



Senator Sean Edwards
Chair
Senate Economics Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

29 April 2016

Dear Senator

ANTI-COMPETITIVE CONDUCT IN RETAIL WINE INDUSTRY & ACCC ROLE

The Australian Small Business and Family Enterprise Ombudsman was established on 11 March 2016 with two core functions – advocating for and assisting small businesses and family enterprises. We work cooperatively with small business and family enterprise (and their representatives), and also across government, including with the Australian Competition and Consumer Commission (ACCC). As the Committee would be aware, many participants in the broader wine industry are small businesses and family enterprises.

Competition issues arising from concentration in Australia's retail grocery market are issues which have been canvassed in previous inquiries, as well as a number of inquiries considering issues relevant to the broader wine industry. In an industry where there is market concentration with a few parties controlling access to the market, we agree that there is a heightened need to ensure that all participants are acting in appropriately competitive ways.

The primary regulation that addresses issues relating to competition in the retail wine industry is the generic competition law set out in the *Competition and Consumer Act 2010 (Cth)*, and enforced by the ACCC. This law was recently the subject of a comprehensive review that resulted in the Government's decision to amend section 46 of the Act (relating to misuse of market power) to introduce an "effects test". For an industry such as the retail wine industry, this will allow the ACCC to consider whether conduct by retailers with market power has an anti-competitive *purpose, effect or likely effect*. This broadens the current law that focuses on whether conduct has an anti-competitive *purpose*. We strongly support this amendment to strengthen the law relating to misuse of market power.

Although there are a range of industry codes that are relevant to the broader wine and grocery retailing sector, none of these directly addresses retail issues in the wine

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industry at the present time. For example, the current Wine Industry Code of Conduct is a voluntary code that largely applies to regulate the relationship between wine grape growers and producers. More recently, the Food and Grocery Code of Conduct was introduced to address perceived problems in the retail grocery market. Despite the fact that many grocery retailers incorporate the retail sale of alcohol into their business models, the coverage of the Code excludes alcoholic drinks.

If a Code were to address the capacity of large retailers to improperly leverage market power by “squeezing” suppliers, this could have a positive impact on competition at the retail level. For example, the issue of payment terms is one that participants in the wine industry have previously raised. Large retailers may be able to offer lower prices by systematically drawing out payment periods for suppliers. Although it does not apply to wine, the Food and Grocery Code has a method of addressing such practices. The Code also addresses issues such as acting in good faith in dealings with suppliers as well as dispute resolution.

Another factor that we see affecting competition within the retail wine sector is the production and sale of wine under private or own brands of large retailers. These private label wines are generally sold at a competitive price and compete with other wine labels without the consumer being made aware that they are purchasing a generic supermarket brand. This can be facilitated by vertical integration or use of the market power by large retailers in purchasing bulk wine. Such private or own brands are obviously not available for sale by small/independent retailers.

Please let us know if you would like us to clarify or expand on any aspect of this submission.

Yours sincerely

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