

NOTIFICATION OF COLLECTIVE BARGAINING – ‘RIVAWINE COLLABORATION PTY LTD’ WINE GRAPE GROWERS IN THE RIVERLAND REGION, SOUTH AUSTRALIA

Notifying party

1. Provide details of the notifying party, including:

1.1. name, address (registered office), telephone number, and ACN

Name: Rivawine Collaboration Pty Ltd
Address: 6 Kay Avenue Berri, (P.O. Box 2127 Berri) S.A, 5343
ABN: 60 616 926 464
Telephone Number: 0403 520 242

1.2. contact person’s name, telephone number, and email address

Name: Andrew Weeks
Phone Number: 0403 520 242
Email: andrew.weeks@rivawine.com.au

1.3. a description of business activities

Wine grape growing, including sale of wine grapes and processing of wine grapes into wine for sale.

1.4. email address for service of documents in Australia.

Andrew Weeks: andrew.weeks@rivawine.com.au

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

2.2. resale price maintenance (s. 48)

No

2.3. collective bargaining (s. 93AB). If the notified conduct is for collective bargaining, does the notified conduct include a collective boycott.

The notified conduct is for collective bargaining only and does not include a collective boycott. Members of the collective group will still be free to pursue business outside of the collective group.

3. Provide details of the notified conduct including:

3.1. a description of the notified conduct

Rivawine Collaboration on behalf of the growers in Attachment 4 seeks the ACCC’s permission to engage with various wine companies and other wine grape purchasers on behalf of the growers within the group. The combination of a number of grower entities within the single collaboration provides the growers with greater scope to provide potential wine and grape purchasers with a balance of wine and fruit of a range of different varieties and offers potential for greater flexibility in business arrangements than simply selling wine grapes to a supplier at a price.

There are 11 known and prospective entities that are likely to trade through Rivawine Collaboration in some form. These are listed in Attachment 4. All are growers located in the Riverland region of S.A. Two of these businesses are shareholders in Rivawine Collaboration, with the remainder expressing an interest to trade through the Rivawine

NOTIFICATION OF COLLECTIVE BARGAINING – ‘RIVAWINE COLLABORATION PTY LTD’ WINE GRAPE GROWERS IN THE RIVERLAND REGION, SOUTH AUSTRALIA

Collaboration group in the coming season. Rivawine is an overarching “umbrella” type structure that serves to combine all the voluntary trading partners under a common trading brand.

The combined volume of fruit of all group members projected for this trade is approximately 2.8% of the total production of the Riverland Region. While there are economies of scale that may be achieved through this structure, there is negligible potential effect on the total market volume.

While the grower entities listed have indicated a desire to trade through Rivawine, there will be no barrier to performing other trade with any other businesses in addition to or instead of trading through Rivawine. There will be no contract or other encumbrance preventing growers from leaving Rivawine to trade with other entities if they so wish.

Rivawine Collaboration may either:

- Purchase the fruit of the participating grower members, and process a proportion of this fruit into wine, and sell fruit and wine on to various customers. In this case Rivawine assumes ownership of the fruit through purchase and rewards participating grower members with the best possible returns from later value adding.
- It may choose to act on behalf of the trading members with their authority to do so. In this case Rivawine would effectively be acting as an agent on behalf of the grower members.

The common goal in either model or any other models that may be adopted in future is to provide its members a return greater than would have been possible if they were operating as a sole entity, and simply selling wine grapes at the regional average price for fruit of that particular variety as is the case with the old or traditional business model.

Terms that are expected to be negotiated on behalf of members include:

- a) Sale of wine grapes to a wine company or other grape purchaser;
- b) Agreement for contract processing by a wine processor on behalf of members of the group;
- c) Sale of wine to various buyers

3.2. any relevant documents detailing the terms of the notified conduct

Not Applicable

3.3. the rationale for the notified conduct

The trading partners (growers) within the Rivawine Collaboration group provides not only a significant scale of fruit (over 12,000 T at the time of writing) but the member growers have established a track record of producing quality wine grapes in the Riverland region, and therefore provides potential buyers with confidence that dealing with Rivawine will result in a good value outcome for their business.

Operating as a combined group provides potential buyers with the efficiency of dealing with a single point of contact for a wide range of fruit or wine options, therefore making business more efficient for them.

NOTIFICATION OF COLLECTIVE BARGAINING – ‘RIVAWINE COLLABORATION PTY LTD’ WINE GRAPE GROWERS IN THE RIVERLAND REGION, SOUTH AUSTRALIA

The operation of the growers within a group also allows for management of cashflow and different scale of returns for the member growers in accordance with their wishes, with potential returns dependent on the willingness to make wine and opt for a greater return through value – adding. This offers the member growers greater flexibility and potential for greater margins than simply offering fruit for sale under the normal trading conditions in the wine sector.

Rivawine also offers a service to potential customers in managing agrichemical application records and providing a conduit for communication of market information and logistics relating to harvest organisation, therefore removing the need for the customers to perform this work themselves.

3.4. any time period relevant to the notified conduct.

It is planned to commence the notified conduct in time for trade in the 2019 vintage period, which will commence with the harvest of fruit in approximately mid-January 2019. The parties assume that assuming that the anticipated benefits are realised this the collective bargaining notification would stand for ten years.

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 notified conduct and any minutes or record of the decision made.¹

Rivawine Collaboration has not previously applied for notification of this nature. The nature of the business model has been discussed individually with each trading partner, and permission has been given by each trading partner to act on their behalf. An extract of board meeting minutes from August 1st which refers to decisions made around the business plan in acting on behalf of the numerous entities is included in Attachment 1 – confidential. Ongoing discussions have also been had with each individual entity.

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 list of potential buyers of wine grapes and wine is attached in Attachment 2 (confidential). At the time of lodgement of this notification discussions are still progressing with potential customers. The persons or classes of persons who may be affected by the notified conduct would include wine companies, brokers and other grape purchasers. Some of these businesses that Rivawine is currently in negotiation with operate locally, nationally or internationally. Some wine companies that operate in the Riverland region are active internationally. Some of these wine companies that operate within the Riverland region are listed (in 9.3) below.

There is unlikely to be any discernible negative impact on these businesses due to the small proportion that the volume of the proposed trade makes up in the regional total (see below). However, there may be benefits to both purchasers and Rivawine trading partners through increased flexibility of business deals, the ability to combine different varieties of wine grapes into a large trading “parcel”, therefore offering a broader range of potential fruit and wine to customers, and scope for different payment arrangements to the participating growers.

Market information and concentration

6. Describe the products and/or services supplied, and the geographic areas supplied, by the notifying parties. Identify all products and services in which two or more parties to

NOTIFICATION OF COLLECTIVE BARGAINING – ‘RIVAWINE COLLABORATION PTY LTD’ WINE GRAPE GROWERS IN THE RIVERLAND REGION, SOUTH AUSTRALIA

the notified conduct overlap (compete with each other) or have a vertical relationship (eg supplier-customer).

The notification relates to the sale of wine grapes and wine, with wine processing being provided to the group on a contractual basis. The sale of wine and wine grapes will occur predominantly within but is not limited to the Riverland Geographic Indicator (G.I.) region of South Australia.

The growers trading with Rivawine Collaboration may also have fruit sold either under contract or through other arrangements with other wine companies and fruit purchasers. There is no restriction on the members of this group to trade solely through Rivawine Collaboration.

Rivawine intends to purchase grapes from its members and offer a final return that is more attractive than would otherwise be attained via sale of grapes as an individual entity. Rivawine may in future choose to act on behalf of member growers without purchasing the fruit if that is what the member growers wish. The growers are requested to commit to sale via a sales agreement with Rivawine but are under no compulsion to do so. They remain free to instead sell their fruit to another buyer if they wish.

The member growers of the group are free to continue to trade as they wish, and there may continue to be some competition between sales of fruit or wine to wine companies from commercial arrangements that the members have outside the scope of Rivawine Collaboration. Therefore, there may continue to be competition between the participants while they operate as member growers of Rivawine Collaboration.

7. 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.

The wine industry largely comprises growers of wine grapes who sell their fruit to wine companies usually directly or sometimes through brokers. These wine companies use the fruit to make wine, and sell this either domestically or on export markets, either in a bottled branded product or in bulk. Some wine companies also operate their own vineyards to supply fruit for their own purposes. Approximately 63% of all wine grapes in Australia are produced by independent growers with the balance grown by wine companies. There is a substantial amount of trade in bulk wine between Australian wine companies and internationally.

Wine grapes may be sold under a contractual agreement between grower and purchaser, which may be of only a short or longer-term duration. Other fruit is purchased on an annual offer, where the purchaser makes an offer to buy the fruit shortly before harvest in a given season.

The purchaser may or may not offer advice or support to the fruit grower to assist in fruit growing, in particular under longer term contractual arrangements; but is under no compulsion to do so. When the fruit matures to the point where the flavour and maturity parameters are suitable for the intended wine it is delivered to a winery, where the grapes are crushed and made into wine. Usually ownership of the fruit transfers to the purchaser after the fruit is weighed as it passes over a weighbridge at the point of receipt into a winery.

The price paid for wine grapes will vary, sometimes widely. There is some uniformity within a grape growing region, where the value of wine grapes is influenced by the sale price of the resulting wine. This is in turn determined by the flavour characteristics of the fruit, and to some extent by market value attached to the region from a reputation as a quality producer. In warm inland regions the value of wine grapes is heavily influenced by the global price of bulk wine for each grape variety in question. Much of the resulting wine is exchangeable on wine markets and is similar to FMCG products. In cool and temperate regions, the price is more closely linked with the sale price that the final bottled, branded product would expect to sell for at the retail outlet.

NOTIFICATION OF COLLECTIVE BARGAINING – ‘RIVAWINE COLLABORATION PTY LTD’ WINE GRAPE GROWERS IN THE RIVERLAND REGION, SOUTH AUSTRALIA

The sale of wine grapes is not regulated and is essentially an agreement between a seller and purchaser of fruit. There is some consistency in prices within grape growing regions, as fruit grown within regions will have similar end use in the form of wine. Some wine companies have signed up to the voluntary Wine Industry Code of Conduct <http://www.wineindustrycode.org> which provides a framework for wine grape sales and provides a dispute resolution system for disagreements. There is no mandatory code nor regulation that controls the prices paid nor terms of trade in a grape purchase agreement. Often the value of fruit purchased is determined at the sole discretion of the purchaser.

1

Notifying parties should consult with the ACCC prior to lodgement to discuss the scope and range of documents needed in the context of the proposed conduct the subject of the notification.

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

The total volume of fruit that is envisaged to be traded through Rivawine Collaboration is small relative to the total output of the Riverland region. At the time of writing there was an estimate of 12,600T of winegrapes of various varieties from all the prospective grower members. The total annual production of the Riverland region is circa 450,000 T (<http://www.riverlandwine.com.au/about-riverland-wine.html>) so the total volume of proposed trade represents approximately 2.8% of the region by volume. In comparison with the national wine grape production of approximately 1.79 M T (<https://www.wineaustralia.com/market-insights/national-vintage-report>) it represents 0.7% of national production by volume.

The largest single grower produces 3,350T for Rivawine Collaboration, representing 26.6 % of Rivawine fruit, 0.7% of the Riverland region and approximately 0.2% of the national crush respectively by volume. Other members of Rivawine Collaboration are significantly less by volume and their individual market share of production is negligible.

9. Describe the competitive constraints on the parties to the proposed conduct, including any likely change to those constraints should authorisation be granted. You should address:

9.1. existing or potential competitors

All parties in the trading group join voluntarily and are free not to be a part of the group if they so wish.

Essentially all suppliers of wine grapes within the Riverland region of South Australia are competitors in selling their fruit to wine grape purchasers. Similarly, wine companies are competitors in seeking to buy good quality wine grapes. While there are advantages of scale through the proposed trading arrangement the small percentage of regional production means that there will be no perceived influence on competition at a regional basis. There is nothing to prevent other wine grape growers from forming similar collaborative trading groups in this manner and seeking the same benefits from economies of scale. The list of potential customers is included in Attachment 2.

9.2. the likelihood of entry by new competitors

Unknown. While there is nothing to prevent other winegrowers from forming similar collaborative groups, the decision to grow and sell wine grapes is largely dependent on likely returns. Profitable conditions at the end of last century combined with favourable taxation depreciation arrangements saw many new vineyards being planted. While there has been a recent improvement in the profitability of wine and grape sales as a result of improved trade with China, there are some

NOTIFICATION OF COLLECTIVE BARGAINING – ‘RIVAWINE COLLABORATION PTY LTD’ WINE GRAPE GROWERS IN THE RIVERLAND REGION, SOUTH AUSTRALIA

roadblocks to broad scale planting of new vineyard areas, mainly due to increased water prices. More profitable orchard crops dominate large scale plantings of late, and the price of permanent or temporary water is a disincentive for new vineyard development.

9.3. any countervailing power of customers and/or suppliers

In recent years the sale of wine grapes has very much been a buyer’s market, while supply of wine grapes has been in oversupply. The proposed trading entity is unlikely to alter any balance of strength between customer and supplier. Rather, the proposed entity intends to offer efficiencies of economies of scale through organising a number of winegrowing entities through a single focal point, and to offer value adding service to its customers.

There are a number of wine companies actively buying wine grapes in the Riverland regions and processing wine. These include, but are not limited to:

- Accolade Wines
- Treasury Wine Estate
- Pernod Ricard Winemakers
- Kingston Estate
- The Wine Group
- Growers Wine Group
- Salena Estate
- Qualia Wines
- Yalumba Wines
- Pacific Vintners

While final commercial arrangements are still being determined at the time of writing this report, it is highly likely that the trading entity will be dealing with a number of the entities listed above, and also with other much smaller scale producers; some who may be located outside the Riverland region.

Notification is sought to include collective bargaining with any purchaser of wine grapes or wine within or outside of the Riverland region.

The only anticipated impact on suppliers of agricultural goods (to the winegrowing entities involved) is that improved profitability for trading members is likely to lead to improved trade with them.

9.4. any other relevant factors.

None that are foreseen.

Public benefit

10. 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.

There are a number of possible public benefits that are likely to flow on from the proposed trade:

- Improved profitability of the participating members is likely to lead to increased local spending in local supplier outlets. Two of the longer-term members that have operated similar collaborative entities can report greater local investment on major purchases such as vehicles and farm machinery as a result of increasing profitability through better efficiencies.

NOTIFICATION OF COLLECTIVE BARGAINING – ‘RIVAWINE COLLABORATION PTY LTD’ WINE GRAPE GROWERS IN THE RIVERLAND REGION, SOUTH AUSTRALIA

- A much greater balance in bargaining power between the winegrowers and purchasing wineries. This is due to the ability to offer a larger volume of quality fruit, and also to offer a range of white and red grapes for sale. The group also offers value-adding for potential customers in the form of providing a uniform spray diary, pest and disease support for grower members and assisting in harvest logistics. This will result in both the grower group and customer being more efficient and assisting the production of sound, high quality wine grapes.
- The proposed trade also offers an example of a different industry model with mutual benefits to customers and participants that might result in a number of unrelated grower entities pursuing similar arrangements, therefore improving their profitability and engagement in wine markets.
- Increased competition between local grape purchasers for the quality fruit produced by participating grower members;
- There are likely synergies in creating different commercial deals with wine companies offering contract processing arrangements. The group has a number of growers located across the Riverland region and has the ability to improve the management of harvest intake through greater flexibility of harvest across a large group, which can react to breakdowns during harvest and minimise the disruption to winery intake, for example.
- There is likely to be reduced transaction costs for the participants in comparison with individual trade;
- Rivawine provides wine market information and technical support to the grower group, therefore increases the knowledge of members and facilitating more effective business decisions of the members;
- The flexibility of the proposed business model allows grower members improved flexibility in managing their cashflow against a possible greater return;
- The group has a policy of continuous improvement through collaboration, therefore improving compliance costs for the participants;

Public detriment including any competition effects

- 11. 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 notified conduct will have no material negative impact on the local trade between winegrowers and purchasers of wine grapes, nor other wine industry participants for the following reasons:

- The volume of trade is not of significant proportion to influence the market (as explained previously) and competitor growers selling wine grapes in the region will not be impacted by the notified conduct;
- Due to the volume of trade (above) the proposed arrangement is also unlikely to have negative impact on wine grape purchasers or their suppliers.
- The proposed conduct will not alter the amount of wine grapes sold in the region and therefore will not impact on demand.
- The group is not planning to operate as a “buying group” and therefore will not press local suppliers for heavily discounted supplies, but each participating entity will continue to trade individually and therefore will instead develop good business relationships and concentrating on building value.
- The members relating to this notification are not bound to the group, and therefore the notified conduct will not have any impact on freedom of trade.

Contact details of relevant market participants

NOTIFICATION OF COLLECTIVE BARGAINING – ‘RIVAWINE COLLABORATION PTY LTD’ WINE GRAPE GROWERS IN THE RIVERLAND REGION, SOUTH AUSTRALIA

- 12. Identify and/or provide 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.**

A list of potential customers, suppliers and industry organisations and their contact details is listed in Attachment 3

Any other information

- 13. 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

- 14. 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 party is not a trade union, an officer of a trade union or acting at the direction of a trade union.

- 15. 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.**

The current and proposed members of the group are listed in Attachment 4 (confidential). At the time of preparation of this notification many members are yet to confirm their status with Rivawine. There are 11 current and prospective members of Rivawine and they consent to the notification to the notification being lodged by Rivawine Collaboration on behalf of one or more of the contracting parties.

The notified conduct also extends to any other growers who may join the group in future.

- 16. Confirm each contracting party reasonably expects to make one or more contracts with the targets for the supply or acquisition of the relevant goods or services and the value of each contract will not exceed A\$3 million (or any other amount prescribed by regulation) in any 12 month period. Provide details of the basis for that expectation.**

Each of the contracting parties will not receive more than \$5M (the sum provided for in the regulations involving primary production) in any given year.

The contractual payments will depend on the market price of bulk wine and wine grapes. Wine grapes attract different value depending on the grape variety and various quality parameters negotiated with the purchaser. Even in the event that the largest contracted stakeholder was able to achieve the highest possible likely market value for all the varieties on offer, the value gained would be significantly lower than \$5M see Attachment 5, (confidential)

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

NOTIFICATION OF COLLECTIVE BARGAINING – ‘RIVAWINE COLLABORATION PTY LTD’ WINE GRAPE GROWERS IN THE RIVERLAND REGION, SOUTH AUSTRALIA

17.1. the event/s that would trigger a collective boycott

There is no plan for collective boycott – not applicable.

1. 17.2. the process that would be followed

There is no plan for collective boycott – not applicable.

2. 17.3. any proposed notice period to be given to the target/s prior to commencing a collective boycott

There is no plan for collective boycott – not applicable.

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

Not applicable.

NOTIFICATION OF COLLECTIVE BARGAINING – ‘RIVAWINE COLLABORATION
PTY LTD’ WINE GRAPE GROWERS IN THE RIVERLAND REGION, SOUTH
AUSTRALIA

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 of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).

Signature of authorised person



Office held

Managing Director, Rivawine Collaboration Pty Ltd

(Print) Name of authorised person

Andrew Weeks

This 28th day of November 2018

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.

NOTIFICATION OF COLLECTIVE BARGAINING – ‘RIVAWINE COLLABORATION PTY LTD’ WINE GRAPE GROWERS IN THE RIVERLAND REGION, SOUTH AUSTRALIA

Attachment 3
List of possible affected persons, industry organisations, etc

In addition to the list of potential customers listed in Attachment 1 the following industry organisations may be interested parties in the notified conduct.

Riverland Wine

Regional industry representative body based in the Riverland region in S.A.

Contact: Chris Byrne

Executive Chairman

chris@riverlandwine.com.au

0419 555 001

Please note that the two peak bodies Winemakers’ federation of Australia (WFA) and Australian Vignerons (AV) voted to dissolve their respective bodies and merge on 13/11/19. This is very timely.

I have included Anna Hooper as the primary contact due to her former role as CEO of AV, and therefore with greatest familiarity with grape grower issues.

Tony Battaglione is the former CEO of WFA and will assume the role of CEO of the new entity AGWI.

Australian Grape and Wine Incorporated

National industry body representing winegrowers and winemakers

Contact: Anna Hooper

Fmr. CEO Of Australian Vignerons (previous national body representing Australian Winegrowers)

anna@australianvignerons.com.au

0427 685 077

Contact: Tony Battaglione

CEO Australian Grape and Wine Incorporated (newly merged entity of WFA and Australian Vignerons, as of 13/11/18)

tony@wfa.org.au

0413 014 807