



Australian
Competition &
Consumer
Commission

Determination

Applications for authorisation

lodged by

**North East Valleys Wine Group Pty Ltd and
its wine grape grower members**

in respect of

**NEV and wine grape growers appointing a common agent (NEV) to
provide consulting and sales agency services in relation to wine grapes,
and farm supply procurement services**

Date: 19 March 2008

**Authorisation nos.: A91080 &
A91081**

Public Register no.: C2008/81

Commissioners: Samuel
Sylvan
King
Martin

Summary

The ACCC grants authorisation to most aspects of applications for authorisation for current and future wine grape Growers in the North East Valleys (located in the Alpine and King Valleys) in the north east region of Victoria to appoint a common agent to negotiate the sale of wine grapes and the purchase of farm supply services on their behalf.

The authorisation process

The Australian Competition and Consumer Commission (ACCC) can grant immunity from the application of the competition provisions of the *Trade Practices Act 1974* (the Act) if it is satisfied that the benefit to the public from the conduct outweighs any public detriment. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

The application for authorisation

On 21 December 2007 North East Valleys Wine Group Pty Ltd (NEV) and 39 identified wine grape growers located in the Alpine and King Valleys in the north east region of Victoria (Growers) lodged applications for authorisation A91080 and A91081 with the ACCC. Growers who conduct wine grape growing operations in this region are affected by the phylloxera vine louse and are subject to quarantine regulations.

NEV and the Growers have applied for authorisation for the Growers to appoint a common agent (NEV) to provide (by itself or through a sub-agent, Winegrapes Australia Pty Ltd (WGA)):

- commercial consulting services in relation to grape supply contracts, including pricing advice
- sales agency services in respect of grape sales and
- farm supply procurement services.

In effect, authorisation is sought for NEV to act as an agent for the collective sale of the Growers' wine grapes and as a purchasing agent for farm services. Growers will continue to contract directly with wine grape purchasers.

With respect to the proposed arrangements for NEV to provide farm supply procurement services to Growers, NEV only identified a single telecommunications supplier (Wireless Communications) and an insurance provider (Portfolio Planning Solutions) as parties with whom it may seek to negotiate on behalf of Growers.

Assessment of public benefit and detriment

The ACCC considers that the proposal for Growers to appoint a common agent to negotiate wine grape supply contracts has the potential to generate some anti-competitive detriment. In particular, the proposed arrangements may reduce competition to some extent between Growers party to the arrangements. However, the ACCC considers that any anti-competitive detriment generated by the arrangements is mitigated by:

- the voluntary nature of the arrangements

- the relative size of the bargaining group and the competitive tension provided both by growers outside the group, from the Alpine and King Valleys and other regions, and by the Growers within the group to the extent they can negotiate individual supply arrangements and
- the absence of collective boycotts.

The ACCC is concerned that the provision of information by Growers to NEV regarding the prices paid and the identity of the purchasers of wine grapes sold by the Grower individually has the potential to significantly erode competition between Growers.

However, the ACCC notes that following the draft determination, NEV advised that it has amended its pro forma NEV Grower Contract to reflect the requirement that Growers who choose to participate in separate negotiations, will not be required to disclose to NEV and/or WGA the identity of the other parties to those negotiations or the prices being discussed.

The ACCC considers that the proposal for the Growers to appoint a common agent to negotiate contracts with providers of telecommunications and insurance services on their behalf generates minimal public detriment.

The ACCC considers that the proposed arrangements will generate public benefits by:

- providing Growers with increased input into contracts with associated efficiencies
- generating transaction costs savings and
- enabling Growers to obtain services from relevant suppliers at a lower cost than would otherwise be the case.

On balance, the ACCC considers that subject to Growers not providing NEV with details of the price paid and the identity of purchasers of wine grapes in respect of their individually negotiated contracts, the public benefits of the proposed arrangements are likely to outweigh the anti-competitive detriment.

Final determination

The ACCC grants authorisation to NEV and current and future Growers in the North East Valleys (located in the Alpine and King Valleys) in the north east region of Victoria until 30 June 2012.

The ACCC grants authorisation for current and future Growers in the North East Valleys (located in the Alpine and King Valleys) in the north east region of Victoria to appoint a common agent to provide:

- commercial consulting services in relation to grape supply contracts, including pricing advice
- sales agency services in relation to grape sales and
- farm supply procurement services in respect of telecommunications services and insurance products.

The ACCC does not authorise current and future Growers to provide NEV and/or WGA with details of the prices paid or being negotiated, or the identity of parties to negotiations for the individual sale of wine grapes by Growers.

Interim authorisation

On 1 February 2008 the ACCC granted interim authorisation to some aspects of NEV's applications, as summarised at paragraphs 2.11 to 2.17 of this final determination. The interim authorisation granted by the ACCC will remain in place until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.

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1. Introduction

Authorisation

- 1.1. The Australian Competition and Consumer Commission (the ACCC) is the independent Australian Government agency responsible for administering the *Trade Practices Act 1974* (the Act). A key objective of the Act is to prevent anti-competitive conduct, thereby encouraging competition and efficiency in business, resulting in a greater choice for consumers in price, quality and service.
- 1.2. The Act, however, allows the ACCC to grant immunity from legal action for anti-competitive conduct in certain circumstances. One way in which parties may obtain immunity is to apply to the ACCC for what is known as an ‘authorisation’.
- 1.3. The ACCC may ‘authorise’ businesses to engage in anti-competitive conduct where it is satisfied that the public benefit from the conduct outweighs any public detriment.
- 1.4. The ACCC conducts a public consultation process when it receives an application for authorisation. The ACCC invites interested parties to lodge submissions outlining whether they support the application or not, and their reasons for this.
- 1.5. After considering submissions, the ACCC issues a draft determination proposing to either grant the application or deny the application.
- 1.6. Once a draft determination is released, the applicant or any interested party may request that the ACCC hold a conference. A conference provides all parties with the opportunity to put oral submissions to the ACCC in response to the draft determination. The ACCC will also invite the applicant and interested parties to lodge written submissions commenting on the draft.
- 1.7. The ACCC then reconsiders the application taking into account the comments made at the conference (if one is requested) and any further submissions received and issues a final determination. Should the public benefit outweigh the public detriment, the ACCC may grant authorisation. If not, authorisation may be denied. However, in some cases it may still be possible to grant authorisation where conditions can be imposed which sufficiently increase the benefit to the public or reduce the public detriment.
- 1.8. This document is a final determination concerning applications for authorisation A91080 and A91081 lodged by North East Wine Group Pty Ltd (NEV) and its grower members.

2. The applications for authorisation

The applicants

- 2.1. The applications for authorisation were lodged by NEV and 39 identified growers of wine grapes in the North East Valleys (located in the Alpine and King Valleys) in the north east region of Victoria (Growers).
- 2.2. NEV was established by growers with each participating Grower having a shareholding in the company. NEV will have as its directors a selection of Growers whose involvement as directors will be separate from NEV's operations. NEV will be financed from fees paid by Grower shareholders.

The applications

- 2.3. On 21 December 2007 NEV and Growers, lodged applications for authorisation A91080 and A91081 with the ACCC.
- 2.4. NEV and the Growers have applied for authorisation for the Growers to appoint a common agent (NEV) to provide (by itself or through a sub-agent, Winegrapes Australia Pty Ltd (WGA)):
 - commercial consulting services in relation to grape supply contracts, including pricing advice
 - sales agency services in respect of grape sales, and
 - farm supply procurement services.
- 2.5. In effect, NEV will act as an agent for the collective sale of the Growers' wine grapes and as a purchasing agent for farm services. Growers will continue to contract directly with wine grape purchasers.
- 2.6. Each Grower would also remain free to sell grapes directly to purchasers outside of the collective arrangements. However, it is proposed that Growers would be required to furnish NEV with full details of any sales made outside of the group, including the quantities and varieties of grapes sold, the identity of the purchaser and the price paid.
- 2.7. The ACCC notes that following the draft determination, NEV advised that it has amended its pro forma NEV Grower Contract to reflect the requirement that Growers who choose to participate in separate negotiations, will not be required to disclose to NEV and/or WGA the identity of the other parties to those negotiations or the prices being discussed.
- 2.8. NEV seeks authorisation both for an arrangement which may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Act and for an arrangement that may be an exclusionary provision within the meaning of section 45 of the Act.
- 2.9. Authorisation is also sought to extend to other wine grape growers in the region who may choose to join the proposed Grower group in the future.
- 2.10. The applicants seek authorisation until 30 June 2012.

Interim authorisation

- 2.11. In addition to its substantive applications, NEV sought interim authorisation to allow it to act as an agent for Growers in negotiating contracts for the 2007/2008 supply year while the ACCC considers and evaluates the merits of its substantive applications.
- 2.12. On 1 February 2008 the ACCC granted interim authorisation to some aspects of the applications.
- 2.13. Interim authorisation was granted to allow NEV/WGA to negotiate supply contracts with wine processors and other wine grape buyers.
- 2.14. Interim authorisation was also granted to allow NEV to negotiate on behalf of Growers with two companies identified by NEV, Wireless Communications, a supplier of telecommunications goods and services, and Portfolio Planning Solutions, a supplier of insurance products.
- 2.15. Interim authorisation was also granted for Growers to provide NEV with details of the volume and variety, or varieties, of grapes/bulk wines the Grower has individually sold or is negotiating to sell.
- 2.16. Interim authorisation was not granted for Growers to provide NEV with details of the prices paid or being negotiated, or the identities of parties to the negotiations, for grapes/bulk wine the Grower has individually sold or is negotiating to sell.
- 2.17. Interim authorisation was granted to any element of the proposed arrangement which may constitute an exclusionary provision within the meaning of the Act. However, interim authorisation was not granted for potential collective boycott conduct.

Draft determination

- 2.18. On 13 February 2008, the ACCC issued a draft determination proposing to grant authorisation to most aspects of NEV's application. The ACCC proposed to grant authorisation for Growers to appoint a common agent to provide:
 - commercial consulting services in relation to grape supply contracts, including pricing advice
 - sales agency services in relation to grape sales and
 - farm supply procurement services in respect of telecommunications services and insurance products.
- 2.19. The ACCC proposed to grant authorisation to NEV and Growers until 30 June 2012.
- 2.20. A pre-decision conference was not requested in relation to the draft determination.

Chronology

2.21. The table below sets out the significant dates in the consideration of these applications.

DATE	ACTION
21 December 2007	Applications for authorisation lodged with the ACCC, including a request for interim authorisation.
24 December 2007	ACCC commenced public consultation with parties identified and sought details of wine grape buyers and suppliers of farm supply services with whom it proposed to negotiate from applicant.
8 January 2008	Applicant identified classes of wine grape buyers with whom it proposed to negotiate. ACCC commenced public consultation with wine grape buyers.
18 January 2008	Initial closing date for submissions from interested parties in relation to the request for interim authorisation and the substantive applications for authorisation.
21 January 2008	Applicant identified suppliers of farm services with whom it proposed to negotiate. ACCC commenced public consultation with these parties.
30 January 2008	Closing date for submissions for further identified parties in relation to request for interim authorisation.
1 February 2008	ACCC granted interim authorisation to parts of the applications. Closing date for submissions.
13 February 2008	Draft determination issued.
6 March 2008	Closing date for submissions from interested parties in relation to the draft determination.
19 March 2008	Final determination issued.

Background to the applications

The Australian wine grape industry

2.22. The Australian wine industry experienced rapid growth from the 1990s driven by a dramatic increase in exports¹ and an undersupply of grapes.

¹ *The Over-supply of Cool Climate Wine Grapes*, Draft Discussion Paper, South Australian Wine Industry Council, October 2006, p.13

- 2.23. Between 1990 and 2005 the national vineyard area (or grape planting) trebled from 67,000ha to over 166,000ha.²
- 2.24. The Australian Bureau of Statistics (ABS) estimates there are currently 8,350 Australian vineyards³, many of a small scale. There are also approximately 2000 wineries in Australia.⁴
- 2.25. Since early 2000 surplus production has been an issue for the Australian wine industry.
- 2.26. Wine grape prices have fallen significantly since early 2000, across most grape varieties, in part reflecting this oversupply. The largest declines were in the cooler climate regions of New South Wales and Victoria⁵.
- 2.27. Approximately 60% of wine produced in Australia is exported. Australia is now the fourth largest exporter of wine in the world. One of the consequences of this is that the price paid for wine and wine grapes is linked to international wine prices.⁶
- 2.28. In 2005-2006 while export volumes increased by 12% the average price per litre fell by 9%.
- 2.29. Due to the perishable nature of grapes, wineries were traditionally located in relatively close proximity to the vineyards that supplied their grapes. However with refrigerated transport wineries can now source and blend grapes from various regions.
- 2.30. Wine makers can also substitute some varieties of grapes for others or cool climate grapes for warm climate grapes.
- 2.31. While the cost of production of cool climate grapes is higher than that of producing warm climate grapes, cool climate grapes are considered by winemakers to be of superior quality.
- 2.32. One consequence of the oversupply of wine grapes has been an excess of cool climate grapes with little difference in the price paid for warm climate and cool climate grapes. As a result wine makers have been buying more cool climate grapes due to their superior quality, thus displacing warm climate grapes.
- 2.33. ABS figures show a massive reduction in wine production from the 2006/2007 harvest, down from 2 million tonnes to 1.22 million tonnes. It is expected that this reduction in supply, in addition to a strong demand for Australian exports, will rebalance the oversupply from previous years and will likely result in an increase in the prices paid for Australian grapes and wine.⁷

The Alpine Valleys and King Valley region

- 2.34. NEV submits that with respect to wine grape growers, the Commonwealth Government has declared the North East Valleys as an 'exceptional circumstances area' seriously

² *Australian Wine Grape Outlook 2007-2011*, p.5

³ Australian Bureau of Statistics, 2005

⁴ *The Australian Wine Grape Industry Taking Stock and Setting Directions*, Final Report, December 2006, p.59

⁵ *The Australian Wine Grape Industry Taking Stock and Setting Directions*, Final Report, December 2006, p.63

⁶ *The Over-supply of Cool Climate Wine Grapes*, Draft Discussion Paper, South Australian Wine Industry Council, October 2006, p.13

⁷ Miletic, Daniella, *Drink and be merry, for soon we pay more*, the Age, 30 January 2008

affected by economic circumstances. NEV submits the area has been impacted by drought conditions over four years, severe frosts in 2006 which wiped out 60% of crops in the region, and bushfires in 2003 and 2006.

2.35. NEV also submits the following significant features of the region should be noted:

- Aggregate wine grape production in the region is around 4% of Victorian production and 1% of national production.
- Not all growers in the region are competitors with each other or competitors at all times as grape buyers distinguish between different grape varieties, different growing conditions and other factors. However, there is competition between growers in nearly all grape classifications. There is also further competition between certain classifications as there is a degree of substitutability between certain grape classifications, particularly in respect to grape supplies to producers of 'blended' wines.
- Growers in the region are typically small, family owned vineyards with varying levels of commercial sophistication, few economies of scale, and are price takers in the markets in which they acquire goods and services or supply wine grapes.
- The region is affected by *phylloxera* vine louse. Quarantine regulations require all grapes grown in the region to be processed within the region. That is, grapes must be processed into juice or 'must' before being allowed out of the region. Quarantine only applies to the movement of grapes out of the region and does not affect shipments of grapes into the region. NEV submits the effect is that Growers are locked in to using local processors, but the processors (some of whom also produce their own wines) are able to source their wine grape supplies from other areas.
- There has been a significant increase in the number of small vineyards in the region in recent years for various reasons including the decline of the region's tobacco industry.
- Wine grape production in the region has been seriously affected by bushfires in 2003 and 2006 which created smoke-taint of a large proportion of those years' vintages, and by drought.
- The vineyards' wine grape supply arrangements are characterised by a predominance of medium-to long term contracts with local processors. The negotiating position of vineyards is typically poor as a result of the growers' inability to ship wine grapes outside the region, the dominant market position of the processors, and a lack of commercial negotiating skill on the part of growers.

2.36. NEV submits that for many years the major primary industries in the region have been the logging, tobacco and wine industries. NEV submits that tobacco production ceased in 2005.

2.37. NEV claims that because of the inordinately low prices at which the region's grapes are able to be sold a large proportion of Growers are not viable and face closure within the next two seasons.

2.38. NEV states that the region produces cool climate grapes which although more costly to produce than warm climate grapes they are considered to be of superior quality.

2.39. NEV submits the target markets for the region's wine grapes are the premium, super premium and ultra premium segments of the wine grape market.

Supply arrangements

2.40. NEV submits the large number of unsophisticated vineyards in the region makes it inefficient for wine producers/buyers to attempt to source their grape supplies from Growers in the region. NEV submits one consequence of the high transaction costs involved in numerous negotiations for relatively small volumes is to create a disincentive to wine producers entering the local market.

2.41. NEV submits a second consequence has been that buyers have preferred to contract with local processors rather than with growers.

2.42. NEV submits the most typical supply chain at present is:

- growers sell wine grapes to local processors
- processors press the wine grapes and either:
 - use the juice in their own wines
 - sell the juice to third party wine buyers (such as Fosters/SouthCorp, Yalumba and/or local wineries), or
 - process the juice to make basic-grade wine (called 'must') sold to wine buyers for further processing.

2.43. Alternatively NEV submits, growers can contract with wine buyers directly. Where a grower does contract directly with a wine buyer the grapes must still be supplied to a processor within the region for pressing given quarantine restrictions. However, in these instances the processor does not have a direct contractual relationship with the grower. Rather, the processor contracts directly with the wine buyer to press the grapes on their behalf.

2.44. Under the proposed arrangements NEV submits it would act as a selling agent for Growers for the sale of grapes to both processors and wine buyers.

2.45. NEV submits that one of the rationales behind the proposed arrangements is to make the purchasing of grapes directly from growers, rather than through processors, a more attractive option for wine buyers.

2.46. NEV advises that there are currently eight processors in the region and many potential wine buyers, both within and outside the region.

Purchasing arrangements

2.47. In relation to the proposed arrangements for NEV to provide farm supply procurement services to Growers NEV only identified a single telecommunications supplier (Wireless Communications) and an insurance provider (Portfolio Planning Solutions) as parties with whom it may seek to negotiate on behalf of Growers.

NEV's submission in respect of the applications for authorisation

2.48. NEV submits that by reason of:

- the preference among wine buyers to deal with intermediate brokers rather than large numbers of individual growers
- the current situation where processors are the only obvious brokers for grapes sourced from the region's growers
- the disparity in size and sophistication between growers and processors, and
- the disparity in bargaining power arising from the large number of wine grape growers relative to the small number of processors and the quarantine regulations which result in growers being much more dependent on processors than processors are on growers

local processors have been able to hold wine grape prices down to artificially low levels. NEV submits that in the absence of some corrective mechanism in the market it is likely that a significant proportion of the region's growers will exit the market.

2.49. NEV submits that the proposed arrangements will:

- provide Growers with an opportunity for increased input into contract terms and conditions
- generate transaction cost savings for Growers and buyers arising from buyers increased capacity to source wine grapes through a single broker, and
- improve decision making by Growers based on the expertise of specialist consultants made available through NEV.

2.50. NEV submits that the proposed arrangement will not lessen competition as:

- processors have alternative sources of supply
- wine grape buyers are not affected other than by being offered an additional alternative source of supply
- at its broadest the group will account for only 4% of Victorian and 1% of national grape production, and
- insofar as the proposed arrangements extend to the procurement of farm supplies, growers are only one of these suppliers' customers.

2.51. NEV submits that the efficiency gains and improved farm sustainability that will result from the arrangements will lead to reduced prices for consumers.

3. Submissions received by the ACCC

- 3.1. NEV provided a supporting submission with its applications for authorisation, as summarised at paragraphs 2.48 to 2.51 and subsequently provided further information regarding its applications.
- 3.2. The ACCC also sought submissions from interested parties potentially affected by the application, including processors, wineries and industry associations.
- 3.3. The ACCC received one public submission from the Foster's Group, and one submission that was excluded from the public register at the request of the party.
- 3.4. Following the draft determination, the ACCC received a submission from NEV supporting the draft determination. The ACCC did not receive any further submissions from interested parties.
- 3.5. Issues raised in submissions are discussed in the ACCC's assessment of the arrangements in chapter 5 of the determination.
- 3.6. Copies of public submissions are available from the ACCC website (www.accc.gov.au) by following the 'Public Registers' and 'Authorisations Public Registers' links.

4. The net public benefit test

- 4.1. The ACCC may only grant authorisation where the relevant test in section 90 of the Act is satisfied.

Application A91080

- 4.2. NEV lodged application for authorisation A91080 under section 88(1) of the Act to make and give effect to a contract, arrangement or understanding, a provision of which is or may be an exclusionary provision within the meaning of section 45 of the Act.
- 4.3. The relevant test is found in section 90(8) of the Act.
- 4.4. Section 90(8) states that the ACCC shall not authorise a proposed exclusionary provision of a contract, arrangement or understanding, unless it is satisfied in all the circumstances that the proposed provision would result or be likely to result in such a benefit to the public that the proposed contract, arrangement or understanding should be authorised.

Application A91081

- 4.5. NEV lodged application for authorisation A91081 under section 88(1) of the Act to make and give effect to a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of the Act. The relevant tests for this application are found in sections 90(6) and 90(7) of the Act.
- 4.6. In respect of the making of and giving effect to the arrangements, sections 90(6) and 90(7) of the Act state that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding, other than an exclusionary provision, unless it is satisfied in all the circumstances that:
- the provision of the proposed contract, arrangement or understanding would result, or be likely to result, in a benefit to the public, and
 - this benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement was made and the provision concerned was given effect to.

Application of the tests

- 4.7. The Tribunal has stated that the test under section 90(6) is limited to a consideration of those detriments arising from a lessening of competition.⁸
- 4.8. However, the Tribunal has previously stated that regarding the test under section 90(6):

[the] fact that the only public detriment to be taken into account is lessening of competition does not mean that other detriments are not to be weighed in the balance when a judgment is being made. Something relied

⁸ *Australian Association of Pathology Practices Incorporated* [2004] ACompT 4; 7 April 2004. This view was supported in *VFF Chicken Meat Growers' Boycott Authorisation* [2006] AcompT9 at paragraph 67.

upon as a benefit may have a beneficial, and also a detrimental, effect on society. Such detrimental effect as it has must be considered in order to determine the extent of its beneficial effect.⁹

- 4.9. Consequently, given the similarity of wording between section 90(6) and 90(7), when applying these tests the ACCC can take most, if not all, detriments likely to result from the relevant conduct into account either by looking at the detriment side of the equation or when assessing the extent of the benefits.

Definition of public benefit and public detriment

- 4.10. Public benefit is not defined in the Act. However, the Tribunal has stated that the term should be given its widest possible meaning. In particular, it includes:

...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principle elements ... the achievement of the economic goals of efficiency and progress.¹⁰

- 4.11. Public detriment is also not defined in the Act but the Tribunal has given the concept a wide ambit, including:

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.¹¹

Future with-and-without test

- 4.12. The ACCC applies the ‘future with-and-without test’ established by the Tribunal to identify and weigh the public benefit and public detriment generated by arrangements for which authorisation has been sought.¹² Under this test, the ACCC compares the public benefit and anti-competitive detriment generated by arrangements in the future if the authorisation is granted with those generated if the authorisation is not granted. This requires the ACCC to predict how the relevant markets will react if authorisation is not granted. This prediction is referred to as the ‘counterfactual’.

Length of authorisation and conditions

- 4.13. The ACCC can grant authorisation for a limited period of time.¹³

- 4.14. The Act also allows the ACCC to grant authorisation subject to conditions.¹⁴

⁹ Re Association of Consulting Engineers, Australia (1981) ATPR 40-2-2 at 42788. See also: *Media Council case* (1978) ATPR 40-058 at 17606; and *Application of Southern Cross Beverages Pty. Ltd., Cadbury Schweppes Pty Ltd and Amatil Ltd for review* (1981) ATPR 40-200 at 42,763, 42766.

¹⁰ Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677. See also Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242.

¹¹ Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

¹² Australian Performing Rights Association (1999) ATPR 41-701 at 42,936. See also for example: Australian Association of Pathology Practices Incorporated (2004) ATPR 41-985 at 48,556; Re Media Council of Australia (No.2) (1987) ATPR 40-774 at 48,419.

¹³ Section 91(1).

¹⁴ Section 91(3).

Future and other parties

- 4.15. Applications to make or give effect to contracts, arrangements or understandings that might substantially lessen competition or constitute exclusionary provisions may be expressed to extend to persons who become party to the contract, arrangement or understanding at some time in the future and persons named in the authorisation as being a party or a proposed party to the contract, arrangement or understanding.¹⁵

¹⁵ Section 88.

5. ACCC evaluation

- 5.1. The ACCC's evaluation of the proposed collective bargaining arrangements is in accordance with the net public benefit test outlined in Chapter 4 of this final determination. As required by the test, it is necessary for the ACCC to assess the likely public benefits and detriments flowing from the proposed arrangements.

The market

- 5.2. The first step in assessing the effect of the conduct for which authorisation is sought is to consider the relevant market(s) affected by that conduct.
- 5.3. In this instance, the ACCC has identified the primary area of competition as the supply of wine grapes to processors and wine grape buyers.
- 5.4. With respect to the supply of wine grapes to processors the ACCC notes that, due to the phylloxera wine louse, Growers are only able to sell grapes to processors in the region. However, processors are able to source grapes from outside the region.
- 5.5. With respect to the supply of wine grapes to other buyers, such as wineries or larger wine producers, Growers are able to sell grapes to buyers both within and outside the region. Albeit that grapes sold to buyers outside the region would need to be processed into juice or 'must' before being transported out of the region.
- 5.6. Purchasers of wine grapes are able to source grapes from both within and outside of the region. However for some, particularly smaller wineries located within the region, purchasing from growers outside the region may be less economically viable.
- 5.7. NEV has also sought authorisation to negotiate for the supply of farm supply services on behalf of Growers. NEV identified two parties with whom it proposed to negotiate in this respect, Wireless Communications, a telecommunications service provider and Portfolio Planning Solutions, an insurance provider. NEV did not identify any other parties, or classes of goods or services, the supply of which it proposes to negotiate on behalf of Growers.
- 5.8. Accordingly the ACCC has identified the supply of telecommunication and insurance services as areas of competition potentially affected by the proposed arrangements.

The counterfactual

- 5.9. As noted in Chapter 4 of this final determination, in order to identify and measure the public benefit and public detriment generated by conduct, the ACCC applies the 'future with-and-without test'.
- 5.10. In the absence of authorisation it appears unlikely that NEV would negotiate contracts collectively on behalf of Growers. Accordingly the counterfactual with respect to the proposed arrangements appears to be the situation in which each Grower individually agrees to terms and conditions for the sale of their wine grapes and for the supply of telecommunications services and insurance products.

Public detriment

Submissions

- 5.11. NEV submits that the proposed arrangements will not lessen competition as:
- processors have alternative sources of supply
 - wine grape buyers are not affected other than by being offered an additional alternative source of supply
 - at its broadest the group will account for only 4% of Victorian and 1% of national grape production and
 - insofar as the proposed arrangements extend to the procurement of farm supplies, growers are only one of these suppliers' customers.
- 5.12. One submission, excluded from the public register at the request of the party, supported the granting of authorisation to allow NEV to collectively market Growers' grapes but opposed authorisation to allow the collective negotiation of terms and conditions of sale.
- 5.13. The party submits that most buyers buy grapes directly from growers, not processors, with the processor having a separate agreement with the buyer to press the grapes.
- 5.14. The party refutes NEV's suggestion that wine grape prices in the region are artificially low stating that while prices in many regions decreased in 2006, prices in North East Victoria increased.
- 5.15. The party also submitted that there are approximately 110 small local wineries in the region, most of whom are too small to purchase grapes from other regions and that these buyers will be at a disadvantage if forced to source grapes through NEV rather than from individual growers.
- 5.16. The Foster's Group did not support the applications, raising concerns that the proposed arrangements will eliminate competition amongst growers.
- 5.17. Foster's submits that its previous experience with co-operative type arrangements has been that growers inevitably negotiate towards a common price. Foster's submits that the result is that higher quality growers are generally disadvantaged and lower quality growers advantaged which creates a disincentive for the continued production of a high quality product. Foster's further submits that over time, the total pool quality tends to reduce as growers make conscious decisions to increase production levels to ensure that they are not disadvantaged by all growers within the group receiving an average price.
- 5.18. Foster's also submits that the proposed arrangements may lead to the bundling of desirable grape varieties with undesirable varieties, thereby encouraging the continued growing of undesirable varieties notwithstanding a lack of demand for those varieties.
- 5.19. More generally, Foster's submits that the operational and ownership characteristics of the region do not differ significantly from other wine grape growing regions and as such growers in the region are at no particular disadvantage to other growers with regard to bargaining power.

5.20. The ACCC sought the views of all processors in the region and a cross section of wine buyers, including those identified by NEV. Other than the two submissions noted, no interested party raised any objections to the proposed arrangements.

ACCC view – supply of wine grapes through NEV

5.21. While NEV submits that it is not seeking authorisation to collectively bargain, it does propose to negotiate the terms and conditions, including price in relation to wine grape supply contracts on behalf of Growers, which would apply to any or all Growers who so choose.

5.22. Further, any negotiations between NEV and/or WGA and wine buyers will be mindful of the bargaining power of NEV as a collective of growers. As such, the ACCC considers the effects of the proposal for NEV to negotiate model terms and conditions on behalf of Growers are analogous to those of Growers forming a collective bargaining group.

5.23. It is within this context that the ACCC has considered the benefits and detriments of the proposed arrangements.

5.24. Generally speaking, competition between individual businesses generates price signals which direct resources to their most efficient use. Collective negotiation of terms and conditions can interfere with these price signals and accordingly lead to inefficiencies. However, the extent of the detriment and the impact on competition of the collective agreement will depend upon the specific circumstances involved.

5.25. In its past consideration of collective bargaining arrangements the ACCC has accepted that where collective bargaining results in reduced competition between participants on issues such as price and terms of supply, anti-competitive detriment could arise. This detriment, among other things, may be in the form of increased prices to consumers and/or reductions in innovation.

5.26. The ACCC has previously identified that the anti-competitive effect of collective bargaining arrangements constituted by lost efficiencies is likely to be more limited where the following four features are present:

- the current level of negotiations between individual members of the group and the proposed counterparties on the matters that they seek to negotiate is low
- participation in the collective bargaining arrangements is voluntary
- there are restrictions on the coverage and composition of the bargaining group and
- there is no boycott activity.

Current level of negotiations between individual Growers and the counterparties

5.27. NEV submits that Growers have little negotiation power and are highly vulnerable price takers in the markets in which they supply grapes.

5.28. While NEV have submitted that Growers are in effect price takers, the ACCC notes that they supply grapes to a wide variety of buyers including large national wine producers, large wineries, wine grape processors and small local wineries.

- 5.29. The ACCC also notes that while there has been an oversupply of most varieties of grapes in recent years it is expected that a reduced harvest in the current season will result in a reduction in this oversupply.
- 5.30. Accordingly, while Growers may be in a weak bargaining position relative to some buyers, this is not likely to be the case in respect of all buyers.
- 5.31. As a consequence of the proposed arrangements access to a significant proportion of available wine grapes in the region may be aggregated through a single supplier.
- 5.32. The ACCC considers that the proposed arrangements do have the potential to adversely impact smaller buyers to the extent that they may affect the balance of bargaining power between smaller buyers and growers in negotiating terms and conditions of sale. However, the voluntary nature of the arrangements do mitigate against this.
- 5.33. More generally, growers collectively supplying their grapes through a common agent rather than negotiating individual sales agreements may reduce the current level of competition between Growers party to the arrangements. However, the ability for Growers party to the arrangements to continue to negotiate individual agreements outside of the group, in effect competing with the group, means that the extent to which Growers compete would not be reduced by the arrangements as much as would otherwise be the case.
- 5.34. In addition, the ACCC considers that the features of the arrangements noted below, namely that they are voluntary for all parties, competition from those outside the group and the absence of collective boycotts, reduce the potential for the arrangements to significantly impact on competition amongst Growers.

Voluntary participation in the collective bargaining arrangements

- 5.35. The ACCC notes that participation in the proposed arrangements is voluntary. Following the draft determination, NEV confirmed that Growers are not required to engage NEV, that Growers who engage NEV are not required to use its services and remain free to conduct independent negotiations and wine grape buyers are free to decline not to negotiate with NEV.
- 5.36. Growers who consider that they will be able to negotiate a more commercially attractive arrangement through negotiating individually, will remain free to do so. Consequently, incentives for Growers to compete on price, to innovate, or to otherwise improve their quality of services, to the extent that they exist, will not be reduced by the proposed arrangements to the extent they might otherwise be.
- 5.37. In this respect, the ACCC notes that collectively negotiated contracts will only be agreed and implemented where both Growers and wine purchasers consider it is in their commercial best interest to do so. The proposed arrangements do not impact on any processor's or wine buyer's ability to negotiate individually with growers. Rather, the arrangements give processors and wine buyers another option in respect of dealing with growers, should they choose to exercise this option.
- 5.38. In the draft determination, the ACCC noted that under the proposed arrangements Growers would be required to provide NEV with details of arrangements entered into outside of the grower group, including identifying any purchaser to whom they have sold grapes directly and the price paid for the grapes.

- 5.39. Providing details of the volume and variety, or varieties of grapes sold outside the group would appear to be necessary in order that NEV is aware of the volume and variety of grapes it is able to offer for sale on behalf of Growers.
- 5.40. The ACCC noted in the draft determination that it did not see any justification for Growers furnishing NEV with information regarding the price paid for grapes sold outside the group to buyers of those grapes.
- 5.41. Rather, the provision of such information would serve to undermine the ability for Growers party to the arrangements to individually compete against the group to supply buyers.
- 5.42. Provision of this information could also, by informing the group of prices and other terms and conditions being offered to and by individual Growers, increase the potential for collusive activity between growers beyond that the subject of the applications for authorisation.
- 5.43. Following the draft determination, NEV advised that it has amended its pro forma NEV Grower Contract to reflect that Growers who choose to participate in separate negotiations, will not be required to disclose to NEV and/or WGA the identity of the other parties to those negotiations or the prices being discussed.

Size/composition of bargaining groups

- 5.44. The ACCC considers that where the size of bargaining groups is restricted, any anti-competitive effect is likely to be smaller having regard to the smaller area of trade directly affected and to the competition provided by those suppliers outside the group.
- 5.45. While the proposed group consists of a significant number of growers in the region the competitive tension provided by growers outside the group, both within and outside the region will, particularly in respect of larger buyers, constrain the group in negotiations with processors and wine buyers.
- 5.46. Following the draft determination, NEV acknowledged that any proposal to make similar arrangements in relation to wine grape growers located outside of the North East Valleys phylloxera quarantine area would not be covered by the current application for authorisation and would require separate authorisation from the ACCC.
- 5.47. The Foster's Group has submitted that supply terms and conditions for a group of growers being negotiated through a single process could result in common terms and conditions being negotiated which do not account for differences in the quality of grapes grown, thereby providing a disincentive for the production of a high quality product.
- 5.48. As noted, the proposed arrangements are voluntary. As such it could be expected that, to the extent that this is a concern, arrangements will only be entered into where all parties consider that they generate sufficient efficiency gains to offset any inefficiencies which may result from reduced flexibility in contracts entered into.
- 5.49. More generally, it would be expected that to the extent that the quality of grapes grown varies, suitable incentives would be incorporated into contracts to accommodate this.

- 5.50. If this were not the case it would be expected that those growers producing a higher quality product would choose to continue to negotiate individually so as to achieve prices reflective of the quality of grapes grown, rather than join the collective arrangements.
- 5.51. In this respect, as noted, Growers party to the arrangements remain free to negotiate individually with buyers while a member of the group. This serves to provide an additional competitive tension constraining the group in negotiations with processors and wine buyers.

Boycott activity

- 5.52. In the context of collective bargaining, collective boycotts occur when a group of competitors agree not to acquire goods or services from, or not to supply goods or services to, a business with whom the group is negotiating, unless the business accepts the terms and conditions offered by the collective bargaining group.
- 5.53. In its decision on the VFF Chicken Meat Growers' Boycott Authorisation the Tribunal has stated in part:
- The seriousness of the potential consequences of authorising the use of collective boycotts is beyond doubt: they can result in substantial commercial damage not only to the direct target(s) of them but also to the other upstream and downstream businesses and their employees. Consumers might suffer disruption to market supplies and possibly at least temporary price increases.¹⁶
- 5.54. NEV has sought authorisation to engage in conduct that it considers might constitute an exclusionary provision within the meaning of the Act. While NEV has not identified any such provision, the ACCC understands that NEV is concerned that as the effect of the arrangements may be that the growers collectively may enter into arrangements with some buyers and not others it could be inferred that a purpose of the arrangements was to restrict the supply of grapes except on condition that the buyer deals with NEV/WGA.
- 5.55. Following the draft determination, NEV clarified that an effect of the proposed arrangements is that individual Growers may decline to negotiate directly with buyers and elect to sell their grapes only through NEV.
- 5.56. Authorisation has not been sought to extend to any broader conduct such as, for example, collective boycotts.
- 5.57. In any event, any authorisation granted would not extend to any collective decision by current or future Growers to not deal with any wine grape buyers or processors.

ACCC view – negotiation for the supply of farm procurement services by NEV

- 5.58. Authorisation is sought for the appointment by Growers of a common agent to provide farm supply procurement services.
- 5.59. As noted, NEV identified Wireless Communications, a telecommunications service provider, and Portfolio Planning Solutions, a provider of insurance services, as parties with whom it may seek to negotiate on behalf of Growers. Beyond these two parties NEV did not identify any party, or goods or services, the supply of which it seeks to negotiate on behalf of Growers.

¹⁶ *Re VFF Chicken Meat Growers' Boycott Authorisation* [2006] ACompT 2, at para 381

- 5.60. Accordingly, the ACCC has limited its consideration of this limb of the applications to an assessment of Growers appointing a common agent to negotiate with telecommunications and insurance service providers.
- 5.61. The ACCC notes that neither Wireless Communications nor Portfolio Planning Solutions objected to the proposed arrangements.
- 5.62. Further, the proposed arrangements aggregate only a very small proportion of the customer base for these goods and services. As such, the arrangements are unlikely to significantly affect the balance of bargaining power between Growers and suppliers.
- 5.63. The ACCC therefore considers that the public detriment generated by the proposed arrangements is minimal.

Public benefit

Submissions

5.64. NEV submits that the proposed arrangements will:

- improve Growers' bargaining position with processors and wine buyers, and consequently improve input into contract terms and conditions, and the prices paid for the region's wine grapes
- generate transaction cost savings for Growers and buyers arising from buyers' increased capacity to source wine grapes through a single broker
- allow Growers to obtain better prices for farm supplies by organising higher volume purchases and
- ensure a viable wine grape industry in the region.

5.65. An assessment of the public benefits claimed by NEV follows.

Improved input into contracts for Growers

- 5.66. NEV submits that the proposed arrangements will improve Growers' bargaining position with processors.
- 5.67. NEV submits that Growers, individually, are in a weak bargaining position relative to processors and that Growers do not have the skills required to deal with well resourced buyers.
- 5.68. The ACCC considers that arrangements for the negotiation of terms and conditions through a common agent can result in benefits to the public by facilitating improvements in the level of input a party has in their contractual negotiations. This improved input provides a mechanism through which the negotiating parties can identify and achieve greater efficiencies in their businesses, for example by addressing common contractual problems in a more streamlined and effective manner.
- 5.69. This improved input is a feature of increasing the bargaining power of the collective (by allowing them to aggregate their influence in the negotiation); of improving the individual's access to information and resources; and of providing a mechanism through

which productive contractual discussions between the collective and the counterparty can be achieved.

- 5.70. In the context of the NEV's applications for authorisation, it would appear that the relative positions of individual growers and some larger buyers, such as, large processors and/or wineries, may limit the capacity of growers to have effective input into contract terms and conditions.
- 5.71. The ACCC considers that where successful, collective negotiation provides parties to the arrangement with more direct, effective and explicit input into contracts, which may result in public benefits.
- 5.72. The ACCC considers that the proposed arrangements would provide greater opportunity for Growers, through NEV or WGA, to provide input into the terms and conditions of contracts negotiated with some parties. To the extent that this leads to efficiency gains, it gives rise to some public benefit.

Transaction costs savings

- 5.73. NEV submits the large number of small vineyards in the region makes it inefficient for wine producers/wine grape buyers to attempt to source their grape supplies from the region. NEV also submits that many large wine buyers have a preference for dealing with processors directly as it allows them to source larger quantities of grapes through a single transaction.
- 5.74. NEV submits the intrusion of a third party between growers and wine producers introduces a second margin into the supply of grapes to wine producers and has also reduced contact between growers and wine makers.
- 5.75. Against this, one submission that was excluded from the public register at the request of the party making the submission, argued that most wine buyers deal with growers directly.
- 5.76. Foster's submits it is unclear from the applications how the introduction of an additional party, NEV, into the negotiation process will reduce transaction costs.
- 5.77. The ACCC notes that NEV negotiating on behalf of Growers would not introduce another party to the negotiating process. Rather, one party, the Grower, would be replaced by another, NEV.
- 5.78. Generally transaction costs are likely to be lower where a single negotiating process is employed, relative to a situation where a buyer must negotiate individual agreements with every business with which it deals.
- 5.79. Accordingly, to the extent that Growers currently negotiate individually with wine buyers and relevant farm service suppliers the proposed arrangements may generate some transaction cost savings. Similarly, the arrangements may reduce transaction costs involved with negotiating between Growers and processors.
- 5.80. To the extent that existing transaction costs serve as a disincentive to buyers dealing with Growers directly, the proposed arrangements may assist in facilitating more direct negotiations between Growers and buyers which would also contribute to Growers having an increased input into the contract terms and conditions.

Improved prices for farm supply services

- 5.81. NEV submits that by sourcing Growers' farm supply services collectively it may be able to negotiate reduced rates for the provision of these services.
- 5.82. As noted in the ACCC's consideration of the potential public detriment generated by the proposed arrangements, it is unlikely that the proposed arrangements will significantly affect the balance of bargaining power between Growers and providers of services such as telecommunications and insurance.
- 5.83. Any savings negotiated for the collective provision of these services through the proposed arrangements are likely to reflect the lower costs involved in providing services collectively.
- 5.84. Such cost savings to the provider may include savings on the cost of negotiating terms and conditions of supply. To the extent that this is the case these savings are considered in the ACCC's assessment of the transaction cost savings generated by the proposed arrangements.
- 5.85. However, the proposed arrangements may also enable suppliers to achieve economies of scale in the provision of these services that are not available in respect of dealing with each Grower individually.
- 5.86. To the extent that this is the case the ACCC considers this to be a public benefit flowing from the proposed arrangements.

Ensuring a viable wine grape industry in the region

- 5.87. Foster's submits that market demand alone is responsible for the low prices of some varieties of wine grapes.
- 5.88. Foster's also submits that demand is determined by market forces and it is difficult to accept that a reduction in supply through the exit of growers from the industry is anti-competitive and disadvantageous to consumers.
- 5.89. NEV submits that the proposed arrangements will assist in ensuring the long term viability of Growers in the region by improving bargaining efficiency of small vineyards and ameliorating the effects of the peculiar competition problems as a result of the phylloxera quarantine.
- 5.90. NEV also submits that this will have a flow on effect to the local community. NEV submits local vineyard operations bring significant income into the area, which stays in the area as most operators are entirely local businesses, and accordingly has a strong multiplier effect through the local community.
- 5.91. The ACCC considers that there is a public benefit in maintaining the viability of efficient businesses, where this can be satisfactorily demonstrated. However, the ACCC does not consider that there is likely to be a public benefit in maintaining inefficient businesses.
- 5.92. In this respect, the ACCC is not currently satisfied that the viability of efficient businesses is being jeopardised and that allowing those businesses to bargain collectively will go some way towards ensuring their continued viability.

5.93. In the current case, it remains in the wine buyers' best interests to maintain an efficient supply network and it could be expected that wine buyers will act in accordance with that interest both in negotiations with Growers party to the applications, whether through individual or collective negotiations, and with other suppliers.

Balance of public benefit and detriment

5.94. The ACCC considers that the proposal for Growers to appoint a common agent to negotiate wine grape supply contracts has the potential to generate some anti-competitive detriment. In particular, the proposed arrangements may reduce competition to some extent between Growers party to the arrangements. However, the ACCC considers that any anti-competitive detriment generated by the arrangements is mitigated by:

- the voluntary nature of the arrangements
- the relative size of the bargaining group and the competitive tension provided both by growers outside the group, from the Alpine and King Valleys and other regions, and by the Growers within the group to the extent they can negotiate individual supply arrangements and
- the absence of collective boycotts.

5.95. As noted, the ACCC was concerned that the provision of information by Growers to NEV regarding the prices paid and the identity of the purchasers of wine grapes sold by the Grower individually has the potential to significantly erode competition between Growers.

5.96. However, following the draft determination, NEV advised that it has amended its pro forma NEV Grower Contract to reflect that Growers who choose to participate in separate negotiations, are not required to disclose to NEV and/or WGA the identity of the other parties to those negotiations or the prices being discussed.

5.97. The ACCC considers that the proposal for the Growers to appoint a common agent to negotiate contracts with providers of telecommunications and insurance services on their behalf generates minimal public detriment.

5.98. The ACCC considers that the proposed arrangements will generate public benefits by:

- providing Growers with increased input into contracts with associated efficiencies
- generating transaction costs savings and
- enabling Growers to obtain services from relevant suppliers at a lower cost than would otherwise be the case.

5.99. The ACCC notes since interim authorisation was granted, NEV advised that the short term response from buyers has been positive and that the arrangements appear to have introduced new buyers to the North East Valley region. Further, NEV stated that it has been able to provide all potential buyers with improved information about the produce on offer from the local area.

5.100. On balance, the ACCC considers that subject to Growers not providing NEV with details of the price paid and the identity of purchasers of wine grapes in respect of their

individually negotiated contracts, the public benefits of the proposed arrangements are likely to outweigh the anti-competitive detriment.

5.101. The ACCC limits the authorisation granted for NEV and/or WGA to provide farm supply procurement services to growers to the procurement of those goods and services identified by NEV, being telecommunications services and insurance products.

Length of authorisation

5.102. NEV seeks authorisation until 30 June 2012. The ACCC grants authorisation for that period.

6. Final determination

The application

- 6.1. On 21 December 2007 the North East Valleys Wine Group Pty Ltd (NEV) and 39 identified growers of wine grapes in the North East Valleys (located in the Alpine and King Valleys) in the north east region of Victoria (Growers) lodged applications for authorisation A91080 and A91081 with the Australian Competition and Consumer Commission (the ACCC).
- 6.2. **Application A91080** was made using Form A Schedule 1, of the Trade Practices Regulations 1974. The application was made under subsection 88 (1) of the Act to make and give effect to a contract, arrangement or understanding, a provision of which is or may be an exclusionary provision within the meaning of section 45 of the Act. The relevant test for this application is found in section 90(8) of the Act.
- 6.3. **Application A91081** was made using Form B Schedule 1, of the Trade Practices Regulations 1974. The application was made under subsection 88 (1) of the Act to make and give effect to a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of the Act. The relevant tests for this application are found in sections 90(6) and 90(7) of the Act.
- 6.4. Authorisation is sought for Growers to appoint a common agent (NEV) to provide (by itself or through a sub-agent, Winegrapes Australia Pty Ltd (WGA)):
 - commercial consulting services in relation to grape supply contracts, including pricing advice
 - sales agency services in respect of grape sales and
 - farm supply procurement services.

The net public benefit test

- 6.5. For the reasons outlined in Chapter 5 of this final determination, the ACCC considers that subject to Growers not providing NEV or WGA with information regarding the price paid or being negotiated, or the identity of parties to negotiations, for the individual sale of wine grapes by Growers:
 - the proposed arrangements would be likely to result in such a benefit to the public that they should be allowed to be made and given effect to and
 - that the public benefits likely to result from the proposed arrangements would outweigh the potential anti-competitive detriments of the arrangements.

Conduct for which the ACCC proposes to grant authorisation

- 6.6. The ACCC grants authorisation until 30 June 2012 to NEV and current and future Growers in the in the North East Valleys (located in the Alpine and King Valleys) in the north east region of Victoria for the following aspects of the applications:

Supply Contracts

- (a) The appointment by current and future Growers in the North East Valleys (located in the Alpine and King Valleys) in the north east region of Victoria of a common agent (NEV) to provide (by itself or through Winegrapes Australia Pty Ltd (WGA) as a sub-agent):
 - (i) commercial consulting services in relation to grape supply contracts, including pricing advice and
 - (ii) sales agency services in respect of grape services.

To the extent that any element of the proposed arrangements may constitute an exclusionary provision within the meaning of sub-sections 45(2)(a)(i) and (2)(b)(i) and section 4D of the Act, the proposed authorisation covers that conduct.

- (b) Authorisation also extends to current and future Growers in the North East Valleys (located in the Alpine and King Valleys) in the north east region of Victoria providing NEV and/or WGA with details of the:
 - (i) volume and
 - (ii) variety, or varieties,

of grapes/bulk wine the Grower has individually sold or is negotiating to sell.

Procurement Services

- (c) The ACCC also grants authorisation for the appointment by current and future Growers in the North East Valleys (located in the Alpine and King Valleys) in the north east region of Victoria of a common agent, to provide farm supply procurement services only in respect of goods and services supplied by telecommunications and insurance service providers.

6.7. This final determination is made on 19 March 2008.

Conduct not authorised

- 6.8. This authorisation does not extend to any collective decision by current or future Growers to not deal with any wine grape buyers or processors.
- 6.9. The authorisation for the conduct referred to in paragraph 6.6 does not extend to Growers providing NEV and/or WGA with details of the:
 - (i) prices paid or being negotiated or
 - (ii) the identity of parties to negotiations

as contemplated by clause 7 of the NEV Grower Contract which was provided as an attachment to the application for authorisation.

Interim authorisation

- 6.10. NEV requested interim authorisation for the proposed arrangements. On 1 February 2008 the ACCC granted interim authorisation to some elements of the proposed arrangements, as detailed at paragraphs 2.11 to 2.17 of this final determination.
- 6.11. Interim authorisation will remain in place until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.

Date authorisation comes into effect

- 6.12. This determination is made on 19 March 2008. If no application for review of the determination is made to the Australian Competition Tribunal, it will come into force on 10 April 2008.