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12⁵ January 2005

The Hon Tony Abbott MHR
Federal Member for Warringah
Minister for Health and Ageing
Level 2, 17 Sydney Rd
MANLY NSW 2095

Dear Minister

GLOBE WINES

I refer to your letter of 22 December 2004 together with various attachments on behalf of your constituent Ms Diane Dewar of Globe Wines (Globe).

I also refer to previous letters to you on this matter dated 30 July 2003, 9 June 2004 and 20 July 2004.

As has been noted in the previous correspondence the Australian Competition and Consumer Commission (ACCC) has devoted considerable time and resources to the issues raised by Ms Dewar. Extensive material has been requested and obtained from Orlando Wyndham (Orlando). This material has been very carefully reviewed. Senior staff of the ACCC have held several meetings with Ms Dewar and her legal representatives about the matter. However, the ACCC has not been able to find any basis for suspecting a breach of the *Trade Practices Act 1974* (TPA).

In the material attached to your letter Ms Dewar complains of the ACCC's failure to exercise its compulsory powers to require information from Orlando. As you will be aware, the ACCC is required to use its investigative powers properly in accordance with the requirements of the law. Where the ACCC has no reason to believe that a breach of the TPA has occurred it cannot exercise its compulsory power to require production of books and records.

In any case, Orlando provided the ACCC with extensive material on a voluntary basis. Orlando was within its rights to claim commercial confidentiality in respect of this material. Ms Dewar appears to be under the misapprehension that had the ACCC obtained the information under

EXECUTIVE OFFICE

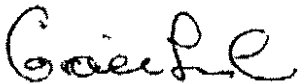


notice she would have been entitled to access this material. This is not correct as material obtained by the ACCC under notice must be kept strictly confidential. ACCC staff have endeavoured to explain this to Ms Dewar on several occasions.

Ms Dewar also complains of the ACCC's failure to consider fresh evidence put before it by Globe. I can assure you that this is not the case. All the material provided by Globe to the ACCC has been carefully analysed. The file has been reopened several times at Ms Dewar's request and senior staff members of the ACCC have closely reviewed the conclusions of the initial investigation.

In all these circumstances, the ACCC has determined that it will not take any further action in relation to this matter. While I realise that Ms Dewar may not be satisfied with this response, I hope that you will understand that this decision follows substantial and serious consideration of Ms Dewar's complaint undertaken in good faith by the ACCC.

Yours sincerely



Graeme Samuel
Chairman

The Hon. Tony Abbott MHR
Federal Member for Warringah
Level 2-7 Sydney Rd, Manly, 2095
Parliament House – Suite MG43
Canberra, ACT, 2600

16 February 2005

Dear Mr Abbott

RE: MR GRAEME SAMUEL 12 JANUARY 2005 LETTER TO YOURSELF

(copy enclosed for your convenience)

Mr Samuel's letter shows – he has been incorrectly briefed by his 'senior officers' who are themselves ill informed as to the facts.

1. Consider Mr Samuel letter 'chapter & verse'.

Page 1 Par 3 – “Extensive material has been requested and obtained from Orlando Wyndham (Orlando). This material has been carefully reviewed.”

Not True for the evidence shows: – That the ACCC's senior officer in charge of Globe's investigations Mr Geoff Williams completely missed the relevance of what is a very significant piece of evidence contained within Orlando's advise to the ACCC (which not only confirms Globe's claims as to Orlando's 'harsh and unconceivable' actions – from which their officers produced 'false and misleading' evidence, which in turn influenced 'experts' and thus provided extensive financial gain for Orlando – but also demonstrated Orlando's clear intent to 'misuse their market power'). Mr Williams, passed this factual evidence directly onto Globe by letter 28 October 2003 – unrecognised and therefore its relevance unnoted by the ACCC? Thus Mr Samuel's statement, “This material has been carefully reviewed” is strongly challenged here by Globe.

Which then begs this question – what other “significant evidence” has the ACCC simply not recognised as relevant (or chosen to ignore).

2. Page 1 par 3 Mr Samuel misinformation continues: – “Senior staff of the ACCC have held several meetings with Ms Dewar and her legal representatives about the matter”.

Simply untrue

- 1st Meeting – 30 January 2003 Globe’s officers met with the ACCC’s Senior Officers, (with no legal representatives in attendance), Globe was advised at this general briefing meeting that, following their investigating officers comprehensive review of Globe’s and Orlando’s public domain documentation (which Globe provided to the ACCC, on that date). Then the ACCC would require to interview both of Globes active Officers, Andrew Dibley GM and Diane Dewar MD separately. After which the ACCC would proceed to discuss Globes claims directly with Globe’s officers and to then evaluate these claims expeditiously. This was firmly Globe’s understanding of the ACCC’s undertaking provided on 30 January 2003.
- 2nd Limited Meeting, 10 April 2003. Only in response to Globe’s calls (with no legal representatives in attendance) Mr Williams finally interviewed Globe’s G.M. Andrew Dibley for one and a half hours. Then advised that no such interview was necessary from Diane Dewar – Globes principle participating officers in all communications with Orlando.
- Globes officers over the following months kept the ACCC informed as to Orlando’s past and continuing abuses of Globe through providing written submissions and documents directly to all the ACCC Senior Officers (present at the first meeting) no replies were received by Globe. If one was fortunate to make contact with Mr Williams, Globe would receive vaguely conveyed general information. Globe’s case clearly was not of interest to the ACCC.
- Later in 2003 (in a response to a call from Globe) Mr Williams advised Globe’s officer, in words to the effect “what Globe requires is public domain documentation which proves breaches to the TPA by Orlando have occurred”. So it was that Globe’s officers (having received such advice) went back and thoroughly researched all copies of Orlando’s and their public domain documentation (provided to the ACCC on 30 January 2003, together with those documents Globe provided to the ACCC over the course of 2003). From such documents Globe’s officers then

recognised they already had all the public domain documented evidence they needed to prove their claims.

- It was on 26 November 2003 that Globe's officer both in writing and by phone advised Mr Williams/ACCC that Globe had uncovered sufficient public domain evidence to support its claims (with one very important piece of evidence coming directly from Mr Williams/ ACCC). When Globe then sought Mr Williams advice on how to present such evidence to the ACCC he encouraged Globe's Officer to go back to their legal representative and have those officers prepare a submission, which would then be formally presented to the ACCC.
- Globe's officer kept the ACCC informed on the progress of Globes submission by faxed letters, 26 November 2003, 3 December 2003, 8 January 2003 and 15 January 2004 and then intermittently by phone and email.
- However, (without any prior notice to Globe) on 14 April 2004 Mr Williams advised both Orlando and Globe formally that the ACCC would not be proceeding further with it's investigation of Globes claims. This being the first and only time, 'not several times' see par 7 this letter.
- Following this notification Globe's officer Diane Dewar rang Nigal Ridgway in Canberra (looking for Mr Cassidy). Nigal Ridgway then provided Globe with an immediate correction to the ACCC's untimely and inappropriate conclusion of Globes investigation. Why, because the ACCC had previously accepted that a legal submission was in-train from Globe, which would contain evidence (in principle) both from Globe's & Orlando's public domain documentation together with vital fresh evidence that the ACCC had supplied to Globe which supported its claims.
- So it is that on 4 June 2004 for the first and only time that Globe with Legal Representation ever met with any ACCC Senior officers to present their final submission. See submission following on under additional Tabs 1 to 5. The ACCC appeared to reopen their door to Globe, (to save face with a Federal Minister) but in reality their door remained firmly closed to Globe.
- The ACCC's letter of dismissal 20 July 2004 was outrageous in its approach as it contravenes all the ACCC's previous undertakings provided firstly to yourself Mr Minister and then onto Globe. (Globe's officer, has prepared a draft reply to this letter, available on request).

3. See Mr Samuel's following incorrect statements page 1 par 4 – “Ms Dewar complains of the ACCC’s failure to exercise its compulsory powers to require information from Orlando” and “where the ACCC has no reason to believe that a breach of the TPA has occurred it cannot exercise its compulsory power to require productions of book and records.”
- The facts are that at the 30 January 2003 meeting ACCC’s senior officers had conveyed to Globe’s officers, in words to the effect “the opportunity to use our compulsory powers could well arise to enable us to confirm Globe’s claims and likewise result in the ACCC providing assistance to many other growers across the wine districts, from whom we have received numerous complaints since 1998”* and even the opportunity to find growers with similar claims, through advertising, was likewise discussed by the ACCC with Globe officers at this meeting.
 - Now Mr Samuel’s letter implies that the ACCC is not aware of claims concerning breaches of the TPA from growers against wineries. Is Mr Samuel also saying that his senior officers never discussed with Globe’s officers that the ACCC could use their compulsory powers to uncover Orlando’s documentation and therefore the truth of Globe’s case. This would be far from the reality of the day.
 - Why is it that when a grower with documented evidence stand up to be counted, that a senior ACCC officer (Ms Rose Webb) then states “Not for one grower only” even if Globe’s evidence successfully proves and therefore would release many Aussie growers and the wine industry as a whole from such harsh and unconscionable breaches of the TPA.
 - Late in 2003 Mr Williams delivered his submission on behalf of Globe to the ACCC’s Commissioners (which includes Mr Samuel) obviously Globe had moved past the ACCC’s initial investigation stage.
 - Mr Williams’ submission would have included evidence as to why those ACCC’s compulsory powers needed to be enacted on Globe’s behalf . Clearly Mr Williams as a ACCC senior officer would not have made such a submission on Globes behalf to ACCC’s commissioners without valid evidence of note.
 - Approx in November 2003 the ACCC commissioners refused their senior officer/Globe’s request.
 - Instead the Commissioners chose to request evidence only from Orlando. This evidence (undoubtedly vetted) would be held ‘in camera’ by the ACCC and this was clearly understood by Globe’s officers as by such actions
 - the ACCC commissioners had provided maximum protection to Orlando, while denying Globe any input whatsoever, especially with regard to those privileged 2001 court documents already in Globe’s hands.

- This is exactly why Globe's officers had (on two occasions) requested the ACCC acquire both Globes and Orlando's documentation simultaneously for comparison over the period 1999, 2000 and 2001.
 - The ACCC was fully aware that Globe had taken Orlando to court in 2001 and that privileged documentation for that period would be in Globe's possession. The ACCC therefore would have been totally justified to simultaneously acquire and evaluate all evidence from both parties so as to draw a just and fair conclusion.
 - However the ACCC denied Globe's request in 2003 and then when Globes legal representative on 4 June 2004, again requested this procedure be enacted by the ACCC, this specific request was simply not responded to by the ACCC or even recognised in the ACCC's formal written response to Globes legal officers. Its existence being completely ignored by the ACCC.
 - Now the ACCC is seen by Globe to be deliberately suppressing vital public domain documented evidence, received by the ACCC from Orlando, which supports Globes claims. This evidence was also specifically addressed in Globe's last submission to the ACCC and likewise received no recognition by the ACCC in their final reply. For to do so would place the ACCC in the position of opening Pandora's box on similar abuses in operation across the entire Australian wine industry.
4. Now consider two of Mr Samuel's statements together – firstly page 1 par 3 "This material has been carefully reviewed" – then page 2 par 2 "all the material provided by Globe to the ACCC has been carefully analysed". What Mr Samuel's statements implicitly implies (re their investigation) directly with each other, not so
- for had the ACCC's investigating officer been sufficiently informed ie. briefed by Globe's officers he would have known what he was looking for and therefore what he was looking at and would have been able to compare apples with apples. Thus the ACCC would be compelled to recognise that a strong piece of evidence exists (provided by Orlando to the ACCC's own officer) that not only proves Globe's claims but would more than justify the ACCC's use of their compulsory power.
 - Either, the ACCC's investigating officer had not done their home-work, or was deprived of both the time and incentive to study thoroughly all Orlando's and Globes public domain documentation provided to him by Globe, which undoubtedly prove Orlando has not only breached their industries 'best practices' but also significantly breach the TPA in its dealing with Globe.

5. Mr Samuel misinformation continues see pages 1 & 2 re: par 5 & 1 respectively. “Mrs Dewar appears to be under the misapprehension that had the ACCC obtained the information under notice she would have been entitled to access this material.”
- Completely untrue as Mrs Dewar/Globe is fully aware that this restriction imposed on Globe by the ACCC would protect Orlando’s officer in their concealment of the facts contained within their documents. Again I repeat that was exactly why Globe’s officer’s had specifically (on two occasions) requested directly from the ACCC’s senior officers and commissioners that they access simultaneously both Orlando’s and Globe’s 1999, 2000 and 2001 documentation ‘under notice’. Then and only then the ACCC’s senior officers and commissioners alike would be privie to all the facts and most importantly Globe’s Officers would (for the first time) be invited to address the ACCC officers on the significant proof contained within Orlando’s and Globe’s public domain documentation together with Globe’s restricted 2001 court evidence which would then be correctly considered by ACCC’s officers. Clearly this was not the ACCC’s intent.
6. Mr Samuel’s misinformation continues – page 2 par 2 “Ms Dewar also complains of the ACCC’s failure to consider fresh evidence put before it by Globe. All the material provided by Globe to the ACCC has been carefully analyse”.
- Again simply untrue: – please revisit all the (summarised) points shown here in this letter 1 to 5 respectively. Not only do the facts provided here clearly challenge Mr Samuel statement, but challenge what his officers seek to achieve through an inept and aborted investigation. For if Globe’s evidence was considered in any public domain it would at the least be recognised as proving Orlando has breached the TPA and at worst could find fraudulent actions still in progress.
7. Mr Samuel misinformation continues on page 2 par 2 – “The file has been reopened several times at Ms Dewar’s request and senior staff members of the ACCC have closely reviewed the conclusions of the initial investigation”.
- Yet again completely untrue. The ACCC has, only once – “not several times”, sought to inappropriately close down their investigation of Globes claims against Orlando. Please revisit page 3, dot points 1 to 4, which answer this incorrect statement by Mr Samuel.
 - Then (re: the art of implied innuendo) revisit the last part of Mr Samuel’s statement (underlined here for your convenience) “the file has been reopened several times at Ms Dewar request and senior staff members of the ACCC have closely reviewed the conclusions of the initial investigation”.

- Through Mr Samuel's choice of words, and the combining of two statements in one sentence, one could be forgiven for believing either Ms Dewar (in her diminished capacity) had requested from the ACCC or Ms Dewar knew of, or had been advised by the ACCC that they were reviewing their "initial investigation" of Globe's claims.
 - Nothing could be further from the truth, for at this time all Globe's Officers knew was that Mr Williams/ACCC was fully aware of (in fact had recommended such action) and was therefore awaiting Globe's legal submission which was on-train to the ACCC. Which Globe's officers believed would then instigate a thorough investigation by the ACCC (for the first time) of Globes claims against Orlando.
8. In the end it comes down to what the ACCC's intent was in conducting this investigation. Was this investigation only ever intended to be an exercise in – Yes Minister.
 9. For the ACCC's conduct displayed here shows that the ACCC Commissioners only allowed their officers investigation of Orlando's actions to be conducted under a blindfold and likewise blindfolded Globe.
 - This was actively achieved through the ACCC's officers constantly shifting their 'Goal Posts' through constantly changing their advice to Globe, in words to the effect, "We know a great deal about such practices (breaches of the T.P.A.) by wineries impacting on grower interests. Globes case may be very helpful and we could well use our compulsory powers and likewise be able to assist other growers similarly affected".
 - Then the ACCC moved on to such statements as, "Globe needs to be able to prove it's claims against Orlando first by having access to public domain documentation which supports such claims, then we may be able to consider your request to use our compulsory powers, no guarantees though."
 - Onto "we know nothing about such practices in your industry and we are not at liberty to use our compulsory powers in Globe's case because no breaches to the TPA can be seen to have occurred – whatever gave Ms Dewar that idea.
 10. Finally Mr Samuel/ACCC presents their findings to you Mr Minister in words to the effect – "there is no evidence against Orlando, it does not exist, we do not recognize any of Globe's evidence". (Why, because the ACCC officers have chosen not even to look at or discuss such public domain evidence with Globes Officers, let alone acknowledge it's existence in writing.) Therefore Globe's evidence in Mr Samuel's mind simply does not exist. Keep saying it doesn't and it won't, is this how the ACCC most senior officers deliver 'justice for all'.

Dear Minister since the ACCC's formal closure of its investigations of Globe's claims against Orlando 20 July 1994, the road Globe and numerous other Aussie growers have had to travel has been long and increasingly desperate. Just prior to vintage 2005 'McQuigan Simeon Wines' actively engaged across many wine districts in what one could only describe as the financial rape of numerous independent winegrowers. Through McQuigan Simeon Wines engaging in actions which provided their shareholders and directors alike with access to crops/wine outcomes well below the winegrowers cost to produce.

- When did Orlando, SouthCorp and Hardies as shareholders and directors of 'McQuigan Simeon Wines' make the decisions to increasingly withdraw from active participation in the direct purchase of crops across the wine regions.
- For as these three major wineries increasingly withdraw their buying power effectively from any wine region, to whom will the majority of such winegrowers be left to sell the majority of their crops to – why 'McQuigan Simeon Wines'.
- Then who will McQuigan Simeon Wines then on sell that wine (they had already been contracted to make) to – Why Orlando, SouthCorp and Hardies of course.
- When one has paid for crops far less than their cost to produce at \$250 to \$500 a tonne, which on any open market in 1994 would have bought \$800 to \$1500 a tonne. Does such deliberately instigated actions bear any association with the word 'collusion'. Surely such actions would be seen as most grievous and serious breaches of the TPA and should be investigated thoroughly and completely wherever that trail leads.

Over a long period of time the ACCC's most senior officers have deliberately chosen to look the other way as our valuable and precious Aussie Wine Industry, from its grass roots up, has since 1998 been left completely unprotected as it slips even deeper into crisis. Then when growers like Globe left their heads (with documented evidence) and dare to stand up and be counted, the ACCC not only abandons Globe but seeks to cut down Globe's reputation.

What deeply concerns Globe and all winegrowers is that when a Federal Minister makes these observations on behalf of his constituent to senior ACCC officers and these officers then provide a commitment to thoroughly investigate Globe's claims, while in reality they chose to ignore the factual documentary evidence presented. Then the ACCC has left Australian independent winegrowers to the unethical practices of international companies, thus 4 major wineries (soon to be 3) effectively control in excess of 95% of Australia's grape crush and therefore every growers

income each year without any proper and necessary containment through legislation. This is not just rape of a few growers but the planned and carefully executed take-over of Australia's national wine industry by the few for mega financial gains. Some of these major wineries (or possible new investors be they contacts or not of the wineries) may buy up these gutted bankrupted vineyards for half price and therefore still have the opportunity to enjoy substantial returns when the dust settles.

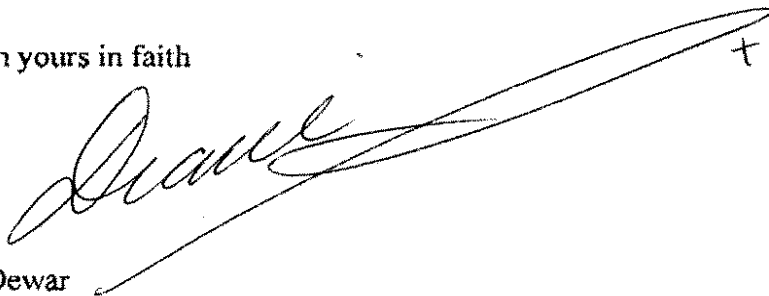
What would happen if a French government attempted to look the other way, as their winegrowers come under threat from (4 soon to be 3) international wineries? 'There would be blood on the streets'. What makes our prestigious industry and our winegrowers less important to the ACCC or Australians (who currently are being kept completely in the dark).

** see point 3 subpoint 1 – In 1998 the ACCC allowed 'Grower protection' legislation (which had been successfully in operation for many years) to lapse – not renewed. Why? This legislation had provided winegrowers with a 'crop pricing protection legislation' which worked and kept the bastards/wineries honest which (when lobbied extensively by the major wineries), the ACCC then allowed to lapse.*

I am just completing a separate paper entitled 'To Whom it may Concern' which contains the facts of these past events between one major winery Orlando and one winegrower Globe. Globe's factual evidence is supported point by point by Orlando's own public domain documentation.

I look to you Mr Minister for your continued support for all Aussie winegrowers who only seek 'a fair go for all – without fear or favour'.

I remain yours in faith



Diane Dewar

P.S. Please see following a news article directly concerning these abuses.