



Statement of Issues

21 September 2023

Endeavour Group Limited – proposed acquisition of Rye Hotel

Purpose

1. Endeavour Group Limited (**Endeavour**) proposes to acquire the Rye Hotel at 2415 Point Nepean Road, Rye, Vic (the **Rye Hotel**) including the attached drive-through Thirsty Camel liquor store (the **proposed acquisition**).
2. This Statement of Issues:
 - gives the Australian Competition and Consumer Commission's (**ACCC**) preliminary views on competition issues arising from the proposed acquisition,
 - identifies areas of further inquiry, and
 - invites interested parties to submit comments and information to assist our assessment of the issues.
3. Statements of Issues do not refer to confidential information provided by the parties or other market participants and therefore may not fully articulate the ACCC's preliminary position.

Overview of ACCC's preliminary views

4. In considering the proposed acquisition, the ACCC applies the legal test set out in section 50 of the *Competition and Consumer Act 2010* (the **CCA**). In general terms, section 50 prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in any market.
5. The ACCC divides its preliminary views into three categories, 'issues of concern', 'issues that may raise concerns' and 'issues unlikely to raise concerns'. In this Statement of Issues there is one issue of concern and three issues unlikely to raise concerns.

Issue of concern

6. The ACCC's preliminary view is that the proposed acquisition is likely to substantially lessen competition in the retail market for the supply of packaged liquor for off-site

consumption in the local area surrounding the Rye Hotel because the proposed acquisition:

- will remove local competition between the Rye Hotel Thirsty Camel and Endeavour's BWS Rye store, which are likely each other's closest competitors, and result in a significant increase in market concentration in the local area that is already concentrated; and
- is likely to remove an effective competitor with a differentiated offer available to customers in Rye.

Issues unlikely to raise concerns

7. The ACCC's preliminary view is that the proposed acquisition is unlikely to substantially lessen competition in the retail market for packaged liquor for off-site consumption between liquor brands on a regional, state or national level. Post-acquisition there would continue to be a number of Thirsty Camel retailers in the area such that the proposed acquisition would not materially reduce Thirsty Camel's geographic presence, brand awareness or group buying power.
8. The ACCC's preliminary view is that the proposed acquisition is unlikely to substantially lessen competition in the wholesale market or markets for the supply of liquor to liquor stores and/or hospitality venues because the Rye Hotel is unlikely to be of sufficient size to materially impact the wholesale costs of Endeavour or independent wholesalers.
9. Further, the ACCC's preliminary view is that the proposed acquisition is unlikely to substantially lessen competition in the provision of overnight accommodation, liquor for on-site consumption, gaming or entertainment/dining, given a number of competitors in the area and the lack of competitive overlap with existing Endeavour properties.

Making a submission

10. The ACCC invites submissions from interested parties, particularly on the following key issues:
 - the extent to which the Rye Hotel Thirsty Camel competes with BWS Rye including on price, product range, quality, service, location and site amenity.
 - the extent to which other liquor retailers in the local Rye area compete with the Rye Hotel Thirsty Camel and BWS Rye, including on price, product range, quality, service, location and site amenity.
 - the extent to which the Rye Hotel Thirsty Camel provides a differentiated retail offer from BWS Rye and/or other liquor stores in the area and the importance of this differentiated retail offer to consumers.
11. Interested parties should provide submissions by 5pm on 6 October 2023. Responses may be emailed to mergers@accc.gov.au with the title: Submission re: Endeavour/Rye Hotel. If you would like to discuss the matter with ACCC staff or have any questions about this Statement of Issues, please contact Morgan Woodland on (02) 9230 9194 or Fiona Kennedy on (03) 9290 1925.
12. The ACCC anticipates making a final decision on 30 November 2023, however, this timeline can change. To keep up with possible timing changes and to find relevant documents, interested parties should visit the Mergers Register on the ACCC's

website at <https://www.accc.gov.au/public-registers/mergers-registers/public-informal-merger-reviews>.

Confidentiality of submissions

13. The ACCC will not publish submissions regarding the proposed acquisition. We will not disclose submissions to third parties (except our advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with s155AAA of the CCA. Where the ACCC is required to disclose confidential information, the ACCC will notify you in advance where possible so that you may have an opportunity to be heard. Therefore, please identify any confidential information that is provided to the ACCC. Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

About ACCC ‘Statements of Issues’

14. A Statement of Issues is not a final decision about a proposed acquisition. A Statement of Issues outlines the ACCC’s preliminary views and identifies further lines of inquiry.
15. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It is also intended to provide the merger parties and other interested parties with the basis for making further submissions should they consider it necessary.

The parties

Endeavour

16. Endeavour is a major Australian alcoholic drinks retailer and hotel operator that operates a portfolio of brands including BWS, Dan Murphy’s, Jimmy Brings, Langton’s and Cellarmasters. Endeavour also manages over 330 licensed hotels (with more than 12,000 gaming machines) across Australia, through its subsidiary, ALH Hotels.
17. Until 28 June 2021, Endeavour was a subsidiary of Woolworths Group. Endeavour has been separated from Woolworths Group via a demerger and is now a separately listed corporation on the ASX (ASX:EDV).
18. Endeavour currently operates one liquor store, BWS Rye, within a 3km radius of the Rye Hotel. BWS Rye is approximately 900 metres from the Rye Hotel by road.

Rye Hotel

19. The Rye Hotel is located at 2415 Point Nepean Road, Rye, Vic. The building on Point Nepean Road sits on three blocks of land which house:
 - on-premises food and beverage areas, including function rooms, live entertainment, TAB and gaming facilities,
 - an attached drive-through liquor store which trades under the Thirsty Camel banner, and
 - beachfront accommodation.

20. The Rye Hotel is located on Point Nepean Road, the main arterial road for traffic flow from Melbourne to the Mornington Peninsula. The Mornington Peninsula is a popular holiday destination and its population tends to significantly increase during peak times, including over the summer school holidays, the April school holidays and the AFL Grand Final long weekend.
21. The vendor also owns and operates nearby liquor store Peninsula Cellars which trades under the Thirsty Camel banner, and is located approximately 800 metres from the Rye Hotel by road. The vendor is also seeking to sell Peninsula Cellars but this does not form part of the proposed acquisition.
22. There are approximately 350 Thirsty Camel stores throughout Australia, all of which are independently owned. In Victoria, United Inn-keeper Association Limited operates the Thirsty Camel banner.

Areas of overlap

23. Endeavour operates one liquor store, BWS Rye, in the same local area as the Rye Hotel Thirsty Camel.
24. **Figure 1** below is a map of the Rye area, identifying the Rye Hotel Thirsty Camel and other liquor stores within a 3km and 5km radius. **Figure 2** shows a closer area around the Rye Hotel Thirsty Camel.

Figure 1: Map of liquor stores in Rye and surrounding suburbs

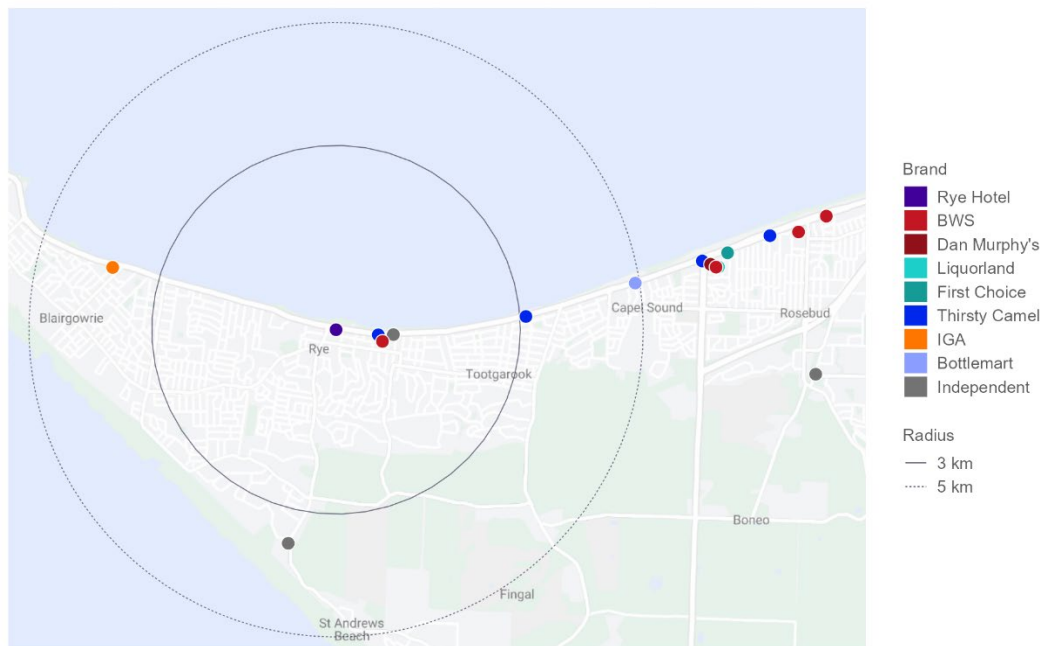
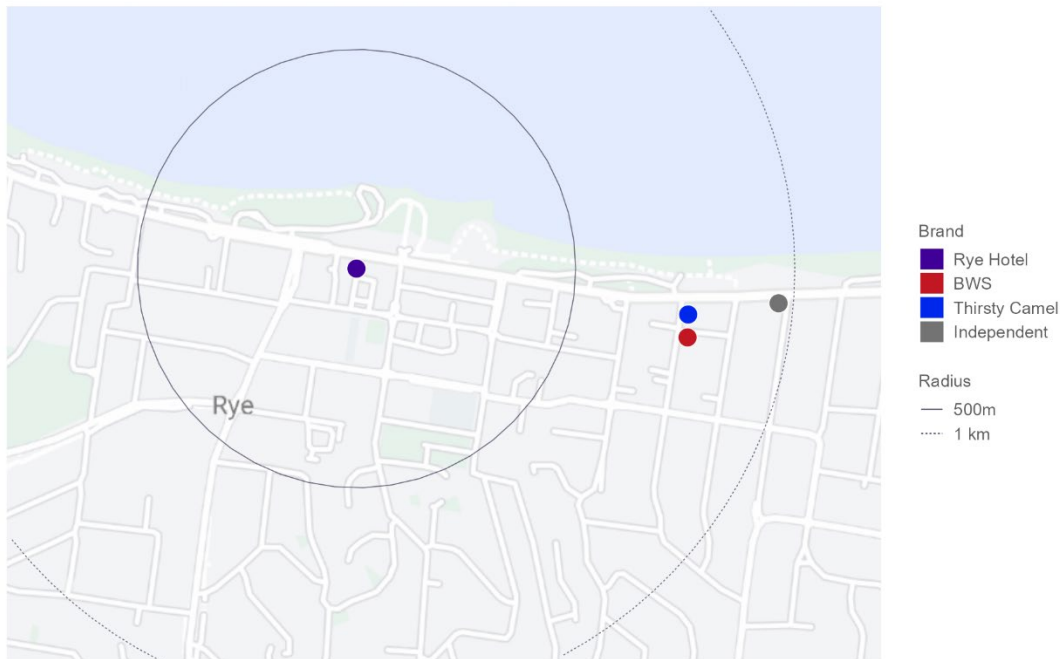


Figure 2: Map of liquor stores in close proximity to the Rye Hotel Thirsty Camel



The proposed transaction

25. Endeavour proposes to acquire the business and assets of the Rye Hotel from Myndit Pty. Ltd. and enter into a separate leasehold agreement with the new owner of the land on which the Rye Hotel is located.

Previous ACCC decisions

Endeavour Group Limited's proposed acquisition of the Beachfront Hotel, NT

26. On 23 February 2023, the ACCC decided not to oppose Endeavour's proposed acquisition of the Beachfront Hotel in Rapid Creek, NT. The ACCC considered the acquisition in the local market for the retail supply of off-premise liquor and concluded that the acquisition was unlikely to substantially lessen competition because a sufficient variety of liquor stores would remain in the area post-acquisition. The ACCC also found that the proposed acquisition was unlikely to substantially lessen chain-on-chain competition between liquor stores or competition in the wholesale supply of liquor to liquor stores and hospitality venues.

Endeavour Group Limited's proposed acquisition of each of the Beach Hotel, Crown Inn, Tower Hotel and Whitehorse Inn, SA

27. On 23 December 2022, the ACCC did not oppose Endeavour's proposed acquisition of the Tower Hotel and co-located Cellarbrations bottle shop in Magill, SA and the Beach Hotel and co-located Cellarbrations bottle shop in Seaford, SA after accepting a court-enforceable undertaking offered by Endeavour to divest its BWS Seaford store.

Endeavour also withdrew its proposal to acquire the Crown Inn and co-located Cellarbrations bottle shop in Old Reynella, SA and the Whitehorse Inn and co-located Cellarbrations bottle shop in Bolivar, SA.

28. In relation to the Tower Hotel, the ACCC concluded that the acquisition was unlikely to substantially lessen competition in any market, including the market for the supply of takeaway liquor in the local area, because the acquisition resulted in a minor increase in market concentration and a sufficient range of alternative liquor retailers remained in the area to maintain competition post-acquisition.
29. In relation to the Beach Hotel, absent the undertaking to divest Endeavour's BWS Seaford store to an approved ACCC purchaser, the ACCC had concerns the acquisition would substantially lessen competition in the supply of takeaway liquor in the local area because BWS Seaford and the Beach Hotel Cellarbrations were each other's closest competitors and post-acquisition, Endeavour would not be sufficiently constrained by other liquor retailers in the local area.

Market definition

30. As stated in the ACCC's *Merger Guidelines*, the ACCC's starting point for defining relevant markets to assess the competitive effects of the proposed acquisition involves identifying the products and services supplied by the merger parties.¹ The ACCC then considers what other products and services constitute sufficiently close substitutes to provide a significant source of constraint on the merged entity.
31. The ACCC is considering the impact of the proposed acquisition on competition:
 - in the local retail market for the supply of packaged liquor for off-site consumption
 - between retail liquor store chains
 - in the market for the wholesale supply of liquor to liquor stores and hospitality venues.

Retail market for the sale of packaged liquor for off-site consumption

32. The ACCC's preliminary view is that the local area in the vicinity of the Rye Hotel is relevant to the assessment of the proposed acquisition.
33. When assessing local retail markets, the ACCC aims to identify the competitive constraints on the merged firm's retail offers at a store level. The ACCC considers travelling time and distance between retailers of packaged liquor for off-site consumption are important determinants of competitive constraint. Our preliminary assessment has considered the effects of the proposed acquisition on the local market with a radius of 3km to 5km on a straight-line basis from the Rye Hotel. Based on previous informal merger reviews, the ACCC understands that retail liquor sales to customers residing further than 5km are likely to be uncommon unless the customer is in the area for another purpose.
34. We are continuing to investigate the relevant geographic scope of the local market, including the extent to which liquor retailers in Blairgowrie, which sits outside of the 3km radius to the west, and Rosebud, which sits outside of the 5km radius to the east, form part of the relevant geographic market. In doing so, we are considering the

¹ ACCC, [Merger Guidelines 2008 \(updated 2017\)](#), paragraph 5.17.

unique geography and site-specific factors that may affect the relevant radius, including traffic flows at various times of the day and during peak times of the year.

35. The ACCC understands that many liquor chains, including the Endeavour brands, and other banners such as Thirsty Camel, standardise major elements of their retail offers centrally across all stores in a region, for example by setting consistent prices across a region. However, the ACCC's preliminary view is that this standardised pricing does not mean competition does not also occur at a local level, particularly as competition at the local level relates not just to price, but also to non-price factors such as product range and quality, service quality, and store amenities and convenience.

The ACCC invites comments from market participants on our preliminary views about the definition of the relevant local market. In particular, market participants may wish to comment on:

- the distance customers typically travel to visit liquor stores in the local area and the factors that influence how far a customer will travel.
- the extent to which customers view liquor stores in Rosebud, Tootgarook, Blairgowrie and further afield as substitutes for the Rye Hotel Thirsty Camel.
- whether customers who reside in Rye, Tootgarook, St Andrews and Blairgowrie would typically travel to Rosebud for liquor purchases.
- whether customers who reside in Rye, Tootgarook and St Andrews would typically travel to Blairgowrie for liquor purchases.

The ACCC invites comments from market participants on the relevant markets for considering chain-on-chain competition between liquor store chains and the market for the wholesale supply of liquor.

Issue of concern: reduction in local competition in the retail supply of packaged liquor for off-site consumption

36. The ACCC's preliminary view is that the proposed acquisition is likely to substantially lessen competition in the retail market for the supply of packaged liquor for off-site consumption because:
- the proposed acquisition would significantly increase concentration in an already concentrated market for the retail supply of packaged liquor for off-site consumption within a 3km or 5km radius of the Rye Hotel Thirsty Camel.
 - the Rye Hotel Thirsty Camel is likely to be Endeavour's BWS Rye store's closest competitor, and other liquor retailers in the local area appear unlikely to provide a significant competitive constraint on Endeavour post-acquisition.
 - the proposed acquisition may reduce the range of products available in the local area and result in a loss of consumer choice from the loss of an effective competitor with a differentiated offering.

Market concentration

37. The ACCC's preliminary view is that the local market is already highly concentrated (irrespective of the relevant geographic radius applied) and the proposed acquisition would lead to a substantial increase in market concentration. The ACCC estimates that

post-acquisition, Endeavour would have over 80% of sales revenue in the 3km radius from the Rye Hotel and over 50% of sales revenue in the 5km radius from the Rye Hotel.

38. Further, the ACCC is also of the preliminary view that the proposed acquisition would remove one of the few liquor retailers of material size in the local area. In particular:
- within 3km driving distance of the Rye Hotel Thirsty Camel, BWS Rye and the Rye Hotel Thirsty Camel are the only two liquor stores with significant size and range.
 - within 5km driving distance of the Rye Hotel Thirsty Camel, BWS Rye, the Rye Hotel Thirsty Camel and IGA Express Blairgowrie are the only liquor stores with significant size and range.

BWS Rye and the Rye Hotel Thirsty Camel compete closely for retail customers

39. Market participants have indicated that the strongest competitor to Endeavour's BWS Rye store is the Rye Hotel Thirsty Camel as it is the most proximate liquor store of a comparable size and offers a range that, like BWS Rye, includes a diverse selection of beer, cider, wine, spirits, and ready-to-drink and non-alcoholic beverages in various package sizes.
40. The Rye Hotel Thirsty Camel has a drive-through forecourt and as such, may appeal predominantly to customers looking to purchase alcohol "on the go". Conversely, the BWS Rye is a large format liquor store located adjacent to Woolworths Rye and may attract customers that are typically looking to purchase alcohol as part of a food and beverage shopping trip. Despite these potential different primary purposes of the stores, the ACCC's preliminary view is that given their geographic proximity, similarity in size and type of products supplied, the stores are likely to compete.

Competitive constraint from alternative liquor stores in the local area

41. There are other liquor stores in the area surrounding the Rye Hotel Thirsty Camel, including, within a 3km radius:
- Peninsula Cellars (Thirsty Camel)
 - Independent Wine Store
- and, within a 5 km radius:
- Tootgarook Fine Wine Cellars (Thirsty Camel)
 - Back Beach Cellars (Liquor @)
 - IGA Express Blairgowrie (IGA Liquor)
 - Point Nepean Cellars (Bottlemart)
42. However, our inquiries indicate that these stores do not impose a strong competitive constraint on BWS Rye or the Rye Hotel Thirsty Camel.
43. In the 3km radius, while Peninsula Cellars (Thirsty Camel) is very close in proximity to BWS Rye, it is a small-format liquor store with a limited number of stock keeping units (**SKU**). Independent Wine Store is a niche specialist fine wine retailer with strong focus on wine and only a select offering of beer, cider and spirits. These liquor retailers appear unlikely to provide a significant competitive constraint on Endeavour post-acquisition.
44. For liquor stores in the 5km radius, the ACCC's preliminary views are:

- Tootgarook Fine Wine Cellars would place a limited constraint on Endeavour post-acquisition. While Tootgarook Fine Wine Cellars is located on the same main arterial road as the Rye Hotel Thirsty Camel, it is materially smaller than both the Rye Hotel Thirsty Camel and BWS Rye, does not have a shopping strip to generate foot traffic and has limited street parking nearby.
 - Back Beach Cellars is likely to impose a very weak competitive constraint on Endeavour post-acquisition due to its small size, and fairly isolated location.
 - IGA Express Blairgowrie is not as close a competitor to the Rye Hotel Thirsty Camel as BWS Rye given it is in a different cluster of shops further along Point Nepean Road. While there may be some competitive overlap, the ACCC understands the IGA Express Blairgowrie tends to draw customers from the local area around Blairgowrie as opposed to the Rye area.
 - Point Nepean Cellars would impose a limited constraint on Endeavour post-acquisition, as although it is located on the same main arterial road as the Rye Hotel Thirsty Camel, it is significantly smaller than the Rye Hotel Thirsty Camel and BWS Rye, and is located in a different shopping strip and would likely draw customers from the local area around Rosebud West rather than Rye.
45. In light of the above, the ACCC's preliminary view is that the merged entity would face limited competitive constraint from alternative retail liquor stores in the local area post-acquisition. As a result of the removal of the Rye Hotel Thirsty Camel, customers in the local area may be disadvantaged by a reduction in choice of packaged liquor, may experience a lowering of service levels and site amenity and may not benefit from price competition or differentiated promotional activity.

Removal of the Rye Hotel Thirsty Camel's differentiated offer

46. The ACCC is also considering whether the proposed acquisition will result in a reduction in the differentiated offer provided by the Rye Hotel Thirsty Camel, and the impact this would have on competition in the local area.
47. Market feedback has indicated that the range of products stocked by the Rye Hotel Thirsty Camel differs to that offered at BWS stores, particularly that the Rye Hotel Thirsty Camel has a focus on stocking local Mornington Peninsula products. Market participants noted that Thirsty Camel stores (including the Rye Hotel) generally stock regular products that can be found in most liquor stores but that they also have greater discretion over their product offering compared to BWS stores. As such, market participants indicated Thirsty Camel stores are therefore more likely to offer a product range that is tailored to local preferences, including stocking products from local suppliers. The ACCC also understands from market feedback that Endeavour's BWS stores stock a higher proportion of private label products compared to other liquor stores.
48. The ACCC notes that the alternative liquor stores in the local area would likely continue to provide a differentiated range to Endeavour, although their ability to do so may be limited by their smaller store sizes. As such, the ACCC's preliminary view is that removing the differentiated offer provided by the Rye Hotel Thirsty Camel, one of the larger liquor retailers in the area, may have an impact on the range available to consumers, which could adversely impact competition for retail takeaway liquor in the Rye area.

The ACCC invites comments from market participants on its preliminary views in relation to the retail supply of packaged liquor for off-site consumption. In particular, market participants may wish to comment on the following:

- market concentration and the extent to which Endeavour’s share of the local market would increase as a result of the proposed acquisition.
- the degree of the competitive constraint provided by other competitors in the local area and online on both the Rye Hotel Thirsty Camel and BWS Rye.
- the extent to which the Rye Hotel Thirsty Camel provides a differentiated retail offer from Endeavour’s BWS Rye and other liquor stores in the local area.
- the value of the Rye Hotel Thirsty Camel’s differentiated retail offer to consumers, and the impact it has on competitors.

Issue unlikely to raise concerns: reduction in chain-on-chain competition between liquor stores

49. The ACCC’s preliminary view is that the proposed acquisition is unlikely to result in a substantial lessening of competition in chain-on-chain competition between retail liquor brands on a regional, state or national level.
50. The ACCC is considering the geographic scope of competition between liquor store chains, including whether it is most appropriate to consider chain-on-chain competition on a regional, state or national level.
51. The ACCC considers that having strong alternative liquor store banners to those operated by Endeavour is important for consumers to benefit from differentiated price, range and service offerings. Some market feedback suggested that the Thirsty Camel brand relies on geographic presence and brand awareness in a region to compete strongly with Endeavour brands and that the loss of the Rye Hotel Thirsty Camel as a well-performing store of significant size may impact the overall strength of the Thirsty Camel banner in the Mornington Peninsula.
52. However, our preliminary view is that the proposed acquisition is unlikely to substantially lessen chain-on-chain competition regardless of the geographic scope of the relevant market. This is because, post-acquisition, there would continue to be a significant number of Thirsty Camel retailers in the Mornington Peninsula such that the proposed acquisition would not materially reduce Thirsty Camel’s geographic presence, brand awareness or group purchasing power in the Mornington Peninsula or on a wider geographic basis. That said, the ACCC considers that the removal of one store, especially if combined with other acquisitions over time, could result in significant adverse impacts on chain-on-chain competition on a regional or broader geographic level.

The ACCC invites comments from market participants on the impact of the proposed acquisition on chain-on-chain competition on a regional, state or national level.

Issues unlikely to raise concerns: wholesale supply of liquor

53. The ACCC is considering the effect of the proposed acquisition on competition in the wholesale market for liquor sold to bottle shops and other hospitality venues.
54. This includes considering the relevant geographic scope of the wholesale market/s. The wholesale market has elements on a regional (e.g. the Mornington Peninsula),

state and national level, given the business model of distribution via warehouses across each state/territory or a broad area.

55. Market feedback has raised concerns that the loss of the Rye Hotel will impact the efficiency and competitiveness of independent wholesalers that operate in the Mornington Peninsula and may weaken the overall strength of independent wholesalers to provide a competitive alternative to Endeavour.
56. However, the ACCC's preliminary view is that the proposed acquisition is unlikely to result in a substantial lessening of competition in the wholesale market for liquor supplied to bottle shops and other hospitality venues, regardless of whether this is a Mornington Peninsula market or a broader market. Our preliminary view is that the Rye Hotel is unlikely to be of sufficient size to materially impact the wholesale costs of Endeavour or independent wholesalers.

The ACCC invites comments from market participants on the impact of the proposed acquisition on the wholesale supply of liquor to liquor stores and hospitality venues on a regional, state or national level.

Other markets

57. The ACCC's preliminary view is that there are unlikely to be any significant competition impacts in the following markets:
 - the provision of accommodation in the local Rye area;
 - the supply of liquor for on-site consumption in the local Rye area;
 - gaming in the local Rye area; and
 - the provision of meals/entertainment in the local Rye area.
58. The ACCC has not reached a concluded view on the precise scope of these markets, but does not consider it impacts on the competition assessment.
59. Endeavour has a limited local presence, with the nearest Endeavour-operated hotel, Somerville Hotel, located approximately 40 kilometres to the north-east of the Rye Hotel. The ACCC notes there are a range of competitors that would continue to constrain Endeavour post-acquisition in the provision of accommodation, liquor for on-site consumption, gaming and meals/entertainment in the area around the Rye Hotel.

ACCC's future steps

60. As noted above, the ACCC invites submissions from market participants on each of the issues identified in this Statement of Issues and on any other issue that may be relevant to the ACCC's assessment of this matter. Submissions should be emailed to mergers@acc.gov.au by no later than 5pm on 6 October 2023.
61. The ACCC will finalise its view on this matter after it considers submissions invited by this Statement of Issues.
62. The ACCC intends to publicly announce its final view by 30 November 2023. However, the anticipated timeline may change in line with the *Informal Merger Review Process Guidelines*. A Public Competition Assessment explaining the ACCC's final view may be published following the ACCC's public announcement.