



Riverina
WINE GRAPES
MARKETING BOARD

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Response to ACCC Interim Recommendations

Wine Grape Market Study

June 2019

Introduction

The Wine Grapes Marketing Board (WGMB) in November 2018 provided a detailed submission into the Australian Competition and Consumer Commission (ACCC).

This document is in response to the June 2019 *Wine Grape Market Study Interim Report* released by the ACCC seeking feedback into the proposed recommendations developed by the ACCC in response to industry matters raised.

The WGMB looks forward to ongoing dialogue with respect of appropriate regulation for the Australian wine grape industry. Self-regulation has not worked and the industry Code has not had the widespread uptake needed to assist in the smooth operation of the market.

Quality assessments

1. The ACCC recommends the National Measurement Institute (NMI) and the Australian Wine Research Institute (AWRI) work with industry to develop uniform standards for testing and measuring grape sugar levels and colour. Winemakers' testing equipment and processes would then be capable of being independently audited by the NMI, including in response to complaints from growers.

The Wine Grapes Marketing Board supports the recommendation of the ACCC. We believe that Industry should be represented in the development of uniform standards and the AWRI is the most relevant body to do so as it is held to a high standard of integrity within the industry. It should also have industry representatives from the Inland "Warm" Regions, Wine Australia and Australian Grape and Wine Incorporated.

Existing colour measurement techniques in red winegrapes were developed by the AWRI and have been in part amended by industry participants to suit their needs. Changes in dilution factors and the concentration of chemicals within the process to reduce the time taken to get a result have been commonplace. The equipment used as per recommendations of the AWRI have not always been followed and are cost prohibitive to many within the industry.

Laboratory result vary in the process of colour sampling as evidence by the WGMB trials in this area. Each step in the process takes time and if the laboratory is undertaking a single sample the timing can be managed. In reality testing for colour may involve large volumes of samples and the time between each step can and will vary and in turn lead to a variation in the end result being achieved.

The recommendation does not address the issue of concern regarding the in-vineyard sampling technique and this is required. A laboratory can be managed to follow a set standard operating procedure and use the correct equipment and chemicals but the system of in-field sampling is hard to manage. As the process is an annually occurring event staff generally are low skilled and often time poor during the process of harvest and shortcuts in the sampling process have been known to occur.

As little as 100 berries taken from selected bunches may be used for the testing of a 15-tonne crop or a 500-tonne crop of winegrapes and site sampling variability and its reduction is key to growers having faith in the sampling system. There have been many anecdotes by winegrape growers of infield sampling being conducted in an ad-hoc manner or focusing on a poorer section of the vineyard.

Currently the AWRI colour testing procedure "The Patrick Iland Method" that is used by industry does not prescribe an infield sampling process. This needs to be agreed upon and for larger blocks greater than 1 sample would be deemed required for sampling system integrity. Just as each load of winegrapes at the weighbridge are tested for sugar, regardless of the size of the harvest from an individual block the assessment of colour should be undertaken in a manner that provides a thorough representation of the block. Possibly research/review needs to commence on weighbridge sampling of winegrape colour. If the systems employed were rigid enough this would be a significant outcome for growers.

If the industry could move to a system that measure colour per load at the weighbridge simply, reliably and accurately it would reduce overall costs to industry, particularly labour and laboratory costs borne by processors.

2. The ACCC recommends that winemakers should use well-documented and objective testing and sampling techniques for quality assessments. Despite the limitations to objective measures, and the importance of sensory assessment, the ACCC considers that reliance on subjective measures to determine payment amounts should be decreased wherever possible.

Agreed, the industry when working within the “commodity” category of the winegrape market should process principally on objective measures. The best winegrapes can be obtained from well-balanced vines and this vine balance can be objectively measured.

Winegrape chemistry “pH and Titratable Acid” can be measured simply and reliably and the sugar content of winegrapes while needing desperate review of the processes can become accurate.

3. The ACCC recommends that supply agreements should clearly outline the testing and sampling methods that winemakers will use to assess grape quality. This will increase the transparency regarding quality testing methods, allowing growers to make more informed decisions when entering into agreements.

Agreed, to increase the transparency in sampling that is undertaken in field all sampling times should be notified to the grower or their representative. It is common and proper practice of all transparent wineries to advise when the grapes are being sampled to allow the opportunity for the grower to accompany the winery representative in the field. This should be specified within the supply agreement.

During the vintage season winery representatives may attend a number of grower vineyards per day and the issues of Workplace Health and Safety and Biosecurity factors are important within the industry. It will also assist the grower to know where in the vineyard block that sampling has occurred to ensure that it is representative of the entire block to be tested.

Price transparency in winegrape values is not evident pre-harvest with a system that uses regional, seasonal averages of objective measures such as colour. Winegrape growers have an idea of the price that they might ultimately receive but cannot state for certain the final price to be paid until the season is completed. While this can be considered fair and equitable the lack of transparency is concerning.

4. The ACCC recommends that winemakers be required to provide indicative prices to an independent body by 8 December for all grapes intended to be purchased from growers in warm climate regions during the subsequent harvest. The independent body would then make all pricing information simultaneously available (publicly) on 15 December [or alternative dates considered suitable by industry]. Winemakers would also be required to provide indicative prices to their growers on this date. Indicative prices should be provided to an independent body and released simultaneously, to avoid the risk that this increased price transparency could result in the largest winemakers using indicative pricing announcements in a concerted manner which could inhibit price competition.

Agreed, however there is always concern that this indicative price will not reflect the market price and become an arbitrary figure provided by wineries to comply with the recommendation as above.

The recommendation would need to form part of a regulation that penalises winemakers that do not comply. Without adequate penalty winemakers would be reluctant to provide such information that actually reflects the market price to be paid.

In the Riverina prior NSW legislation [Wine Grapes Marketing Board Reconstitution Act 2003] required that winemakers need to provide a copy of their price lists to the statutory authority on a set date covering each variety they were to purchase that year. This process while still allowing wineries to purchase wine grapes at different price grades allowed them to notify the lowest amount possible. For penalty provisions the NSW Government had winemakers that didn't put a price out for any variety but purchased said variety they would be required to pay the average price paid for that variety on that day. This process was cumbersome and unworkable, ultimately being removed. Wineries to comply would list all

winegrape varieties at a nominal price per tonne just in case they decided to purchase an obscure variety they hadn't taken previously. The market information obtained from such a process was negligible.

In the Riverina there are no independent experts available to assist with any pricing disputes that may arise from early price notification. The majority of input costs have occurred on the vineyard by December the year prior to harvest and perhaps an earlier date may be more applicable to the winegrape industry.

The most suitable body to undertake this function would be Wine Australia. It is uniquely positioned with legislation to act on behalf of the industry. It is funded both from grower and winery charges.

5. The ACCC recommends that, after communicating final prices directly to growers, winemakers be required to provide final prices (both the non-quality adjusted price and a quality-adjusted weighted-average price) to an independent body which will then make that pricing information publicly available on 1 May [or another date considered suitable by industry]. As above, the ACCC recommends that this applies to all grapes purchased from growers in warm climate regions. This would increase visibility over final prices offered by each winemaker over time and increase competition between winemakers in the medium term. In relation to recommendations 4 and 5, the ACCC seeks industry feedback regarding:

- whether Wine Australia would be the most appropriate body to receive and publish pricing information and if not, what alternative body would be appropriate

Wine Australia would be the most suitable organisation due to its status within industry. It currently runs an industry pricing survey that captures the majority of the industry however there is no regulation to ensure that the pricing information is accurate.

- whether this requirement should be legislated or alternatively a requirement of the Code

Regulation is required while the industry Code is voluntary.

- whether this requirement should exclude winemakers under a certain size

All winemakers that “purchase” winegrapes should be required to submit a report outlining the purchase price. All winemakers that process their own winegrapes would be required to provide a production report on a variety by variety basis. This will ensure that the industry has the most accurate understanding of the market across the entire industry. Not only will the reporting provide invaluable market information for the Australian wine industry on a pricing perspective and a variety and region basis, it will provide tonnage information.

- whether prices under certain supply agreements should be excluded (such as fixed price multi-year agreements)

No – all supply agreements should be included. This will reduce the compliance costs of checking to ascertain the type of contract that is in place.

- whether prices should be published without identifying the winemakers who provided the price

There should be no need to publish winery names. This will ensure a degree of commercial in-confidence is maintained within the system. Winemakers will be able to benchmark themselves from the average regional price.

- whether the suggested dates are appropriate dates for the publication of the relevant prices.

The dates proposed by the ACCC are appropriate. As the Riverina has not been a part of the Industry Code of Conduct and price notification to growers is limited in the region. Some wineries post prices and provide these to their contracted growers, others may wait until the harvest has commenced, using a minimum price within the contract as the starting offer.

Early price notification is needed to assist growers to understand the demand for each variety at each winery. Viticultural practices can be altered minimally to increase yields in response to low price offers or changes in irrigation and pruning practices may be implemented to try and achieve a higher quality grade and return more to the grower.

Payment periods

6. The ACCC recommends that long-term payment periods should be phased out of standard form contracts and an industry standard be introduced to require payment in full for grapes no later than 30 days after delivery.

The ACCC considers that an appropriate means of introducing this change is through amending the requirements of the Code, as well as through amendments to SA WGI Act. The ACCC seeks industry feedback regarding:

- any types of winemakers or supply agreements that should be exempt from new requirements, such as winemakers under a certain processing capacity

Using the existing Code to specify the requirement of payment terms will require the Code to be mandatory. There are many examples of breaches of payment terms in the Riverina that occurred when statutory provisions in place.

Payments should be made electronically as there are many examples in the Riverina where cheques are written but not provided to growers until after the date falls due.

Penalties also need to be applied in the event of a breach. Interest should be payable on all defaulted payments and winemakers should be prohibited from purchasing winegrapes in future seasons should all payments not be made. All default payments should be dealt with by Wine Australia or similar regulatory authority that is able to ensure compliance occurs.

Amendments to the SA WGI Act would not be required if federal legislation was enacted. The Act would be superseded by federal legislation that mimic the SA legislation.

- the timeframe for transitioning to 30 day payment terms.

30 day payments would be ideal for growers and should be phased into the industry over a 2 year period. Year one should see winemakers paying growers in 3 payments as per the existing SA WGI Act and the second year moving to 30 days following the end of month of delivery.

By 2021 the industry should be paying in 30 days.

The Voluntary Code of Conduct

7. The ACCC recommends that the Code be substantially strengthened, and that all winemakers in Australia with crushing capacities above 10 000 tonnes become signatories to the Code. The Code should be amended to:

- provide a structured process for the review of adverse quality assessment decisions made at the winery (including at the weighbridge)

The Code needs to be made mandatory for all wineries regardless of the size of their crush. Unless the Code is mandatory the uptake in regions like the Riverina will be negligible to non-existent.

While a structured process for reviewing adverse quality assessments at the winery would be ideal in practical terms, in reality when harvest is occurring during the hours of night this will be problematic. Access to available independent experts as specified in the Code in the Riverina is extremely limited. Having an expert on call for the vintage period would need to be funded by a third party such as the Wine Grapes Marketing Board and then it is questionable that wineries would accept the independence of the expert.

The Code dispute structure does have sufficient details with regard to the timing and timeliness of disputes at weighbridges that would provide growers and winemakers a level of certainty that the dispute could be resolved without undue loss of winegrape quality at the weighbridge and delay in processing time for fruit.

- provide a structured process for arbitration of contractual disputes, as well as other types of disputes that may arise out of supply agreements. This will improve access to impartial dispute resolution procedures and help address the power imbalance between the two parties.

Agreed. This should also be applicable to contract negotiations. An independent party could review contracts and any concerns raised by either party in the supply chain.

- guarantee equal representation of growers (including grower representative bodies) and winemakers on the Code Management Committee.

Agreed. Representative growers should be those that do not have an interest in the processing of winegrapes into wine as a secondary business. Grower representative bodies also need to be duly represented including representatives of inland regions.

The costs of the management of the Code Management Committee need to be agreed upon. If it is providing a service to industry then industry should pay for the operation of the CMC. If mandatory provisions are placed in the Code it is reasonable to suggest that the CMC will be used for often than it currently is which will require better financial resourcing.

The ACCC will review the progress of the industry in adopting the final recommendations approximately 12–18 months after the release of the final report, and if winemakers do not sign up to the Code, the ACCC may recommend to Government that the code be made mandatory.

The ACCC seeks industry feedback regarding:

the ACCC's position of not recommending a mandatory code of conduct at this time

No change in the market conditions will be seen by Riverina based winegrape growers until the Code is made mandatory.

The Code will not get any more signatories unless it is made mandatory as there is no commitment from winemakers, particularly those based in the Riverina to sign onto the

Code. The Winemakers Federation of Australia and the Wine Grapes Marketing Board have tried to progress this with Riverina wineries since the introduction of the Code. Simply put the Riverina winemakers have allegedly stated to the WFA that they “have their own Code in the Riverina”.

- an appropriate arbitration model that ensures disputes are resolved fairly, efficiently and without imposing significant costs on the parties

Agreed, however without significant availability of experts in the Riverina the costs will remain high. Costs of disputes should be shared equitably between both parties to the dispute regardless of the outcome of the dispute.

- the feasibility of taking, holding and testing retention samples if a winemaker downgrades or rejects a delivery of grapes in order to assist dispute resolution.

A number of winemakers currently retain and freeze grape samples for testing of Maximum Residue Limits (MRLs) in winegrapes and to back-check a colour assessments in red winegrapes should a dispute arise. However it is not a reliable system that would allow the quality parameters to be reliably reproduced. Sampling would need whole berries and these are only present in the vineyard and not at the weighbridge due to the maceration that is caused by machine harvesting.

Research work undertaken by the AWRI shows that colour degrades over time when a winegrape sample is frozen for future use. This is due to the breakdown on anthocyanins in the skin of the winegrape.

- potential changes to the processes and timeframes for dispute resolution under the Code.

The entire Code needs review to ensure that disputes occur in a timely and efficient manner for the smooth operation of the market. As the Code has not been in operation in the Riverina there is no comment that can be made to any potential changes.

Contracting practices

8. The ACCC recommends that winemakers review their standard form contracts and remove any unfair contract terms. The ACCC has identified a number of potential unfair contract terms in supply agreements and may take enforcement action against winemakers who retain unfair terms in standard form contracts. A careful review of contract terms by winemakers is likely to result in greater compliance with the unfair contract terms laws.

Ideally industry contracts should be vetted by an independent authority for fairness. Recommending winemakers review these is likely to not elicit any significant change. The Wine Grapes Marketing Board has worked closely with a number of wineries over the years and has been able to provide guidance on the issue of fairness. Some of this advice has been taken up by winemakers but not all issues have been corrected.

The ACCC should be able to provide advice to industry on the fairness of contracts and industry should develop a proforma contract for use by all growers.

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