



NATIONAL COMPETITION POLICY:

Submission

September 2024

## About the wine sector

Australian Grape and Wine Incorporated (Australian Grape & Wine) welcomes the opportunity to contribute to the consultation Revitalising National Competition Policy.

There are over two thousand wine producers and approximately six thousand grape growers, a vast majority based in regional Australia. Although there are several large players, most wine and winegrape producers fall under \$10 million in turnover. Downstream of the supply chain, in the liquor retail industry the level of concentration is much higher. The four largest retailers (Endeavour Group, Coles, Metcash and Aldi) hold a market share of almost seventy per cent, with Endeavour and Coles alone having a fifty-five per cent market share.<sup>1</sup> Like many other agricultural industries, this structure often gives rise to producers undertaking commercial negotiations with substantially larger businesses. Any associated challenges impacting wine producers flow directly to growers. The high concentration level in the wine retail sector has been partly facilitated by the ease with which liquor retailers can acquire more retail establishments under the *Competition and Consumer Act 2010*. Consolidation of liquor retail continues to increase.

This submission will focus on Reform themes 1 and 2 in Section 3 *A National Competition Reform Program*.

### Theme 1: Promoting a more dynamic business environment

Although Australia's competition policies have generally encouraged competitive industries, the operating environment has changed and continues to change. There are several challenges facing the grape and wine industry, and many other agricultural industries that could be resolved through strengthening competition laws and reviewing regulatory systems that are not serving these sectors as best they could. The most important challenge is market dominance, particularly downstream of the supply chain in food and beverage retailing. The extent of market power in these retail sectors is an indicator that our merger and acquisition laws are too permissive.

The discussion paper highlights characteristics of certain sectors that make them prone to anti-competitive market structures. Wine and winegrapes, like most other agricultural sectors, are familiar with many of these characteristics. For example, in viticulture, fixed costs are high which creates barriers to entry, expansion and exit. Significant market power downstream is an exacerbator of that challenge. This can occur in transactions between the largest wine producers and their growers, but is particularly evident in the relationships between wine producers and the major liquor duopoly. Small producers may face a glass ceiling in their growth once direct to consumer sales or to small independent bottle shops and restaurants reach a saturation point as many lack the ability to scale up sufficiently nor to meet the rigorous demands of major retail chains. The other emerging issue relates to both red and green tape and increased reporting requirements. Left unchecked, this could potentially harm small businesses making entry and expansion more difficult, and pushing out small players.

Competition laws, regulation and policies play a critical role in ensuring a level playing field. The ACCC submission to the February 2024 Treasury Competition Review calls for various measures that we would support including to enhance market transparency, for government-led reforms relating to standardising green claims, and the need for consumers and small business to be well-informed.<sup>2</sup> They also raised the potential for additional policy measures to increase price transparency and quality regulation frameworks in certain circumstances.<sup>3</sup>

---

<sup>1</sup> IBISWorld, Industry Report G4123 Liquor Retailing in Australia, IBISWorld, 2023, p. 10.

<sup>2</sup> <https://www.accc.gov.au/system/files/CompetitionReview-ACCCsubmission13February2024.pdf>

<sup>3</sup> <https://www.accc.gov.au/system/files/CompetitionReview-ACCCsubmission13February2024.pdf>

## Addressing Market Dominance

Australia's current merger control regime can, and does, affect competitive conditions for businesses. Australian Grape & Wine has maintained an interest in the progress of the Competition Review and the Government's response to the need to strengthen competition laws. The ACCC has recently issued a media release stating that reform of laws governing mergers and acquisitions is urgently needed to bring Australia in line with other developed economies.<sup>4</sup> Their submission to Treasury late last year highlights Australia as an international outlier in not requiring mandatory notification of mergers. It criticises not only the voluntary nature of the existing notification regime but the public litigation risk required for raising an objection due the fact that enforcement can only occur through the court system.<sup>5</sup>

Consolidation of wine retail over the last two decades has changed and left unchecked will continue to change the operating environment for many wine producers. Low pricing and margin erosion are common complaints throughout the supply chain. When combined with practices that introduce uncertainty for wine producers such as de-listing products at short notice or unforeseen requirements for wine producers to contribute to retailer trade spends, businesses become more sensitive to the impacts of margin erosion. The margin squeeze situation is exacerbated by a proliferation of inconsistent market reporting requirements and the imposition of specific production or logistical processes.

Successive acquisitions of smaller independent liquor retailers by larger chains commenced in the late nineties and led to a rapid growth in market share in a short space of time. Consolidation continues and the types of acquisitions have expanded to include hotels, online businesses, as well as winemaking, storage, packaging and bottling facilities. Several purchases of independent retail outlets have been investigated by the ACCC and not opposed. A key focus of the investigations has been on whether there will be an impact on competition between major retailers and other independent retailers in the local area. As these individual acquisitions don't tend to lead to lessening of competition on their own, there has been an accumulation of market power over time through a strategy of small serial acquisitions. Similarly, the impact of one acquisition on wine wholesale markets is insufficient to cause concern when assessed in isolation of the others. Thus, we welcome a statement by the ACCC that they intend to make it harder for big companies in concentrated and consumer-facing sectors such as retail and liquor to merge.

6

In the winegrape market, there are moderate levels of concentration. There are over 2000 small and medium sized wine producers and yet the top twenty producers are responsible for approximately seventy five percent of production. There are 6000 growers with the average vineyard size being approximately 24 hectares. The Code of Conduct for Australian Winegrape Purchases provides some protection to winegrape growers on matters unique to the wine sector that are not covered under Australian Consumer Law. However, the Code remains voluntary and, being industry led, does not provide for penalties. When the ACCC conducted their Winegrape Market study in 2019, there was a lack of evidence of industry-wide support for further regulation through a mandatory code due to the often-restrictive nature of mandatory codes and concerns that excessive regulation would deter producers from entering into supply contracts with growers. Further downstream, there is no active Code to guide winemakers in their dealings with wholesalers or retailers. While the wine and winegrape industry expects to see further improvements in commercial practices in response to the recent strengthening of unfair contract term legislation,

---

<sup>4</sup> <https://www.accc.gov.au/media-release/evidence-backs-case-for-critical-merger-law-reform#:~:text=Reform%20of%20laws%20governing%20mergers,told%20the%20Treasury%20Competition%20Review%20>.

<sup>5</sup> <https://www.accc.gov.au/system/files/accc-submission-on-preliminary-views-on-options-for-merger-control-process.pdf>

<sup>6</sup> Australian Financial Review (2<sup>nd</sup> February 2024) <https://www.afr.com/policy/economy/the-accc-wants-to-block-these-mergers-20240202-p5f1y8>



along with the unfair trading practices review, until established legal precedence occurs, practices that may be unfair are likely to continue. Both the wine and winegrape markets are currently subject to a Senate Inquiry into the adequacy of the voluntary Code of Conduct for Australian Winegrape Purchases and a Grape and Wine Sector Regulatory Impact Analysis being led by Dr Craig Emerson.

Market dominance in wine retail presents further challenges due to the fact that the largest retailers now grow and make wine themselves. They can also purchase wine in bulk and then bottle what is referred to as a “buyers’ own brand” or they can carry private label products exclusively available at their stores. With these businesses now owning hundreds of different brands from both Australia and overseas, for many winemakers the retailers are now both their major customer and their major competitor.

Our industry estimates that retailers’ own brands could account for as much as thirty five percent of the domestic wine market by volume, compared to about five percent in New Zealand.<sup>7</sup> One larger retailer recently reported that one of their wine producer subsidiaries generated \$1.8 billion of retail sales with over half coming from wine.<sup>8</sup> Australia’s total domestic wine market is \$3.1 billion (ex-winery). In correspondence received late last year, one producer estimated that the channel opportunity for branded suppliers has become fifty percent smaller since the rise of vertically integrated retailers.

### Increasing market transparency

There are concerns that the large retailers use their market power to gain competitive advantage for their own brands. Retailers can do this through their privileged degree of market insight or by leading consumers towards choices they might not otherwise make by manipulating store layout, product placement and various other forms of choice editing. Retailers can interrogate search data and in-store sales data to act quickly on market signals to identify what inventory they should be holding and to be early movers when an alternative wine style or variety is taking off. Their respective customer loyalty programs generate data relating to customer demographics and geodemographics, purchasing patterns and other insights that allow them to build stronger relationships with the consumer base. This type and extent of data is not available to their supplier competitors who have much less transparency over the market trends such as when an alternative wine style or variety is taking off or about how their products are performing compared to others in the relevant category. These information asymmetries mean that retailers’ privately owned brands have an unfair advantage over equally efficient competitors. One retailer claimed in 2024 that they have ‘leveraged their customer insights to drive product innovation, with circa 400 new drinks products launched during the year driving over 50% of their growth’.<sup>9</sup> They have managed to achieve this phenomenal growth in a domestic wine market that is contracting overall in response to increased emphasis on responsible drinking.<sup>10</sup> Left unchecked, the negative impact on producers could extend to consumers, particularly if private brands continue to increase market share and competition in wine retail declines in response.

As Australian Grape & Wine continues to field concerns from wine producers relating to the ongoing impacts of vertical integration on their ability to remain competitive in the domestic retail market, one major retailer claimed they were continuing to look for opportunities to expand the portfolio, taking advantage of the number of distressed wine assets on the market.<sup>11</sup>

---

<sup>7</sup> Pers comms. Wine Australia (2024), based on various market research

<sup>8</sup> [ASX Announcement](#) June 2024

<sup>9</sup> Ibid.

<sup>10</sup> <https://fare.org.au/declining-alcohol-consumption-in-australia-implications-for-public-health/>

<sup>11</sup> <https://www.afr.com/companies/retail/two-years-after-split-from-woolworths-endeavour-eyes-more-wine-buys-20230621-p5dif2>

#### *Issues for Consumers:*

Consumers are unable to easily identify buyer own branded wines as these products often have a look and feel reminiscent of those made by winemaking focused businesses. Traditionally when own-branded products are sold in supermarkets, it is understood by the consumer that the supermarket has the ability to cut or eliminate costs in distribution, marketing and advertising and so associated savings will be reflected in the price. There are countless studies that show that consumers will pay a price premium, not just for quality but for brands they trust. Furthermore, products carrying supplier brands (as opposed to private and buyer owned brands) are generally also afforded a premium due to their association with quality and prestige. As the current environment lacks transparency, it is not providing for this price premium opportunity to be realised. Australian Grape & Wine would be interested to engage in further consultations about how this could be resolved.

#### *Issues for producers:*

For non-proprietary (wine producer owned) brands, there is an expectation of year-round availability of each product. Supply shortages have been associated with product de-listings. There are concerns that retailers have access to better information to support their product stock to sales forecasting for their private and buyer own brands compared to their competitors. Supply chain logistics contribute a significant component to the total costs embedded in a typical bottle of wine. Once again, retailers' own branded products have an advantage over competing wine producers for a range of reasons. Retailers have the power to impose logistical parameters and processes that must be abided by, or are difficult to avoid, creating a greater burden on non-proprietary suppliers. Furthermore, unlike other wine producers, a vertically integrated retailer can transfer, or create an internal sale, between their own branded wine and their retail store at a cost exclusive of marketing, distribution and storage. The implication of such an inconsistency would be inconsequential if it were not for the fact that it is permissible that they then calculate wine equalisation tax on that substantially deflated notional wholesale value.

#### *Issues for growers:*

Lack of market transparency has in the past been recognised as a problem in the winegrape market. Lack of retail market price transparency has contributed to this. Australian Grape & Wine has responded to ACCC advice from the winegrape market study released in 2019 by promoting the development of supporting materials to improve transparency in both pricing mechanisms and winegrape quality assessments. Through the Australian Government's Improving Market Transparency in Perishable Agricultural Good Industries initiative a consortium comprising Australian Grape & Wine, the Inland Wine Regions Alliance and Wine Australia has undertaken a project that has seen the release of an online wine grape price indicator platform and a suite of price indicators, to help inform business decision-making. The launch of the platform in October 2023 means that winegrape growers now have access to timely and reliable market trends so they can better understand the market. The wine industry collects and maintains a comprehensive database of all export sales however there remain significant gaps in the domestic sales data available. Better availability of retail sales data would improve the accuracy of the price forecasting at the same time as contributing towards transparency in wine retail. Under that project and in partnership with ABARES independent winegrape price forecasts and commodity analysis for commercial grapes are now released each quarter.

### **Regulatory pressures**

Australian Grape & Wine recognises a significant risk in any untapped growth in the regulatory burden facing small producers. Regulation can not only unnecessarily impact competition by restricting new businesses entering a market, but by creating disincentives to growth. With that in mind, there is strong support for the objective of

ensuring businesses do not face excessive or unnecessary compliance costs to participate in markets, including for smaller and nascent businesses and businesses seeking to expand. With the wine sector currently subject to an inquiry that will consider costs and benefits of grape and wine sector regulation, we remain concerned that regulation relating to winegrape pricing could come with unintended consequences that discourage winemakers from purchasing grapes or threaten the viability of their businesses.

Anti-competitive market structures as a result of Government regulations do not only create direct cost but can be resource hungry. One way to resolve this is to eliminate or reduce the frequency of regulatory reporting, particularly when it is set at a level that does not reflect the risk associated with the policy intervention. The emergence of Container Deposit Schemes is one example of a new regulation creating a significant administrative burden on small producers. The inclusion of wine bottles in expanded schemes will significantly increase costs for wine producers, requiring them to navigate complex compliance processes such as producer and product registration, monthly reporting (even in the case of zero sales), and the need for annual returns and statutory declarations. Additionally, the potential for varying schemes across different Australian jurisdictions would create further challenges, complicating contracts and increasing administrative costs for producers already managing multiple sets of regulations.

Another emerging issue is environmental regulations, commonly referred to as 'green tape'. When it comes to regulation that relates to public policy objectives of environmental protection, businesses will be better placed to manage their risk if some time remains in their busy days to get the job done rather than being caught up in unhelpful and unnecessary administrative processes. Therefore it is once again important that regulations and, specifically reporting requirements, are appropriately scaled for their level of risk. Businesses are facing challenges in understanding the legal environment with respect to making false or misleading environmental claims making it more and more difficult for smaller producers to promote their positive environmental practices and to reap the rewards attached to sustainable agriculture. Access to clear and regularly updated guidance such as that produced by the ACCC will be an important imperative. Understanding exposure to this type of legislation in heavily regulated export markets such as the European Union (EU) will be another important part of managing compliance risk, as will advocating against anti-competitive non-tariff trade barriers. Specifically, the Australian Government should also maintain a watching brief on the impact of the EU Green Claims Directive that states environmental claims made by organisations must be substantiated through independent verification by an accredited third-party certification body, and backed by solid scientific evidence. Under that directive, new private environmental labelling schemes set up both in the EU and in third countries will have to be approved by EU Member States, 'taking account of their added value in terms of their environmental ambition and ability to support SMEs' green transition, compared to existing schemes'.<sup>12</sup> The EU Commission will publish the list of officially recognised environmental labels permitted for use on the EU market. This will invariably create flow on effects for businesses and certification schemes operating both within and outside of EU.

## **Theme 2: Harnessing the benefits of competition in the net zero transformation**

Australian Grape & Wine supports the objectives of this reform theme and in particular, the need to ensure businesses do not face excessive compliance costs to participate in the low carbon economy. We agree with the sentiment of the discussion paper that this will require streamlined regulatory processes that are easier for all participants, and especially SMEs, to navigate. We believe that all businesses should have access to opportunities such as carbon offsetting and in-setting.

While we support the principle of a carbon market, carbon farming to date has not been taken up by winegrape

---

<sup>12</sup> [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/753958/EPRS\\_BRI\(2023\)753958\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/753958/EPRS_BRI(2023)753958_EN.pdf)

growers. Most carbon offset projects have involved the regeneration or protection of native forests on grazing lands in semi-arid regions. The scheme doesn't allow for existing permanent crops such as grapevines to be considered as ACCU generators, however there are soil carbon sequestration methods available. A list of barriers along with potential solutions are cited in an AgriFutures Australia report.<sup>13</sup> These barriers include low carbon prices, permanence obligations and lack of trust and awareness. Complexities and costs in project registration, auditing and reporting are high. Furthermore, to navigate the various challenges it is common to engage a project developer or aggregator who can charge a substantial commission of between 20-30%. Simplifying these processes such as through acceptance of sector specific models for estimating soil carbon that integrate localised remote sensing, aerial imagery or machine learning are potential solutions to lower this cost and drive more vineyard owners to participate in the market.

Combined with local challenges, is the growing imperative for other trading nations to put in place trade prohibitive green tape linked to Carbon. These types of regulatory pressures could potentially discourage export at the same time as having an impact on the ability of small firms to compete in the domestic market if not carefully managed.

The strong policy impetus to decarbonise may offer potential benefits for agriculture, however there is a risk that any benefits will be outweighed by unhelpful regulations that may not pass the public interest test or that could be subject to market power abuse. With the recent passing of the *Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Act 2024* Legislation the Australian Accounting Standards Board will soon issue internationally aligned sustainability reporting standards that large Australian businesses and financial institutions must comply with. The trickle-down effect on smaller businesses remains unclear. The potential risk specifically applies to businesses who are part of the value chain of larger businesses and therefore could be asked to contribute to their Scope 3 reporting. In October 2023, the Australian Accounting Standards Board released the first draft rules for disclosures, the Australian Sustainability Reporting Standards modelled closely to the International Financial Reporting Standards Sustainability Disclosure Standards. How large businesses go about meeting these requirements will likely be open to some level of interpretation relating to the materiality of their purchased goods and services emissions and the level of granularity, accuracy and verification requirements that come alongside any information requests put to the value chain. Guidelines should be set to ensure that any value chain data requirements are reasonable and scaled to business size and risk so that small businesses are not forced out of business due to green tape. Interoperability and consistency of data demands that larger business place on smaller businesses will be another key factor in managing the risk of multiple inconsistent reporting requirement. Government support for industry projects relating to developing efficient and well-governed data ecosystems is always welcomed.

## Summary

Australian Grape & Wine recognises a significant risk in any untapped growth in the regulatory burden facing grape and wine producers. These risks range from administratively burdensome policies such as container deposit schemes to the risk of new market regulations that could threaten the viability of wine producers if poorly thought through. Green tape type regulations, while necessary, must be risk-based. Although potentially beyond the scope of this review, Australia must ensure it is prepared for the onslaught of protectionist environmental policies and the impact that green tape could have on our ability to remain competitive in our export markets as well as any international commitments that have flow on effects to the regulatory environment in Australia.

There is strong justification for further regulation to address issues related to competition caused by market power imbalances, particularly to address the oligopolistic nature of wine retail. As has been demonstrated in this

---

<sup>13</sup> Agrifutures (2019) Improving Carbon Markets to Increase Farmer Participation

submission, strengthened competition laws or policies would have potential to improve competition through resolving information asymmetries, improving transparency for both consumers and producers, addressing creeping acquisitions, and ensuring that wine producers compete on a level playing field with the major retailers they have little choice but to supply to.

Further information about the role of Australian Grape & Wine is provided below. We would be delighted to discuss this submission further if required. Australian Grape & Wine has also provided the following submissions to related inquiries:

- Competition Policy Review,
- the ACCC Supermarkets Inquiry,
- the Senate Select Committee on Supermarket Pricing,
- the Food and Grocery Code review, and
- the Unfair trading practices: Consultation Regulation Impact Statement.

**Lee McLean**

**Chief Executive Officer**

Level 1, The Realm, 18 National Circuit,  
Barton, ACT, 2600

**Tel** +61 8 8133 430

**Mobile:** [REDACTED]

**Email** [lee@agw.org.au](mailto:lee@agw.org.au)

**Anna Hooper**

**Director, Economic and Environmental Policy**

National Wine Centre, Botanic Road, Adelaide  
SA 5000 |

**Mobile:** [REDACTED]

**Email** [anna@agw.org.au](mailto:anna@agw.org.au)

## 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 and unique from other liquor industries. 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. Ensuring fair and equitable pricing throughout the supply chain is essential for the ongoing prosperity of all these businesses. 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*.