Dissenting report from Senator Whish-Wilson and Senator Xenophon

Previous Senate committees have considered the issue of container deposits. This inquiry provided the committee with the opportunity to interrogate the details of the established schemes in South Australia and the Northern Territory.

Claims of profiteering within the existing schemes have been raised by the Boomerang Alliance in their recent reports on container deposit schemes. These allegations precipitated the Senate inquiry. Further background to this inquiry has been a well-resourced campaign by the Australian Food and Grocery Council asserting that the cost of living will rise if a national container deposit scheme is legislated.

The committee's report states that the committee was 'not presented with any compelling evidence to support the argument put forward by Boomerang Alliance – that beverage manufacturers may be increasing their prices above what is needed to operate the container deposit schemes'.

While this conclusion is difficult to dispute on the evidence provided publicly to the committee, the committee was unwilling to go 'in-camera' to hear confidential evidence which may have shed more light on the operation of the container deposit schemes. The committee has also not been prepared to require certain witnesses attend the hearing and certain documents be supplied to the committee. This means that it is difficult to prove or disprove whether profiteering is occurring because the information required has not been brought forward.

However based on the evidence presented in the inquiry and the confidential information provided by Coca Cola Amatil subsequent to the inquiry we believe Coca Cola Amatil are profiteering on the container deposit scheme in South Australia via their wholly owned subsidiary 'super collector' State Wide. While this is not illegal this does demonstrate some problems with the structure of existing container deposit schemes. The below outlines the reasoning for coming to this conclusion.

Alec Wagstaff from Coca Cola Amatil (CCA) claimed that 'we make no apology that we recover the costs of regulation from within the markets in which that regulation is imposed. So we do charge more at the wholesale level for our products in the Northern Territory and in South Australia'[1]

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[1] Mr Alec Wagstaff, Director, Corporate Affairs, Coca-Cola Amatil *Proof Committee Hansard*, 7 November 2012, p. 15

The full cost recovery mechanism occurs via the amount CCA charges on units of beverages sold by CCA to the wholesalers (provide to the Senate in confidence)

CCA have also claimed to make a profit from their 'super collector' State Wide, as State Wide is a wholly owned subsidiary consolidated on their balance sheet if State Wide profits CCA does.

We know State wide are making a profit because Mr Wagstaff at CCA acknowledged that ' we are making money out of statewide' [2]

Mr Wagstaff confirmed that this Super collector profit is a component of the overall effective cost of the CDL scheme (from Cokes perspective) when he commented on the CDL scheme costs submitted by the Recyclers of South Australia.

"they are not actually accurate. Both they and the Boomerang numbers are inaccurate. If you read the last sentence of that page, it makes a very interesting statement, saying "**if profit is ignored**".

It says -these costs are indicative only and relate to the cost of the system in **South Australia before profit is made by the Super Collector.**

We are not a charity. None of the super collectors are charities. They all need to operate. It not only **ignores profit that a super collector will make**, it ignores the costs that the super collector incurred, so these costs are actually inaccurate".

In other words the costs and profits associated with their wholly owned and consolidated 'super collector' are part of the regulation costs passed on to customers by CCA.

Based on this, it is possible to draw the conclusion that the charge by Coke to wholesalers, calculated to recover the costs of CDL regulation, are inclusive of their Super Collectors profit (and should this profit data be available for South Australia we could calculate this down to a per container/unit basis).

Although we can state with confidence that Coke must be profiteering through their super collector arrangements, we cannot quantify this on a per unit/container basis without further information on the Super collectors profitability and contractual arrangements.

It is worth noting Mr Wagstaff didn't disclose the level of this profit when asked by Senator Cameron

'why can't you simply identify the profitability of that part of your operation [the super collector] so people can be absolutely confident there is no price gouging'[3]

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[2] Mr Alec Wagstaff, Director, Corporate Affairs, Coca-Cola Amatil *Proof Committee Hansard*, 7 November 2012, p. 19

Mr Wagstaff responded that:

'for exactly the same reason that we do not identify the separate business operation of any parts of our stream to see if there is no price gouging' he continued on to say 'to test to see whether they are price gouging is the ability of people to go to another supplier. If State Wide were price gouging, they would not have any other customers because they would all go to their competitor'[4]

The second part of this comment from CCA's representative relates to companies and price gouging within the collection/coordination regime, not the impact on consumers through their (Cokes) wholesale prices being inflated by the level of profit made by their super collector. In other words, apart from claiming commercial In confidence concerns, the representative distracted away from the key issue-whether Coke were making profits from their Super Collector and then charging these profits as scheme costs back to the consumer (and profiteering).

The committee's report focuses on the competiveness of the 'super collector' market. Some of the witnesses at the hearing used to insisted that the 'super collector' market was competitive.

While this point is debatable, the focus should be on wholesale prices charged, how these flow on to retail prices and whether there is transparency in the market for consumers. Allegations by Alec Wagstaff from Coca-Cola Amatil (CCA) that

' we have absolute transparency in what we charge an individual customer. A customer who is doing business with us clearly has transparency at the price we are charging. They can compare that price from alternate suppliers. In some cases that can be for an alternate brand of a similar product. In some cases it can be for the same brand through an alternate source. '[5]

The soft drink market is heavily brand driven and CCA is the only supplier of their branded product. So it is unclear what transparency in this context CCA is referring to.

A number of witnesses in the inquiry highlighted the "inefficiencies" inherent in container deposit schemes, which directly influence the costs of administering CDL schemes, which beverage companies directly recoup by charging higher wholesalers prices to customers. Inefficiencies in the CDL scheme are therefore likely to feed into higher retail prices for beverages under a CDL scheme, and in this sense, a Senate

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[3] Senator Cameron, *Proof Committee Hansard*, 7 November 2012, p. 17

[4] Mr Alec Wagstaff, Director, Corporate Affairs, Coca-Cola Amatil *Proof Committee Hansard*, 7 November 2012, p. 17

[5] Mr Alec Wagstaff, Director, Corporate Affairs, Coca-Cola Amatil *Proof Committee Hansard*, 7 November 2012, p. 16

Inquiry into pricing and revenue allocation practices of the beverage industry needs to acknowledge the underlying basis for the costs of the scheme, and how these costs relate to allegations/perceptions of price gouging at the wholesale and retail level (especially in the Northern Territory).

It is therefore important to acknowledge that inefficiencies exist, they impact cost and generally they are passed onto consumers. These inefficiencies therefore may be responsible for allegations and perceptions of price gouging and profiteering (especially in the NT), or they may be used by beverage companies as an excuse to advertise that container deposit schemes are expensive and should be replaced by other recycling initiatives, On this basis it is imperative that any future legislation looking at a national CDL scheme needs to address these "in efficiencies" in its legislative structure.

It is also obvious that beverage companies who own super collectors and are therefore part of the CDL structure could implement solutions to fix these inefficiencies, but there is no obvious incentive for them to do so. This is based on the fact that they are fundamentally opposed to CDL schemes and want to see them replaced by other recycling initiatives, and the way the schemes are structured it is not in their financial or cultural interest to improve recycling rates (increased recycling rates lead to higher effective scheme costs due to higher redemption rates -or lower unredeemed deposits available to beverage companies.)

These inefficiencies, especially in the NT, are due to Container Deposit Legislation and the architecture of the schemes. They include (amongst many issues) the number of splits depots are required to sort containers into, and restrictions on bundling/crushing prior to transport from depots to super collectors.

For example the inefficiencies in the scheme In the Northern Territory relate directly to the fact that containers need to be sorted into 24 categories (splits). This means collection depots sue significant resources sorting containers. Marine Stores and Statewide two 'super collectors' who gave evidence seemed reluctant to provide any insights into how this inefficiency could be addressed and downplayed the role of technology in providing a solution to these inefficiencies.

The committee report also refers to the agreements that are made between beverage manufacturers and super collectors as being conducted in an open market. While this may be the case, two of the super collectors are majority owned by beverage companies. Beverage companies who are on the record stating their opposition to any form of container deposit scheme own 'super collectors' who are part of the inefficiencies in the system. According to the Recyclers of South Australia

'the reason for the relative efficiency [of the SA scheme] of not having multiple splits like they have in the Northern Territory is more a function of our association

negotiating and using those contractual arrangements to make sure that we get efficiencies with our negotiations with super collectors.'[6]

The same beverage companies who run super collectors complain that the system is 'fundamentally inefficient and expensive.'[7]

When pressed on whether if the inefficiencies could be removed from the system would beverage company Lion accept a container deposit scheme, they stated

'we do not believe container deposits are the solution'[8]

The question of unredeemed deposits was also tackled by the inquiry. The South Australian Environmental Protection Authority (EPA) stated in regards to unredeemed deposits 'that if you assume that unredeemed deposits are occurring in the marketplace, then in South Australia alone it is probably about a $20 million gain that one of these parties is making.'[9]

They also make it clear that the EPA 'economists are continually scratching their heads to figure out what they can assume, what sense they can make and whether the unredeemed deposits are actually occurring or not.'[10]

The EPA is the regulator of the container deposit scheme in SA. It is revealing that the regulator doesn't have visibility of where unredeemed deposits sit in the scheme.

If a national container deposit scheme is established or any other state introduces a container deposit scheme, evidence from this inquiry suggests that serious consideration should be given to excluding beverage companies from involvement with super collectors. The evidence presented gives an impression that there is a conflict of interest in a beverage company being subject to container deposit legislation and running a 'super collector.'

Recommendations:

1. **The committee should initially request and if necessary compel beverage companies to provide in-confidence time series information (over a period**

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[6] Mr Trevor Hockley, Consultant, Recyclers of South Australia Inc., *Proof Committee Hansard*, 7 November 2012, p. 35

[7] Mr David Carter, Group Environment and Business Continuity Director, Lion Pty Ltd, *Proof Committee Hansard*, 7 November 2012, p. 21

[8] Mr David Carter, Group Environment and Business Continuity Director, Lion Pty Ltd, *Proof Committee Hansard*, 7 November 2012, p. 22

[9] Mr Tony Circelli, Deputy Chief Executive, Environment Protection Agency, South Australia, *Proof Committee Hansard*, 7 November 2012, p. 59

[10] Mr Tony Circelli, Deputy Chief Executive, Environment Protection Agency, South Australia, *Proof Committee Hansard*, 7 November 2012, p. 60

of 18 months) on wholesale prices in South Australia and the Northern Territory and a non CDL state as a comparison.

2. **The committee should also request and if necessary compel the 'super collectors' to provide in-confidence information on their annual profits, including a breakdown by state.**

This information will allow calculation of the level of profiteering in the existing schemes.

3. **If a national container deposit scheme is established or any other state introduces a container deposit scheme, evidence from this inquiry – relating to the existence of inefficiencies and profiteering -suggests that serious consideration should be given to excluding beverage companies from involvement with future super collection operations (ie co-ordinator roles).**

Senator Peter Whish-Wilson
Senator for Tasmania

Senator Nick Xenophon
Senator for South Australia