



Statement of Reasons

In respect of a notification lodged by

Rivawine Collaboration Pty Ltd

in respect of

collective negotiation with purchasers of wine grapes
and wine

Date: 20 December 2018

Notification number: CB10000461

Commissioners: Sims
 Keogh
 Rickard
 Court
 Featherston

Summary

The ACCC does not object to the notification lodged by Rivawine Collaboration Pty Ltd (**Rivawine**), on behalf of a group of 11 wine grape growers in the Riverland region of South Australia, to enable:

- growers within the group to act collectively in selling wine grapes to Rivawine and/or
- Rivawine to negotiate, collectively on behalf of the growers within the group, with wine companies and other wine grape purchasers.

The notification was lodged on 28 November 2018 and the ACCC has decided to allow it to remain in force for a period of 10 years from that date. Accordingly, the notification came into force on 12 December 2018 and will remain in force until 27 November 2028, unless it is withdrawn or revoked.

The notification

1. On 28 November 2018, Rivawine Collaboration Pty Ltd (**Rivawine**), on behalf of a group of 11 wine grape growers in the Riverland region of South Australia, lodged a collective bargaining notification¹ to enable:
 - growers within the group to act collectively in selling wine grapes to Rivawine (Rivawine would assume ownership of the fruit) and/or
 - Rivawine to negotiate, collectively on behalf of the growers within the group, with wine companies and other wine grape purchasers (Rivawine would not assume ownership of the fruit) (the **Notified Conduct**).
2. Rivawine will negotiate with purchasers of wine grapes and wine, including wine companies and brokers operating locally, nationally and internationally (**purchasers**) either:
 - on its own behalf, should it assume ownership of the fruit, or
 - on behalf of the wine grape growers.
3. The notification has been expressed to extend to negotiation with any purchasers, either within or outside the Riverland region.
4. Rivawine submits that the combined volume of fruit currently produced by the growers represents approximately 2.8% of fruit produced by wine grape growers in the Riverland region. Rivawine further submits the largest single grower in the group represents approximately 0.7% of fruit produced by wine grape growers in the region.
5. Rivawine submits that the proposed arrangement is voluntary for growers and for the targets, and the Notified Conduct does not include a collective boycott. Rivawine further submits that growers will not be required to enter into sale

¹ Businesses can obtain protection from legal action under the *Competition and Consumer Act 2010* (CCA) for collective bargaining including associated collective boycotts by lodging a collective bargaining notification with the ACCC. Protection for collective bargaining (which does not involve a collective boycott) will generally commence 14 days after the collective bargaining notification is lodged.

agreements with Rivawine and growers will be free to trade with purchasers outside of the collective arrangement.

6. The notification has been expressed so as to extend to other growers who may join the group in the future.
7. Rivawine requests that the notification continue for 10 years.

Background²

8. There are 65 wine grape growing regions in Australia and around 5000 wine grape growers across these regions. Broadly, Australian wine grape growing regions fall into one of two categories: warm climate or cool climate.
9. Riverland, as well as Riverina (NSW) and Murray Valley (NSW/Vic), are regions regarded by the industry as warm climate. Around 1,500 wine grape growers and approximately 70% of Australia's wine grape production comes from these regions.
10. The Riverland region, located east of the Barossa Valley, extends for around 330 kilometers along the Murray River. Around 1,000 growers and 27% of Australia's wine grape production comes from the Riverland region.³
11. The environment in warm climate regions is more naturally suited to high volume wine grape growing, with higher average temperatures, longer growing seasons, less exposure to disease and access to irrigation. Accordingly, production is focussed on bulk production and the average cost of production is generally lower.
12. Consequently, vineyards in these regions generally produce high volumes of grapes, which are sold to large processors. Most of the wine grapes from these regions end up in generic blended or bulk wine. Around 70-80% of wine made from grapes in these regions is exported and accordingly, they are particularly exposed to fluctuations in international wine prices.
13. Australia's largest winemakers' processing facilities are concentrated in the warm climate regions. In contrast, there is a shorter growing season for wine grapes in cool climate wine regions with a greater risk of disease and frost damage, and less access to irrigation. Production costs per tonne tend to be higher in cool climate areas and average yields are lower.
14. As a result of these differences between the warm and cool climate regions, there are generally also different commercial relationships between growers and processors. In the warm regions, commercial arrangements focus on producing higher volumes of generalised qualities of grapes. In the cool regions, the vineyard and winemaker are more likely to be vertically integrated or work together to grow grapes that will produce wines with specific characteristics, often referred to as 'premium' or 'boutique' wines.

Consultation

15. The ACCC invited submissions from a range of interested parties including purchasers of wine grapes in the Riverland region, wine grape grower associations

² Unless otherwise noted the information in this section is taken from *ACCC Issues Paper, Wine Grapes – a market study by the ACCC, 26 September 2018, p 5-6.*

³ <http://www.riverlandwine.com.au/about-riverland-wine.html>

and industry associations. The ACCC did not receive any submissions in relation to the notification.

ACCC's Assessment

16. The ACCC has considered the Notified Conduct in accordance with section 93AC of the *Competition and Consumer Act 2010 Cth (CCA)*.
17. In doing so, the ACCC has taken into account:
 - The likely future with and without the Notified Conduct. In particular, the ACCC considers that, absent the Notified Conduct, each participant in the group is likely to continue to individually negotiate with purchasers for the supply of wine grapes and wine.
 - The relevant areas of competition likely to be affected by the Notified Conduct. The ACCC considers that the primary area of competition is the supply of wine grapes and wine from the Riverland region of South Australia.⁴

Public Benefit

18. The ACCC considers that the Notified Conduct is likely to result in the following public benefits from improved efficiency through:
 - Transaction cost savings (such as negotiation and contracting costs, and the time taken to negotiate) for the growers and purchasers, relative to each grower conducting negotiations with purchasers on an individual basis.
 - Better input into contracts, as collective bargaining may improve the ability for growers to have better input into contracts than they would be able to achieve on their own. Collective bargaining may also enable growers to be better informed of relevant market conditions, which is likely to improve their input into contractual negotiations with purchasers to achieve outcomes that are more efficient.
 - Greater uniformity in production of wine grapes through coordination within the grower group about spray diaries, pest/disease support and harvest logistics. This is likely to be valued by producers of generic blended or bulk wine.

Public Detriment

19. The ACCC considers that the Notified Conduct is likely to result in minimal, if any, public detriment from a reduction in competition between the members of the bargaining group for the supply of wine grapes and wine from the Riverland region of South Australia because:
 - The combined total of wine grapes produced by the growers in the group represents a small share (approximately 2.8%) of the total wine grapes produced by growers in the Riverland region.

⁴ The ACCC notes that there may be a degree of substitutability between wine grapes from the Riverland region and wine grapes from other warm climate regions. The ACCC does not consider it necessary to form a concluded view about this issue for the purpose of assessing this notification.

- Although the Notified Conduct may reduce competition between growers within the growers group, there is no agreement between the growers to trade solely through Rivawine Collaboration, and growers will still be free to trade with purchasers through other arrangements.
- Participation in the Notified Conduct is voluntary for the members of the group and for the targets.

Period for which the Notification will be in force

20. A collective bargaining notification (and therefore the protection it confers) will be in force for a period of three years from the date it is lodged unless the ACCC determines that another period is appropriate or the notification is withdrawn or revoked.
21. In this case Rivawine asked that notification remain in place for 10 years.
22. The ACCC considers that it is appropriate for the notification to remain in force until 27 November 2028 for the following reasons:
 - The likely benefits of the Notified Conduct may be expected to continue for the duration of the Notified Conduct and therefore total benefits are likely to be greater with the extended notification period.
 - The extended notification period is unlikely to change the minimal public detriment which is likely to result from the Notified Conduct.

Decision

23. The ACCC considers that the benefit to the public that is likely to result from the Notified Conduct will outweigh the detriment to the public that is likely to result.
24. Accordingly, the ACCC does not object to the notification at this time. As with any notification, in accordance with s 93AC, the ACCC may act to remove the protection afforded by the notification at a later stage if it is satisfied that the public benefit does not outweigh the public detriment.
25. With respect to the period for which the notification will remain in force, for the reasons set out in paragraph 22, in accordance with s 93AD(5), the ACCC is satisfied that:
 - a three year notification period is not appropriate in all the circumstances, and
 - another period is appropriate in all the circumstances, being the period ending on 27 November 2028.⁵
26. Accordingly, the protection provided by notification CB1000061 commenced on 12 December 2018 and will continue until 27 November 2028, unless the notification is withdrawn or revoked.
27. This Statement of Reasons serves as the written notice and written statement of reasons for giving that notice required by section 93AD(6) of the CCA.

⁵ As required by s 93AD(5)(b), this period will end no later than 10 years after the day that the notification was lodged.