independent competition and regulatory commission

Final Report

Container Deposit Scheme Price Monitoring

Report 10 of 2019, July 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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Foreword

On 4 April 2018 the Commission received a reference from the ACT Government to monitor and report on the impact of the ACT beverage prices and competition in the ACT resulting from the introduction of the ACT Container Deposit Scheme (CDS) on 30 June 2018.

The Commission's monitoring and reporting focused on:

- the effect of the CDS on prices of beverages supplied in specified types of container in the ACT;
- the performance and conduct of beverage suppliers in the ACT before and after the implementation of the CDS; and
- any other market impacts from the implementation of the CDS.

This final report presents the Commission's final findings and recommendations to the ACT Government. Throughout the investigation period, the Commission encouraged feedback and submissions from stakeholders, and engaged directly with stakeholders to inform the Commission's final decision set out in this report.

The Commission takes this opportunity to thank both ACT consumers for taking their time to participate in this investigation and beverage suppliers and retailers for their cooperative approach and constructive engagement throughout the investigation.

Joe Dimasi

Senior Commissioner

23 July 2019

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Executive Summary

The ACT Government introduced a Container Deposit Scheme (CDS) in June 2018, with the objectives 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.[1]

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 asked 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.[2]

This final report outlines the Commission's findings and recommendations based on monitoring impacts over the first 12 months of the CDS.

Overview of final findings and recommendations

The Commission's monitoring over the initial 12 months of the ACT CDS has shown that price increases attributable to the CDS appear 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.

Based on the information, data and analysis done as part of the investigation, the Commission found no specific evidence that the CDS has had a material impact on competition. However, the Commission identified several issues that may have the potential to create barriers to entry and restrict competition should they not be addressed.

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[1] ACT Government 2018a.

[2] Appendix 1.

Price increases are consistent with what would be expected given the nature and magnitude of the scheme costs

A key part of the Commission's investigation was 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 compared the estimated price impact from the ACT CDS with the estimated direct costs for the ACT CDS. [3] 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 may not be workably competitive.

The Commission examined the price impact of the CDS on both wholesale and retail prices of eligible beverages over 12 months. 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.[4]

The Commission's final findings are largely unchanged from the progress report. The Commission found that the increase in beverage prices attributable to the ACT CDS is consistent with what would be expected given the nature and magnitude of the scheme costs.

The Commission found that non-promotional wholesale prices for eligible beverages, over the period from July 2018 to June 2019, increased on average by 12.3 cents per container (including GST) as a result of the CDS.[5] This price increase was higher than the Commission's estimate of the scheme's direct costs of around 7.5 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.

Further, it is important to recognise that retail beverage prices, which are the prices that consumers pay, may be lower than non-promotional wholesale prices due to discounts and promotions offered by both wholesale and retail beverage suppliers.

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[3] Chapter 2 provides further detail on the direct costs of the ACT CDS.

[4] Ebiquity is an independent media and marking analytics organisation that monitors advertising across a number of channels such as TV, digital and press.

[5] 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.

Based on the Commission's analysis of ABS data, retail beverage prices increased by less than non-promotional wholesale prices following the introduction of the CDS. The Commission found, when looking at the first ninemonths following the introduction of the ACT CDS, average retail prices in Canberra for water, soft drinks and juices increased by about 5 per cent (equivalent to around 10 cents per container, including GST), and for beer by about 1 per cent (equivalent to around 5 cents per container, including GST).

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

As noted earlier, the average direct costs of the scheme were around 7.5 cents per container (including GST) over the first 12 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 for NSW.[6]

In the ACT, these indirect costs per container may be relatively larger because of lower economies of scale. The indirect costs are likely to vary significantly across first suppliers[7] 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 appears to have created cash flow pressures for at least some beverage suppliers, which would have increased their costs of participating in the CDS. The volatility also created uncertainty for beverage suppliers around setting an appropriate and stable price, especially during the first six-months of the scheme.

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 adjusted discounts and promotional prices to account for the volatility in the monthly direct costs of the ACT CDS over the first 12 month period.

[6] IPART 2018d, p 58.

[7] 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 final findings are similar to the findings of IPART in that the direct costs of the CDS in both the ACT and NSW were found to be below 10 cents per container, which is the refund payable for containers returned by consumers. The Commission found that the direct costs of the ACT CDS, of around 7.5 cents per container (including GST), were lower than IPART's estimate of 9.3 cents per container[8] (including GST) for the NSW CDS.

The Commission found that retail price increases attributable to the schemes were similar between the ACT and NSW. IPART estimated the price impact of the NSW CDS to be about 10 cents per container for water, soft drinks and juices, which is the same as the Commission's estimate for Canberra. IPART estimated the scheme impact to be around 4 cents per container for beer for NSW, which is similar to the Commission's estimate of around 5 cents per container for Canberra.[9]

Scheme efficiency can be improved by increasing transparency and harmonising the ACT CDS with other schemes, particularly the NSW CDS

Several stakeholders raised concerns about the efficiency of the scheme's costs, particularly the costs of the Network Operator, Re.Turn It, and the Scheme Compliance Fee (the costs incurred by the ACT Government for regulating the CDS). The Commission recommends that the ACT Government should consider publishing a contract summary of the Network Operator Agreement and Scheme Coordinator Agreement to increase the transparency of the ACT CDS, and to inform interested parties about the costs incurred by the ACT Government in administering the ACT CDS.

The Commission has estimated that the Scheme Compliance Fee represents about 3 per cent of the annual costs. While this is higher than IPART's estimate of a reasonable fee for the NSW scheme (1-2 per cent of annual costs),[10] the Commission considers that the ACT CDS fee represents a higher proportion of total costs due to lower economies of scale in the ACT compared to NSW, and the lower container return rate in the ACT compared to NSW. The Commission has estimated that the ACT Scheme Compliance Fee would have represented about 2 per cent of total scheme costs if the return rate in the ACT was the same as in NSW in the first nine-months of each scheme.[11] As this is close to IPART's recommended range for NSW, the Commission has concluded that the ACT Scheme Compliance Fee is reasonable, taking into account the lower economies of scale in the ACT.

[8] IPART 2018d, p 28. This is for the period December 2017 to October 2018.

[9] IPART 2018d, p 40.

[10] IPART 2018d, p 6.

[11] Chapter 2, Table 2.1.

Based on submissions received to the progress report and targeted consultation with beverage suppliers, the Commission has concluded that the differences between the CDSs across Australia increase the administrative burden faced by first suppliers operating across multiple jurisdictions. The Commission recommends 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.

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

Base on its analysis of submissions, feedback in targeted consultation and IPART's findings for NSW, the Commission has concluded that the ACT CDS payment model creates cash flow pressures for the industry, particularly for small first suppliers. This has 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.[12] This is broadly similar to the model used in NSW.

The scheme payment model has led to month to month volatility in the direct costs of the scheme, which ranged from negative 0.6 cents per container to around 11.2 cents per container (including GST) in the period from July 2018 to June 2019. This month to month volatility has reduced in recent months as forecasts of container returns have become more accurate. Nevertheless, forecast return rates continue to differ significantly from actuals, particularly for returns via the MRF. The Commission sees benefit in the Scheme Coordinator reviewing the methodology used to forecast returns at the MRF with the aim of improving the accuracy of the forecasts and reducing the month to month volatility in scheme costs.

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 considers that these issues would be addressed if the ACT CDS adopted an arrears payment model. Such a model involves invoicing suppliers based on actual container returns and actual containers supplied to the market. As such, it improves cash flow for businesses and removes the need for forecasts, which contribute to month to month volatility. The CDSs in Queensland, South Australia and the Northern Territory use an arrears payment model.

[12] True up adjustments are 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.

However, the Commission also found that harmonisation of the CDS with other schemes is important, particularly with the NSW scheme, as discussed above. The ACT and NSW markets are similar in terms of suppliers and the ACT shares all its borders with NSW. The two jurisdictions also have the same scheme coordinator.

The Commission understands that the NSW Government is not currently planning to implement an arrears payment model for the NSW CDS. The Commission understands the NSW Government is considering other changes to the current advance payment model to reduce the cash flow pressures on businesses found by IPART. As a result, there is uncertainty around the potential changes to the NSW CDS payment model at this stage.

Taking into account the cost and administration benefits of harmonisation with the NSW scheme, the Commission considers that the payment model used in the ACT CDS should ideally be aligned, as much as possible, with the NSW CDS, provided this results in net benefits to the ACT beverage industry and ACT consumers. The Commission recommends harmonisation of the ACT scheme with the NSW scheme, conditional on scheme changes improving beverage suppliers' cash flows, reducing the administration costs of first suppliers and reducing cost volatility. The Commission considers that the ACT Government should work with Exchange for Change and counterparts in NSW on developing a payment model that addresses these issues.

A possible change to the payment model that would reduce administration costs for small businesses and the Scheme Coordinator is to revise the invoicing arrangements for small businesses, such as invoicing small suppliers less frequently (such as quarterly) based on actual containers supplied. The Commission understands that it may be possible to introduce such invoicing arrangements for small businesses, even if similar arrangements are not adopted in NSW, without reducing the benefits of harmonisation with the NSW scheme. The Commission recommends further consideration of such arrangements.

In addition, the Australian Beverage Council Ltd (ABCL) and the National Retail Association (NRA) indicate support for limiting the true up period to 12 months after the invoice is issues, which is also consistent with feedback received from targeted consultation. Therefore, the Commission confirms its draft recommendation to limit the true up period to 12 months after the invoice is issued, as this would be appropriate under any payment type. This recommendation is consistent with the recommendation made by IPART on the NSW CDS.

Price and competition monitoring is not required beyond the investigation period

The Commission considers that ongoing price and competition monitoring beyond the initial investigation period is not needed.

As noted above, the Commission considers that the price changes resulting from the ACT CDS appear consistent with the outcomes that would be expected in a workably competitive market. In addition, the Commission 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 identified some issues that may have the potential to adversely affect first suppliers and competition in the future and has made final recommendations to address them.

The Commission's process for this investigation

The Commission's investigation process involved the collection of information, data analysis and stakeholder consultation. This report represents the last milestone in the Commission's price and competition monitoring of the ACT CDS.

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

To make it easier for stakeholders to contribute views and information, the Commission 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 beverage suppliers. The Commission also held a public hearing on 20 March 2019 to give interested parties an opportunity to engage directly with the Commission and to provide feedback on the progress report.

List of Commission's final findings and recommendations

The following list consolidates the Commission's final findings and recommendations contained in this report.

Final findings

Scheme costs

1. The direct costs of the CDS averaged around 7.5 cents per container (including GST) over the period July 2018 to June 2019.
2. The direct costs have fluctuated significantly over the first 12 months, ranging from negative 0.6 cents per container in November 2018 to around 11.2 cents per container in August 2018 (including GST). The month to month volatility has reduced in recent months, with direct costs averaging around 10 to 11 cents per container in April, May and June 2019 (including GST).
3. The monthly volatility in the direct costs mainly reflected the difference between forecast and actual volumes of containers recovered and the associated true ups. The difference between forecast and actual volumes returned has reduced since the start of the scheme.

4. The Scheme Compliance Fee accounted for about 3 per cent of the scheme costs over the first 12 months. The Commission has concluded that the ACT Scheme Compliance Fee is reasonable, in comparison with IPART's estimate for the NSW CDS of 1 to 2 per cent of annual costs, after taking into account the lower economies of scale in the ACT and the lower container return rate in the ACT. The return rate was 35 per cent for the first 12 months of the ACT scheme compared to about 53 per cent for the NSW scheme.

Price impact of ACT CDS

5. Non-promotional wholesale prices for all eligible beverages increased by an average of 12.3 cents per container (including GST) as a result of the ACT CDS in the period from July 2018 to June 2019, with:
   - non-alcoholic beverage prices increasing by 12.2 cents per container (including GST); and
   - alcoholic beverage prices increasing 12.7 cents per container (including GST).
6. Retail beverage prices, which are the prices that consumers pay, have on average increased by less than non-promotional wholesale prices, due in part to discounts and promotions offered by both wholesale and retail beverage suppliers.
7. The retail price of water, soft drinks and juices increased by about 10 cents per container as a result of the CDS (based on data for the first nine months of the scheme). Retail beer prices increased by about 5 cents per container. These price increases are similar to those observed for eligible beverages in Sydney in the first 12 months after the NSW was introduced.
8. 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 2018 to May 2019.
9. 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.
10. The estimated changes in eligible beverage prices appear consistent with what would be expected in a workably competitive market.
11. It is reasonable for suppliers to increase prices by more than the direct costs of the CDS because of the indirect costs of the scheme, such as the cost of compliance, reporting and updating billing systems.
12. The month to month volatility in the scheme's direct costs has led to some uncertainty around setting pricing for some suppliers. Some suppliers may wait until the scheme's monthly direct costs are clearer before adjusting non-promotional prices to keep these prices more stable.

Other competition and market impacts of the ACT CDS

13. The Commission found no specific evidence to indicate the introduction of the ACT CDS has resulted in a material change in market share or market structure in the ACT beverage market.
14. The ACT CDS can create cash flow pressures for some businesses, particularly small businesses. The pressures result from the scheme contribution being paid by first suppliers in advance selling the beverages, and the seven-day payment terms imposed by Exchange for Change.
15. The scheme's payment model, which is based on forecasts of containers returned and supplied, and subsequent true ups for actual containers returned and supplied has contributed to the month to month volatility in scheme costs.
16. The Commission 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.
17. Based on the feedback received, the Commission found no specific evidence of changes in consumer choice as a result of the ACT CDS that would restrict or reduce competition in the beverage market.
18. The Commission found that some beverage suppliers are choosing to simplify the administration of CDSs across jurisdictions by averaging the costs across schemes.
19. The Commission found no specific evidence to suggest that the introduction of the ACT CDS has led to a significant movement of containers from nearby regions in the NSW to the ACT or vice versa.

Final recommendations

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.

Other competition and market impacts of the ACT CDS

2. The period in which a true up can be made should be limited to 12 months after the invoice is issued.

Reducing volatility in scheme costs and addressing cash flow pressures on beverage suppliers

3. The payment model used in the ACT CDS should ideally be aligned, as much as possible, with the NSW CDS, provided this results in net benefits to the ACT beverage industry and ACT consumers in terms of improving beverage suppliers' cash flows, reducing the administration costs of first suppliers, and reducing scheme cost volatility.

4. The ACT Government and Exchange for Change should work with their counterparts in other jurisdictions to harmonise the ACT CDS with other schemes across Australia, in particular with the NSW CDS.
5. The ACT Government and Scheme Coordinator should consider streamlining invoicing arrangements for small businesses, such as invoicing small suppliers less frequently (such as quarterly) based on actual containers supplied.

Supporting product innovation in beverage containers

6. The ACT Government should work with their counterparts in other jurisdictions to consider developing guidance for beverage suppliers to help them develop product innovations that are consistent with the Government's objective of reducing litter.

Ongoing price and competition monitoring

7. Ongoing monitoring of the price and competition impacts of the ACT CDS is not required beyond the initial 12-month period, ending 30 June 2019.

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.[13]

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 for the investigation were issued under Section 16 of the *Independent Competition and Regulatory Commission Act 1997* (the ICRC Act or Act) and are provided at Appendix 1.

1.2 The Commission's role and powers

The Commission is an independent commission within the ACT Government and is governed by the ICRC Act. The Commission's purpose is set out in a number of functions and objectives under sections 7 and 8 of the ICRC Act, including to investigate and regulate pricing, investigate matters referred to the Commission by referring authorities, and regulate access and other matters for relevant industries.

1.3 The Commission's investigation process

The timing and nature of the Commission's investigation process was guided by the Terms of Reference and the ICRC Act. The Terms of Reference sets out the monitoring period and reporting requirements. Table 1.1 shows the Commission's investigation timeline.

The issues paper was released on 5 July 2018 and set out the Commission's proposed approach to the investigation.

The progress report was released on 28 February 2019 as required by the Terms of Reference and satisfied the draft report requirements under section 18 of the ICRC Act, with submissions also being received and considered under section 18 of the Act.

The final report sets out the Commission's final 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.

[13] ACT Government, 2018a.

Table 1.1 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 closed	12 April 2019
Final report to Minister for Transport and City Services	23 July 2019

1.4 Public consultation

During the course of the investigation, the Commission consulted with a wide range of stakeholders, including manufacturers, distributors, wholesalers, retailers, the ACT Government, the Scheme Coordinator (Exchange for Change), the Network Operator (Re.Turn It), and consumers.

To facilitate effective engagement with stakeholders as part of its investigation, the Commission used a variety of methods to seek comments from interested parties. The Commission 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.

In addition, a public hearing was held on 20 March 2019. A transcript of the public hearing is available at the Commission's website. The hearing gave interested parties an opportunity to engage directly with the Commission and to provide feedback on the progress report.

The Commission received 11 submissions during the investigation process, of which eight responded to the issues paper and three to the progress report.

1.5 Structure of final report

The rest of this report sets out further information on this investigation, the Commission's approach, and the final 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 final 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 final findings and recommendations on the need for ongoing price and competition monitoring.

The final report includes seven 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 statement of compliance with the Terms of Reference.
- Appendix 3 sets out the Commission's statement of compliance with the ICRC Act.
- Appendix 4 describes the containers eligible for the ACT CDS.
- Appendix 5 summarises the submissions received on the issues paper.
- Appendix 6 summarises the feedback received from targeted consultation.
- Appendix 7 summarises the submissions received on the progress report.

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 for a 10-cent refund.

2.2 CDS participants and financial operation

The key participants in the ACT CDS are consumers, the Scheme Coordinator, the Network Operator, the Materials Recovery Facility (MRF) operator, and the first suppliers of eligible containers.[14] The roles of each participant are outlined in Box 1.[15]

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,[16] 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.

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

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[14] 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).

[15] ICRC 2018, pp 6–7.

[16] Collection points can also be operated by third parties, who are paid the handling fees and refund amounts by the Network Operator.

2.3 Collection points

In June 2018, the ACT CDS commenced with nine collection points across Canberra, ranging from express return points to bulk depots. The number of collection points has increased to 22 in July 2019.[17] The number of collection points is expected to continue to increase and include new types of collection points such as ‘pod’ drop off points that use shipping containers to collect and store consumers’ containers.[18]

2.4 Beverage markets

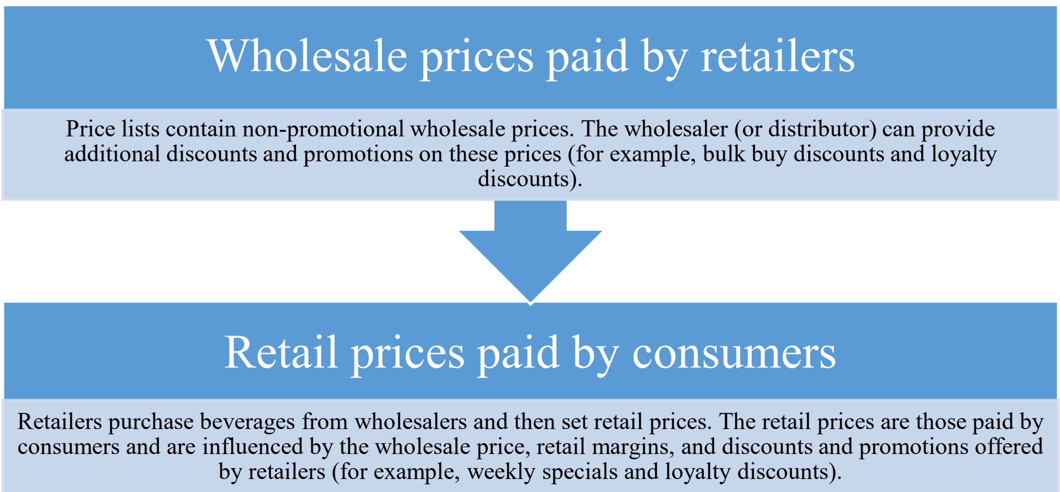
The beverage industry is composed of many products, manufacturers, suppliers, distributors and retailers. Identifying and defining the relevant beverage market is a critical step to identifying the beverage industry participants whose behaviour and conduct is impacted by the ACT CDS. The relevant market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

For the 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 have been included with 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



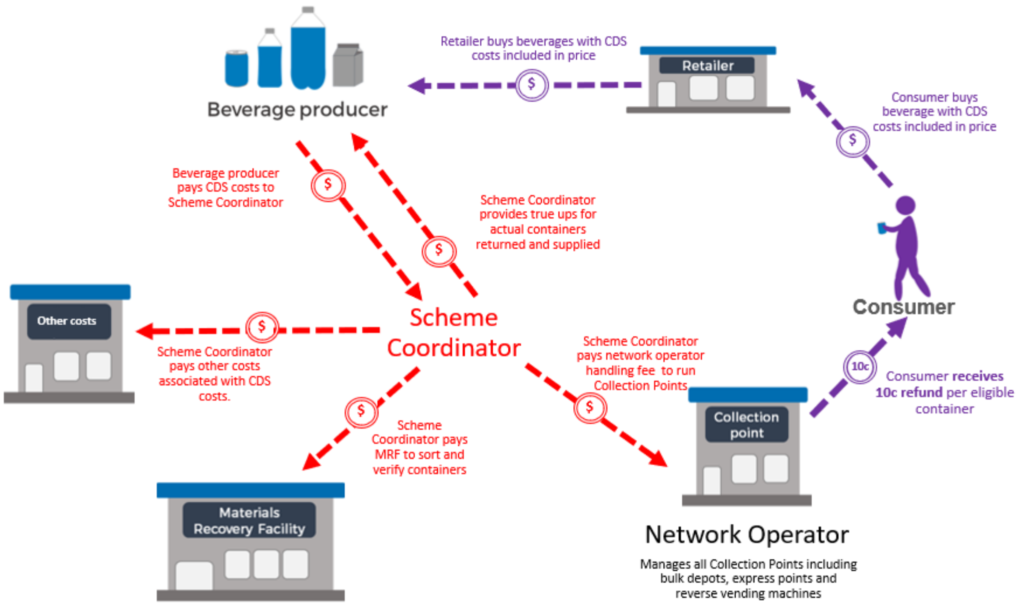
[17] As advised by Exchange for Change on 8 July 2019.

[18] ACT Government 2019.

2.5 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:[19]

- 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.

[19] ACT Government 2018b and 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 with 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.

2.6 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 and are available on the ACT CDS website, www.actds.com.au.[20]

[20] ACT Government 2018d.

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.

2.7 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 two years, while the WA and Tasmanian Governments' are planning to implement a CDS in 2020 and 2022, respectively. 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.[21]
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[22] 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.[23]
New South Wales	December 2017	The NSW CDS commenced in December 2017 with a return rate of around 53 per cent over the initial 12 months.[24] The return rate reached nearly 60 per cent in March 2019.[25]
Australian Capital Territory	June 2018	The ACT CDS commenced in June 2018 and was designed to be consistent with the NSW CDS. The average container return rate was 35 per cent for the period from July 2018 to March 2019, but had increased over this period to 53 per cent in March 2019.[26]
Queensland	November 2018	The QLD CDS commenced in November 2018. In order to promote harmonisation across borders, the scheme was designed to be similar to existing schemes of SA, NT and NSW. The average container return rate is estimated to be around 30 per cent for the period November 2018 to June 2019.[27]

[21] EPA South Australia 2018.

[22] NT EPA 2018, p 5.

[23] NT EPA 2018, p 7.

[24] Exchange for Change 2018a and 2018b.

[25] Exchange for Change 2019a and 2019b.

[26] Commission's analysis based on Exchange for Change data provided in 2019.

[27] Commission's analysis based on information accessed from www.containersforchange.com.au on 15 July 2019, which stated actual number of containers returned as at 7 July 2019 is 641,324,605 and approximately three billion beverage containers generated in Queensland annually.

State/Territory	Commencement Date	Description
Western Australia	2020 (expected)	The WA Government's CDS is expected to commence in 2020 with legislation passed by WA parliament in March 2019.[28] 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.
Tasmania	2022 (expected)	In June 2019, the Tasmanian Government announced that a CDS will be implemented by 2022.[29]
Victoria	N/A	Victoria does not have a CDS.

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	The 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	The ACT and NSW each have one network operator, whereas SA and the 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 have implications for the administrative costs incurred 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 Commission considered whether the differences resulted in movements of containers between the ACT and NSW by affecting supplier or consumer behaviour. The Commission discusses cross border issues in Chapter 6.

[28] Government of Western Australia 2018 and 2019.

[29] Elise Archer, Minister for Environment 2019.

3 Commission's approach

3.1 Overview of the Commission's approach

The Commission's approach for this investigation consisted of the following steps, which are consistent with the approach outlined in the progress report:

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 this approach in the progress report and did not receive any feedback or submissions in relation to its approach. Therefore, the Commission has maintained this approach for this final report, except for including additional data and making some minor refinements when incorporating new data.

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 insights 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 undertook 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 12 months of the scheme (the period from 30 June 2018 to 30 June 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; and

- 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, additional costs associated with participating in and complying with a CDS are incurred 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 took a similar approach to the Independent Pricing and Regulatory Tribunal (IPART)[30] 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, including beverage 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.

[30] IPART 2018c, pp 19–20.

The Commission categorised the data contained in the two datasets in a similar manner to IPART, that is, by beverage market (alcoholic or non-alcoholic – see Chapter 2 for more detail) and then by the following beverage categories within each market: [31]

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

The analysis of wholesale and retail prices was based on data between June 2017 and June 2019, and between June 2017 and April 2019, respectively.[32]

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.[33] 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 the Commission's website.

Method 4: Consider the price changes for promotional alcoholic beverages using Ebiquity data.[34] 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 did not have access to a comparable dataset for non-alcoholic beverages prices.[35]

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[31] IPART 2018d, p 100.

[32] For promotional alcoholic retail prices, data was only available from January 2018 to May 2019.

[33] Method 1 used prices from January 2018 to April 2019.

[34] Ebiquity is an independent media and marking analytics organisation that monitors advertising across a number of channels such as TV, digital and press.

[35] Method 4 used prices from January 2018 to April 2019.

There are 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 the retail prices that consumers face.
- The second method has the advantage of using retail price data, which includes both promotional and non-promotional prices paid by 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 into 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 identifying the price impact attributable to the introduction of the CDS, as adopted in the progress report and this final report, differs from 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.[36] It was not possible for the Commission to implement this approach because of differences in the data available to the Commission compared to IPART.

Specifically, the Commission did not have unit level retail price data for a comparison group (such as beverages in other jurisdictions) which 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 had retail price data for Canberra.

[36] IPART 2018a; IPART 2018b; IPART 2018c; and IPART 2018d.

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.

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.[37]

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. For this reason, the Commission analysed data over a 12-month period as part of 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 Table 3.1,[38] to assess whether the ACT CDS affected competition in the ACT beverage market.

[37] IPART 2018c, p 23.

[38] ICRC 2018, p 19; and ICRC 2019, p 21.

Table 3.1 Indicators for competition monitoring

Indicator	How the Commission considered
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 and ICRC 2019, p 21.

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 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 final 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 was for the Commission to assess whether ongoing price monitoring is required beyond the initial 12-month period. The Commission's final findings from the previous steps outlined in this section helped to inform the Commission's final decision on this question.

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 June 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[39] and MRF true ups occurring quarterly.[40]

The Commission took the same approach as IPART for calculating the monthly direct costs per container and the overall direct cost per container.[41] The monthly direct cost per container is the sum of the advance contribution and true up for each month divided by the forecast number of containers supplied in that month. The average direct cost per container since the introduction of the CDS is the total scheme cost after true up[42] divided by the actual total number of containers supplied over the period from the CDS commencement to June 2019.[43]

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

Box 3 Summary of final findings for the direct costs of the ACT CDS

The Commission estimates that the direct costs of the ACT CDS averaged around 7.5 cents per container (including GST) for the period 1 July 2018 to 30 June 2019, which is in line with the progress report draft finding on direct costs. These costs fluctuated from month to month over this period from around negative 0.6 cents per container to around 11.2 cents per container (including GST) with smaller fluctuations in direct costs in recent months. This volatility in direct costs is due to two factors:

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

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[39] The first collection point true up occurred in the September 2018 invoice for the month of July 2018.

[40] The first MRF true occurred in the November 2018 invoice for the months of July, August and September 2018.

[41] IPART 2018d, p 27.

[42] Sum of all advance contributions and true ups.

[43] For the average direct costs over the first 12 months, the Commission used the forecast return rate for June 2019 to allow annual comparisons to be made as actuals for June 2019 are not yet available.

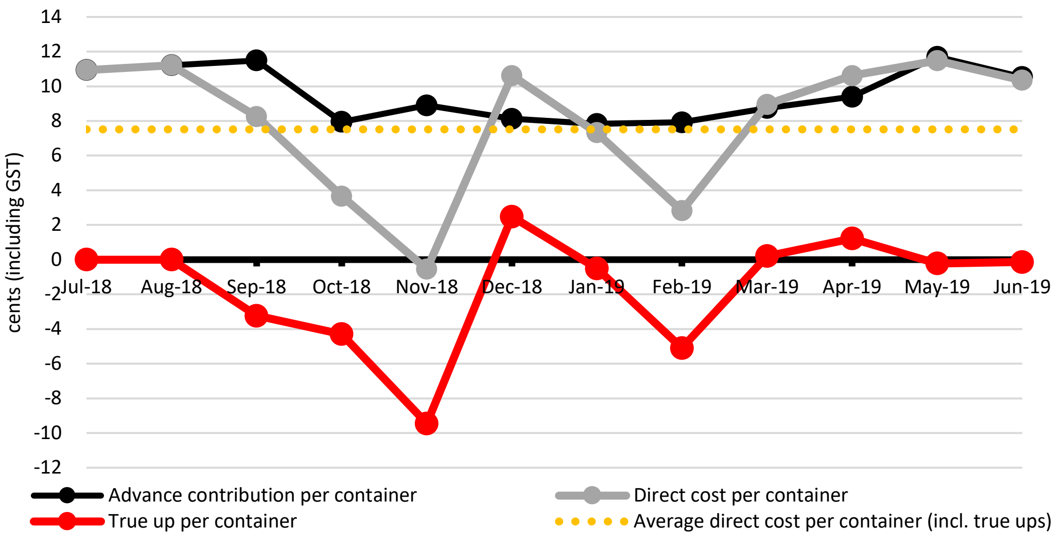
4.1 Commission's estimate of ACT CDS direct costs

The Commission estimates that the direct costs of the ACT CDS averaged 7.5 cents per container (including GST) over the period from 1 July 2018 to 30 June 2019.[44] This is shown in Figure 4.1 and is similar to the Commission's progress report draft finding of 7.1 cents per container (including GST).[45] The monthly direct costs ranged from a low of negative 0.6 cents per container in November 2018 to a high of around 11.2 cents per container in August 2018, which is unchanged from the progress report.[46] 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 findings are broadly similar to outcomes for the NSW CDS. IPART reported an average direct cost for the first year of operation of 9.3 cents per container including GST, varying between 1.0 cent and 15.1 cents per container depending on the month.[47]

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 October 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 October 2018.

Figure 4.1 ACT CDS direct costs, July 2018 to June 2019 (cents per container, including GST)



Source: Commission's analysis of Exchange for Change data provided in 2018 and 2019.

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[44] For the average direct costs over the first 12 months, the Commission used the forecast return rate for June 2019 to allow annual comparisons to be made as actuals for June 2019 are not yet available.

[45] ICRC 2019.

[46] Figures in the final report may differ slightly from the figures in the progress report, as the Commission used the latest total containers supplied provided by Exchange for Change in July 2019.

[47] IPART 2018d, p 8.

The two main adjustments made by the Scheme Coordinator are:

- network operator true up – this is an adjustment for the differences between the forecast and actual containers returned at collection points; and
- MRF operator true up – this is an adjustment for 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 beginning of the next month, which allows the network operator true ups to occur in the subsequent month. The network true ups ranged from 4.3 cents per container in October 2018 to negative 2.7 cents per container (including GST) in December 2018.[48]

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.

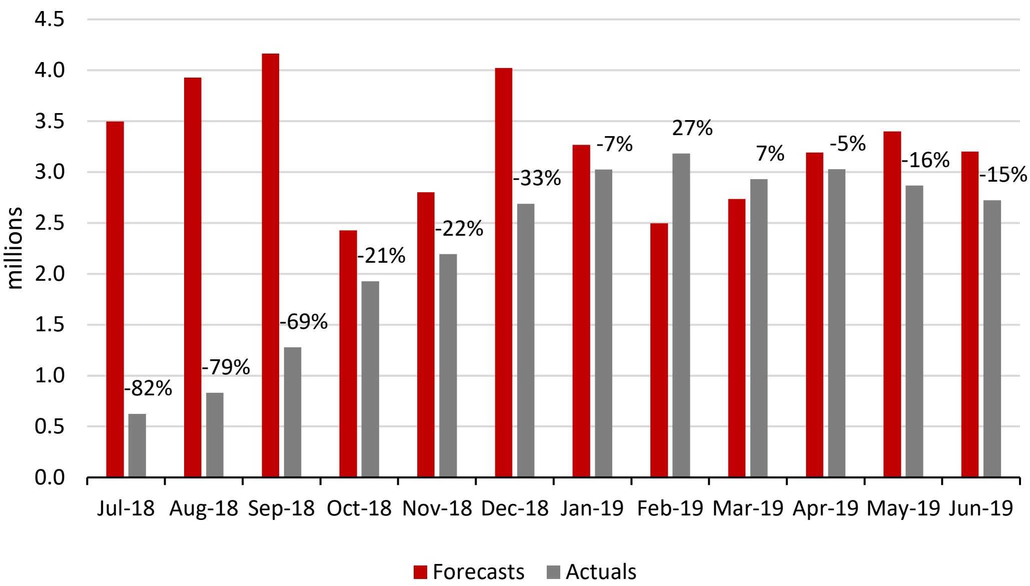
4.2 Volatility in monthly direct costs

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.

The differences in the forecast and actual container returns at collection points for the first 12 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 to less than 20 per cent in the three months to June 2019.

[48] Negative true ups decrease the amount payable by first suppliers, as the actual costs of the CDS are less than the forecast costs of the CDS. Positive true ups increase the amount payable by first suppliers, as the forecast costs of the CDS are more than the actual costs of the CDS.

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



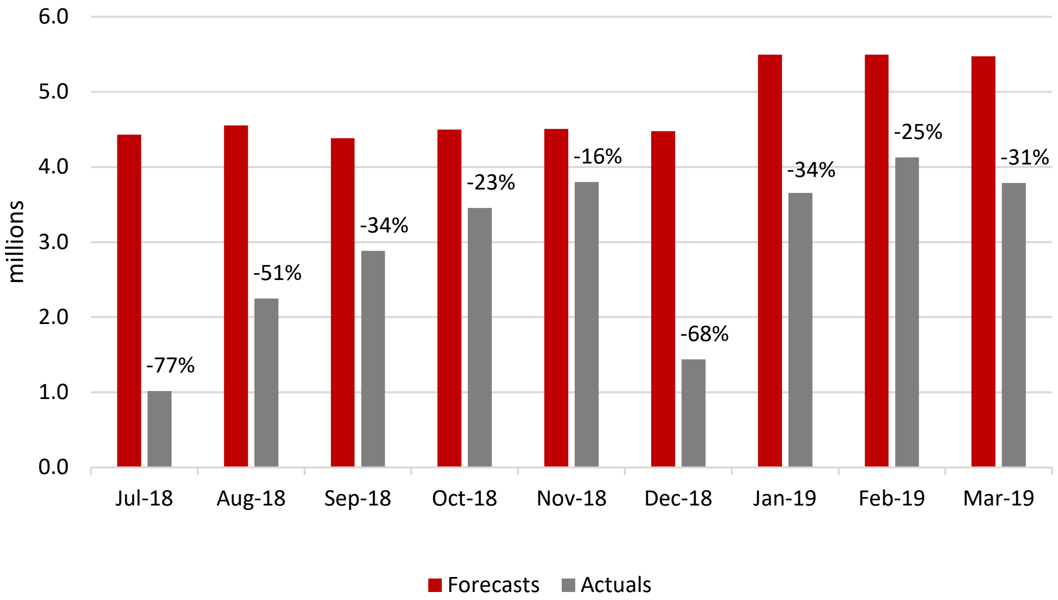
Source: Commission's analysis of Exchange for Change data provided in January and July 2019
Note: The percentages shown in the figure are the monthly differences between the forecast and actual containers returned.

The monthly differences between forecast and actual container returns at the MRF for the first nine-months of the CDS are shown in Figure 4.3. The figure shows that the difference between forecast and actual containers returned has decreased compared to the first two months of the scheme, with the exception of December 2019. The significant fall in actual containers returned via the MRF for December 2018 could be due to seasonal factors.[49]

The differences between forecast and actual containers returned through the collection points and the MRF have both reduced significantly since the ACT CDS commenced on 30 June 2018. This has largely reflected an increase in the return rate. Nevertheless, Figure 4.3 shows that there remain significant differences between the actual and forecast container returns via the MRF, ranging between 25 and 34 per cent higher than actual returns in the latest three months for which information is available. The Commission sees benefit in the Scheme Coordinator reviewing, and where necessary revising, its forecast methodology, particularly for returns via the MRF, with the aim of improving the accuracy of the forecasts. More accurate forecasts would contribute to reducing the month to month volatility in scheme costs.

[49] For example, MRF collections could be temporarily reduced during holiday periods, as the shipping of recycled material may be difficult during the holiday periods and, to a lesser extent, consumers may not be available to place items in to the yellow bins or place the yellow bins out for collection.

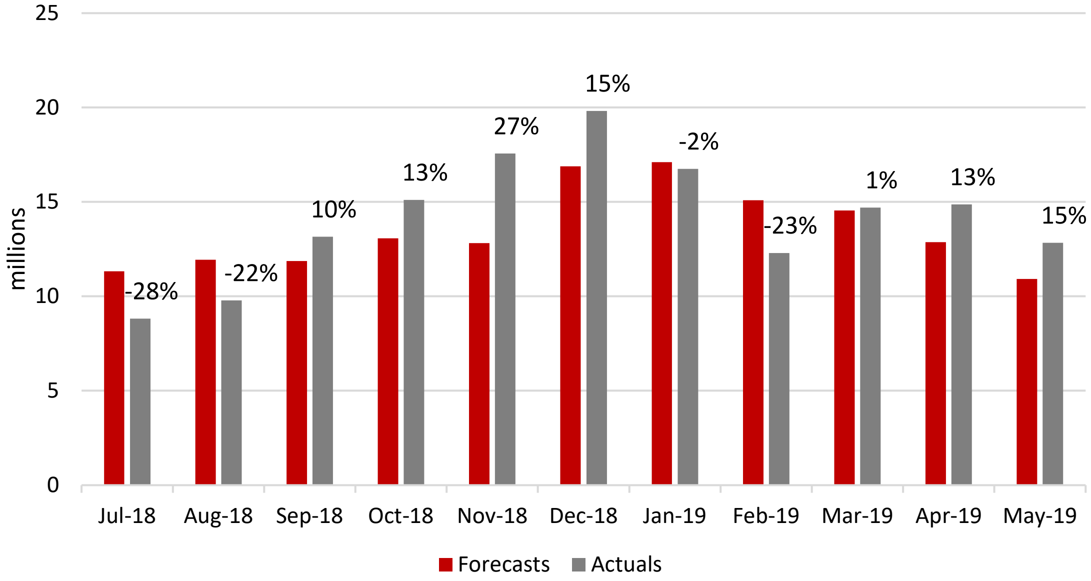
Figure 4.3 MRF – forecast and actual containers returned under the ACT CDS (millions)



Source: Commission's analysis of Exchange for Change data provided in January and July 2019.
Note: The percentages shown in the figure are the monthly differences between the forecast and actual containers returned.

In addition to forecast and actual containers returned, first suppliers are invoiced based on total containers supplied in the ACT for a particular month. First suppliers are required to provide estimates of the containers to be supplied in the ACT to allow Exchange for Change to estimate the advance contribution per container. They subsequently provide actual containers supplied in the following month to allow for true ups to be made based upon actual total containers supplied. Figure 4.4 shows the estimated and actual total containers supplied in the ACT between July 2018 and May 2019.

Figure 4.4 Forecast and actual total containers supplied in the ACT (millions)



Source: Commission's analysis of Exchange for Change data provided in April and July 2019.
Note: The percentages shown in the figure are the monthly differences between the estimated and actual containers supplied as at 1 April 2019.

Volatility in monthly direct costs can be caused in two ways: (i) some first suppliers do not submit actual total containers supplied on time or (ii) some first suppliers provide figures that need to be updated subsequently. Both cases create volatility because the revising and updating figures for actual containers supplied per month leads to a true up in a later month. For example, suppose estimated container supplies for a given month are greater than actual containers supplied. Once suppliers correct the data, there will be a true up and the direct cost per container in that month will be larger. This is because there are fewer containers to spread the scheme costs over.

4.3 Scheme Compliance Fee

The Commission received a submission to the Issues Paper about the Scheme Compliance Fee. The Australian Beverage Council Ltd (the ABCL) stated:

> [it] would like ICRC to consider the imposition of the "Compliance Costs" to monitor compliance with the Scheme.
>
> The ABCL calls upon the ICRC to review this matter, and we call upon the ACT Government to declare the exact amount of these Compliance Costs. We also ask how it is intended that such funds will be spent, and what will happen with any surpluses which might arise.

The Commission's draft recommendation

The Commission noted 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.

Taking into account the ABCL's submission, the Commission proposed in its progress report that 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. Doing so would improve transparency of the ACT CDS more broadly and address the concerns raised by stakeholders.

In addition, the Commission noted that further analysis of the Scheme Compliance Fee would be conducted as part of the final report as more data became available. The Commission's analysis is discussed in the following subsection.

Stakeholder submissions to the progress report

The Commission received two submissions supporting the Commission's draft recommendation for the ACT Government to consider publishing a summary of the Network Operator Agreement and Scheme Coordinator Agreement.

The ABCL stated:

> The ABCL thanks the ICRC for supporting the ABCL's call for transparency in relation to CDS scheme costs. We believe that full disclosure of all costs incurred by the Scheme should be published and be a matter of public record due to their impact on the Scheme, Beverage Suppliers, Retailers and most importantly, Consumers.[50]

The National Retail Association (NRA) stated:

> We submit that there needs to be very clear transparency over administration costs and recovery percentages. The costs of the CDS should be readily available to all stakeholders and comparable with what suppliers are charged. We submit that it is important that the handling fee reflects the true cost of operations and that this is easily verifiable.[51]

Further analysis on the Scheme Compliance Fee

Based on the data provided by Exchange for Change for the period 30 June 2018 to 30 June 2019, the Commission estimated that the Scheme Compliance Fee represents about 3 per cent of the annual costs. While the Scheme Compliance Fee is higher than IPART's estimate of a reasonable fee for the NSW scheme (1-2 per cent of annual costs),[52] the Commission considers that the higher percentage for the ACT CDS is reasonable for the following reasons.

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[50] ABCL progress report submission 2019.

[51] NRA progress report submission 2019.

[52] IPART 2018d, p 6.

First, the ACT CDS return rate (about 35 per cent) was less than NSW return rate (about 53 per cent) for the initial nine months of each respective scheme, which means the fixed costs accounted for a greater proportion of overall CDS costs in the ACT.[53] The Commission estimated that the ACT Scheme Compliance Fee would represent about 2 per cent of scheme costs if the return rate in the ACT was the same as in NSW (at about 53 per cent).[54] This is at the top of IPART's estimated range for NSW.[55]

Second, there are lower economies of scale in the ACT compared to NSW. The fixed costs of the ACT CDS must be spread across a substantially lower number of containers supplied compared to NSW.

The Commission's final findings

The Commission has concluded that the Scheme Compliance Fee is reasonable when taking into account lower economies of scale and the lower return rate in the ACT compared to NSW.

The Commission maintains its draft recommendation that the ACT Government 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 Final findings on scheme costs

The Commission's final findings on the direct costs of the CDS in the ACT are:

1. The direct costs of the CDS averaged around 7.5 cents per container (including GST) over the period July 2018 to June 2019.
2. The direct costs have fluctuated significantly over the first 12 months, ranging from negative 0.6 cents per container in November 2018 to around 11.2 cents per container in August 2018 (including GST). The month to month volatility has reduced in recent months, with direct costs averaging around 10 to 11 cents per container in April, May and June 2019 (including GST).
3. The monthly volatility in the direct costs mainly reflected the difference between forecast and actual volumes of containers recovered and the associated true ups. The difference between forecast and actual volumes returned has reduced since the start of the scheme.

[53] Chapter 2, Table 2.1.

[54] Chapter 2, Table 2.1.

[55] IPART 2018d.

4. The Scheme Compliance Fee accounted for about 3 per cent of the scheme costs over the first 12 months. The Commission has concluded that the ACT Scheme Compliance Fee is reasonable, in comparison with IPART's estimate for the NSW CDS of 1 to 2 per cent of annual costs, after taking into account the lower economies of scale in the ACT and the lower container return rate in the ACT. The return rate was 35 per cent for the first 12 months of the ACT scheme compared to about 53 per cent for the NSW scheme.

4.5 Final recommendation on scheme costs

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

Box 4 Summary of final findings on price impacts of the ACT CDS

There has been a statistically significant increase in the average retail and non-promotional wholesale prices 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 30 June 2018.

On average, non-promotional wholesale prices of all eligible beverages increased by 12.3 cents (including GST) per container due to the introduction of the CDS over the 12 months from July 2018 to June 2019 (Table 5.1). The price impact was similar across beverage types, ranging on average from 11.9 cents to 12.8 cents per container. In addition:

- The price impact was only slightly larger for alcoholic beverages than for non-alcoholic beverages (increases of 12.7 cents and 12.2 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, which are paid by consumers, the Commission's analysis of ABS data over the first nine months of the scheme suggests that water, soft drinks and juice prices increased by around 5 per cent (equivalent to about 10 cents per container) as a result of the scheme. For beer the increase was about 1 per cent (equivalent to about 5 cents per container). These price increases are similar to IPART's estimated price increases in NSW that resulted from the NSW CDS. IPART estimated that water, soft drinks and juices increased by 10 cents per container over the first 12 months of the NSW scheme. For beer the estimate was 4 cents per container.[56]

In addition, the Commission 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 2018 to May 2019, which is less than the price increase for non-promotional wholesale alcoholic beverages.

[56] IPART 2018d, p 40.

The Commission's final findings suggest that the increase in beverage prices attributable to the ACT CDS appear to be consistent with a workably competitive market.

While the Commission found that non-promotional wholesale prices of eligible beverages increased as a result of the CDS, on average, by more than the average direct cost of the scheme of around 7.5 cents per container (including GST) over the period from July 2018 to June 2019, the Commission considers the difference is not unreasonable for two main reasons:

- 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 beverage suppliers and uncertainty around setting an appropriate and stable price, especially in the relatively short time period examined.

In addition, it is important to recognise that discounts and promotions are not accounted for in non-promotional prices.[57] It appears that first suppliers, to some extent, may have adjusted discounts and promotional prices to account for the volatility in the monthly direct costs of the ACT CDS. This explains part of the difference between the estimated direct costs and the scheme's impact on non-promotional wholesale prices.

Table 5.1 Average wholesale price increase due to the ACT CDS – comparison of Progress and Final report (cents per container)

Beverage Market	Beverage Type	Progress Report (updated to December 2018)	Final Report (updated to June 2019)
All		***12.4***	***12.3***
Non-alcoholic		***12.3***	***12.2***
	Water	12.3	12.2
	Soft drink	12.5	12.2
	Fruit juice	12.0	11.9
	Other[58]	N/A	12.2
Alcoholic		***12.6***	***12.7***
	Beer	12.6	12.8
	Cider	12.7	12.7
	Ready-to-drink	12.6	12.4

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

[57] See Figure 2.1 in Chapter 2 for more detail on differences between wholesale and retail prices.

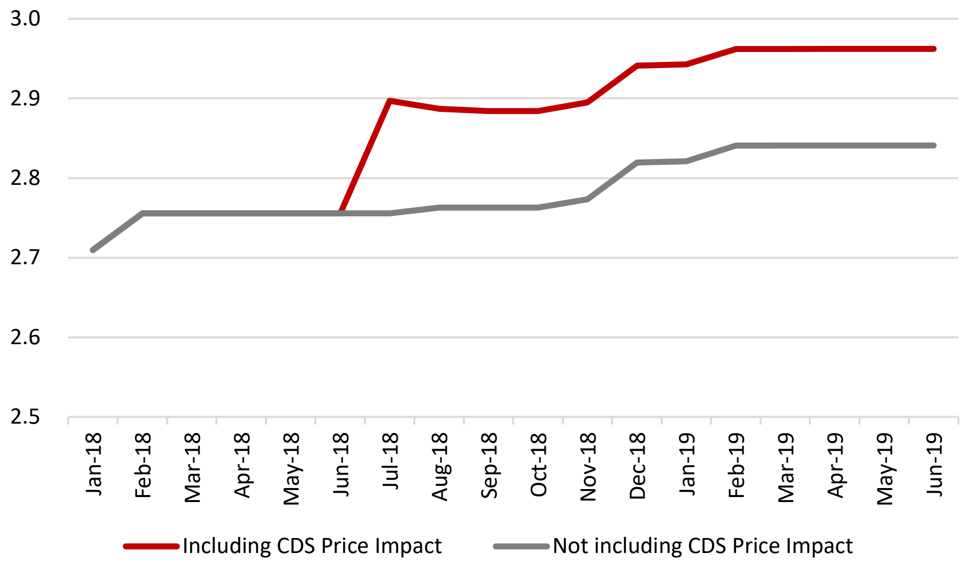
[58] The 'Other' beverage type consists of drinks such as iced tea, flavoured milk and energy drinks.

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.[59] In most cases, the price lists recorded the non-promotional wholesale prices with and without CDS-related costs. The Commission confirmed that 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. In addition, the Commission filtered the data to ensure that only prices for the same products were used each month in calculating the averages each month.

The Commission found that non-promotional wholesale prices of all eligible container beverages increased on average by 12.3 cents (including GST) per container due to the introduction of the CDS over the first 12 months from July 2018 to June 2019. This is similar to the estimated price impact of 12.4 cents per container (including GST) in the progress report, which was for the period 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. Further details are set out below.

Figure 5.1 Average monthly wholesale prices of eligible beverages, January 2018 to June 2019 ($ per container, GST inclusive)



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

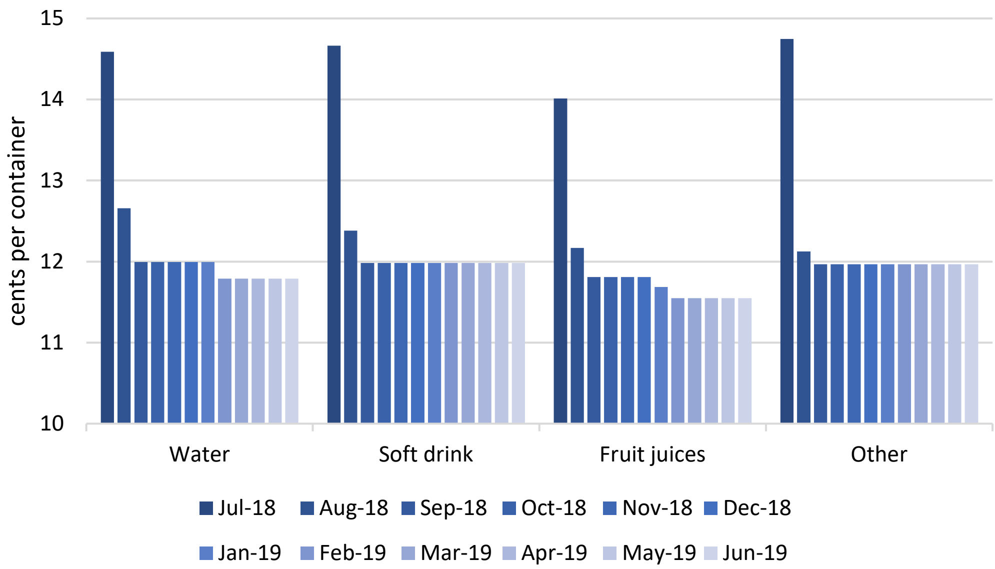
[59] The wholesale price increase reported in this section refers to the price paid by retailers, rather than the price paid by the consumer. The price paid by the consumer is the retail price, which may be different from the wholesale price for a range of reasons, including retail costs, discounts offered 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 12.2 cents per container (including GST) as a result of the CDS in the period from July 2018 to June 2019. The increase ranged from a low of 11.9 cents for fruit juices to a high of 12.2 cents for soft drinks, water and other 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.[60] 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 2018 to June 2019 (cents per container, GST inclusive)



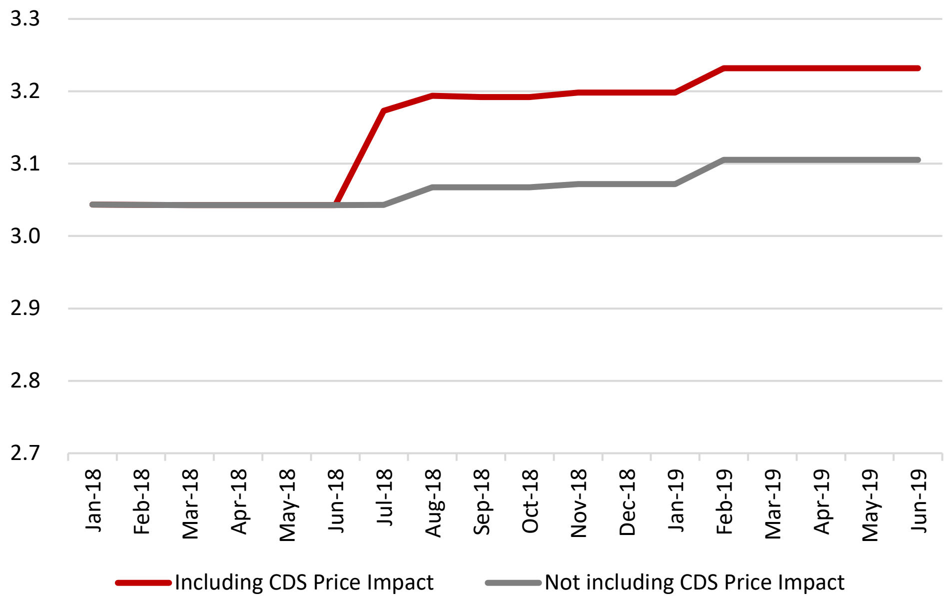
Source: Commission's analysis of confidential data provided by first suppliers in 2018 and 2019.

Alcoholic beverage prices

For eligible alcoholic beverages, average prices increased by around 12.6 cents per container between July 2018 to June 2019 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.

[60] Coca-cola Amatil 2018.

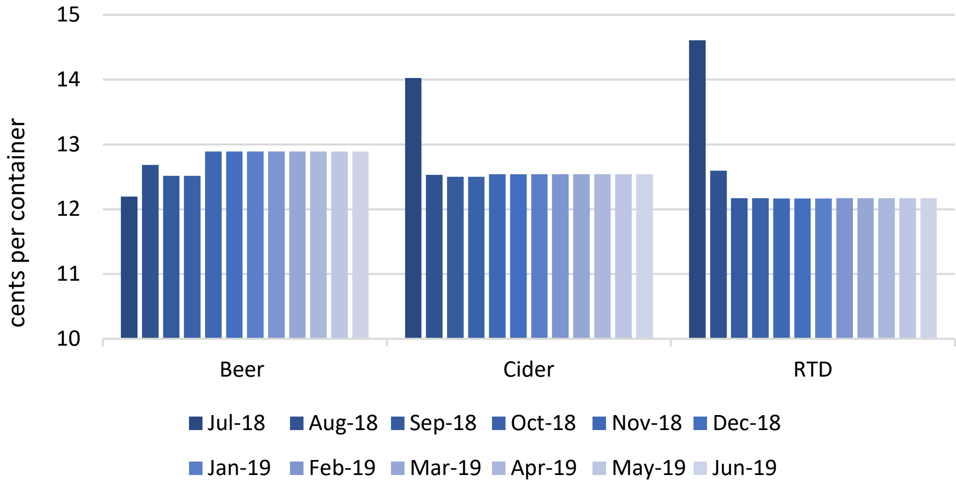
Figure 5.3 **Average monthly wholesale prices of eligible alcoholic beverages in January 2018 to June 2019 ($ per container, GST inclusive)**



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 2018 to June 2019.

Figure 5.4 **Average monthly CDS impact on eligible alcoholic beverage prices, July 2018 to June 2019 (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 the changes to its prices that were attributable to the ACT CDS.[61]

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.[62] The Commission compared discounts offered in Canberra and Melbourne for an 18-month period, including the months before and after the introduction of the CDS.[63] 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 (such as changes in production costs). This approach is similar to IPART's approach in looking at promotional prices for alcoholic beverages.[64] The Commission was able to undertake this analysis only for alcoholic beverages as it did not have access to a comparable dataset for non-alcoholic beverages.

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[61] Coca-Cola Amatil 2018.

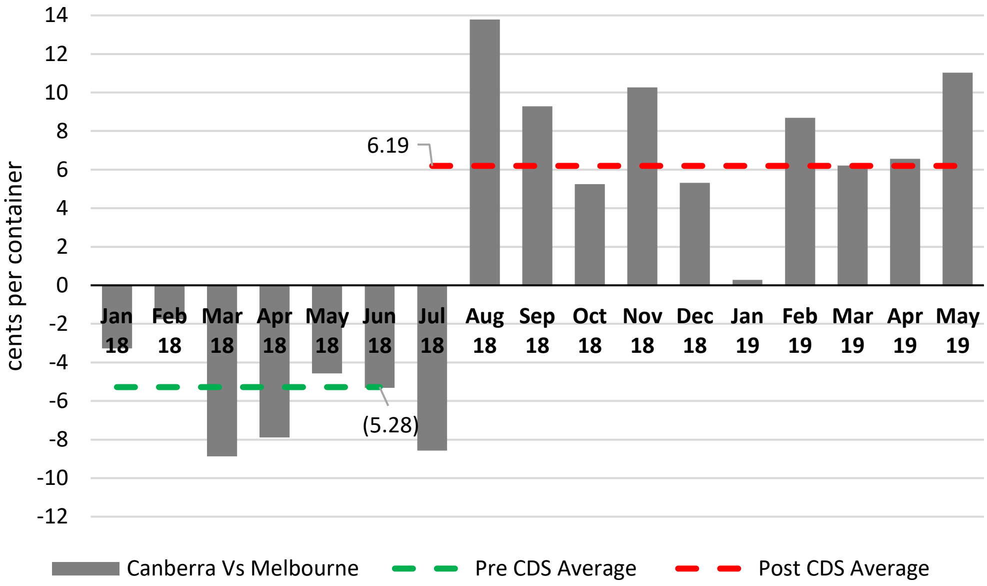
[62] Ebiquity is an independent media and marking analytics organisation that monitors advertising across a number of channels such as TV, digital and press.

[63] 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.

[64] 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 2018 to May 2019. 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, January 2018 to May 2019 (cents per container, GST inclusive)



Source: Commission's analysis of Ebiquity data.

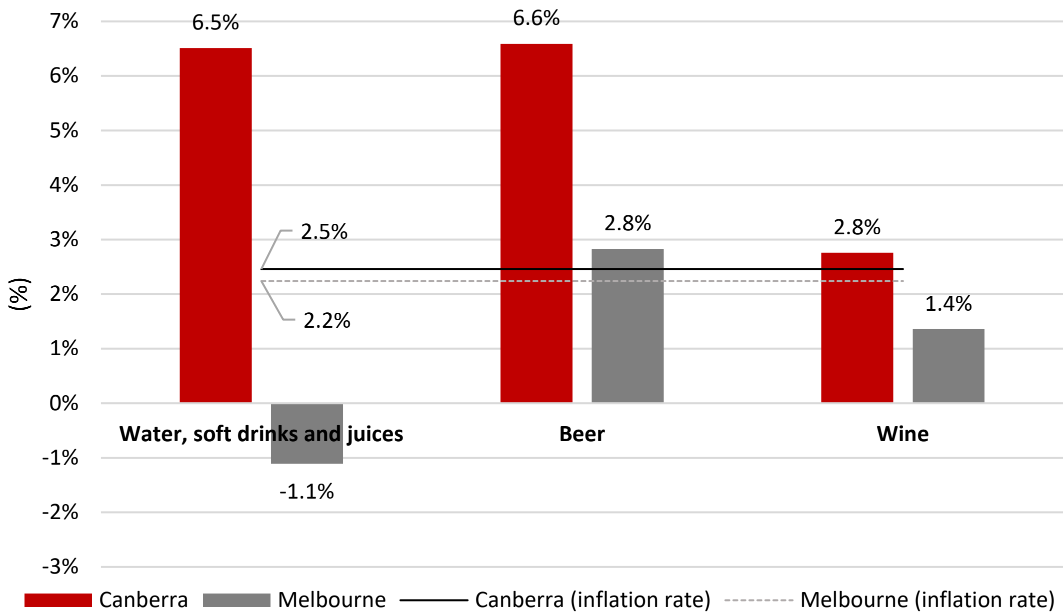
5.2 Changes in ABS consumer price indices for beverages

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 and March quarter 2019 are shown in Figures 5.6 and 5.7, respectively. 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 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 index declined by 1.1 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 Melbourne's rate of inflation.
- 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 (%)

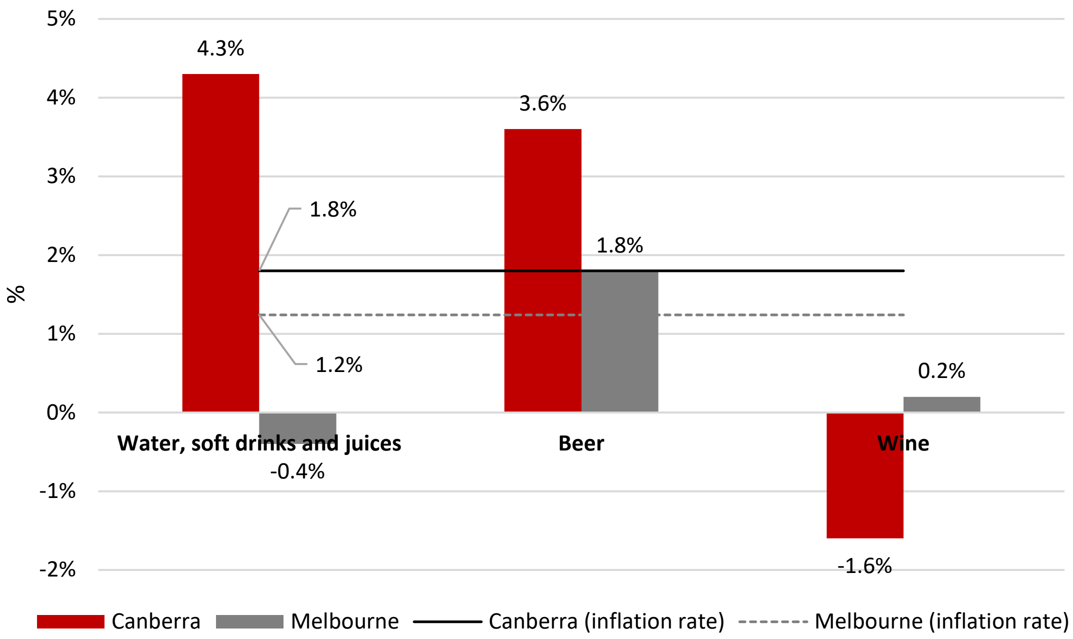


Source: Commission's analysis of the ABS CPI data.

Figure 5.7 shows that, in the year to the March 2019 quarter:

- Water, soft drink and juice prices rose 2.5 per cent more than the rate of inflation for Canberra, representing a total increase of 4.3 per cent; this compares to Melbourne where the price indices declined by 0.4 per cent.
- Beer prices rose 1.8 per cent more than the rate of inflation for Canberra, representing a total increase of 3.6 per cent, while Melbourne prices increased in line with Melbourne's rate of inflation .
- Wine prices for both cities were below the rate of inflation, with wine prices in Canberra decreasing while prices remain relatively flat in Melbourne.

Figure 5.7 **Year-on-year change in the ABS consumer price indices for beverages, March quarter 2019 on March quarter 2018 (%)**



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

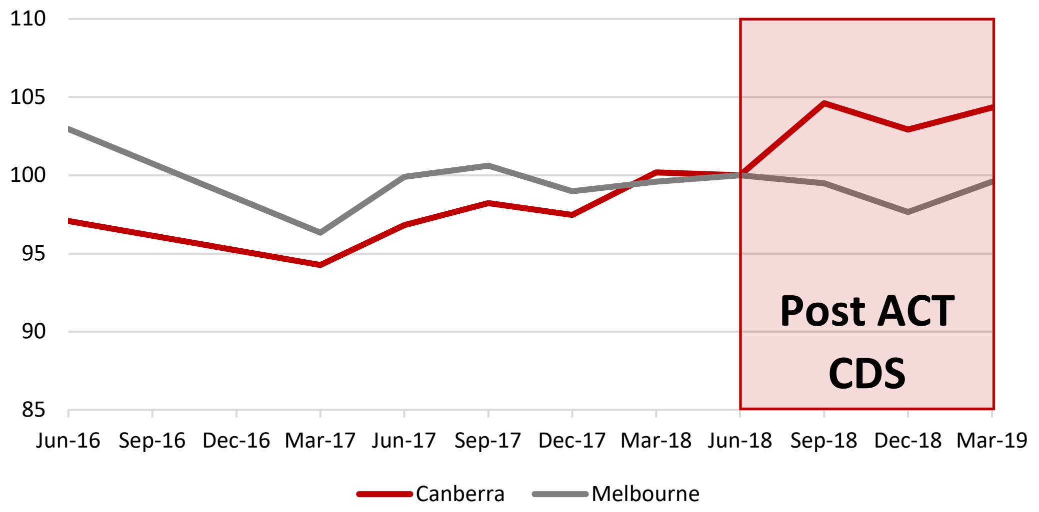
Figures 5.8 to 5.10 show the ABS price indices for water, soft drink and juices, beer, and wine over the period from June 2016 to March 2019 for Canberra and Melbourne. To help to distinguish price movements from before and after the introduction of the ACT CDS, the Commission set the index value for 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 Figures 5.7 and 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 2018 quarter, while the price index for Melbourne remained flat (see Figure 5.8).

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 and March quarter 2019. The one-off relative price increase in Canberra occurred in the September quarter, suggesting that the ACT CDS did not have a noticeable effect on ACT beverage prices prior to its implementation.

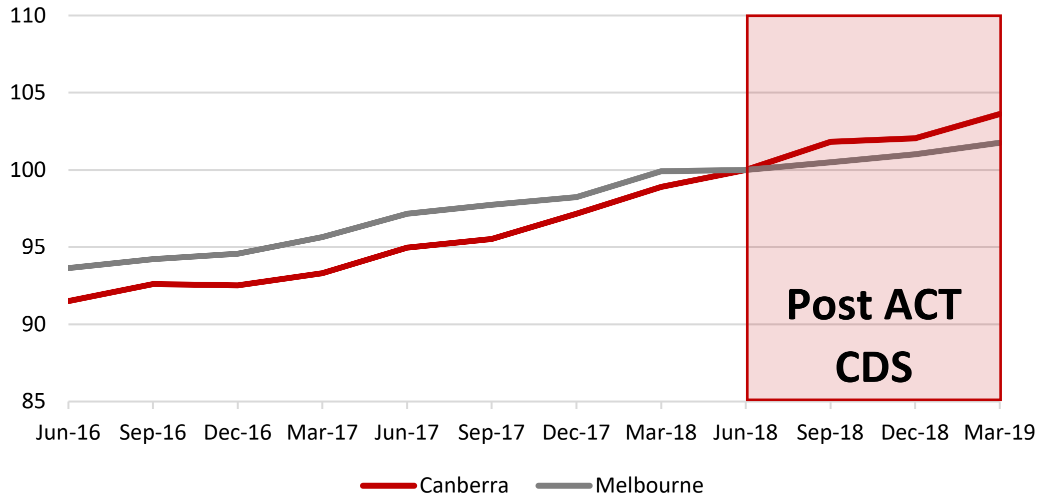
In contrast, movements in the wine price index (a non-eligible beverage) remained largely in line for both cities around the September quarter 2018 (see Figure 5.10). This indicates that Canberra prices for non-eligible beverages were not affected by the ACT CDS.

Figure 5.8 ABS consumer price index for water, soft drinks, and juices (rebased to the June quarter 2018)



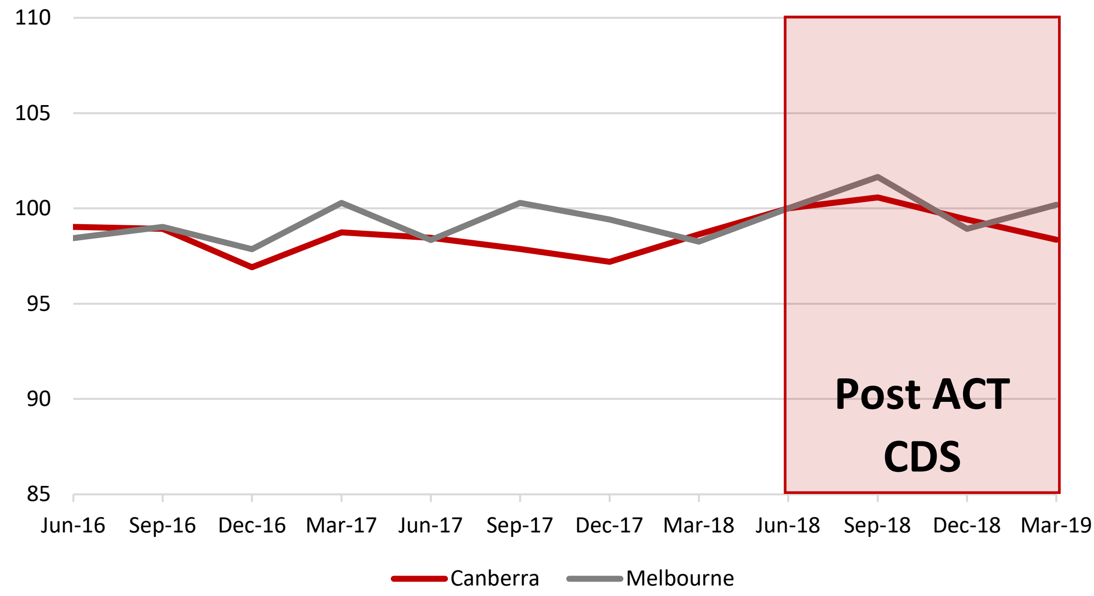
Source: Commission's analysis of the ABS CPI data.

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



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

Figure 5.10 ABS consumer price index for wine (rebased to the June quarter 2018)



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

The retail price increase in the ACT was similar to the increase in Sydney when the NSW CDS was introduced

The Commission also examined whether the CDS's effect on retail beverage prices in Canberra was similar to that experienced 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 5.8 and 5.9) and compared the changes to those in Sydney when the NSW CDS was introduced (Figures 5.11 and 5.12).[65]

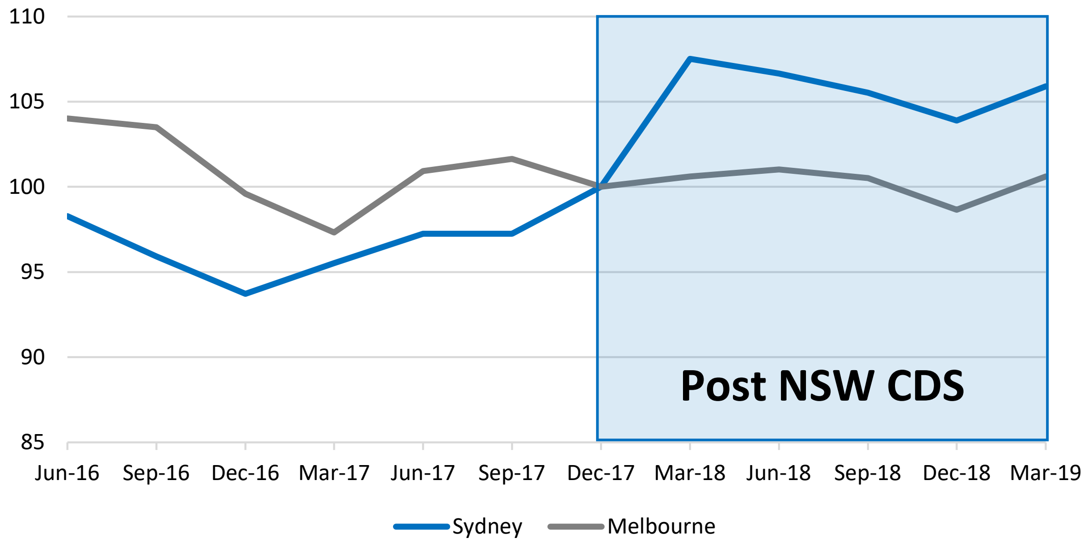
The average retail price changes in Canberra were similar to those changes in Sydney when the NSW CDS was introduced. For example, the ABS consumer price index for water, soft drinks and juices in Sydney increased by around 7 per cent in the quarter following the introduction of the NSW CDS (see Figure 5.11), when compared to Melbourne.[66] The same index for Canberra increased by around 5 per cent in the quarter following the introduction of the ACT CDS, when compared to Melbourne (see Figure 5.8).

[65] Figures 5.11 and 5.12 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.

[66] Melbourne is used as a control because Victoria does not have a CDS. It therefore controls for other factors affecting beverage prices, as discussed in chapter 3.

The changes in the ABS consumer price indices in Canberra (compared to Melbourne)[67] over the first nine-months of the scheme indicate that the CDS led to an increase in retail prices. The price increase was about 5 per cent for water, soft drink and juice prices (equivalent to about 10 cents per container, including GST), and about 1 per cent for beer prices (equivalent to about 5 cents per container, including GST).[68] Similarly, IPART estimated the impact of the NSW CDS to be about 10 cents per container for non-alcoholic beverages and about 4 cents per container for beer, in the first 12 months of the scheme.

Figure 5.11 ABS consumer price index for water, soft drinks, and juices (rebased to the December quarter 2017)

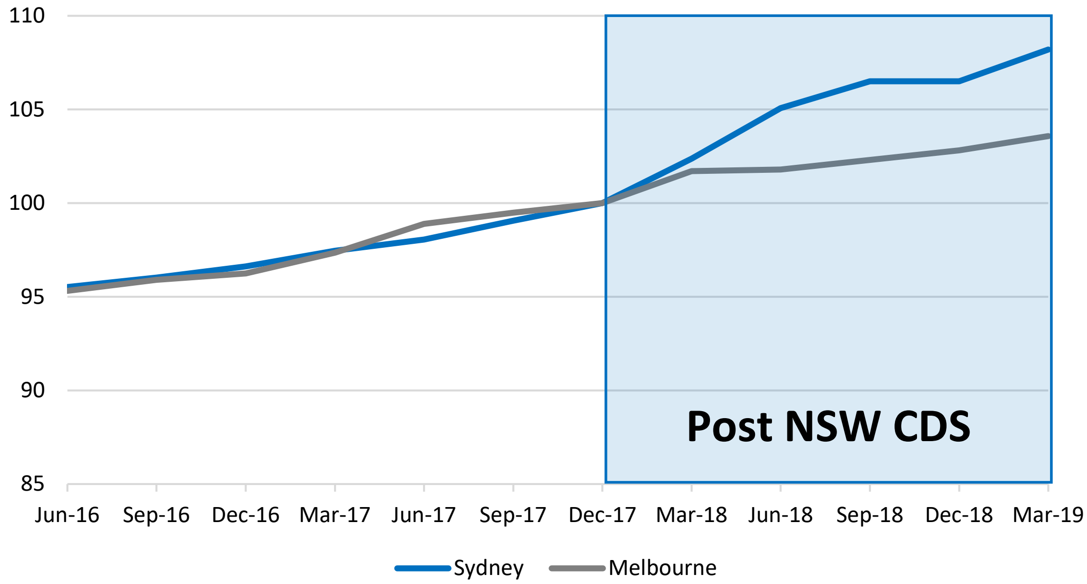


Source: Commission's analysis of the ABS CPI data.

[67] As described earlier, the price index for Melbourne is an indicator of non-CDS factors that affect prices.

[68] The percentage increase refers to the increase in Canberra less the increase in Melbourne (to control for other factors affecting prices). The Commission applied this increase to the retail price lists it received from first suppliers to obtain the impact on a cent per container basis.

Figure 5.12 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

During this investigation the Commission received submissions on price impacts of the CDS, which generally made the following main types of comments:[69]

- the ACT CDS would increase prices of all eligible beverage by varying amounts; and
- 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.

Submissions to the progress report

The Commission did not receive any additional submissions on the price impact of the ACT CDS after submissions closed in April 2019.

Commission's final finding

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 4 and 6.

[69] ICRC 2019, p 40.

The Commission monitored 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.[70] The Commission considers that the small number of complaints indicates that in most cases price increases implemented by individual retailers following the introduction of the CDS were likely to have been in line with the average increases attributable to the scheme.

5.4 Factors affecting the magnitude of the price increases

As discussed earlier, average wholesale prices of eligible container beverages increased by 12.3 cents per container (including GST) as a result of the CDS from July 2018 to June 2019. This compares to the average direct costs of the scheme over a similar period of 7.5 cents per container (including GST) as discussed in Chapter 4. While the direct costs are lower than the estimated price increase, the Commission considers the difference is reasonable due to a number of other factors that have contributed to the price impact of the CDS. These factors are discussed below.

5.5 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, for example:[71]

- 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 the Scheme Coordinator; and
- updating prices for the changes in ACT CDS costs.

[70] ICRC 2019, p 40.

[71] EY 2018, p 19; IPART 2018d, p 58; and feedback from first suppliers in targeted consultations.

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 sought feedback on the magnitude of these indirect costs incurred by first suppliers, which are discussed further in this chapter.

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.[72] The ACT market is relatively small compared to other jurisdictions, which suggests that the indirect cost per container in the ACT compared to other jurisdictions may be larger because of lower economies of scale.[73]

In the period examined in this report, the Commission considers that the indirect costs of the scheme were likely to have been larger than they will be on an ongoing basis. This is because in the months immediately following the introduction of the ACT CDS, beverage suppliers are likely to have passed on at least some of the one-off costs associated with changes to billing or reporting systems that were required to participate in the CDS.

Stakeholder feedback on indirect costs

Coles submitted that:[74]

> Despite the significant costs, Coles has absorbed most of these in terms of time and resources used across the group to comply with CDSs across Australia. This position may be revised over time.

Other stakeholders provided feedback on costs incurred as a result of the introduction of the ACT CDS, and these were largely the costs of upgrades in billing systems and ongoing costs associated with reporting and compliance. Further details on the feedback provided can be found in Appendix 6.

The ABCL stated in its submission to the progress report that:[75]

> Indirect costs incurred by beverage manufacturers as a consequence of the implementation of the ACT CDS include:
>
> - modifying or establishing computer-based and manual systems to capture, collate and publish the data which manufacturers are required to submit to the Scheme Coordinator in complying with Scheme obligations;
> - undertaking revised price modelling and sales forecasting;
> - negotiating and documenting new pricing arrangements with customers;
> - registering containers;

[72] IPART 2018d, p 58.

[73] ALSA 2018, p 2.

[74] Appendix 6.

[75] ABCL progress report submission 2019, p 13.

- making necessary changes to container labels including obtaining:
    - compliant barcodes;
    - redesigning labels and artwork;
    - printing new labels containing the regulated Refund Mark;
    - replacing or discarding non-compliant label stock;
- preparing for and undergoing external CDS audits;
- preparing, completing and submitting contracts, agreements and statutory declarations to both the Scheme Coordinator and Government s compelled; and
- communicating price increases to retailers and consumers.

The NRA stated in its submission to the progress report that:[76]

> Changes to the refund mark at this stage (that is before all jurisdictions have adopted the current mark) would create extremely high costs to industry in terms of labelling, production and administration and would ultimately impact costs to consumers.

Commission's final finding

The Commission confirms its draft finding that it is reasonable for beverage suppliers to increase prices above the direct costs of the CDS because of the indirect costs of the scheme.

5.6 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 2018 to April 2019, 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 0.6 cents per container in November 2018 to around 11 cents per container in December 2018.

In the progress report, the Commission found that volatility may affect prices for serval 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 prefer stable pricing. The Commission 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 timed changes in CDS costs that are passed through to beverage prices to align with existing pricing practices such as alcohol excise changes that occur bi-annually or with the timing of internal pricing reviews.

[76] NRA progress report submission 2019, p 2.

Stakeholder feedback on cost volatility

The ABCL stated in its submission to the progress report that:[77]

> to restate our position that the month-to-month volatility in scheme costs has led to manufacturers adopting a more conservative approach to product pricing as they have not known what CDS costs will be on an ongoing basis. Moreover, manufacturers have also been uncertain as to what the impact of historical corrections (the so-called 'true ups') might mean fiscally. Any negative adjustments arising as a consequence of historical corrections are of course unrecoverable as prices have been set and products have been sold on the basis of previous estimates and forecasts.

Commission's final finding

The Commission has found that the volatility in direct costs is likely to have affected beverage prices.

5.7 Promotional prices

In the progress report, the Commission noted that the difference between the estimated direct cost and the scheme's impact on non-promotional wholesale prices may, in part, reflect the fact that discounts and promotions are not accounted for in non-promotional prices. This conclusion is supported by the finding that retail prices have not increased by as much as non-promotional wholesale prices.

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).

It appears that first suppliers are, to some extent, adjusting discounts and promotional prices to account for the volatility in the monthly direct costs of the ACT CDS. 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.

However, the NRA, in its submission to the issues paper, stated that:[78]

> 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.

[77] ABCL progress report submission 2019.

[78] NRA issues paper submission, 2018, p 2.

This suggests two things. First, while some beverage suppliers may be taking into account the actual direct costs of the CDS compared to the costs estimated in advance and adjusting discounts and promotions accordingly, not all beverage suppliers are. Smaller retailers may be less likely to adopt this practice. Second, it is likely to be very difficult to correlate changes in discounts and promotions with changes in the direct costs of the CDS because of the many other factors influencing discounting and promotional decisions.

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

The Commission's final findings have similarities to the findings of IPART on the NSW CDS. Consistent with IPART's findings, the Commission found that the direct costs of the CDS were below 10 cents per container. The Commission notes that the scheme's direct costs in the ACT are around 7.5 cents per container compared to IPART's estimate of 9.3 cents per container for the NSW CDS.[79]

In terms of the price impact of the scheme, the final findings are 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).[80]

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.[81]

The Commission found that the average non-promotional wholesale price increase attributable to the ACT CDS was around 12.3 cents per container. The average increase in discounted and promotional retail prices for alcoholic beverages was lower than the estimated average non-promotional wholesale price increase, at around 11 cents per container.

[79] IPART 2018d, p 28. This is for the period December 2017 to October 2018.

[80] IPART 2018c; IPART 2018d; and IPART 2018d, p 32.

[81] IPART 2018d, p 32.

5.9 Final findings on price impacts of ACT CDS

The Commission's final findings are:

5. Non-promotional wholesale prices for all eligible beverages increased by an average of 12.3 cents per container (including GST) as a result of the ACT CDS in the period from July 2018 to June 2019, with:
   - non-alcoholic beverage prices increasing by 12.2 cents per container (including GST); and
   - alcoholic beverage prices increasing 12.7 cents per container (including GST).
6. Retail beverage prices, which are the prices that consumers pay, have on average increased by less than non-promotional wholesale prices, due in part to discounts and promotions offered by both wholesale and retail beverage suppliers.
7. The retail price of water, soft drinks and juices increased by about 10 cents per container as a result of the CDS (based on data for the first nine months of the scheme). Retail beer prices increased by about 5 cents per container. These price increases are similar to those observed for eligible beverages in Sydney in the first 12 months after the NSW was introduced.
8. 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 2018 to May 2019.
9. 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.
10. The estimated changes in eligible beverage prices appear consistent with what would be expected in a workably competitive market.
11. It is reasonable for suppliers to increase prices by more than the direct costs of the CDS because of the indirect costs of the scheme, such as the cost of compliance, reporting and updating billing systems.
12. The month to month volatility in the scheme's direct costs has led to some uncertainty around setting pricing for some suppliers. Some suppliers may wait until the scheme's monthly direct costs are clearer before adjusting non-promotional prices to keep these prices more stable.

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

This chapter discusses the Commission's final findings and information and data used in reaching these findings.

Box 5 Summary of final findings on other competition and market impacts

The Commission found no specific evidence to indicate the introduction of the ACT CDS has resulted in a material change in market share or market structure in the ACT beverage market.

The Commission found that the ACT CDS may create cash flow pressures for some first suppliers, particularly small businesses, which may have the potential to adversely affect competition in the future. The cash flow pressures relate to the scheme contributions being paid by first suppliers in advance of selling the beverages, and the seven-day payment terms imposed by Exchange for Change.

The Commission did not receive any reports from consumers of unjustified supplier behaviour with the potential to harm competition. Therefore, the Commission 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 found that it would be beneficial to streamline the CDSs across jurisdictions where possible, as this would reduce the administrative costs faced by beverage suppliers. This is likely to be particularly true for small businesses where the administrative burden has a disproportionately large impact. The Commission 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. The Commission 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 use this data to assess the CDS impact on market shares.
- While data on beverage prices and volumes for most large beverage manufacturers and larger retailers in the ACT is available to the Commission, 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 size of the ACT market that could be combined with the beverage supplier data to determine market shares for the large suppliers.

Stakeholder feedback on market structure and market share

Stakeholders indicated that there were no substantial changes in market shares as a result of the ACT CDS. Some stakeholders indicated that there may have been some minor temporary changes in market shares with the introduction of the CDS as beverage suppliers undertook different approaches to marketing the introduction of the scheme. Some stakeholders submitted that it would be difficult to measure market shares precisely given that some suppliers treat the ACT as part of the NSW market.[82]

The ABCL stated in its submission to the progress report that:[83]

> the ABCL, as the peak industry body for the non-alcoholic beverage industry, has not received one single complaint from any of our Members in relation to ‘competition’ or market issues since the introduction of CDS in the ACT. From this, we are able to deduce that our Members have not experienced any lessening of competition or any adverse competition [effects] arising as a consequence of price rises attributable to the ACT CDS.

Commission’s final finding

The feedback from stakeholders indicates that the introduction of the ACT CDS did not have a significant impact on the market shares of beverage suppliers.

[82] Appendix 6 and 7.

[83] ABCL progress report submission 2019, p 6.

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."[84] As noted in the progress report, the Commission considers it reasonable to make a similar finding given the similarities between the ACT and NSW markets in terms of beverage suppliers.

6.2 Barriers to entry

The Commission received evidence in discussions with stakeholders that the ACT CDS may create cash flow pressures for some first suppliers, particularly small businesses. 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 selling the beverages, and the seven-day payment terms imposed by Exchange for Change.

As described earlier, the payment model also creates month to month volatility in direct costs and this also creates cash flow pressure and uncertainty for business. The volatility comes about because: (a) invoices are based on forecasts of containers supplied and returned; and (b) there is an indefinite period that suppliers have to edit supply data and obtain true ups.

These cash flow pressures can increase the barriers to entry for new beverage suppliers, especially for small suppliers. This is because, for example, it may increase their overall upfront capital requirements.

Commission's draft findings

As part of the progress report, the Commission made the following draft findings relating to the payment model:

- 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 selling the beverages, and the seven-day payment terms imposed by Exchange for Change.
- The scheme's payment model has contributed to the month to month volatility in scheme costs.

Commission's draft recommendations

In response to the draft findings, the Commission made draft recommendations to:

- implement an arrears payment model in place of the current advance payment model;
- increase the payment terms to 14 days; and

[84] IPART 2018d, p 71.

- limit true ups to 12 months after an invoice is issued.

The arrears payment model and increase in the payment terms were recommended to alleviate cash flow pressures for first suppliers. The limit on true ups was recommended to reduce cost volatility.

The Commission's draft recommendations were consistent with IPART's recommendations to move to an arrears payment model with longer payment terms and a limit on the true up period.[85]

In making these draft recommendations, the Commission recognised that there are benefits from streamlining the ACT CDS with the NSW CDS. The Commission made a separate draft recommendation in the progress report to harmonise the ACT CDS with the NSW scheme. The Commission sought feedback on whether an arrears payment model should be adopted in the ACT independently of whether this payment model is adopted in NSW. The feedback received is discussed below.

Stakeholder feedback on the arrears payment model and harmonisation

Targeted consultation with beverage associations, suppliers and retailers found strong support for harmonisation across all jurisdictions and a general preference for an arrears payment model, due to the benefits from reducing cash flow pressure and improving certainty about the costs of the CDS.

The ABCL stated that an arrears payment model should be adopted in the ACT regardless of whether this model is adopted by the NSW:[86]

> Yes, most definitely. Moving to an arrears payment model will:
>
> - allow greater certainty in price modelling and sales forecasting which will benefit manufacturers, retailers and consumers;
> - improve cash flow management; and
> - eliminate bureaucratic processes, in particular the so-called true-up which is in fact a historical correction for inaccurate estimating of charges by the Scheme Coordinator.

However, the Commission also received feedback on the importance and priority of aligning the ACT CDS with NSW CDS, even if the NSW CDS payment model is not an arrears payment model.[87]

[85] IPART 2018d.

[86] ABCL progress report submission 2019, pp 13-14.

[87] Appendix 6.

Coles highlighted the importance of having:[88]

> a single model for NSW and ACT to reduce reporting and administrative burdens.

The NRA stated that it:[89]

> supports the move to a payment in arrears model, as this will create consistency and reduce costs at an administrative level. This needs to be in conjunction with the NSW CDS as the two systems are fundamentally linked.

Exchange for Change stated that:[90]

> EFC is very supportive of an arrears invoicing model for beverage suppliers. There are two competing models that ACT should consider being the Queensland model or the NSW model…
>
> The NSW Treasury has declined to provide security for an overdraft account for the NSW CDS. As a result, an arrears model cannot be implemented in NSW…
>
> … it is recommended that true ups be limited to 12 months. When a beverage supplier varies their supply volumes for periods older than 12 months, this should be treated as revenue or costs for the current period and distributed between all beverage suppliers based on their percentage supply for the current period.

Stakeholder feedback on other issues related to the payment model

The Commission received a submission from Exchange for Change proposing other changes to the payment model that may assist in reducing administrative burden and indirect costs faced by small businesses. Exchange for Change stated the following additional scheme improvements can be made regardless of the payment model adopted for the ACT CDS :[91]

> The Queensland scheme has introduced a special arrangement for small beverage suppliers in that they only have to…being invoiced quarterly. [Exchange for Change] believes this small supplier arrangement should be implemented in ACT be the short term…The arrangements should be as follows: Beverage Suppliers who supply less than 15,000 containers annually would be invoiced quarterly, with 14 day payments terms

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[88] Appendix 6.

[89] NRA progress report submission 2019, p 3.

[90] Exchange for Change progress report submission 2019, pp 1-4.

[91] Exchange for Change progress report submission 2019, p 5.

Exchange for Change also submitted the following reasons for adopting a special arrangement for small beverage suppliers:[92]

> A CDS is administratively costly for small beverage suppliers. The requirement for monthly reporting of supply volumes, as well as reconciliation and payment of [Exchange for Change] invoices is a significant burden for all beverage suppliers but significantly more so for small beverage suppliers where they have limited resources to deal with these processes…Invoicing small beverage suppliers monthly is also an administrative burden on [Exchange for Change].
>
> If the [cut off] for a small supplier is set at 20,000 containers [annually] this would represent 214 suppliers which supply a total of 697,750 containers annually compared to the annual total supply volume of 164,708,453. This means the 214 small suppliers would supply less than 0.42% of the total containers supplied in the ACT.

Commission's final findings

The Commission has confirmed its two draft findings that:

- 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.
- The scheme's payment model has contributed to the month to month volatility in scheme costs.

The Commission considers that these issues would be resolved if an arrears payment model were to be adopted for the ACT CDS. Such a model involves invoicing suppliers based on actual container returns and after they have supplied containers to the market. As such, it improves cash flow for businesses and removes the need for forecasts, which contribute to the month to month volatility. The CDSs in Queensland, South Australia and the Northern Territory use an arrears payment model.

However, the Commission understands that the NSW Government is not currently planning to implement an arrears payment model for the NSW CDS. The Commission understands that the NSW Government is considering other changes to the current advance payment model to reduce the cash flow pressure on businesses reported by IPART. As a result, there is uncertainty around the potential changes to the NSW CDS payment model at this stage.

[92] Exchange for Change progress report submission 2019, p 5.

The Commission recognises that harmonisation of the ACT CDS with other schemes is important, particularly with the NSW scheme. Throughout this investigation the Commission has received stakeholder feedback that differences between CDSs cause administrative burden for businesses, particularly small businesses (discussed in more detail in section 6.5). The ACT and NSW markets are similar in terms of suppliers and the ACT shares all its borders with NSW. The two jurisdictions also have the same scheme coordinator.

Taking into account the cost and administration benefits of harmonisation with the NSW scheme, the Commission considers that the payment model used in the ACT CDS should ideally be aligned, as much as possible, with the NSW CDS, provided this results in net benefits to the ACT beverage industry and ACT consumers. The Commission recommends harmonisation of the ACT scheme with the NSW scheme, conditional on scheme changes improving beverage suppliers' cash flows, reducing the administration costs of first suppliers and reducing cost volatility. The Commission considers that the ACT Government should work with Exchange for Change and counterparts in NSW on developing a payment model that addresses these issues.

The Commission has considered Exchange for Change's proposal to introduce special arrangements for small beverage suppliers with annual total containers supplied below 15,000. The special arrangements would involve small suppliers being invoiced in arrears once every quarter based on actual containers supplied.

Commission analysis of data provided by Exchange for Change, covering the period July 2018 to May 2019, indicates that small beverage suppliers that have supplied less than 15,000 containers over this period represent less than 0.3 per cent of total containers and around 200 of the total of about 300 beverage suppliers.

The Commission considers there would be benefits to small beverage suppliers and Exchange for Change from adopting quarterly invoicing arrangements for beverage suppliers supplying less than 15,000 containers annually. The Commission has estimated the impact of the change as being relatively small, with the additional cost of the arrears payment model for small businesses being less than 0.01 cents per container.

The Commission understands that it may be possible to introduce such invoicing arrangements for small businesses, even if similar arrangements are not adopted in NSW, without reducing the benefits of harmonisation with the NSW scheme. The Commission recommends further consideration of streamlined invoicing arrangements for small businesses in the ACT.

The Commission notes the Scheme Coordinator's forecasts of the container return rate for the ACT CDS have improved since the commencement of the scheme. This reduces the month to month volatility in direct costs and, hence, the cash flow pressures for some businesses. Nevertheless, forecast return rates remain significantly different to actuals, particularly for returns via the MRF. The Commission sees benefit in the Scheme Coordinator reviewing the methodology used to forecast returns at the MRF with the aim of improving the accuracy of the forecasts and reducing the month to month volatility in scheme costs.

In addition, the ABCL and NRA indicate support for limiting the true up period to 12 months after the invoice is issues, which is also consistent with feedback received from targeted consultation.[93] Therefore, the Commission confirms its draft recommendation to limit the true up period to 12 months after the invoice is issued, as this would be appropriate under any payment type. This recommendation is consistent with the recommendation made by IPART on the NSW CDS.[94]

6.3 Supplier behaviour

The Commission 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 reports from consumers of unjustified supplier behaviour with the potential to harm competition. The Commission has not received information from other ACT Government agencies such as ACT Fair Trading in Access Canberra about any consumer complaints about unjustified beverage supplier behaviour.[95]

The NRA submitted to the issues paper that some suppliers may have be purchased large quantities of beverages prior to the commencement of the CDS and either sold them at the pre-CDS price to improve their competitiveness or sold them at the post-CDS price to temporarily improve their margins.[96] The NRA noted that it would be difficult to determine to what extent, if any, this occurred.

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[93] ABCL progress report submission 2019; NRA progress report submission 2019; and Appendix 6.

[94] IPART 2018d.

[95] ACT 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. ACT Fair Trading advised on 14 June 2019 that no complaints have been received about the ACT CDS.

[96] NRA issue

paper submission, 2018, p 4.

In the progress report, the Commission asked stakeholders whether there was any evidence of a significant increase in beverage containers supplied in the ACT prior to the introduction of the ACT CDS followed by a corresponding reduction after its introduction.

Stakeholder feedback on supplier behaviour

Feedback from targeted consultation indicated it would not be cost effective to stockpile beverages before the CDS commenced due to the associated costs of carrying and storing the beverages before they are sold.[97]

Commission's final finding

The Commission compared the year-on-year change in monthly beverage supplies 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.

The Commission received no evidence of suppliers having purchased large quantities of beverages prior to the commencement of the CDS and notes the feedback received on the costs of carrying and storing beverages before they are sold. The Commission has concluded that the ACT CDS is unlikely to have had any significant impact on the volumes of containers supplied prior to the CDS commencing.

6.4 Consumer choice and behaviour

The Commissions sought stakeholder views on changes in consumer choice or behaviour resulting from the ACT CDS as part of its progress report.

6.4.1 Consumer choice

In the progress report, the Commission noted that BentSpoke has developed a unique container where the lid is relatively large and fully removable. This container type has been temporarily granted registration for two years in the NSW CDS and is therefore covered by the ACT CDS through mutual recognition. The Commission has been informed that the fully removable lid can potentially increase litter should it not be recycled.

In the progress report, the Commission noted the need to balance fostering innovative products such as 360 degree lid containers (used by BentSpoke) with the key objective of reducing litter as part of the ACT CDS.

[97] Appendix 6.

Stakeholder feedback on 360 degree lid containers

The Commission was informed by the Transport Canberra and City Services Directorate and BentSpoke that beverage suppliers that use 360 degree lid containers for their beverages have yet to resolve the matter of whether the ongoing registering of these containers will be allowed in the NSW after the temporary registration granted by NSW.[98] However, it is possible for the containers to be registered in the ACT and other jurisdictions, which would permit these containers to being sold in these jurisdictions, irrespective of whether NSW allows the containers to be registered for the NSW CDS.

Stakeholder feedback on product ranges

Stakeholders have indicated that there appears to be no evidence that the range of products available have changed since the commencement of the ACT CDS.[99]

The ABCL stated in its submission to the progress report that:[100]

> The ABCL is unaware of any evidence that the introduction of the ACT CDS has resulted in [a] significant difference in the range of beverage products available in the ACT.

Commission's final finding

The Commission maintains its view that there needs to be a balance between fostering innovative products such as 360 degree lid containers with the key objective of reducing litter as part of the ACT CDS. Therefore, the Commission considers that the ACT Government should continue to monitor the eligibility under the ACT CDS of new types of containers that are developed to ensure there is a balance between innovative products and reducing litter. Further, the Commission considers that there are likely to be benefits in the ACT Government working with their counterparts in other jurisdictions to consider developing guidance for beverage suppliers to help them develop product innovations that are consistent with the Government's objective of reducing litter.

In reviewing the number of products available from the confidential data provided by beverage suppliers, there appears to have been no significant change in the range of products offered since the ACT CDS commenced. The Commission has concluded that there is no specific evidence to indicate that the ACT CDS has reduced consumer choice in the ACT or created barriers to the availability of products that would restrict or reduce competition in the ACT beverage market.

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[98] Advised by Transport Canberra and City Services Directorate officials on 20 June 2019 and BentSpoke on 8 July 2019.

[99] Appendix 6.

[100] ABCL progress report submission 2019, p 14.

6.4.2 Consumer behaviour

In the progress report, the Commission noted 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.[101] This represented a decrease in household consumption by 6.7 per cent per household per month (in volume terms) and increase in expenditure 3.2 per cent per household per month. IPART considered this change to be in line with what could be expected given the scheme's impact on the prices of container beverages, and with the impacts being felt by suppliers. IPART did not have suitable data to make a similar assessment for alcoholic beverages.[102]

Stakeholder feedback from targeted consultation

While most beverage suppliers that provided feedback have not observed changes in the quantity of beverages purchased by consumers, some beverage suppliers stated that they had noticed some decrease in the quantity of beverages purchased as they had expected due to the price increase from ACT CDS. Some beverage suppliers considered that any change in consumption caused by the ACT CDS would likely only be minor and/or temporary.[103]

The ABCL stated in its submission to the progress report that:

> The ABCL understands that the introduction of CDS, and the associated impact on beverage prices, has resulted in a decline in quantity of beverages purchased and consumed by consumers. This is of course to be expected, as any price change is invariably met with a response by consumers.

Commission's final finding

The Commission has considered IPART's findings and the evidence of some stakeholders in the ACT that beverage consumption is likely to have decreased by a small amount following the introduction of the ACT CDS.

The Commission considers that a small decrease in consumption, potentially similar to that found in NSW, could reasonably be expected in the ACT following the price increase caused by the ACT CDS, given the feedback from some ACT suppliers, the similarities between the NSW and ACT markets, and the similarities in the price impacts of the two schemes. However, given the lack of direct evidence on changes in total sales of eligible container beverages in the ACT, the Commission has not made a specific finding on whether consumers have changed their beverage purchasing behaviour significantly as a result of the CDS.

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[101] IPART 2018d, pp 77–79.

[102] IPART 2018d, p 78.

[103] Appendix 6.

6.5 Cross border issues

6.5.1 Cross border impacts on supply and pricing

Cross border impacts on supply and pricing

Before the introduction of the ACT CDS, the NSW CDS had been operational for about seven months. The Commission found no specific evidence that the NSW CDS increased the price of beverages in the ACT during this time (Chapter 5). For example, it was clear from the non-promotional wholesale prices examined by the Commission when the initial price change due to ACT CDS occurred and that there was no evidence that any significant shift upwards in prices before 30 June 2018. This conclusion is supported by the analysis of ABS beverage price indices reported in Chapter 5.

The Commission found in the progress report that the difference in non-promotional wholesale beverage prices between the ACT and NSW had 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 NSW & ACT (the LSA), in its submission to the issues paper, stated that:

> For the most part, distributers and retailers treat the ACT and NSW as part of the same market.[104]

However, in the period after the NSW CDS had commenced and before the ACT CDS had commenced, first suppliers did treat the ACT market differently. 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, and some retailers had separate ACT special catalogues during this period.

These findings were supported by the retail price data. The Commission reviewed retail beverage prices from weekly catalogues from retailers in Canberra, Sydney and Melbourne and found that ACT beverage container prices were generally aligned with prices in:

- Sydney and Melbourne before the NSW CDS commenced (before December 2017);
- Melbourne after the NSW CDS had commenced and before the ACT CDS had commenced (between December 2017 and June 2018); and
- Sydney after ACT CDS had commenced on 30 June 2018.

[104] LSA issues paper submission 2018, p 6.

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.[105] For example, some beverage suppliers that operate in multiple jurisdictions have chosen to average costs per container across jurisdictions that have a CDS and pass on the same average costs per container in all the jurisdictions with a CDS.[106]

Cross border impacts on container movements

Feedback from stakeholders on the progress report confirmed the Commission's draft finding that the commencement of the ACT CDS does not appear to have led to a significant movement of containers from nearby regions in the NSW to the ACT or vice versa. [107]

The Commission has therefore confirmed its draft finding that there is no specific evidence that the commencement of the ACT CDS led to any significant movement of containers from nearby regions in the NSW to the ACT or vice versa.

Export protocols

The Commission noted in its progress report that not having export protocols may result in beverage suppliers and potential consumers paying CDS costs for multiple jurisdictions on the same beverages. 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.

Since the Commission's progress report was released, the Scheme Coordinator has consulted with first suppliers and finalised the export protocols for the ACT CDS.[108] Since May 2019, ACT first suppliers have been able to claim back the ACT CDS costs on beverage exports from the ACT.

The Commission considers that the implementation of export protocols for the ACT CDS has resolved the concern outlined in the progress report about double-payment of CDS fees on containers exported from the ACT to another jurisdiction.

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[105] This is based on confidential information supplied by first suppliers.

[106] Coca-cola Amatil 2018.

[107] Appendix 6 and 7.

[108] Details on Exchange for Change's ACT Export Process is available at https://actcds.com.au/suppliers/.

6.5.2 Harmonisation across container deposit schemes in Australia

As noted in Chapter 2, there are now five different schemes operational across Australia, all with some different features and requirements. In addition, the WA and Tasmania Governments are planning to introduce their own CDS in early 2020 and by 2022, respectively.[109]

Stakeholders have submitted that it would be beneficial to streamline the schemes where possible to minimise the administrative burden faced by beverage suppliers.[110] Some of the issues faced by beverage suppliers operating across jurisdictions are:

- having to set up 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 [111]
- the higher administrative costs may have a disproportionate impact on small beverage suppliers.[112]

The Commission proposed in its progress report that the ACT Government and Exchange for Change should work with their counterparts in other jurisdictions to consider ways to harmonise the different features of the different Australian schemes, in particular to achieve harmonisation of the ACT and NSW CDSs.

Feedback on the progress report

The ABCL stated in its submission to the progress report that: [113]

> The ABCL is actively encouraging Governments across Australia to adopt a harmonised approach to CDS across all Australian States and Territories.

[109] Government of Western Australia 2018 and Elise Archer, Minister for Environment 2019.

[110] 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.

[111] 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.

[112] ABCL 2015, p 6; and ALSA 2018, p 2.

[113] ABCL progress report submission, p 11.

The NRA stated in its submission to the progress report that:[114]

> The NRA submits that maintaining consistency between the State and Territories is paramount to the success of any scheme. We understand that the ACT Government is reviewing the current scheme and possibly adopting processes which align with other states and reduce any duplication that may occur. The NRA strongly supports a truly nationally-consistent scheme…
>
> NRA submit that the most immediate priority should be establishing consistency across jurisdictions, instead of creating more differences. The consumer, manufacturers and retailers would benefit from harmonisation of all schemes across the nation. The benefits would be wide ranging, creating efficiencies and potentially influencing collection rates where confusion is eliminated. The ACT scheme recognizes containers that have been registered in other states, and we would support any discussions amongst the states to contrast a single point of registration nationally.

In targeted consultation, Coles stated that it "continue[s] to support the concept of a single consistent scheme across the country."[115]

Commission's final finding

The Commission maintains its view that harmonisation across all jurisdictions, and in particular NSW, is important to reduce the costs to beverage suppliers and consumers of Australian schemes. The Commission therefore confirms its draft recommendation that the ACT Government and Exchange for Change work with their counterparts in other jurisdictions to consider ways to harmonise the ACT CDS with other schemes, in particular with the NSW CDS.

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 which 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.

[114] NRA progress report submission, p 3.

[115] Appendix 6.

In its progress report, the Commission noted:

- 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.[116] For 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 *Waste Management and Resource Recovery Act 2016* does not prevent more than one network operator from participating in the ACT CDS. However, any potential network operator that seeks to operate in the ACT would need to show how they would comply with relevant legislation and would need to seek approval from the Minister.[117]
- 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 in place since the progress report was released and more expected in the latter half of 2019.[118]

Submissions to the progress report

The ABCL reiterated its concern about the implications of having a network operator operating under a monopoly arrangement. It considered that this arrangement had contributed to the lower container return rate observed in the ACT compared to other jurisdictions like NSW and QLD, highlighting its concern about:[119]

> the need for the Scheme Coordinator to be positioned so as it can undertake necessary actions to improve the performance of Collection Point Operators to improve the collection rate of the Scheme overall. This of course is very difficult to achieve where the ability to impose sanctions or to diversify risk is limited due to one organisation having a monopoly arrangement across the network.

Commission's final finding

The Commission has further considered the ABCL's concerns and concluded that there is sufficient scope within the current ACT CDS model to allow another network operator to operate in the ACT should another party choose to do so.

[116] ACT Government 2018e; and ACT Government 2018f.

[117] Discussions with Transport Canberra and City Services Directorate, 21 June 2019.

[118] Discussions with Transport Canberra and City Services Directorate and Exchange for Change.

[119] ABCL progress report submission, p 12.

6.7 Final findings on other competition and market impacts of the ACT CDS

The Commission's final findings are:

13. The Commission found no specific evidence to indicate the introduction of the ACT CDS has resulted in a material change in market share or market structure in the ACT beverage market.
14. The ACT CDS can create cash flow pressures for some businesses, particularly small businesses. The pressures result from the scheme contribution being paid by first suppliers in advance selling the beverages, and the seven-day payment terms imposed by Exchange for Change.
15. The scheme's payment model, which is based on forecasts of containers returned and supplied, and subsequent true ups for actual containers returned and supplied has contributed to the month to month volatility in scheme costs.
16. The Commission 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.
17. Based on the feedback received, the Commission found no specific evidence of changes in consumer choice as a result of the ACT CDS that would restrict or reduce competition in the beverage market.
18. The Commission found that some beverage suppliers are choosing to simplify the administration of CDSs across jurisdictions by averaging the costs across schemes.
19. The Commission found no specific evidence to suggest that the introduction of the ACT CDS has led to a significant movement of containers from nearby regions in the NSW to the ACT or vice versa.

6.8 Final recommendations to reduce volatility in scheme costs

2. The period in which a true up can be made should be limited to 12 months after the invoice is issued.

6.9 Final recommendation on reducing volatility in scheme costs and addressing cashflow pressures on beverage suppliers

3. The payment model used in the ACT CDS should ideally be aligned, as much as possible, with the NSW CDS, provided this results in net benefits to the ACT beverage industry and ACT consumers in terms of improving beverage suppliers' cash flows, reducing the administration costs of first suppliers, and reducing scheme cost volatility.
4. The ACT Government and Exchange for Change should work with their counterparts in other jurisdictions to harmonise the ACT CDS with other schemes across Australia, in particular with the NSW CDS.

5. The ACT Government and Scheme Coordinator should consider streamlining invoicing arrangements for small businesses, such as invoicing small suppliers less frequently (such as quarterly) based on actual containers supplied.

6.10 Final recommendation on supporting product innovation in beverage containers

6. The ACT Government should work with their counterparts in other jurisdictions to consider developing guidance for beverage suppliers to help them develop product innovations that are consistent with the Government's objective of reducing litter.

7 Price monitoring beyond the investigation period

The final step in the Commission's inquiry was to assess whether ongoing price monitoring is required beyond the initial 12-month period. The Commission has concluded that ongoing price and competition monitoring beyond the initial investigation period is not required. The Commission identified some issues that have the potential to adversely affect first suppliers and competition in the future and has made final recommendations to address them.

7.1 Beverage markets appear to be workably competitive

As described in Chapter 5, the Commission found that price increases attributable to the CDS appear consistent with a workably competitive market. The Commission's final decision is that to continue price monitoring for the ACT CDS would 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 has found that this volatility has reduced since the introduction of the ACT CDS and considers that it may continue to reduce over time. However, improvements to the current payment model would be beneficial in further reducing cost volatility and uncertainty for beverage suppliers (Chapter 6).

7.3 Potential impacts on competition can be addressed

As described in Chapter 6, while there is no specific evidence of a material reduction in competition, the Commission found that the ACT CDS creates cash flow pressures for the industry, particularly for small first suppliers. This has 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 selling the beverages, and the seven-day payment terms imposed by Exchange for Change.

The Commission has made final recommendations emphasising the importance of harmonisation across jurisdictions, in particular that the ACT CDS payment model should be ideally aligned, as much as possible with NSW CDS, provided this results in net benefits to the ACT beverage industry and ACT consumers in terms of improving beverage suppliers' cash flows, reducing the administration costs of first suppliers, and reducing scheme cost volatility (Chapter 6).

7.4 Final recommendation on the need for ongoing price and competition monitoring

7. Ongoing monitoring of the price and competition impacts of the ACT CDS is not required 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

Term	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 final report contains the findings from the investigation.
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 made final 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	The final report contains the findings from the Commission's monitoring activities.
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	The Commission monitored other market impacts of the scheme; the findings are in Chapter 6 of the final report.
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	The Commission provided the final report to the Minister on 23 July 2019.
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 framework for monitoring the scheme is provided in Chapter 3.
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 final report contains the Commission final findings on the effect of the ACT CDS on 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 made final recommendations to the ACT Government in relation to the CDS.
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.	3, 5	The Commission used a range of pricing data to undertake this assessment, as outlined in the final report.

Term	Requirement	Chapter	Comments
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 final findings and recommendations the Commission has taken into consideration submissions and feedback from stakeholders.
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	As part of the investigation the Commission compared the direct costs of the scheme and the price impact of the scheme. The findings are in the final report.
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 final report discusses the manner in which beverage suppliers are recovering scheme costs.
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	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 did not receive any evidence to suggest movements of beverage containers between NSW and ACT as a result of the ACT CDS commencing.
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 final 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 undertook consultation throughout the investigation period, including releasing a progress report on 28 February 2019, holding a public forum on 20 March 2019, and undertaking targeted consultation with stakeholders throughout the investigation period.
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.	The Commission provided the final report to the Minister on 23 July 2019.

Term	Requirement	Chapter	Comments
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. The Commission notes that Exchange for Change has now implemented 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 final 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 final 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 final 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
Eligible containers	Any beverage	Between 150mL and 3L	Glass, plastic (PET and HDPE), aluminium, steel or liquid paperboard
Ineligible	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 issues paper[120]

Table A5.1 Formal submissions to the issues paper

Date received	Submitter	Key issues raised/information provided
17 August 2018	National Retail Association	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: • Retail price changes may lag cost changes. • Retail prices are subject to a range of forces. • Retail prices will vary over time. • Retail prices will vary between locations. 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.
17 August 2018	Liquor Stores Association of NSW & ACT	The submission argues the CDS is not the most efficient method of managing litter. The submission responded to some questions from the issues paper: • Retail prices are expected to increase with the ACT CDS. • ACT and NSW are treated as the same market by retailers, but cross border issues and costs noted. • Supports use of ABS data for price monitoring, issues noted. • Supports use of selected markets, issues noted. • Supports use of market share data, issues noted. • Other impacts to consider: ACT CDS reduces price differential to NSW and online and disruptive technology may impact price and competition.
22 August 2018	Australian Beverage Council Ltd	The submission argues the Commission should extend its monitoring activities to assess scheme effectiveness and efficiency of scheme compliance costs. 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.

[120] As at 22 January 2019.

Date received	Submitter	Key issues raised/information provided
		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

Date received	Submitter	Key issues raised/information provided
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.

Appendix 6 Feedback from targeted consultation

The following tables summarises the feedback from targeted consultation with ACT beverage suppliers after the release of the progress report.

Table A6.1 Summary of feedback on the progress report from targeted consultation with ACT beverage suppliers

Question	Summary of feedback
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.	• Beverage suppliers incur initial indirect costs due to billing system upgrades, and ongoing costs associated with reporting and compliance. • Difficult to determine the amount of 'indirect costs' as each company is different. • Different to determine the amount of 'indirect costs' for ACT CDS only, as some beverage suppliers these costs may be spread across all schemes. • Beverage suppliers have approached recouping the indirect costs in different ways. Some have absorbed the costs due to difficulty in quantifying the costs and some have passed them on through a charge per container.
Is there any evidence that the introduction of the ACT CDS has resulted in significant changes in market shares of first suppliers?	• No observed changes to market shares. However, some temporary changes may have occurred as beverage suppliers undertook different marketing approaches for the introduction of the ACT CDS commenced. • Difficult to determine for ACT only, as some beverage suppliers treat NSW and ACT as one area.
Should an arrears payment model be adopted in the ACT regardless of whether this payment model is adopted by NSW?	• Large and small manufacturers prefer an arrears model due to cashflow implications. • Some retailers were indifferent to the model, while some tend to prefer the same model as NSW CDS, to reduce administrative and reporting burdens. • All preferred harmonised approach across all jurisdictions.
Should the period for true up adjustments be limited to 12 months after invoice?	• Yes, to avoid unexpected true ups indefinitely and across financial years.

Question	Summary of feedback
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?	• Some beverage suppliers have noticed an increase in beverage container supplied in the ACT prior to the introduction of the ACT CDS due to the price increase associated with the ACT CDS. However, even if there was an increase before the ACT CDS commenced, it is believed to be only temporary or minimal. • Some beverage suppliers have indicated that it would not be cost effective to stock pile containers due to additional costs associated with carrying and storing additional containers. • Some beverage suppliers have not observed changes in the number of beverage containers supplied before or after the introduction of the ACT CDS.
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?	• Most beverage suppliers have not observed changes in the range of products available or beverages consumed by consumers. • Some beverage suppliers have noticed some decrease in quantity of beverage consumed in line with the expected decrease due to the price increase from ACT CDS. • Some beverages may have had a similar reduction in sales volume with the introduction of the CDS compared to other jurisdictions that have introduced a CDS (e.g. NSW and QLD).
Is there any evidence that the introduction of the ACT CDS has resulted in significant beverage container movements between NSW and ACT?	• No significant observed movements of containers between NSW and ACT since introduction of the ACT CDS. • Some beverage suppliers have indicated this is unlikely as NSW and ACT are generally treated the same for pricing purposes.

Table A6.2 Feedback from targeted consultation with ACT beverage suppliers

Date	Submitter	Key issues raised/information provided
11 April 2019	Coles	• Despite the significant cost, Coles has absorbed most of these in terms of time and resources used across the group to comply with CDSs across Australia. This position may be revised over time. • Prefer a single model for NSW and ACT to reduce reporting and administrative burdens. In addition, Coles advised they have and will continue to support the concept of a single consistent scheme across the country. • A limit to the true up period is sensible to avoid true ups indefinitely.

Appendix 7 Submissions to the progress report

Summary of submissions received to the progress report[121]

Table A7.1 Formal submissions to the progress report

Date received	Submitter	Key issues raised/information provided
11 April 2019	Australian Beverage Council Ltd	The submission is supportive of the Commission's draft findings and draft recommendations. The submission made the following key comments: • supports a move to an arrears model, regardless if NSW CDS adopted a similar model, with a view that the ACT CDS should transition to the QLD model; • supports the need for an overdraft facility, and provided an alternative option for the ACT Government to provide an interest free loan for a period of 24 months, with the associated principle and finance cost to be recovered in the 24 months from first suppliers; • noted that the CDS has decline the quantity of beverages purchased and consumed, but this was expected; and • no complaints have been received by members in regard to competition impact from the CDS, indicating that the CDS has not had unexpected impacts on competition or market share for members.
15 April 2019	National Retail Association	The submission is supportive of the Commission's draft findings and draft recommendations. The submission made the following key comments: • supports a move to an arrears payment model and that this needs to be in conjunction with the NSW as the "two systems are fundamentally linked"; • supports the draft recommendation relating to the overdraft facility, but would like further detail on the logistics of this; • the most immediate priority should be establishing consistency across jurisdictions; • supports transparency over administration costs and recovery percentages; and • supports the draft recommendation that no further price and competition monitoring is required beyond the 12 month period.

[121] As at 21 May 2019.

Date received	Submitter	Key issues raised/information provided
23 April 2019	Exchange for Change	The submission is supportive of an arrears payment model for the ACT CDS. The submission made the following key comments: • there are two competing models the ACT should consider – Queensland and NSW payment models; • Queensland's model is most favourable for beverage suppliers; • the NSW Treasury has declined to provide a security for an overdraft account for the NSW CDS, therefore an arrears model cannot be adopted; • alternatively, the NSW is considering a different payment model; • preference to have the ACT payment model aligned with NSW rather than adopting a Queensland payment model, as beverage suppliers are harmonising the container price between ACT and NSW and 30 per cent of containers supplied to ACT are from exported from NSW; • support true up adjustments be limited to 12 months after original invoice month; • estimate the maximum overdraft facility required at $4 million; and • provided a suggestion to invoice small beverage suppliers quarterly only, to reduce administrative burden.

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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