in Canberra and Melbourne for a 11-month period, including the months before and after the introduction of the CDS.<sup>43</sup> Melbourne was used as a comparison group because Victoria does not have a CDS and, to some extent, controls for other changes in prices that do not relate to the CDS. This approach is similar to IPART's approach in looking at promotional prices for alcoholic beverages.<sup>44</sup> The Commission was able to undertake this analysis only for alcoholic beverages as it does not have access to a comparable dataset for non-alcoholic beverages.

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<sup>41</sup> Coca-Cola Amatil 2018.

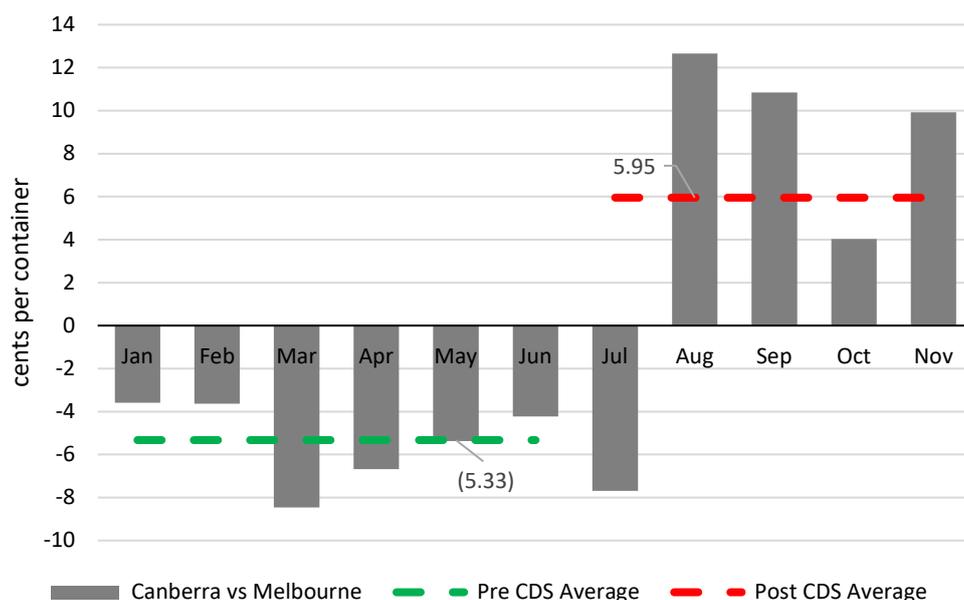
<sup>42</sup> Ebiquity is an independent media and marketing analytics organisation that monitors advertising across a number of channels such as TV, digital and press.

<sup>43</sup> The period of prices examined is from January 2018 to November 2018. Prices for December 2018 was not available when the Commission undertook this analysis.

<sup>44</sup> IPART 2018d pp 41-45.

Figure 5.5 suggests that promotional retail prices of eligible alcoholic beverages increased on average by around 11 cents per container (including GST) as a result of the ACT CDS over the period from July to November 2018. The average promotional retail price of alcohol was on average around 6 cents per container more expensive in Canberra compared to Melbourne following the CDS, compared to about 5 cents cheaper than Melbourne prior to the CDS.

**Figure 5.5 Average monthly promotional alcoholic beverage retail price differences between Canberra and Melbourne in 2018 (cents per container, GST inclusive)**



Source: Commission's analysis of Ebiquity data.

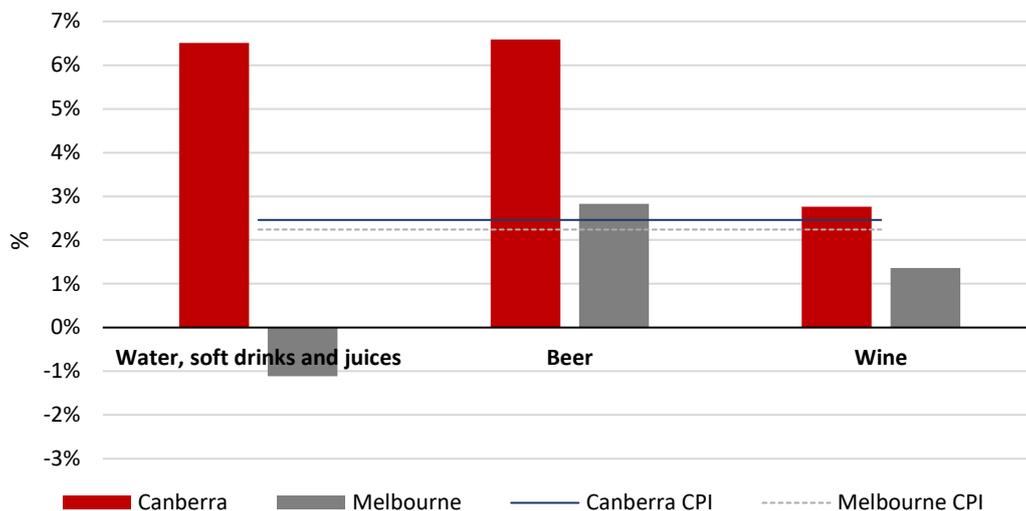
## 5.2 Changes in ABS consumer price indices for beverages

To cross-check the findings of the price impact analysis discussed above, the Commission considered the changes in the ABS consumer price indices for water, soft drinks and juices, beer, and wine. Consistent with these findings, the changes in these indices indicate that the CDS increased the prices of beverages covered by the scheme and did not have any indirect impact on the prices of beverages outside the scheme such as wine.

The year-on-year changes in relevant indices for Canberra and Melbourne for the September quarter 2018 are shown in Figure 5.6. The Commission examined the year-on-year price change to account for seasonality. Melbourne was used as a comparison group because Victoria does not have a CDS and, to some extent, controls for other changes in prices that do not relate to the CDS. The respective consumer price index change is also shown as an indicator of other factors affecting prices more generally in Canberra and Melbourne. Figure 5.6 indicates that, in the year to the September 2018 quarter:

- Water, soft drink and juice prices rose 4 per cent more than the rate of inflation for Canberra, representing a total increase of 6.5 per cent; this compares to Melbourne where the price indices declined by 1.1 per cent and the rate of inflation for Melbourne was 2.2 per cent.
- Beer prices rose 4.1 per cent more than the rate of inflation for Canberra, representing a total increase of 6.6 per cent, while in Melbourne prices increased in line with the rate of inflation in Melbourne.
- Wine prices for both cities were either in line with or below the rate of inflation, with wine prices in Canberra increasing slightly more than in Melbourne.

**Figure 5.6 Year-on-year change in the ABS consumer price indices for beverages, September quarter 2018 on September quarter 2017 (%)**



Source: Commission's analysis of the ABS CPI data.

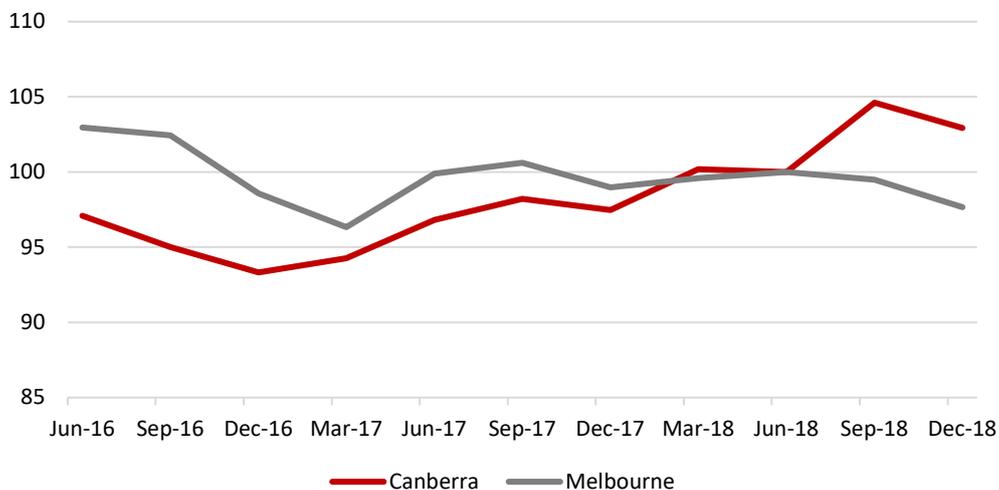
Figures 5.7–5.9 show the ABS price indices for water, soft drink and juices, beer, and wine over the period from June 2016 to December 2018 for Canberra and Melbourne. To help to distinguish price movements from before and after the introduction of the ACT CDS, the Commission set the index value for the June quarter 2018 (the quarter prior to the introduction of the ACT CDS) to 100 in these figures. The figures show that prices of these beverages in Canberra and Melbourne were trending in line prior to the introduction of the ACT CDS.

When the ACT CDS commenced in the September quarter 2018, the price indices for eligible beverages (water, soft drinks and juices, and beer) increased more in Canberra than in Melbourne (see Figure 5.7 and Figure 5.8). For example, the price index for water, soft drink, and juices increased by 4.6 per cent in Canberra in the September 2018 quarter compared to the June quarter, while the price index for Melbourne remained flat (see Figure 5.7).

After this noticeable one-off price change between Canberra and Melbourne, the price indices for the two cities returned to moving in line in the December quarter 2018 where they both declined slightly. This noticeable one-off price change between the cities occurred in the September quarter, suggesting that the ACT CDS did not have a noticeable effect on ACT beverage prices prior to its implementation.

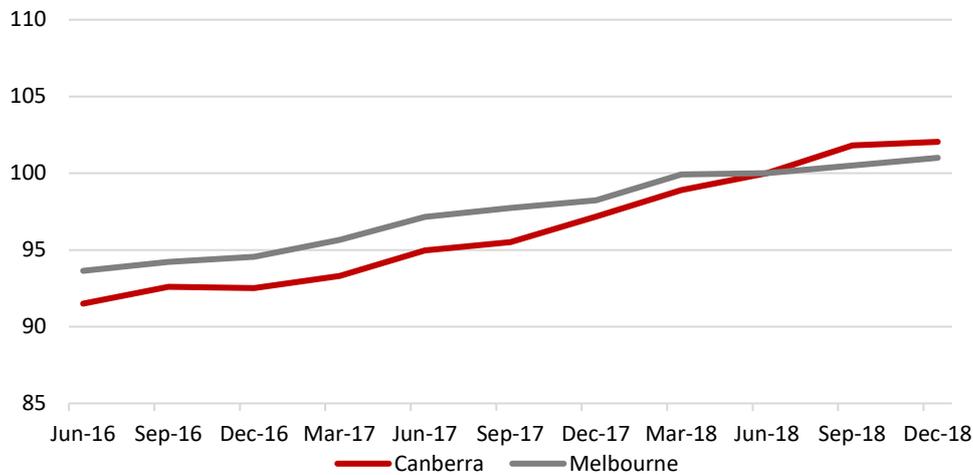
In contrast, movements in the wine price indices (non-eligible beverages) remained largely in line for both cities around the September quarter 2018 (see Figure 5.9). This indicates that prices for non-eligible beverages were not affected by the ACT CDS.

**Figure 5.7** ABS consumer price index for water, soft drinks, and juices (rebased to the June quarter 2018)



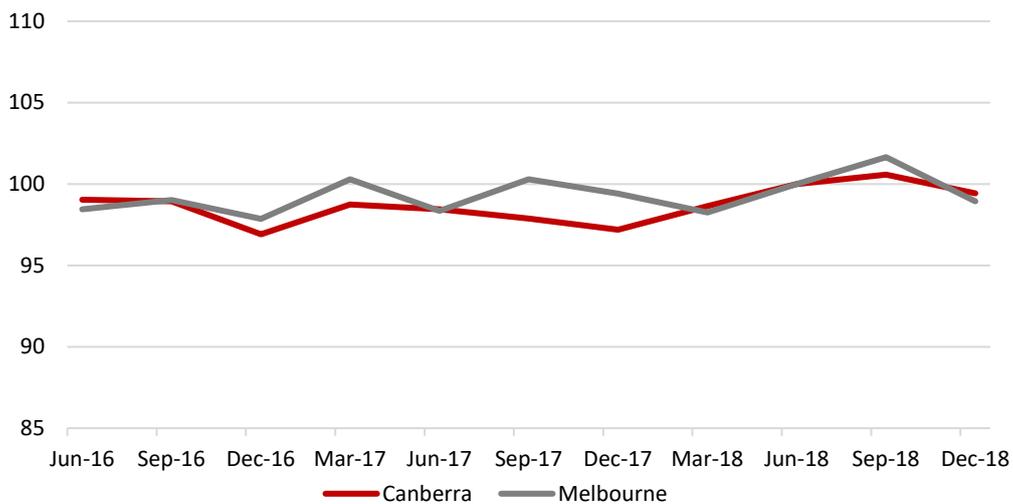
Source: Commission's analysis of the ABS CPI data.

**Figure 5.8 ABS consumer price index for beer (rebased to the June quarter 2018)**



Source: Commission’s analysis of the ABS CPI data.

**Figure 5.9 ABS consumer price index for wine (rebased to the June quarter 2018)**



Source: Commission’s analysis of the ABS CPI data.

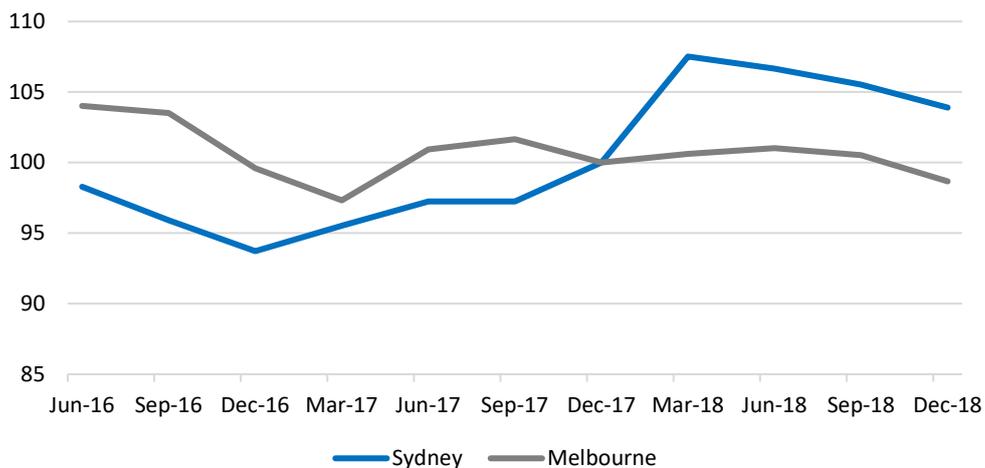
The Commission also examined whether the CDS’s effect on retail beverage prices in Canberra was similar to that found in Sydney when the NSW CDS was introduced. To do this the Commission examined the ABS consumer price indices for water, soft drinks, and juices, and beer, in Canberra when the ACT CDS was introduced (Figures 5.7 and 5.8), and compared the changes to those in Sydney when the NSW CDS was introduced (Figures 5.10 and 5.11).<sup>45</sup>

<sup>45</sup> Figures 5.10 and 5.11 show the ABS price indices for water, soft drink and juices, and beer over the period June 2016 to December 2018 for Sydney and Melbourne. The Commission set the index value for the December quarter 2017 (the quarter prior to the introduction of the NSW CDS) to 100 in these figures.

The Commission has found that changes in the ABS consumer price indices in Canberra, when the ACT CDS was introduced, were similar to those changes in Sydney when the NSW CDS was introduced. For example, the ABS consumer price index for water, soft drinks, and juices in Sydney increased by around 8 per cent with the introduction of the NSW CDS (see Figure 5.10). The same index for Canberra increased by around 5 per cent with the introduction of the ACT CDS (see Figure 5.7). Using the price index for water, soft drinks, and juices in Melbourne to control for other factors affecting beverage prices (that is, non-CDS related factors) makes little difference to these price changes (the price increase for Sydney becomes 7 per cent and for Canberra it remains around 5 per cent).<sup>46</sup>

The ABS consumer price index for beer in Sydney increased by around 2 per cent with the introduction of the NSW CDS (see Figure 5.11). The same index for Canberra increased by around 2 per cent with the introduction of the ACT CDS (see Figure 5.10). Using the beer price index for Melbourne to control for other factors affecting beverage prices makes little difference to these price changes (the price increase for Sydney becomes less than 1 per cent and for Canberra it becomes around 1 per cent).

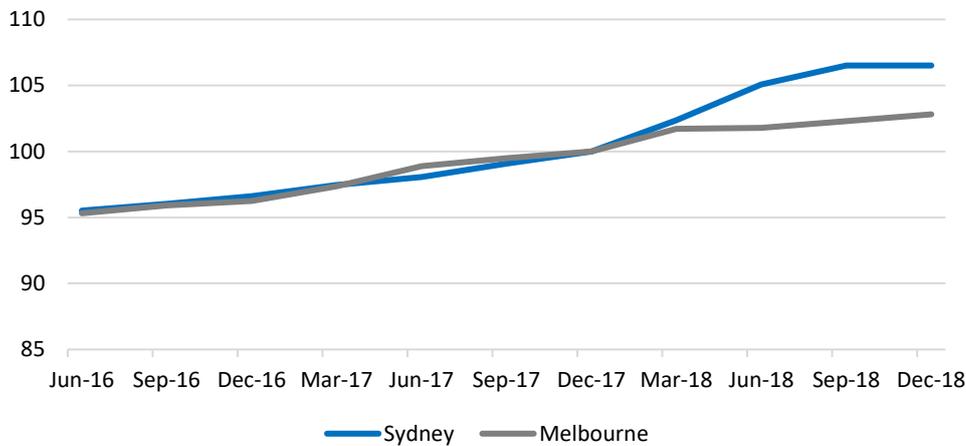
**Figure 5.10 ABS consumer price index for water, soft drinks, and juices (rebased to the December quarter 2017)**



Source: Commission's analysis of the ABS CPI data.

<sup>46</sup> As discussed earlier, Melbourne is used as a comparison location because Victoria does not have a CDS.

**Figure 5.11 ABS consumer price index for beer (rebased to the December quarter 2017)**



Source: Commission's analysis of the ABS CPI data.

### 5.3 Stakeholder submissions on price impacts

The Commission received a number of submissions in relation to price impacts of the CDS. The comments generally fell into two categories:

- the ACT CDS would increase prices of all eligible beverage by varying amounts; and<sup>47</sup>
- there are many other factors that affect retail beverage prices such as retail margins, pricing regimes, promotional activity, other excises and taxes on alcoholic beverages, and raw material costs.<sup>48</sup>

The Commission recognises that there are many other factors apart from the CDS that could affect beverage prices and discusses this in more detail in Chapter 5 and 6.

The Commission has been monitoring complaints from customers and suppliers about the pricing response and market impacts of the CDS. The Commission received three complaints from individual consumers on the price changes caused by the CDS since the commencement of the investigation.<sup>49</sup> The Commission considers that the small number of complaints indicates that in most cases the general price increases following the introduction of the CDS appear to be in line with the average increases attributable to the scheme.

<sup>47</sup> LSA Submission 2018, p 7; ABCL Submission 2018, pp 9-10; Mr Hughes Short Submission 2018; Mr Pettit Short Submission 2018; Independent Liquor Retailers Short Submission 2018; Mr Crisp Submission 2018; and NRA Submission 2018, pp 3-4.

<sup>48</sup> LSA Submission 2018, pp 7-8; ABCL Submission 2018, pp 9-10; and NRA Submission 2018, pp 3-4.

<sup>49</sup> This includes three short submissions from Mr Hughs, Mr Pettit and Mr Crisp.

## 5.4 Factors affecting the magnitude of the price increase

As discussed earlier, average wholesale prices of eligible container beverages increased by 12.4 cents per container (including GST) as a result of the CDS from July to December 2018. This compares to the average direct costs of the scheme over a similar period of 7.1 cents per container (including GST) as outlined in Chapter 4. While the direct costs are lower than the estimated price increase, the Commission considers the difference is likely to be reasonable due to a number of other factors that are likely to have influenced the price impact of the CDS. These factors are discussed below.

### Other costs incurred by first suppliers

The Commission recognises that there are indirect costs incurred by first suppliers. These costs include a range of administrative costs associated with participating in the CDS by having to acquire and develop an understanding of how the ACT CDS operates and its compliance requirements. For example:<sup>50</sup>

- ensuring that eligible containers are registered with a CDS before they are supplied;
- labelling containers correctly (to indicate a container is eligible under the CDS);
- communicating with customers on the ACT CDS;
- having to register as an ACT first supplier for the purposes of the ACT CDS;
- having to train employees to understand and use the ACT CDS reporting system;
- having to set up internal reporting systems to comply with the ACT CDS;
- reporting monthly on forecast containers to be supplied for the next month to the Scheme Coordinator;
- reporting monthly on actual containers supplied to the Scheme Coordinator;
- arranging payment of invoices from Scheme Coordinator; and
- updating prices for the changes in ACT CDS costs.

In addition to the above administrative costs, first suppliers also incur one-off costs associated with IT and reporting system upgrades (for example, billing systems). The Commission is seeking feedback on the magnitude of these other costs incurred by first suppliers.

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<sup>50</sup> EY 2019, p 19; IPART 2018d, p 58; and feedback from first suppliers in targeted consultations.

### **The Commission is seeking feedback on:**

1. What indirect costs do first suppliers incur from participating in the ACT CDS, and how much are these costs? These indirect costs refer to costs that are in addition to those costs invoiced by the Scheme Coordinator.

IPART considered the presence of an additional 1.5 to 2.3 cents per container (including GST) above the average direct costs to be reasonable over the first 12 months of the NSW CDS.<sup>51</sup> In addition, the ACT market is relatively small compared to other jurisdictions, which may suggest that the indirect cost per container in the ACT compared to other jurisdictions may be larger because of reduced economies of scale.<sup>52</sup>

In the period examined in this report the indirect costs of the scheme may have been relatively large. This is because the months immediately following the introduction of the ACT CDS may have been associated with relatively large one-off costs associated with changes to billing or reporting systems that would be required prior to the introduction of the CDS but may not have been passed on until the CDS commenced.

### **Volatility in monthly direct costs**

As discussed in Chapter 4, there is significant month to month volatility in the direct cost of the scheme. For example, in November and December 2018, the monthly advance contribution was relatively stable at around 8 to 9 cents per container (including GST), but true ups occurring in these months resulted in the net direct cost rising from negative 0.4 cents per container in November to around 11 cents per container in December.

This volatility may affect prices for several reasons. First, there may be some time before suppliers choose to pass on changes in the scheme's direct costs because of the uncertainty about the magnitude of true ups before they occur. Second, beverage suppliers and their customers may have a preference for stable pricing. The Commission's analysis to date has found that the price impact attributable to the CDS is relatively stable compared to the direct costs. First suppliers may choose to wait until the scheme's monthly direct costs are more certain and stable before making further adjustments to prices. In addition, some suppliers have aligned changes in CDS costs that are passed through to beverage prices with existing pricing practices such as alcohol excise changes that occur bi-annually or internal pricing review timeframes.

These issues may be particularly important given the relatively short time period examined as part of this progress report. This matter will be investigated further as more data becomes available and will be reported on in the final report.

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<sup>51</sup> IPART 2018d, p 58.

<sup>52</sup> ALSA 2018, p 2.

## Promotional prices

Part of the difference between the estimated direct cost and the scheme's impact on non-promotional wholesale prices may reflect the fact that discounts and promotions are not accounted for in non-promotional prices. It appears that first suppliers, to some extent, may be adjusting discounts and promotional prices to account for the volatility in the monthly direct costs of the ACT CDS.

This may be particularly relevant given the month to month volatility in direct costs. For example, in the face of monthly volatility in direct costs, beverage suppliers may prefer to set a stable non-promotional price and then, once scheme costs become known, adjust the magnitude or frequency of promotional discounts.

The NRA, in its submission to the issues paper, stated that “many of our members are simply not that coordinated and will run promotions and offers ad hoc as they see fit for any number of reasons”, which suggests that promotions may also be used to reflect the costs of the scheme.<sup>53</sup> In addition, the Commission's analysis of alcoholic beverage prices in this chapter suggests that the price impact attributable to the CDS on alcoholic beverages has been slightly less when promotional retail prices are considered (see Section 5.1).

## Comparison between the Commission's and IPART's findings on price impact and direct costs

The Commission's draft findings have similarities to the findings of IPART on the NSW CDS. As with IPART's findings, the Commission has found that the direct costs of the CDS to be below 10 cents per container. The Commission notes that the scheme's direct costs in the ACT is around 7.1 cents per container compared to IPART's estimate of 9.2 cents per container<sup>54</sup> for the NSW CDS.

In terms of the price impact of the scheme, the draft findings were less comparable between the Commission and IPART because of differences in the type of prices and data used. For instance, the Commission used non-promotional wholesale prices while IPART used average retail prices which included both promotional and non-promotional data (IPART gave changes in the promotional prices a 75 per cent weighting and changes in the non-promotional prices a 25 per cent weighting).<sup>55</sup>

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<sup>53</sup> NRA Submission, 2018, p 2.

<sup>54</sup> IPART 2018c, p 27. This is for the period December 2017 to July 2018.

<sup>55</sup> IPART 2018c; IPART 2018d and IPART 2018d, p 32.

IPART found that average retail prices of eligible beverages in NSW increased by 7.7 cents per container because of the NSW CDS, with non-alcoholic beverage prices increasing by 10.1 cents per container and alcoholic beverage prices increasing by 5.1 cents per container. IPART also found that retail prices for some beverages were higher or lower than direct costs. For example, increases in soft drink prices were higher than the average direct costs, while price increases for other beverages (such as beer) appeared to be lower than average direct costs.

The Commission has found that the average non-promotional wholesale price increase attributable to the ACT CDS was around 12.4 cents per container. The average increase in discounted and promotional retail prices for alcoholic beverages is lower than the estimated average non-promotional wholesale price increase, at around 11 cents per container.

## 5.5 Draft findings on price impacts

The Commission's draft findings are:

4. Non-promotional wholesale prices for all eligible beverages increased by an average of 12.4 cents per container (including GST) as a result of the ACT CDS in the period from July to December 2018, with:
  - non-alcoholic beverage prices increasing by 12.3 cents per container; and
  - alcoholic beverage prices increasing 12.6 cents per container.
5. The retail prices of eligible beverages appear to have increased as a result of the ACT CDS. Based on ABS data, the price increase appears to be similar to that observed for eligible beverages in Sydney when the NSW CDS was introduced.
6. The promotional retail price of eligible alcoholic beverages increased by an average of 11 cents per container (including GST) as a result of the ACT CDS in the period from July to November 2018. Similar data for promotional retail prices for non-alcoholic beverages is not available to the Commission.
7. There is no specific evidence to suggest that the introduction of the CDS has impacted the price of beverages not covered by the scheme, such as wine and spirits.
8. The estimated changes in eligible beverage prices do not appear to be inconsistent with a workably competitive market.
9. It is reasonable for suppliers to increase prices above the direct costs of the CDS because of the indirect costs of the scheme.
10. A part of the difference between the estimated direct costs and the scheme's impact on non-promotional wholesale prices reflects the fact that discounts and promotions are not accounted for in non-promotional prices.
11. The month to month volatility in the scheme's direct costs has led to some uncertainty around setting pricing for some suppliers. Suppliers with a preference for stable pricing may prefer to wait until the scheme's monthly direct costs are clearer before making further adjustments to non-promotional prices.

## 6 Other effects on competition and beverage markets

This chapter outlines the Commission's assessment on whether the ACT CDS had any other effects on competition or the ACT beverage market. The approach taken for this includes examining:

- market structure or share;
- barriers to entry;
- supplier behaviours;
- consumer choice and behaviour; and
- cross border impacts on supply, prices or container movements.

The following sections summarise the draft findings and recommendations then discuss the findings and considerations in more detail.

### **Box 5 Summary of draft findings on other competition and market impacts**

Based on information and analysis to date, the Commission has found no specific evidence of changes in supplier behaviour as a result of the ACT CDS that would restrict or reduce competition in the beverage market. The Commission has not received any reports from consumers of unjustified supplier behaviour with the potential to harm competition.

The Commission has found that the ACT CDS may create cash flow pressures for the industry, particularly for small first suppliers, which may have the potential to adversely affect competition in the future.

The cash flow pressures relate to the scheme contribution being paid by first suppliers in advance of the scheme costs, and the seven-day payment terms imposed by Exchange for Change.

The Commission has found that it may be beneficial to streamline the CDSs across jurisdictions where possible, as this would reduce the administrative costs faced by beverage suppliers. This may be particularly true for small businesses where the administrative burden has a disproportionately large impact. The Commission has found that some beverage suppliers chose to simplify the administration of the CDS across jurisdictions by averaging the costs across the multiple schemes.

## 6.1 Market structure and market share

Changes in market share provide information about whether the market has become more or less concentrated and whether there are more or fewer suppliers in the market. For this progress report, the Commission has experienced challenges in assessing changes in the market shares of beverage suppliers in the ACT because of a lack of relevant data. Specifically:

- Exchange for Change did not gather beverage market share data from first suppliers in the ACT prior to the commencement of the CDS. For the ACT scheme, Exchange for Change used NSW market share data as a benchmark to calculate invoices for many first suppliers in the ACT. In contrast, for the NSW CDS, Exchange for Change gathered market share data prior to the commencement of the scheme and this enabled IPART to assess more comprehensively the CDS impact on market shares.
- Data on beverage prices and volumes for most large beverage manufacturers and larger retailers in the ACT is available to the Commission. However, this data does not provide a complete picture of the ACT beverage market that would be needed to determine market shares. Moreover, there is no available data to identify the total market share for the ACT that could be combined with the beverage supplier data to determine market shares for the large suppliers.

The Commission is therefore seeking feedback from first suppliers on whether the CDS may have affected their market share and, if it had an effect, how it may have done so.

For the final report, the Commission will analyse Exchange for Change data on the quantity of beverages supplied by each first supplier in the months following the commencement of the ACT CDS. This may provide some insights as to whether the volume of beverages supplied by different suppliers has varied significantly since the commencement of the CDS. Currently there is insufficient data to identify any trends that might indicate a sustained change in market shares caused by the introduction of the ACT CDS. However, the Commission also notes that there are other factors that would affect the changes in volumes such as seasonal effects and the introduction of new products.

The Commission notes IPART's finding on the NSW CDS that "the [NSW] CDS has not resulted in material change in market share or market composition in beverage markets."<sup>56</sup> If the Commission does not receive evidence showing a change in market shares in the ACT following the introduction of the CDS the Commission considers it would be reasonable to make a similar finding given the similarities between the ACT and NSW markets in terms of beverage suppliers.

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<sup>56</sup> IPART 2018d, p 71.

### **The Commission is seeking feedback on:**

2. Is there any evidence that the introduction of the ACT CDS has resulted in significant changes in market shares of first suppliers?

## **6.2 Barriers to entry**

The Commission received evidence in discussions with stakeholders that the ACT CDS may create cash flow pressures for the industry, particularly for small first suppliers. This may have the potential to adversely affect competition in the future. The cash flow pressures related to the scheme contribution being paid by first suppliers in advance of the scheme costs, and the seven-day payment terms imposed by Exchange for Change. Greater cash flow pressures caused by having to pay CDS invoices in advance can increase the barriers to entry for new and small beverage suppliers, especially for small suppliers as it may increase their overall upfront capital requirements.

To alleviate cash flow pressures, the Commission has made a draft recommendation to implement an arrears payment model in place of the current advance payment model and to increase the payment terms to 14 days. The Commission's draft recommendation is consistent with IPART's recommendation to move to an arrears payment model with longer payment terms.<sup>57</sup>

### **ACT CDS payment model contributes to the month to month volatility in scheme costs**

As discussed in Chapter 4, the ACT CDS currently operates with an advance payment model, whereby first suppliers are invoiced by Exchange for Change in the month that containers will be supplied in the ACT with payment terms of 7 days. This payment model introduces month to month volatility in the scheme costs because it relies on forecast container returns to invoice first suppliers. The difference between forecast and actual container returns is then reconciled through a true up adjustment.

Because true ups can occur in perpetuity they have the potential to further exacerbate this monthly volatility. True up adjustments depend on actual volume data of all suppliers, so a first supplier may face a true up adjustment depending on when other suppliers choose to provide actual volume data to Exchange for Change. The Commission considers that there is benefit in limiting the period in which first suppliers can update their actual container volumes supplied, which would be expected to reduce cost volatility and administrative burden. In determining what period should be used, the Commission considers that IPART's final recommendation (of a 12-month limit for which a true up can occur) appears reasonable.<sup>58</sup>

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<sup>57</sup> IPART 2018d.

<sup>58</sup> IPART 2018d, p 67.

The Commission's consultation with first suppliers in the ACT indicates that beverage suppliers are concerned about the month to month volatility in the direct costs and support a move to an arrears payment model. First suppliers indicated that this would improve cost stability for pricing purposes. For example, the Commission received a confidential submission from a beverage supplier stating:

- there are no deadlines for when actual container volumes are to be submitted by suppliers, leading to true ups occurring with no certainty;
- payment terms of only seven days creates additional administrative costs as it may not coincide with the payment runs for the organisation, which only occurs once a week; and
- the advance payment model creates difficulty in planning its pricing, as the net CDS costs per container is not clear because of true ups.

The benefits of moving to an arrears payment model include the potential to reduce the volatility in direct costs, improve transparency of costs and reduce the administrative costs for first suppliers. However, the implementation of an arrears payment model would marginally increase the direct costs of the CDS due to the requirement to have an overdraft facility to fund the costs of the scheme (as funds will no longer be available in advance as per the current advance payment model in the ACT). For NSW, IPART estimated that a move to an arrears payment model, coupled with 14 day payment terms, would increase the direct costs by about 0.07 cents per container.<sup>59</sup> The key features of IPART's recommended arrears payment model are outlined in Box 3.

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<sup>59</sup> IPART 2018d, p 66.

**Box 6 Summary of IPART’s recommended arrears payment model**

In its final report on the NSW CDS, IPART recommended that the scheme adopt an arrears payment model that has the following features:

- the Scheme Coordinator forecasts the scheme’s costs and volumes by container type and fixes a price per container of the scheme for a fixed period, such as a quarter;
- first suppliers are invoiced in arrears at the end of the month based on actual containers supplied and the predetermined cost per container for the quarter, creating revenue for the scheme;
- at the end of the quarter, the Scheme Coordinator accounts for differences between the revenue collected from all first suppliers to the total costs of the scheme in a separate account;
- the Scheme Coordinator fixes the costs per container of the scheme for the next quarter, by taking into account any adjustment to the overall costs to reconcile difference in the revenues and costs of the preceding quarter;
- the price per container for the quarter will be published by the Scheme Coordinator in the month before the price takes effect;
- suppliers have payment terms of 14 days; and
- the requirement to have an overdraft facility to fund the ongoing operation of the NSW CDS as payments will be in arrears rather than in advance.

Source: IPART 2018d, p 64.

The Commission considers that the benefits of an arrears payment model would outweigh the minor increase in the direct costs associated with an overdraft facility. The Commission has therefore made a draft recommendation that the scheme move to an arrears payment model and that the ACT Government consider providing security for the overdraft facility, with the cost of the overdraft being recovered as a direct cost of the scheme.

In making this draft recommendation, the Commission recognises that there are benefits from streamlining the ACT CDS with the NSW CDS. As such, the Commission is seeking feedback on whether an arrears payment model should be adopted in the ACT independently of whether this payment model is adopted in NSW.

**The Commission is seeking feedback on:**

3. Should an arrears payment model be adopted in the ACT regardless of whether this payment model is adopted by NSW?
4. Should the period for true up adjustments be limited to 12 months after invoice?

### 6.3 Supplier behaviour

Based on information received and its analysis to date, the Commission has found no specific evidence of changes in supplier behaviour as a result of the ACT CDS that would restrict or reduce competition in the beverage market. The Commission has not received any reports from consumers of unjustified supplier behaviour with the potential to harm competition. Other ACT Government agencies such as ACT Fair Trading, Access Canberra,<sup>60</sup> and Transport Canberra and City Services Directorate have not received such reports.

The NRA submitted to the issues paper that some suppliers may be able to purchase large quantities of beverages prior to the commencement of the CDS and either sell them at the pre-CDS price to improve their competitiveness or sell them at the post-CDS price to temporarily improve their margins.<sup>61</sup> The NRA noted that it would be difficult to determine to what extent, if any, this occurred.

The Commission has compared the year-on-year change in monthly beverage supply for beverage suppliers before and after the commencement of the CDS and found that there is significant month to month volatility, making it difficult to attribute any change to the CDS. However, there has been no evidence in the data received by the Commission to indicate any significant increases in the supply of beverages before the introduction of the CDS followed by a corresponding reduction after its introduction.

If the Commission does not receive evidence to show an increase in supply of beverages prior to the ACT CDS commencing, the Commission considers it would be reasonable to make a finding that the ACT CDS did not impact on volumes of containers supplied prior to the CDS commencing.

#### **The Commission is seeking feedback on:**

5. Is there any evidence that a significant increase in beverage container supplied in the ACT prior to the introduction of the ACT CDS followed by a corresponding reduction after its introduction?

### 6.4 Consumer choice and behaviour

The Commission did not receive any reports from stakeholders in relation to changes in consumer behaviour resulting from the CDS. The Commission is seeking stakeholder feedback on this issue to inform the final report.

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<sup>60</sup> Fair Trading is responsible for enforcing the Australian Consumer Law in the ACT. Further information on ACT Fair Trading is available from its website at [https://www.accesscanberra.act.gov.au/app/answers/detail/a\\_id/2269/~-/fair-trading](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/2269/~-/fair-trading).

<sup>61</sup> NRA submission, 2018, p 4.

The Commission notes that BentSpoke has developed a unique container where the lid is relatively large and fully removable.<sup>62</sup> This container type has been temporarily granted registration for two years in the NSW to be covered under the NSW CDS, and therefore, is covered by the ACT CDS. The Commission recognises that the fully removable lid can potentially increase litter should it not be recycled. The Commission has considered that there needs to be a balance between fostering innovative products such as BentSpoke's containers with the key objective of reducing litter as part of the ACT CDS.

For the final report, the Commission will analyse Exchange for Change data on the range of beverages supplied since the introduction of the CDS. This may provide some insights as to whether the product choice available to consumers has changed since the commencement of the ACT CDS. In addition, the Commission is seeking feedback from stakeholders on whether the CDS may have affected the range of products available or their ability to introduce new or innovative beverage containers.

The Commission notes the findings from IPART's final report on the NSW CDS that the scheme appeared to cause a decrease in consumption of non-alcoholic beverages by around 950 mL per household per month and an increase in expenditure on non-alcoholic beverages of around 63 cents per household per month.<sup>63</sup> While for alcoholic beverages IPART did not have suitable data to make a similar assessment.<sup>64</sup>

**The Commission is seeking feedback on:**

6. Is there any evidence that the introduction of the ACT CDS has resulted in significant difference in the range of products available or the quantity of beverages consumed by consumers?

## **6.5 Cross border issues**

### **Cross border impacts on supply and pricing**

Prior to the introduction of the ACT CDS, the NSW CDS had been operational for about seven months. Based on information received and its analysis to date, the Commission has found no specific evidence that the NSW CDS increased the price of beverages in the ACT during this time (Chapter 5). For example, the non-promotional wholesale prices examined by the Commission clearly indicated when the price change due to ACT CDS commenced and there was no indication that any increase was applied prior to 30 June 2018. This draft finding was confirmed by the analysis of ABS beverage price indices reported in Chapter 5.

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<sup>62</sup> ACT Legislative Assembly 2018, p 70.

<sup>63</sup> IPART 2018d, pp 77–79.

<sup>64</sup> IPART 2018d, p 78.

The Commission has found that the difference in non-promotional wholesale beverage prices between the ACT and NSW has been minimal following the introduction of the ACT CDS. This is likely because many beverage suppliers treat the beverage markets in the ACT and NSW as one market. The Liquor Store Association, in its submission to the issues paper, stated that “For the most part, distributors and retailers treat the ACT and NSW as part of the same market.”<sup>65</sup> However, in the period when the NSW CDS had commenced and the ACT CDS was yet to commence, first suppliers did treat the ACT market differently in terms of the CDS costs that may be passed on. For example, the Commission notes that for this short period first suppliers had created separate pricing lists for the ACT as the ACT CDS had yet to commence.

During its consultation with first suppliers, the Commission found that some beverage suppliers chose to simplify the administration of CDSs across jurisdictions by averaging the costs across the multiple schemes.<sup>66</sup> For example, some beverage suppliers chose to pass on the same costs per container across multiple jurisdictions that have a CDS.<sup>67</sup> In addition, some suppliers have aligned changes in CDS costs that are passed through to beverage prices with existing pricing practices such as alcohol excise changes that occur bi-annually or internal pricing review timeframes.

### **Cross border impacts on container movements**

To date, the Commission has not found any specific evidence to suggest that the commencement of ACT CDS has led to movements of containers from nearby regions in NSW to the ACT or vice versa.

The Commission will continue to seek feedback from stakeholders on this draft finding.

### **The Commission is seeking feedback on:**

7. Is there any evidence that the introduction of the ACT CDS has resulted in significant beverage container movements between NSW and ACT?

### **Export protocols**

While the NSW CDS has export protocols, which is administered by the NSW Scheme Coordinator, there are currently no formal export protocols for the ACT CDS. Export protocols ensure that first suppliers do not pay two sets of CDS costs, by coming to an arrangement with the Scheme Coordinator to account for the movement of beverage containers between jurisdictions.

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<sup>65</sup> LSA Submission 2018, p 6.

<sup>66</sup> This is based on confidential information supplied by first suppliers.

<sup>67</sup> Coca-cola Amatil 2018.

Without an export protocol for the ACT CDS, beverage suppliers who buy products in the ACT for export to another jurisdiction may pay two sets of CDS costs. For example, a beverage supplier located in NSW may purchase beverages from an ACT manufacturer at a price that includes ACT CDS costs. The beverage supplier in NSW must pay the NSW CDS costs to be able to sell those beverages in NSW, because they would be the first supplier in NSW. Hence, the NSW beverage supplier would pay the CDS fees for the ACT and NSW. This creates additional cash flow pressures for first suppliers (particularly interstate beverage suppliers that purchase products from ACT manufacturers) and reduces their ability to compete with beverage suppliers that have only paid CDS costs in one jurisdiction.

The Commission has received information on a confidential basis that this has occurred. The Commission notes that export protocols for the ACT CDS are being developed and have been provided to the ACT Government for consideration.<sup>68</sup>

### **Harmonisation between different container deposit schemes in Australia**

As noted in Chapter 2, three different container deposit schemes have commenced across Australia in the past 12 months which means a total of five different schemes are operational at this point in time. In addition, the WA Government is planning to introduce a CDS in 2020.<sup>69</sup>

Stakeholders have indicated that it would be beneficial to streamline the schemes where possible to minimise the administrative burden faced by beverage suppliers.<sup>70</sup> Some of the issues faced by beverage suppliers operating across jurisdictions are:

- having to setup different systems and processes to comply with different payment models, including different payment terms;
- additional administration in having to register containers in multiple jurisdictions; and<sup>71</sup>
- the higher administrative costs may have a disproportionate impact on small businesses.<sup>72</sup>

The Commission considers it would be appropriate for the ACT Government and Exchange for Change to work with their counterparts in other jurisdictions to consider ways to harmonise the different aspects across the schemes, in particular with the NSW CDS.

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<sup>68</sup> IPART 2018d, p 85; and discussions with ACT Government officials and Exchange for Change.

<sup>69</sup> Government of Western Australia 2018.

<sup>70</sup> On 8 February 2019, Metcash indicated their support for national harmonisation. There was similar support for national harmonisation from beverage associations and other first suppliers during the Commission's targeted consultation.

<sup>71</sup> This is not applicable to ACT CDS or beverage suppliers operating in the ACT. However, ACT beverage suppliers that operate outside of the NSW may be required to register their containers.

<sup>72</sup> ABCL 2015, p 6; and ALSA 2018, p 2.

## 6.6 Single network operator

In the issues paper, the Commission asked stakeholders to comment on any other issues that were relevant to the Terms of Reference. The ABCL expressed concern about implications of the appointment of a single network operator. It argued that the ACT Government, in appointing Re.Turn It, a subsidiary of Re.Group business who operates the MRF, as a monopoly network operator, may have eroded competition and cost efficiencies which would have been achieved if other entities had been granted an opportunity to operate as the network operator.

The Commission notes the ACT Government approached the market in 2017 to test the interest in constructing and operating recycling collection facilities that may function as collection points.<sup>73</sup> Due to a range of reasons such as the capability of the organisations and the timeframes around the implementation of the ACT CDS, the ACT Government appointed Re.Turn It as the network operator.

The Commission notes the *Waste Management and Resource Recovery Act 2016* does not prevent more than one network operator from participating in the ACT CDS.

The Commission notes it is possible for third party operators to be established under the ACT CDS to operate as a collection point. Currently, third party operators of collection points include St Vincent de Paul and the Salvation Army, with more third party operators expected in 2019.<sup>74</sup>

## 6.7 Draft findings on other competition and market impacts

The Commission's draft findings are:

12. The ACT CDS may create cash flow pressures for some businesses, particularly small businesses. The pressures result from the scheme contribution being paid by first suppliers in advance of the scheme costs, and the seven-day payment terms imposed by Exchange for Change.
13. The scheme's payment model has contributed to the month to month volatility in scheme costs.
14. The Commission has found no specific evidence of changes in supplier behaviour as a result of the ACT CDS that would restrict or reduce competition in the beverage market.
15. The Commission has found that some beverage suppliers are choosing to simplify the administration of CDSs across jurisdictions by averaging the costs across the multiple schemes.

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<sup>73</sup> ACT Government 2018e; and ACT Government 2018f.

<sup>74</sup> Discussions with Transport Canberra and City Services Directorate.

## **6.8 Draft recommendation on other competition and market impacts**

2. The ACT Government and Exchange for Change work with their counterparts in other jurisdictions to harmonise the ACT CDS with other schemes across Australia, in particular with the NSW CDS, to the extent it would benefit ACT beverage suppliers and consumers in the long run.

## **6.9 Draft recommendations to reduce volatility in scheme costs**

The Commission's draft recommendations in relation to the payment model in the ACT are that:

3. The ACT CDS adopt an arrears payment model with payment terms of 14 days, in particular if NSW CDS adopts an arrears payment model; such a model would be expected to reduce volatility in scheme costs, improve transparency and reduce administrative burden for first suppliers.
4. The ACT Government consider providing the security for the overdraft facility required to implement an arrears payment model, with the associated costs being recovered as a scheme cost from first suppliers.
5. The period in which a true up can be made is limited to 12 months after the invoice is issued.



## **7 Price monitoring beyond the investigation period**

The final step is for the Commission to assess whether ongoing price monitoring is required beyond the initial 12-month period.

At this stage of the investigation, the Commission considers that ongoing price and competition monitoring beyond the initial investigation period is unlikely to be needed. However, the Commission will continue to seek feedback and evidence before making a final recommendation in the final report.

The Commission identified some issues that have the potential to adversely affect first suppliers and competition in the future and has made draft recommendations to address them.

The following sections discuss the Commission's overall draft findings and draft recommendations.

### **7.1 Beverage markets appear to be workably competitive**

As described in Chapter 5, the Commission has found that price increases attributable to the CDS do not appear to be inconsistent with a workably competitive market. The Commission's draft decision is that to continue price monitoring for the ACT CDS could increase costs for market participants that may not be outweighed by the benefits of regulation.

### **7.2 Volatility in the scheme's costs can be addressed**

As discussed in Chapter 5 and 6, the price increases attributable to the CDS appear to be driven by the direct costs of the scheme. Other factors have also influenced the price impacts, such as indirect costs and the month to month volatility in the direct costs. The Commission considers that this volatility may reduce over time but that a more effective way to reduce volatility is to implement an arrears payment model (Chapter 6).

### **7.3 Potential impacts on competition can be addressed**

As set out in Chapter 6, while there is no specific evidence of a material reduction in competition, the Commission has found that the ACT CDS may create cash flow pressures for the industry, particularly for small first suppliers. This may have the potential to adversely affect competition in the future. The cash flow pressures relate to the scheme contribution being paid by first suppliers in advance of the scheme costs, and the seven-day payment terms imposed by Exchange for Change. The Commission has made draft recommendations to implement an arrears payment model in place of the current advance payment model and to increase the payment terms to 14 days (Chapter 6).

### **7.4 Draft recommendation**

6. Based on the analysis to date, ongoing monitoring of the price and competition impacts of the ACT CDS is unlikely to be needed beyond the initial 12-month period, ending 30 June 2019

# Appendix 1 Terms of Reference

Australian Capital Territory

## Independent Competition and Regulatory Commission (Inquiry into beverage price impacts relating to the ACT Container Deposit Scheme) Terms of Reference Determination 2018\*

### Disallowable Instrument DI2018-69

Made under the *Independent Competition and Regulatory Commission Act 1997*, section 15 (nature of industry references) and section 16 (terms of industry reference)

#### 1 Name of instrument

This instrument is the *Independent Competition and Regulatory Commission (Inquiry into beverage price impacts relating to the ACT Container Deposit Scheme) Terms of Reference Determination 2018*

#### 2 Commencement

This instrument commences on the day after it is notified.

#### 3 Industry reference for investigation (Section 15)

I, Meegan Fitzharris, Minister for Transport and City Services, pursuant to Section 15(1)(e) of the *Independent Competition and Regulatory Commission Act 1997*, provide an industry reference to the Independent Competition and Regulatory Commission to investigate the impact on beverage prices and Competition in the beverage industry of the ACT Container Deposit Scheme ("Scheme") to be established under Part 10A of the *Waste Management and Resource Recovery Act 2016*.

#### 4 Terms of reference (Section 16)

I request that the Commission monitor and report on the impact on beverage prices and competition in the beverage industry of the Scheme in accordance with these terms.

(1) I request the Commission monitor:

- a. the effect of the Scheme on prices of beverages supplied in a container in the Territory;

- b. the performance and conduct of beverage suppliers in relation to beverage pricing in the Territory before and after the implementation of the Scheme; and
- c. any other market impacts on consumers that arise from the implementation of the Scheme, for the period from 1 June 2018 to 30 June 2019 (monitoring period).

(2) The Commission is to provide a report to the Minister for Transport and City Services regarding:

- a. the effect of the Scheme on prices of beverages supplied in a container in the Territory for the period from 1 June 2018 to 30 June 2019;
- b. the framework for monitoring the Scheme including the behaviour of suppliers;
- c. the effect of the Scheme on suppliers; and
- d. any recommendations for actions by government to address any adverse effects or behaviours arising from the operation of the Scheme.

(3) In undertaking the monitoring, the Commission should have regard to:

- a. any changes in prices of beverages before or after 1 June 2018 that purport to be in response to the Scheme;
- b. any information provided by Scheme participants and consumers;
- c. the behaviour of suppliers and major retailers before and after 1 June 2018 including whether beverage prices have increased beyond the amount suppliers are charged by the Scheme Coordinator;
- d. the manner in which beverage suppliers are recovering the costs imposed on them by the Scheme; and
- e. any impacts on beverage prices in the Territory which could be attributed to the commencement of the NSW Container Deposit Scheme on 1 December 2017; and
- f. any impacts on the cross border movement of beverage containers which could be attributed to the commencement of the Scheme and its interaction with the NSW Container Deposit Scheme; and
- g. any other associated matters the Commission considers relevant.

The Commission should undertake public consultation. The Commission is requested to release a progress report in February 2019 which provides a draft framework for the review and reports on the first three months of the ACT Container Deposit Scheme.

The Commission is to provide a final report to the Minister for Transport Canberra and City Services in July 2019. The final report is to also recommend whether any further monitoring of beverage prices or any other monitoring of the impact of the container deposit scheme not included in these terms of reference is considered necessary.

At any time during the monitoring period, if the Minister or the Commission considers that any behaviour or market outcomes have arisen that appear unfair or unjustified on consumers or Scheme participants, the Commission is to:

1. Investigate the matter immediately at its own discretion or, on request from the Minister, and
2. Provide an interim report to the Minister as soon as practicable.

#### Definitions

**Act** means the *Waste Management and Resource Recovery Act 2016*.

**Beverage, Container, Scheme Coordinator, Scheme participant, Supply**

**Arrangement** all have their meaning given by the Act

**Container Deposit Scheme** means the scheme established by Part 10A of the Act.

**Supplier** means a supplier, as defined in the Act, who is required under the Act to enter into a supply arrangement with the Scheme Coordinator.

Meegan Fitzharris MLA

Minister for Transport and City Services

Minister administering the *Waste Management and Resource Recovery Act 2016*

4/4/2018



## Appendix 2 Compliance with the Terms of Reference

This appendix sets out how the Commission’s investigation complies with the Terms of Reference.

**Table A2.1 Compliance with the Terms of Reference**

Clause	Requirement	Chapter	Comments
Section 15 of the Act	To investigate the impact on beverage prices and competition in the beverage industry of the ACT Container Deposit Scheme.	1, 2, 3, 4, 5, 6, 7	The progress report outlines the Commission’s investigation to date into the impact on beverage prices and competition in the beverage industry of the ACT Container Deposit Scheme.
1.a	I request the Commission monitor the effect of the Scheme on prices of beverages supplied in a container in the Territory.	4, 5, 6	The Commission has made draft findings on the impact of the ACT CDS on beverage prices in the ACT.
1.b	I request the Commission monitor the performance and conduct of beverage suppliers in relation to beverage pricing in the Territory before and after the implementation of the Scheme.	4, 5, 6	In making its draft findings on the price impact in the ACT, the Commission has requested and received formal communications made by beverage suppliers to its customers and/or consumers.
1.c	I request the Commission monitor any other market impacts on consumers that arise from the implementation of the Scheme, for the period from 1 June 2018 to 30 June 2019 (monitoring period).	6	This clause relates to the final report. However, as part of the progress report the Commission has monitored the period from 1 June 2018 to 31 December 2018.
2.a	The Commission is to provide a report to the Minister for Transport and City Services regarding the effect of the Scheme on prices of beverages supplied in a container in the Territory for the period from 1 June 2018 to 30 June 2019.	5	This clause relates to the final report. However, as part of the progress report the Commission has monitored the period from 1 June 2018 to 31 December 2018.
2.b	The Commission is to provide a report to the Minister for Transport and City Services regarding the framework for monitoring the Scheme including the behaviour of suppliers.	3	The Commission has considered relevant submissions in determining its approach to this investigation.
2.c	The Commission is to provide a report to the Minister for Transport and City Services regarding the effect of the Scheme on suppliers.	4, 6	The Commission has made draft findings on the ACT CDS costs, volatility in ACT CDS costs and other competition or market impacts, which related to suppliers.
2.d	The Commission is to provide a report to the Minister for Transport and City Services regarding any recommendations for actions by government to address any adverse effects or behaviours arising from the operation of the Scheme.	4, 6, 7	The Commission has made six draft recommendations to the ACT Government to address issues identified thus far.

Clause	Requirement	Chapter	Comments
3.a	In undertaking the monitoring, the Commission should have regard to any changes in prices of beverages before or after 1 June 2018 that purport to be in response to the Scheme.	5	The Commission has used pricing data from a range of periods. For the Commission's analysis, the pricing data covered the period from June 2017 until October 2018. For the Commission's non-promotional wholesale prices analysis, the pricing data covered the period from January 2018 until December 2018.
3.b	In undertaking the monitoring, the Commission should have regard to any information provided by Scheme participants and consumers.	3, 4, 5, 6	In making its draft findings and draft recommendations, the Commission has taken into consideration eight submissions.
3.c	In undertaking the monitoring, the Commission should have regard to the behaviour of suppliers and major retailers before and after 1 June 2018 including whether beverage prices have increased beyond the amount suppliers are charged by the Scheme Coordinator.	4,5,6	In making its draft findings on the price impact in the ACT, the Commission has requested and received pricing data from beverage suppliers before and after 1 June 2018 and compared it to the costs of the ACT CDS.
3.d	In undertaking the monitoring, the Commission should have regard to the manner in which beverage suppliers are recovering the costs imposed on them by the Scheme.	5, 6	The Commission received submission outlining pricing practices and also conducted targeted consultation with beverage suppliers to gain a better understanding how the CDS costs were being passed on.
3.e	In undertaking the monitoring, the Commission should have regard to any impacts on beverage prices in the Territory which could be attributed to the commencement of the NSW Container Deposit Scheme on 1 December 2017.	5, 6	In making its draft findings, the Commission has not found any specific evidence that the NSW CDS increased the prices of beverage in the ACT prior to the ACT CDS commencing.
3.f	In undertaking the monitoring, the Commission should have regard to any impacts on the cross border movement of beverage containers which could be attributed to the commencement of the Scheme and its interaction with the NSW Container Deposit Scheme.	7	The Commission has not received any evidence to suggest movements of beverage containers between NSW and ACT as a result of the ACT CDS commencing. However, the Commission will seek further feedback from stakeholders on this matter.
3.g	In undertaking the monitoring, the Commission should have regard to any other associated matters the Commission considers relevant.	3, 4, 5, 6, 7	In making its draft recommendations, the Commission considered other related industry and government reports, feedback from targeted consultations and submissions from stakeholders.
n.a.	The Commission should undertake public consultation. The Commission is requested to release a progress report in February 2019 which provides a draft framework for the review and reports on the first three months of the ACT Container Deposit Scheme.	1, 2, 3, 4, 5, 6, 7	The Commission has undertaken consultation throughout the investigation period thus far, has released the progress report on 28 February 2019, and plans to hold a public forum on 20 March 2019.

Clause	Requirement	Chapter	Comments
n.a.	The Commission is to provide a final report to the Minister for Transport Canberra and City Services in July 2019. The final report is to also recommend whether any further monitoring of beverage prices or any other monitoring of the impact of the container deposit scheme not included in these terms of reference is considered necessary.	n.a.	This clause relates to the final report.
n.a.	At any time during the monitoring period, if the Minister or the Commission considers that any behaviour or market outcomes have arisen that appear unfair or unjustified on consumers or Scheme participants, the Commission is to investigate the matter immediately at its own discretion or, on request from the Minister, and provide an interim report to the Minister as soon as practicable.	6	The Commission received information on the impacts of the ACT CDS not having export protocols. However, the Commission notes that Exchange for Change are working on developing export protocols for the ACT CDS.



## Appendix 3 Compliance with the ICRC Act

This appendix sets out how the Commission’s investigation complies with the provisions of the *Independent Competition and Regulatory Commission Act 1997*.

**Table A3.1 Compliance with Section 7 of the ICRC Act**

Section 7	Requirement	Chapter	Comments
(a)	to promote effective competition in the interests of consumers	4, 6, 7	The Commission’s draft recommendations seek to address the potential competition issues identified as part of this investigation and supports competition in the interests of consumers.
(b)	to facilitate an appropriate balance between efficiency and environmental and social considerations	4, 6, 7	The Commission’s draft recommendations have taken into account how the efficiency of the ACT CDS can be improved from an administrative perspective. Social and environmental considerations have been taken into account through draft recommendations seeking to reduce the complexity of the ACT CDS for businesses where possible, while maintaining the CDS environmental objectives.
(c)	to ensure non-discriminatory access to monopoly and near monopoly infrastructure	n.a.	n.a.



## Appendix 4 Eligible containers in the ACT

Table A4.1 Beverage container eligibility for the CDS

	Original beverage	Container volume	Container material
<b>Eligible containers</b>	Any beverage	Between 150mL and 3L	Glass, plastic (PET and HDPE), aluminium, steel or liquid paperboard
<b>Ineligible</b>	Milk	Any volume	Any material
	Flavoured milk	Above 1L	Any material
	Cordial, fruit or vegetable juice concentrate	Any volume	Any material
	Fruit or vegetable juice (>90 per cent juice)	Above 1L	Any material
	Registered health tonics	Any volume	Any material
	Wine	Any volume	Glass
	Wine	Below 250mL	Plastic or foil
	Wine or wine based beverage	Above 1L	Cardboard and plastic, cardboard and foil, or cardboard
	Spirit	Any volume	Glass
	Water	Above 1L	Cardboard and plastic, cardboard and foil, or cardboard

Source: ACT CDS Regulations: <https://legislation.act.gov.au/View/sl/2017-20/current/PDF/2017-20.PDF>



## Appendix 5 Submissions to the issues paper

### Summary of submissions received to the CDS investigation<sup>75</sup>

Table A5.1 Formal submissions to the issues paper

Date received	Submitter	Key issues raised/information provided
17 August 2018	National Retail Association	<p>The submission observed that retail prices would be expected to increase with the introduction of a new cost to suppliers. However, a reliable conclusion about price impacts should consider:</p> <ul style="list-style-type: none"> <li>• Retail price changes may lag cost changes.</li> <li>• Retail prices are subject to a range of forces.</li> <li>• Retail prices will vary over time.</li> <li>• Retail prices will vary between locations.</li> </ul> <p>The submission expects prices to rise by less than 15 cents per unit. The submission noted that price monitoring would not identify the retailers who acquired stock prior to the introduction of the CDS.</p>
17 August 2018	Liquor Stores Association of NSW	<p>The submission argues the CDS is not the most efficient method of managing litter.</p> <p>The submission responded to some questions from the issues paper:</p> <ul style="list-style-type: none"> <li>• Retail prices are expected to increase with the ACT CDS.</li> <li>• ACT and NSW are treated as the same market by retailers, but cross border issues and costs noted.</li> <li>• Supports use of ABS data for price monitoring, issues noted.</li> <li>• Supports use of selected markets, issues noted.</li> <li>• Supports use of market share data, issues noted.</li> <li>• Other impacts to consider: ACT CDS reduces price differential to NSW and online and disruptive technology may impact price and competition.</li> </ul>
22 August 2018	Australian Beverage Council Ltd	<p>The submission argues the Commission should extend its monitoring activities to assess scheme effectiveness and efficiency of scheme compliance costs.</p> <p>The submission argues that manufacturers will likely treat scheme costs as a production cost. The updated production costs will impact the unit costs which will be passed on to distributors and retailers. Distributors and retailers may add a margin to the manufacturer's costs, which may increase the retail cost above the scheme costs paid by the manufacturer.</p>

<sup>75</sup> As at 22 January 2019.

<b>Date received</b>	<b>Submitter</b>	<b>Key issues raised/information provided</b>
		The submission argues that retail costs will be impacted by a variety of factors other than scheme costs. Retail price movements should not be solely attributed to manufacturers and the introduction of the CDS.

**Table A5.2 Short submissions or feedback via website or email**

<b>Date received</b>	<b>Submitter</b>	<b>Key issues raised/information provided</b>
21 July 2018	Mr David Pettit	The submission queried the costs to consumers. The author cited a Woolworths brochure stating 24 cans of soft drink would increase by \$2.63 (including GST). The submission argued consumers who did not return containers would pay extra money to the retailer.
2 August 2018	Mr Steve Hughes	The submission noted that Aldi had not increased alcohol prices but had increased soft drink prices. A second submission noted that GST is paid on the container refund deposit and the apparent inconsistency with other deposit systems.
17 August 2018	Ind. Liquor Retailers	The submission stated that retail prices have increased in line with wholesale price increases passed on from suppliers. Wholesale costs from suppliers have increased in line with NSW CDS costs, with a limited number of suppliers using ACT CDS costs.
13 October 2018	Mr Robert Crisp	The submission queried the costs to consumers and the CDS system more broadly. The author stated that prices for soft drinks, in particular canned soft drinks, have increases since the CDS commenced and that the CDS is making recycling more complicated.
22 January 2019	Confidential (Beverage Supplier)	This submission requested longer credit terms due to the 7 days being difficult, as its beverage supplier only does payment runs once a week. The beverage supplier stated a preference to be billed on actuals, to have stricter deadlines for first suppliers to provide actual volumes to avoid adjustments in subsequent months, and a maximum price to allow for price planning.

## Abbreviations and acronyms

ABCL	Australian Beverage Council Ltd
ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
CDS	Container Deposit Scheme
Commission	Independent Competition and Regulatory Commission
CPI	Consumer Price Index
Exchange for Change	Exchange for Change (ACT) Pty Ltd.
EPA	Environmental Protection Agency (NSW)
GST	Goods and Services Tax
ICRC	Independent Competition and Regulatory Commission
ICRC Act	Independent Competition and Regulatory Commission Act 1997
IPART	The Independent Pricing and Regulatory Tribunal
HDPE	High-density polyethylene
LSA	Liquor Stores Association NSW & ACT
MRF	Material Recovery Facility
NRA	National Retail Association
NT	Northern Territory
NT EPA	Northern Territory Environment Protection Authority
NSW	New South Wales
PET	Polyethylene terephthalate
QLD	Queensland
RTD	Ready-to-drink
SA	South Australia
Minister	Minister for City Services
WA	Western Australia



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