



## Statement of Issues

12 December 2022

### Endeavour Group Limited – proposed acquisition of Beachfront Hotel

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#### Purpose

1. Endeavour Group Limited (**Endeavour**) proposes to acquire Beachfront Hotel at 342 Casuarina Drive, Rapid Creek, NT (**Beachfront Hotel**) (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 that may raise concerns."

## Issue of concern

### *Reduction in local competition in the supply of off-premises liquor*

The ACCC's preliminary view is that the proposed acquisition is likely to substantially lessen competition in the retail market for packaged liquor for off-site consumption in the local area surrounding the target. This is because:

- Endeavour operates four liquor stores within a 5 km radius of the Beachfront Hotel, and the proposed acquisition would result in a significant increase in market concentration irrespective of the precise geographic dimension adopted.
- Endeavour (through its BWS Nightcliff store) is likely to be the Beachfront Hotel Cellarbrations' closest competitor.

The proposed acquisition would remove an independent competitor which is able to offer a different price/value proposition and range to Endeavour's standardised BWS offer. As a result of the removal of competition from the Beachfront Hotel Cellarbrations, customers in the local area are likely to be disadvantaged by a reduction in choice of packaged liquor, may be faced with a lowering of service levels and site amenity, and may face less price competition especially in relation to differentiated promotional activity.

## Issues that may raise concerns

### *Chain-on-chain competition between liquor stores*

6. The ACCC is considering whether the proposed acquisition may substantially lessen competition in the retail market for packaged liquor for off-site consumption in the Darwin metropolitan and/or broader regional area.
7. The competitive strength of alternative brands to those operated by Endeavour is important for consumers to benefit from differentiated price, range and service offerings. Some market feedback suggests the extent to which Cellarbrations stores competitively constrain Endeavour is reliant on its breadth of geographic presence and brand awareness across a region. There are eight independent stores operating under the 'Cellarbrations' banner in the broad Darwin area. The loss of the Beachfront Hotel Cellarbrations may impact the marketing efficiencies, awareness and competitive presence of all Cellarbrations stores over a broad Darwin or regional area and substantially lessen competition in the market.

### *Impact on the wholesale supply of liquor to retail liquor stores and hotels*

8. The ACCC is considering whether the proposed acquisition may lessen competition in the wholesale market or markets for the supply of liquor to liquor stores and/or hospitality venues in Darwin.
9. The Beachfront Hotel (both the Cellarbrations and the hotel) is a large customer of Australian Liquor Marketers (**ALM**) – which provides wholesale liquor to a large number of independent liquor stores and hotels in Darwin. We are considering the extent to which the loss of the Beachfront Hotel as a customer impacts the efficiency and competitiveness of ALM's wholesale offering in Darwin more broadly. This may reduce the ability of all independent stores or hotels which receive wholesale supply from ALM to exert competitive pressure on Endeavour post-acquisition and lead to a substantial lessening of competition in the market. At this stage, it is not clear that Beachfront Hotel is a significant enough wholesale customer that the acquisition would raise concerns in this regard.

## Issue unlikely to raise concerns

### *Competition in hotel/hospitality services in the local area*

10. The ACCC's preliminary view is that the proposed acquisition is unlikely to substantially lessen competition in the supply of services provided by hotels and hospitality venues in the local area.

## Making a submission

11. The ACCC invites submissions from interested parties, particularly on the following key issues:
- The extent to which the Beachfront Hotel Cellarbrations provides a differentiated retail offer from BWS and/or other liquor stores in the area and the importance of this differentiated retail offer to consumers.
  - Any impact Beachfront Hotel Cellarbrations and its differentiated retail offer has on BWS and/or other liquor stores in the local area.
12. Interested parties should provide submissions by 5pm on 16 January 2023. Responses may be emailed to [mergers@accg.gov.au](mailto:mergers@accg.gov.au) with the title: Submission re: Endeavour/Beachfront Hotel. If you would like to discuss the matter with ACCC staff or have any questions about this Statement of Issues, please contact Micaela Bassford on (02) 9102 4069 or Ben Roberts on (03) 9290 1497.
13. The ACCC anticipates making a final decision on 9 March 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 [www.accc.gov.au/publicregisters/mergers-registers/public-informal-merger-reviews](http://www.accc.gov.au/publicregisters/mergers-registers/public-informal-merger-reviews).

## Confidentiality of submissions

14. 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'

15. 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.
16. 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

17. 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. Until 28 June 2021, Endeavour was a subsidiary of Woolworths Group. However, 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 three standalone liquor stores within a 5 km radius of Beachfront Hotel, and one hotel with attached liquor store within a 5 km radius (and another hotel within a 10 km radius).
19. The four liquor stores are:
  - BWS Nightcliff, located at Nightcliff Shopping Centre
  - BWS Casuarina, located at Casuarina Square
  - BWS Airport Tavern Drive, located at 227 McMillans Road, Jingili, and
  - BWS Leanyer, located at Hibiscus Shoppingtown.
20. The hotels are:
  - Airport Tavern, located at 227 McMillans Road, Jingili (within 5 km radius), and
  - Parap Tavern, located at 15 Parap Road, Parap (within 10 km radius).

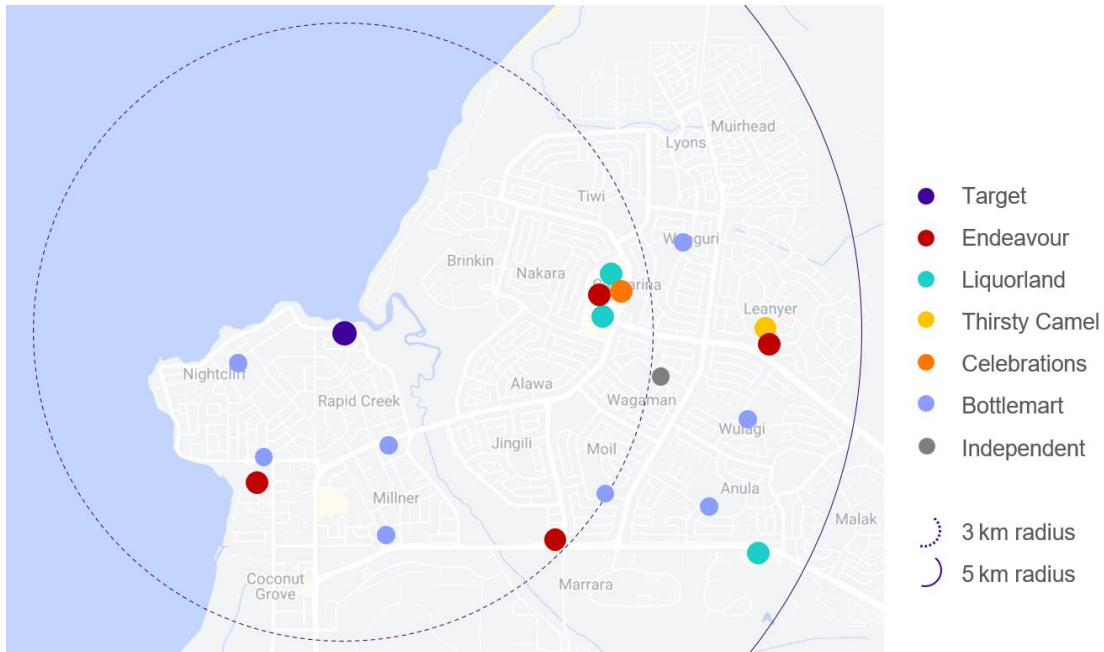
### Beachfront Hotel

21. The Beachfront Hotel is located at 342 Casuarina Drive, Rapid Creek, NT. It sits on a block of 7,500 sqm and includes a bistro offering on-site food and beverage, a public sports bar (with TAB), 20 gaming machines, and a drive-through bottle shop. The bottle shop has a trading area of approximately 270 sqm and currently trades under the Cellarbrations brand.

## Areas of overlap

22. Endeavour operates liquor stores and hotels in the same local area as the Beachfront Hotel.
23. **Figure 1** below is a map of the Rapid Creek area, identifying the Beachfront Hotel, and other liquor stores within a 3 km and 5 km radius.

**Figure 1: Local liquor store competitors in a 3km and 5km radius (not driving distance)**



## The proposed transaction

24. Endeavour proposes to acquire the business assets of the Beachfront Hotel from Trojanmede Pty Ltd, and a separate leasehold agreement with the owner of the property (who will continue to own the physical premises).

## Future with and without the acquisition

25. In assessing a proposed acquisition under section 50 of the CCA, the ACCC considers the effects of the acquisition by comparing the likely future state of competition if the acquisition proceeds (the 'with' position) to the likely future state of competition if the acquisition does not proceed (the 'without' position) to determine whether the proposed acquisition is likely to substantially lessen competition in any relevant market.
26. On the basis of the information currently available, the ACCC considers that the Beachfront Hotel and attached bottle shop would continue to operate as a competitor to Endeavour, absent the proposed acquisition.

## Market definition

27. 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.<sup>1</sup> The ACCC then considers what other products and services constitute sufficiently close substitutes to provide a significant source of constraint on the combined Endeavour and Beachfront Hotel.

<sup>1</sup> ACCC, *Merger Guidelines 2008* (updated 2017), paragraph 5.17.

28. The ACCC is considering the proposed acquisition in the context of:

- retail markets for the sale of packaged liquor for off-site consumption
- retail markets for the sale of liquor for on-site consumption, entertainment and gaming, and
- a wholesale market for the supply of liquor.

**Retail markets for the sale of packaged liquor for off-site consumption**

29. The ACCC's preliminary view is that both the local area in the vicinity of the Beachfront Hotel, and the broader Darwin metropolitan area are relevant to the assessment of the proposed acquisition.

*Local market*

30. 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 that that travelling time and distance between retailers of packaged liquor is an important determinant of competitive constraint. Our preliminary assessment has considered the effects of the proposed acquisition on a local market with a radius of 3 to 5 km from the target site. The ACCC understands that sales to customers residing further than 5 km are uncommon unless the customer is in the area for another purpose.

31. We are continuing to investigate the precise geographic scope of the relevant local market, including by having regard to any site-specific factors that may affect the radius, including traffic flows at various times of the day in the relevant markets.

*Darwin metropolitan market and/or regional market*

32. The ACCC's preliminary view is that competition may occur not just at the local level, but also at a metropolitan or regional level. While all liquor retailers compete to attract customers from other retailers located in the same neighbourhood, we understand that major chains including the Endeavour brands, the Coles Group Brands (Liquorland, 1st Choice and Vintage Cellars), and independent brands such as IGA and Cellarbrations, standardise major elements of their retail offers across all stores in a region – for example by running common promotions across a region.

**Retail markets for the sale of liquor for on-site consumption, entertainment and gaming**

33. The ACCC's preliminary view is that there are local retail markets for the supply of products and services available at hotels and hospitality venues - including liquor for on-site consumption, entertainment and gaming. The ACCC does not have a concluded view in relation to the geographic scope of these markets.

### **Wholesale market for the supply of liquor**

34. The ACCC is considering the geographic scope of the relevant wholesale market/s. The wholesale market has elements that are both territory-wide and Australia-wide, given the business model of distribution via warehouses across each state/territory or a wide area.

The ACCC invites comments from market participants on the ACCC's preliminary views in relation to the relevant markets. In particular, market participants may wish to comment on the following:

- The distance customers typically travel to visit liquor stores in the local area and the factors that influence how far a customer will travel.
- Whether customers who live in Rapid Creek, Nightcliff, Milner and Coconut Grove would typically travel to Casuarina for liquor purchases.

### **Issue of concern: reduction in local competition in the supply of off-site liquor**

35. The ACCC's preliminary view is that the proposed acquisition is likely to substantially lessen competition in the retail market for packaged liquor for off-site consumption in the local area surrounding the Beachfront Hotel. This is because:

- Endeavour operates three standalone liquor stores within a 5 km radius of Beachfront Hotel, and one hotel with attached liquor store within a 5 km radius and the proposed acquisition would result in a significant increase in market concentration irrespective of the precise geographic dimension adopted.
- Endeavour (through its BWS Nightcliff store) is likely to be the Beachfront Hotel Cellarbrations' closest competitor. Although there are closer, small-format Bottlemarts, the ACCC's market inquiries indicate that these focus on a convenience offering and are not a close constraint on Endeavour or the Beachfront Hotel.

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

- Within 3 km driving distance of the Beachfront Hotel Cellarbrations, BWS Nightcliff and Beachfront Hotel are the only two large formal liquor stores (that is, stores with a significant size and range.) Post-acquisition, Endeavour would account for a large majority of all liquor sales in this area.
- Within 5 km driving distance of the Beachfront Hotel Cellarbrations, the proposed acquisition would reduce the number of operators of liquor stores with a significant size and range from 4 to 3 (leaving only Endeavour, Coles Liquor, and Casuarina All Sports). The ACCC understands that Endeavour would account for over half of total liquor supply in this area following the acquisition.

37. Market feedback suggests that the closest competitor of the Beachfront Hotel Cellarbrations is Endeavour's BWS Nightcliff store, being the closest liquor store of comparable size and range.

38. There are smaller grocery/convenience stores in the area surrounding the target which sell takeaway alcohol under the Bottlemart brand, including:

- Aralia Supermarket (now Porkin Small Goods & Coffee)
- Happy Foodland Supermarket
- 5 Start Supermarket
- Sabine Supermarket, and
- NT Oriental Emporium.

39. However, our inquiries indicate that these stores impose a weaker competitive constraint on Endeavour and the Beachfront Hotel Cellarbrations.

- These stores operate as small convenience focused grocery stores with a limited retail liquor offering. Instead of seeking to sell cases of beer or 6-packs / 12-packs of wine, they aim to sell 6-packs or single bottles of beer / wine to residents of the immediate local area seeking a convenience offering.
- These stores do not view themselves as competitors to Endeavour's BWS stores or the Beachfront Hotel Cellarbrations and do not position their price, service, or amenity offering with reference to the larger stores.
- Liquor sales are limited by law for these stores and cannot make up more than 25% of their total store revenue. Market feedback indicates that as a result, these stores limit alcohol sales.
- The range available at these stores is extremely limited in comparison to the larger BWS Nightcliff and Beachfront Hotel Cellarbrations.

40. The ACCC is considering the closeness of competition provided by the Casuarina All Sports Cellarbrations, which like the Beachfront Hotel Cellarbrations, also features a drive through service. While the Nightcliff BWS does not have a drive through, market feedback indicates that customers do not need to enter the shopping centre to access BWS Nightcliff and that there is ample parking close to the retail entrance. The ACCC is continuing to consider the constraint provided by the Casuarina All Sports Cellarbrations.

### **Reduction in range**

41. The ACCC understands that popular and standard products account for a large proportion of most liquor stores' sales, and this includes BWS stores and the Beachfront Hotel Cellarbrations. However, market feedback emphasises that consumers value differentiated product offerings, and that the range of products stocked at the Beachfront Hotel liquor differs to that operated by Endeavour or Coles Liquor.

42. Market feedback indicates that Cellarbrations stores (including the Beachfront Hotel) have greater discretion over their product offering compared to BWS stores and are therefore more likely to offer a selection that is tailored to local preferences. Market feedback also indicates that BWS stores typically stock a higher proportion of private label products than other chains, particularly in relation to wine. The proposed acquisition would replace the Beachfront Hotel Cellarbrations' differentiated offering with a standardised Endeavour offer (which is already available at four liquor stores within the 5km radius, and at the closest large format liquor store), which may lead to a significant reduction in choice for consumers in the relevant market.

43. The ACCC notes that within 5km of the Beachfront Hotel, the Cellarbrations bottle shop at the Casuarina All Sports Club would continue to be able to provide a differentiated range to the Endeavour and Coles Liquor ranges. However, the reduction of two to one large-format independent alternative to Endeavour and



Coles Liquor is still likely to have a significant impact on the range available to customers.

### **Service and site amenity**

44. Market feedback indicates that the presence of competition in the local area provides an incentive for bottle shop operators to compete on service levels and to improve site amenity. The ACCC is concerned that the proposed acquisition may impact incentives for the Beachfront Hotel Cellarbrations, Endeavour's current BWS stores, and other liquor stores in the local area, to maintain and improve their service offering (for example in relation to staffing levels) and to improve the amenity at its stores (for example, less incentive over the long term to ensure refurbishments are timely and expansive). The ACCC understands that the major liquor retailers generally make centralised and national decisions in relation to refurbishments, but we are continuing to consider the extent to which local competition impacts Endeavour, Coles Liquor and other store owners' decisions in relation to site amenity and service levels in the area.

### **Impact on pricing**

45. We understand that Endeavour pricing is set on a national and state-basis, without specific regard to individual competitor stores. At this stage, we do not think that the proposed acquisition would have a direct effect on pricing at BWS Nightcliff. However, the ACCC is concerned that proposed acquisition would result in the removal of a large independent store, which offers customers a differentiated price/value proposition to Endeavour's standardised BWS stores.

46. We are still considering:

- The extent to which independent local competition impacts centralised and local pricing and/or or promotional activity at BWS stores.
- The impact to consumers of the loss of lower prices on some items. For example, market feedback indicates that no bottle shop has lower prices than its competitors on every item, and there is competitive tension provided by differentiated promotions and sales offerings. Some consumers may choose to shop at either BWS Nightcliff or the Beachfront Hotel Cellarbrations, depending on promotional activity at the time.

The ACCC invites comments from market participants on the ACCC's preliminary views in relation to the supply off-site liquor. In particular, market participants may wish to comment on the following:

- The extent to which the Beachfront Hotel Cellarbrations provides a differentiated retail offer from Endeavour (BWS), Coles Group (Liquorland) and other liquor stores in the local area.
- The value of the Beachfront Hotel Cellarbrations' differentiated retail offer to consumers, and the impact that it has on competitors.
- the type of shop that a customer would be likely to undertake at Beachfront Hotel Cellarbrations (e.g., case of beer, wine, spirits). Is this different from other liquor stores in the area?
- The factors on which customers base decisions as to where to purchase liquor. You may wish to consider a store's location, price, range, service, and factors such as whether it is a drive-through store, or whether it is co-located with a supermarket.)

## **Issue that may raise concerns: chain-on chain competition between liquor stores**

47. The ACCC is considering the impact of the proposed acquisition on competitiveness of the Cellarbrations banner in the broader Darwin area and the Northern Territory. The competitive strength of alternative brands to those operated by Endeavour and Coles Group is important for consumers to benefit from differentiated price, range, and service offerings.
48. Endeavour is the largest owner of liquor stores in Australia, operating over 1600 stores.<sup>2</sup> Coles Group is the second largest, operating 933 stores.<sup>3</sup> The ACCC is considering the extent to which a presence in multiple locations in a region are important to the competitive constraint that a chain can exert. Endeavour in its FY22 annual report, identified that its performance and competitive position are based on, among other factors its “strong network.”<sup>4</sup>
49. There are 8 Cellarbrations stores in the greater Darwin area. Market feedback suggests that Cellarbrations price and size positions poses a greater competitive constraint on Endeavour and Coles Group than other chains. Some market feedback suggests the extent to which Cellarbrations stores can competitively constrain the major two chains in Darwin and the Northern Territory is reliant on its breadth of geographic presence and brand awareness.
50. The loss of the Beachfront Hotel Cellarbrations as a significant ‘Cellarbrations’ store may impact the marketing efficiencies, awareness and competitive presence of all Cellarbrations stores over the Darwin area or the Northern Territory. In part this is due to whole-of-area advertising (for example, advertising pricing through television or radio to all of Darwin) and the reduction in economies of scale that support brand-on-brand competition.
51. Furthermore, where Endeavour and Coles make territory-wide pricing decisions, any weakening of the constraint provided by the Cellarbrations brand would also impact local areas in the territory where Cellarbrations is not present.

The ACCC invites comments from market participants on the impact of the proposed acquisition on chain-on-chain competition in Darwin.

## **Issue that may raise concerns: wholesale supply of liquor**

52. The ACCC is considering the impact of the proposed acquisition on the wholesale supply of liquor to both liquor stores and hotels in Darwin. Some market feedback has suggested that the acquisition of the Beachfront Hotel would impact the competitiveness of broader wholesale supply in Darwin and/or the Northern Territory.
53. Endeavour undertakes its own wholesale supply to its extremely large network of liquor stores and hotels throughout the country. In comparison, independent competitors of Endeavour’s retail liquor stores and hotels rely on third party wholesale supply.

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<sup>2</sup> Endeavour Group Annual Report, 16 September 2022.

<sup>3</sup> Coles Group Annual Report, 28 September 2022.

<sup>4</sup> Endeavour Group Annual Report, 16 September 2022, page 35.

54. The ACCC is considering the fixed and marginal costs associated with wholesale liquor supply, including warehousing and distribution costs. Supply to Darwin, and the Northern Territory broadly, involves higher transport costs than other areas of the country, with product generally shipped from South Australia. The fixed costs associated with long hauling increases the relative importance of scale in providing a competitive wholesale offer.
55. The ACCC understands that the Beachfront Hotel (both the bottle shop and the hotel) is an important wholesale customer of Australian Liquor Marketers (**ALM**). The ACCC is considering the extent to which the loss of the Beachfront Hotel as a customer would impact the efficiency and competitiveness of ALM's wholesale offering in Darwin and/or the Northern Territory more broadly. This may reduce the ability of all independent stores or hotels which receive wholesale supply from ALM to exert competitive pressure on Endeavour post-acquisition.
56. At this stage, it is not clear that Beachfront Hotel is a significant enough wholesale customer that the acquisition would raise concerns in this regard.

The ACCC invites comments from market participants on the impact of the proposed acquisition on the wholesale supply of liquor in Darwin.

### **Issue unlikely to raise concerns: competition in hotel/hospitality services in local area**

57. The ACCC's preliminary view is the proposed acquisition is unlikely to substantially lessen competition in relation to the consolidation of hotels and hospitality venues in the local area.
58. Endeavour operates the Airport Tavern and Parap Tavern, each of which are located within 10 km of the Beachfront Hotel. However, there are several other venues within 5 km of the Beachfront Hotel which offer on-site food and beverage service as well as gaming options for consumers. These include:
- The Nightcliff Sports Bar - located 1.4 km from the Beachfront Hotel. The Nightcliff Sports Bar offers a sports bar, bistro, beer garden and gaming room. Entry for visitors is free.
  - Casuarina All Sports - located 4.2 km from the Beachfront Hotel. This venue contains a sports bar, bistro, and gaming facilities.
  - The Hibiscus Tavern - located 5.3 km from the Beachfront Hotel, which contains a bistro as well as gaming facilities.
59. Each of these venues offer a traditional 'pub' offering that is similar to that offered at the Airport Tavern and Parap Tavern. There are also other venues that offer alternative food beverage, bar and gaming options. These are located within Nightcliff as well as across the broader north Darwin area. Examples (along with their distance by road from the Beachfront Hotel) in the immediate local area include Bever Brewery (approx. 3 km), Tracey Village Sports Club (approx. 5.6 km) and Dom's Bar and Lounge (1.2 km).
60. Across Darwin more broadly, there are alternative options in Fannie Bay and Parap including Darwin Railway Club, Darwin Ski Club, Darwin Sailing Club and Darwin Trailer Boat Club, as well as many venues in the city. There are also other types of venues that offer on-site food and beverage services to Darwin residents, such as restaurants and cafes, which would continue to constrain Endeavour post-transaction.

61. In relation to gaming facilities, there are gaming lounges, rooms or facilities offered at the Nightcliff Sports Bar, Casuarina All Sports, and Hibiscus Tavern, as well as Tracey Village Sports Club and Dom's Bar and Lounge.

The ACCC invites comments from market participants on the ACCC's preliminary views in relation to hotels and hospitality venues in the local area.

## **ACCC's future steps**

62. 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](mailto:mergers@acc.gov.au) by no later than **16 January 2023**.
63. The ACCC will finalise its view on this matter after it considers submissions invited by this Statement of Issues.
64. The ACCC intends to publicly announce its final view by **9 March 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.