

NOTIFICATION OF PROPOSED COLLECTIVE BARGAINING

NOTIFYING PARTY

1. Provide details of the notifying party, including:

1.1 First Party:

Name, address (registered office), telephone number, and ACN

Capital Brewing Co Pty Ltd ACN 610 788 317 "Capital"

C/- Equity Partners Accountants Advisors,

'Mode 3' Unit 126 24 Lonsdale Street, Braddon ACT 2612

Laurence Kain: [REDACTED]

1.2 Second Party

Name, address (registered office), telephone number, and ACN

Bentspoke Brewing Company Pty Ltd ACN 158 557 272 ("Bentspoke")

L1 460 Lower Heidelberg Road, Heidelberg VIC 3084

David Ward: [REDACTED]

1.3 Contact person's name, telephone number, and email address

(Agent) Mark Love, BAL Lawyers ABN 37 628 135 120

Level 9, 40 Marcus Clarke St, Canberra ACT 2601

[REDACTED]

1.4 A description of business activities

The notifying parties are each a small brewery who produce and sell craft beer and cider.

Capital primarily sources their supplies from Australian producers. [REDACTED]

Bentspoke have [REDACTED]

[REDACTED] The cans and cardboard used in their packaging are also Australian made. Benstpoke have a closed loop for spent grain from brewing in which the grain is provided to local farmers' cows from which Bentspoke source meat for their pub.

1.5 Email address for service of documents in Australia.

[REDACTED]

DETAILS OF THE NOTIFIED CONDUCT

2. Indicate whether the notified conduct is for:

2.1 exclusive dealing (s. 47 of the Competition and Consumer Act 2010 (Cth) (the Act));

No, unless sponsorship acquisitions of rights to exclude the sale of competitor product at a venue during specific events constitutes such conduct. (refer to direct 2.3)

2.2 **resale price maintenance (s. 48)**

No. (refer to direct 2.3)

2.3 **collective bargaining (s. 93AB). If the notified conduct is for collective bargaining, whether the notified conduct includes a collective boycott.**

The Notifying Party confirms the notified conduct is in relation to collective bargaining without a collective boycott. The Conduct is a joint approach to the ACT Government manager of a football stadium, seeking together, the rights to be the exclusive supplier to the venue of beer and cider products. The "exclusivity" would relate to those events listed in the sponsorship agreement.

3. **Provide details of the notified conduct including:**

3.1 **A description of the notified conduct**

Capital and Bentspoke have prepared a joint bid for pourage rights at GIO Stadium Canberra under which:

(a) [REDACTED]
[REDACTED] beer sold over three years at GIO Stadium; and

(b) GIO Stadium would invoice each entity separately based on sales data.

The period of the contract is [REDACTED]

3.2 **Any relevant documents detailing the terms of the notified conduct**

We annex a copy of:

(a) the bid as submitted to GIO Stadium; and

(b) the agreement between Capital and Bentspoke.

3.3 **The rationale for the notified conduct**

Neither party has the product range to satisfy the requirements of the bid individually, nor does either party have the budget to secure the bid by itself, noting that competing bids will come from international brewing competitors who have typically held the contract in the past.

3.4 **Any time period relevant to the notified conduct.**

For the period of the GIO Stadium contract, which is expected to commence from [REDACTED] and is due to expire on [REDACTED] (unless the contract is extended).

The authorisation is sought for a maximum period of five years, in the instance the notifying parties decide to extend the contract.

4. **Provide documents submitted to the notifying party's board or prepared by or for the notifying party's senior management for purposes of assessing or making a decision in relation to the notified conduct and any minutes or record of the decision made.**

No, refer to direct 3.2.

5. **Provide the names and/or a description of the persons or classes of persons who may be directly impacted by the notified conduct (including targets in collective bargaining or boycott conduct) and detail how or why they might be impacted.**

The notified conduct will impact Asahi who the notifying parties believe hold the current contract with GIO Stadium, in that it will provide competition to Asahi's bid for pourage rights at GIO Stadium. It will impact on such other suppliers of beer and cider who seek the sponsorship rights to GIO Stadium.

MARKET INFORMATION AND CONCENTRATION

6. Describe the products and/or services, and the geographic areas, supplied by the Notifying parties. Identify all products and services in which two or more parties to the Notified conduct overlap (compete with each other) or have a vertical relationship (e.g. Supplier-customer).

The Notifying Parties submit that the relevant products and markets are as follows:

- (a) the production of beer and cider; and
- (b) the supply of beer and cider;

in all states and territories of Australia. Each Notifying Party competes directly against each other in all of these markets, but particularly in the ACT where each has a “local product” presence.

Capital Brewing Co supplies beer and cider to venues and distributors primarily in the Australian Capital Territory, New South Wales and Victoria. Capital has [REDACTED] located in [REDACTED].

Bentspoke Brewing Co. supplies beer and cider to venues and distributors primarily in the ACT, NSW, QLD and VIC. Bentspoke has [REDACTED] located in [REDACTED].

Describe the relevant industry or industries. Where relevant, describe the sales process, The supply chains of any products or services involved, and the manufacturing process.

Breweries around Australia distribute their products through various hospitality venues and retail venues. Breweries can produce their product either overseas or in Australia, depending on whether they are locally owned and operated or a multinational corporation.

The Notifying Parties each brew their product “locally”, both with respect to Australia and with respect to the ACT.

7. **In respect of the overlapping products and/or services identified, provide estimated Market shares for each of the parties where readily available.**

This information is not readily available in respect of Australia. As stated above over 450 small breweries hold approximately 13% of the market share, and it is therefore difficult to calculate each entity’s respective market share.

In respect of the Market Share in the ACT, the Notifying Parties believe they may hold up to 30% of the Market Share combined. Though as you might understand, they are direct competitors and do not share this information except in the most high level way.

8. **In assessing a notification, the ACCC takes into account competition faced by the parties to the proposed conduct. Describe the factors that would limit or prevent any ability for the parties involved to raise prices, reduce quality or choice, reduce innovation, or coordinate rather than compete vigorously. For example, describe:**

8.1 **Existing competitors**

The current share market, so far as the Notifying Parties assess things, can be broken down as follows:

- (a) CUB/Asahi owned: approximately 46 – 48%
- (b) Lion owned: approximately 25 – 36%
- (c) Coopers owned: 3 – 5.6%
- (d) 450+ small breweries owning the remaining market share.

We **annex** an extract from 2019 from Statista which outlines the leading commercial beer market share. We note that, since 2019, Asahi has gone to purchase CUB for \$16 billion.

8.2 Likely Entry by New Competitors

Given the very large presence in the beer market share already held by Asahi and Lion, there are unlikely to be any new competitors, except at the margin. Whilst more small breweries may continue to open, like Capital and Bentspoke, these small breweries alone, will not have the capacity to compete with Asahi and Lion.

8.3 any countervailing power of customers and/or suppliers

The Notifying Parties have each presented their pricing and discounting proposals for product sales at the GIO Stadium to GIO Stadium independently of each other, as sealed annexures to ensure neither party has visibility or discussion of the other entity's pricing or discounting structure to eliminate price fixing activity. The pricing offer for sales at the Stadium has been presented as a "maximum" price offer (as it is understood that GIO wants to ensure reasonable pricing), which allows each Notifying Party to reduce their price, should they choose and to do so without reference to the other Notifying Party.

8.4 any other relevant factors.

The notifying Parties are each small brewers identifies as "local" producers in the ACT region market, supporting local ACT region employment and seek to be identified at the premier local stadium as part of the effort to define region culture, quality and presence of successful regional business offerings.

PUBLIC BENEFIT

9. Describe the benefits to the public that are likely to result from the notified conduct. Provide information, data, documents or other evidence relevant to the ACCC's assessment of the public benefits.

The Notifying Parties submit that the proposed conduct is likely to result in public benefit as a result of:

- (a) Improved commercial outcomes;
- (b) New employment opportunities;
- (c) Promotion of regional cultural identity, and
- (d) Greater investment in community.

Improved Commercial Outcomes

Is it extremely difficult for small breweries to bid for pourage rights in large venues without passing on the increased costs to consumers through higher priced products. In this instance, neither party has the full range of products alone in order to bid for the pourage rights.

It is generally accepted that smaller businesses may lack bargaining power and that by negotiating collectively they are able to negotiate more effectively with larger businesses.

In allowing the Notifying Parties to collectively bid for the pourage rights, they are provided the opportunity to grow and expand their businesses in a manner which would not otherwise be open to either business alone.

Employment

If successful, the projected volume of product supply to GIO Stadium over the three year term will equal 7.5 new jobs for local Canberrans. Further, for every direct job in the brewing industry, a

further 3.8 jobs are created in associated industries such as agriculture, logistics, manufacturing, hospitality and services.

Community Investment

Further, both Capital and Bentspoke have submitted applications to become only the third and fourth brewery in Australia to be B-Corp certified. Independent verified B Corporations are a new kind of business that balance purpose and profit. Both Capital and Bentspoke are committed to making a positive impact for their environment, workers, customers, community and suppliers.

PUBLIC DETRIMENT (INCLUDING LIKELY COMPETITIVE EFFECTS)

10. **Describe any detriments to the public that are likely to result from the notified conduct, including those likely to result from any lessening of competition. Provide information, data, documents, or other evidence relevant to the ACCC's assessment of the detriments.**

The Notifying Parties submit that little, if any, public detriment will result from the notified conduct and that the public benefits will far outweigh any detriment caused. The Notifying Parties do not foresee any lessening of competition.

CONTACT DETAILS OF RELEVANT MARKET PARTICIPANTS

11. **Identify and/or provide names and, where possible, contact details (phone number and email address) for likely interested parties, such as actual or potential competitors, customers and suppliers, trade or industry associations and regulators.**

Venues Canberra:

c/- Lew Gemell, Senior Associate

Hospitality Management Australia Pty Ltd

Suite 17 Austlink Corporate Centre, 14 Narabang Way, Belrose NSW 2085

[REDACTED]

ANY OTHER INFORMATION

12. **Provide any other information you consider relevant to the ACCC's assessment of the notified conduct.**

Not applicable.

ADDITIONAL INFORMATION FOR COLLECTIVE BARGAINING (WITH OR WITHOUT A COLLECTIVE BOYCOTT) CONDUCT ONLY

13. **Confirm that the notifying party is not a trade union, an officer of a trade union or acting at the direction of a trade union.**

The Notifying Parties confirm they are not a trade union, an officer of a trade union or acting at the direction of a trade union.

14. **Provide details (name, phone number, email address) of the persons who are current members of the group (contracting parties) on whose behalf the notification is lodged. If relevant, identify the classes of persons who may become contracting parties in the future and on whose behalf the notification is lodged.**

Laurence Kain, Managing Director of Capital: [REDACTED]

Richard Watkins, Sole Director of Bentspoke: [REDACTED]

[REDACTED]

15. Confirm each contracting party:

15.1 reasonably expects to make one or more contracts with the targets for the supply or acquisition of the relevant goods or services and

The Notifying Parties confirm they expect to make one or more contracts with the targets for the supply or acquisition of the relevant goods or services.

15.2 the value of each contract will not exceed A\$3 million (or any other amount prescribed by regulation) in any 12-month period.

The Notifying Parties confirm the value of each contract will not exceed AUD\$3 million (or any other amount prescribed by regulation) in any 12-month period.

15.3 Provide details of the basis for that expectation.

These estimations are based on current contract amounts.

16. If the contracting parties propose to engage in a collective boycott with respect to the targets, provide details of:

16.1 the event/s that would trigger a collective boycott

16.2 the process that would be followed

16.3 any proposed notice period to be given to the target/s prior to commencing a collective boycott and

16.4 any proposed dispute resolution procedure between the contracting parties and the targets.

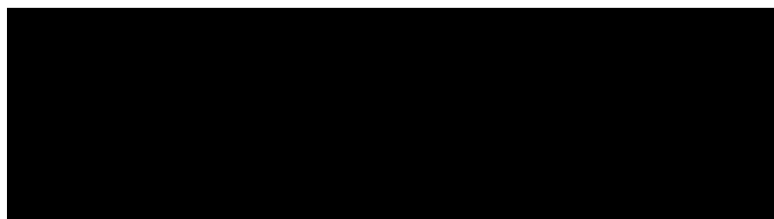
The Notifying Parties submit that they are not seeking to engage in collective boycott activity.

DECLARATION BY NOTIFYING PARTY

Authorised persons of the notifying party must complete the following declaration.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).



Signature of authorised person

Legal Director, agent for the Notifying Parties

Office held

Mark Love

(Print) Name of authorised person

This 11th day of August 2021

Note: If the Notifying Party is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Notifying Party, this fact must be stated.