AUSTRALIAN Grape & Wine

INDEPENDENT REVIEW OF THE FOOD & GROCERY CODE 2023-24:

Submission to the Interim Report

May 2024

Submission

Wine suppliers are particularly vulnerable to major liquor retailers' market power for the same reason that food and grocery producers are. Australian Grape and Wine Incorporated (Australian Grape & Wine) maintain the view that the wine industry would benefit from the inclusion of wine in the Food and Grocery Code of Conduct (the Code) and that there is strong justification for this. We recommend that the Reviewer reconsider the opinionthat wine does not readily fit into the Code and that, if there is a view that closer analysis is required, that this be conducted as part of this review. Substantial analysis was included in our submission to the original Consultation Paper.

The review cited several reasons that wine does not readily fit into a Code. We ask that the reasons provided be reassessed against facts and scrutinised more closely for relevance to the argument against inclusion of wine.

> *"The Review considers that wine does not readily fit into a Code that is designed to cover the supply of 'groceries', being products that are ordinarily found in supermarkets. Many suppliers of grocery products are particularly vulnerable to the supermarkets' market power because these suppliers do not have other avenues to sell their products at scale. In contrast, wine is sold in liquor stores across Australia, and in some states, wine is not available in supermarkets. Furthermore, around 60 per cent of Australian wine is exported."*

Most agricultural producers also enjoy the benefits of significant export markets. In fact, according to the Department of Agriculture, Fisheries and Forestry 72% of agricultural production by value is exported.[1] Australian export wine sales in comparison amount to 38% in value terms.[2] The report also breaks down agricultural export figures into the nine classified agricultural sectors showing that Australia wine exports are smaller than any other agricultural sector and wine export sales values are on a downwards trajectory. This trajectory is likely to be reinforced if the Australian dollar continues to strengthen as it has been predicted to do.[3] Furthermore, for small winemakers who are most vulnerable to market power issues, exports account for only 3 per cent of sales by volume leaving many of them heavily reliant on the challenging domestic market.[4]

> *"The Review considers that the extension of the Code to wine and other alcoholic beverages would require closer analysis to understand the market dynamics in the industry, and to understand whether market power issues in these industries are of the type best addressed through a mandatory Food and Grocery Code of Conduct, or another policy instrument. An important issue associated with extending the Code to these products is that it would raise questions about which other retailers that sell wine and other alcoholic beverages should also be subject to the Code."*

[1] https://www.agriculture.gov.au/abares/products/insights/snapshot-of-australian-agriculture#around-72-of-agricultural-production-is-exported
[2] https://www.wineaustralia.com/market-insights/australian-wine-production-sales-and-inventory
[3] https://www.nab.com.au/business/international-and-foreign-exchange/financial-markets/exchange-rate-forecast
[4] Wine Australia, Small winemaker production and sales survey 2017, p. 6.

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It is not clear how the supply of wine to a retailer differs from the supply of non-alcoholic drinks, household goods, clothing, tobacco or fresh produce. The predominant difference is that wine is sold in liquor specific stores, albeit that these stores are owned by many of those same supermarket chains. In our opinion this is inconsequential. The absence of Australian wine in supermarkets is an anomaly compared to other jurisdictions and stems from reasons completely unrelated to how it is traded. Some Australian jurisdictions do in fact allow the sale of alcohol in supermarkets and others allow it on the proviso that there is some form of separation from the rest of the store. If that is an argument, then what is to stop supermarkets setting up a greengrocer or a butcher alongside from their main outlet and claiming that this makes those sales exempt from the Code?

It would be our assumption that if wine was brought into the Code that liquor retailers over the recommended threshold of $5 billion, would also be bound by those same provisions. This would likely capture at least 70% of domestic sales (Endeavour Group, Coles, Metcash and Aldi). Improved behaviours by the majors would likely have a positive influence throughout the market.

The provisions in the Code line up very neatly with a vast majority of the issues raised by wine producers such as how products are delisted, the funding of promotions, quality specifications, changes to supply chain procedures, product ranging, shelf space allocation and range reviews, intellectual property rights, confidential information, and timeframes for acceptance of price increases. These types of protections would induce significant improvements to supply agreements between wine producers and liquor retailers.

"Metcash noted the following differences

between the liquor and grocery industries:

- *The beer market is predominantly supplied by two large multinational firms with significant countervailing market power.*
- *Retailers are not the primary means for suppliers of alcoholic products to reach the domestic consumption market, with wholesalers/buying groups and the on-premise market providing significant alternative routes to market.*
- *The export market provides another alternative avenue for suppliers."*

"

At present the Food and Grocery Code does not apply to all products sold in supermarkets. Therefore this is a precedent for including some products but not others. Thus, if there is no appetite for the inclusion of beer then this should not prevent the inclusion of wine.

"The Interim Report considers that the case for extending the Code to other retail markets has not yet been made in full given that the Code has been designed to address issues specific to the supermarket industry. It follows that there could be unintended consequences from extending the Code to other retailers beyond those involved in the supermarket business."

It is our opinion that there were sufficient reasons to cited in the submission to the Review that would justify why wine should be included.

Theconcerns outlined in our original submission include requirements for wine producers to contribute to retailer trade spend, delisting products at short notice and other practices that introduce uncertainty for wine producers. Large retailers can and do use their market power to gain competitive advantage for their own-branded products. Retailers do this by manipulating store layout and product placement and various other forms of choice editing. This provides strong potential to lead consumers towards choices they might not otherwise make. In doing so it denies equally efficient competitors of access to a sufficient customer base, meaning they battle to remain competitive.

Evidence from wine producers suggests that the demand forecasting they receive from the retailers is often inaccurate. This can leave them with an excess of wine, which is not always suitable for an alternative distribution channel. Meanwhile, retailers who produce their own branded products enjoy a significant competitive advantage making use of data driven insights that provide for operational decision-making in real-time reducing costs associated with over-runs or product shortfalls affording their own branded products a competitive advantage over non-proprietary brands.

According to the Consultation Paper, the Code guards against abuses of imbalance in bargaining power through:

· Setting a minimum threshold for the basic provisions underscoring contracts to ensure that the terms and conditions set between signatories and their smallest suppliers are fair;

· Requiring an appropriate minimum standard of behaviour by which wholesalers and retailers conduct themselves so that even the smallest of suppliers can expect to be and are treated fairly; and

· Providing an avenue for dispute resolution which alleviates a supplier's fear of retribution for speaking out in instances where a signatory has acted not in accordance with the Code.

Why we are no different

There are over two thousand producers and approximately six thousand grape growers, a vast majority based in regional Australia; for some their businesses are also their family homes. In essence, most winemakers are very similar in their vulnerability market power imbalances as food producers. They *are* in essence farmers, just like food producers, most growing their own fruit. Ensuring fair and equitable business practices exist throughout the supply chain is essential for the ongoing prosperity of all these businesses, especially the small and medium sized enterprises (SMEs). Although there are several large players, most wine and winegrape producers fall under $10m turnover. This has, and continues to, increase as consolidation continues.

Contraction of the wine export market following the loss of the China market has exacerbated the reliance of wine producers on the domestic market and their demand side risk. Both grape growers and wine producers suffer significant lead times and decisions regarding production often occur many months or even years before the product is sold. The ACCC in their Winegrape Market Study[5] (2019) acknowledged the significant risk that winemakers bear in their dealings with buyers due to lack of certainty regarding volumes and pricing, particularly where they suffer the risk of products being delisted at short notice. Issues facing wine producers flow directly to growers.

These guards against abuse of market power would be of significant benefit to Australian wine producers and wine growers. Failing inclusion of wine in this Code, we ask that you consider a recommendation for a separate inquiry

[5] https://www.accc.gov.au/about-us/publications/wine-grape-market-study-final-report

into competition in the wine industry. We would welcome further dialogue on these matters.

About Us

Australian Grape and Wine Incorporated (Australian Grape & Wine) is Australia's national association of winegrape and wine producers. Grape and wine businesses are unique in agriculture. The sector has traditionally been a leader amongst agricultural industries showcasing the regional and economy wide benefits of promoting locally grown and value-added production. These businesses support employment of over 160,000 people in winegrape growing and production, regional exports and food and wine tourism, making a significant contribution to Australia's rural and regional economies and driving economic growth.

Our role is to help forge a political, social and regulatory environment - in Australia and overseas - that enables profitable and sustainable Australian grape and wine businesses. To do this, our activities focus upon the objective of providing leadership, strategy, advocacy, and practical support. We represent small, medium and large winemakers and winegrape growers, with policy decisions taken by the Australian Grape & Wine Board requiring 80% support, ensuring no single category can dominate the decision-making process and guaranteeing policy is only determined if it provides significant industry benefit. In practice, most decisions are determined by consensus.

Australian Grape & Wine is recognised as a representative organisation for winegrape and wine producers under the *Wine Australia Act 2013* and is incorporated under the *SA Associations Incorporation Act 1985*.

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